

# **LST REVIEW**

Volume 23 Issue 303 January 2013



**LAND, CLASS & ETHNICITY**

**THE NORTHERN MUSLIMS OF SRI LANKA**

**LAW & SOCIETY TRUST**

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*Editor's Note... ..*

Continuing an overall theme of justice and land rights in post-war Sri Lanka which was reflected in Issues 299, 300, 301/302 of the *LST Review*, this Issue publishes the concluding part of the series through two important - and complementary - contributions to public debate.

First, a succinct essay by *Sunil Bastian* draws attention to the historical formation of Sri Lanka's property relations in regard to state land. He makes the central point that policies of distributing state land to the landless formed a significant part of both colonial and post-colonial Sri Lanka, even during the expansion and encouragement of a capitalist economy. As he opines, although a notion of encroachment on state land was constructed during colonial times, the Sri Lankan state 'did not treat this idea in a narrow legalistic sense.' Indeed, as is pointed out;

'In a country where a large proportion of the population was rural, the state accepted the fact that land that came under the state due to the Crown Land Encroachment Ordinance had to be distributed for the benefit of the rural population.'

The further point sought to be made is that this was part of state protections put in place to benefit the smallholder peasantry of which the vast majority was Sinhalese. However, as developments linked to liberal market policies in later years show, Sri Lanka's poor peasantry have not actually benefited from such state policies. They also did not benefit the plantation sector classified as an 'alien population.' Moreover land settlement became a contentious issue in regard to the Northern and Eastern provinces and ultimately a vital factor in the worsening of the ethnic conflict in those areas. And in the cities, land needs of the urban poor were often seen to give way to the demands of capitalist growth.

In the post-war period therefore, *Bastian* emphasizes most crucially that in analyzing land demands of the marginalized, both class and ethnic characteristics need to be combined in formulating strategies for advocacy and intervention. Thus;

'The poor peasantry, a significant proportion of which are Sinhalese, need land to make a living. The Indian Tamil population, who were left out of land distribution programmes from the beginning, need to be included as a special category in discussions on land policy. Poor Tamil and Muslim people have lost their land in the North and East due to war. The Tamil peasantry from the Vanni who face the possibility of losing their land also face similar problems to the Sinhala poor peasantry in making a living from land. It is useless to talk about livelihoods without tackling these fundamental issues. Finally, the land of the urban poor from diverse ethnic backgrounds will come under pressure due to expansion of capitalist development.'

He warns, quite legitimately that in the alternative, focusing on some grievances to the exclusion of others will only divide the struggles of the 'socially excluded.' This is a warning that rings true for civil society activism in particular.

The second and longer paper published in this Issue by *Dr. Fara Haniffa* is centered around the expulsion of northern Muslims in 2009. It contains excerpts of work by the Citizens' Commission on Northern Muslims, an initiative hosted by the Law & Society Trust (LST) but operating independently from LST. The paper devotes specific attention to the engagement of this Commission with the government established Lessons Learnt and Reconciliation Commission (LLRC) resulting in the LLRC report reflecting some of the predominant concerns of this exercise. As stated, the findings of this exercise reflect the lack of effective mechanisms to deal with land and resource related conflicts in the areas to which Muslims are returning in the post-war years.

Her paper comprises a critique of inaction on the part of civil society as well as the humanitarian aid sector in relation to the plight of the Northern Muslims during the years of displacement. It looks at relevant governmental policies including the right to vote of the displaced, examines in detail, the difficult process of return and reintegration and proposes several recommendations thereto.

A particularly interesting focus of this paper is its attention to the context and material facts surrounding the attack on the Mannar Magistrate's Court allegedly by a Government Minister in mid 2012 which formed part of the events leading up to the impeachment of Sri Lanka's 43<sup>rd</sup> Chief Justice later that year. *Haniffa* observes that, while the mob attack on the court was to be deplored, the reactions of the national and

international legal community in viewing this issue purely within the parameters of the independence of the judiciary did not take into account the sensitivities particularly of the Muslims in Mannar who felt that their concerns in regard to land disputes between returning Muslims and the Catholic community remained unaddressed by the relevant judicial authorities. Further, as she highlights, the level of police brutality evidenced in the post-attack arrests of Muslims in the area was also bypassed in many accounts of what transpired at that time.

This exploration of the dispute certainly brings into question various factors which illustrate the complexities of such situations. These are cautions that are not limited to the legal community or to the international community alone but propel self-introspection from all quarters. At that time, concerns that the seriousness of the mob attack allegedly with the blessings of a senior Muslim Minister and leading unprecedentedly to the Magistrate being reduced to cowering under his seat had not been adequately reflected in the initial position taken by a fact finding mission of the Citizens' Commission, resulted in the Commission issuing a second clarificatory statement in that regard, (see statements of the Commission respectively dated 22<sup>nd</sup> August and 30<sup>th</sup> August 2012).

Indeed, it is axiomatic that the Muslim community's perception of judicial insensitivity to their plight by the Mannar Magistrate's Court, (which still remains to be thoroughly documented, analysed and critiqued in terms of actual court records and orders), cannot in any manner excuse or condone anarchy. Impunity at the highest government levels in relation to the attack on the Mannar Magistrate's Court, continues. No high-level government official or politician has yet been held responsible despite the lapse of considerable time since the incident.

Overall, this controversy illustrates the importance of sectarian interests not dictating public responses in regard to rights to land which remains a most contentious issue in post-war Sri Lanka, involving post-war disputes between Muslims and Tamils, Muslims and Sinhalese as well as Tamils and Sinhalese. Unfortunately as we saw in the Mannar controversy, the amicable non-resolving of such disputes may spill over to attacks on legal institutions themselves when there is backing of anarchic forces by powerful politicians. This may also be coupled with police excesses as is often the case in similar such situations in Sri Lanka. Violation of human rights by the police exceeding their legitimate authority in clashes between the state and individuals is now

a matter of course not only in regard to Muslims and Tamils but also the Sinhalese community.

The themes of inclusivity and sensitivity in examining issues of this nature as reflected in the opening contribution to this Issue stands collectively reiterated, at least as a caution for future interventions.

*Kishali Pinto-Jayawardena*

## Land, Class and Ethnicity

*Sunil Bastian\**

Land and land policy has received much attention in recent times. There are numerous discussions and activism around land policy. For example, the LLRC (the Lessons Learnt and Reconciliation Commission) has recommendations about land disputes in the North; land disputes were mentioned in the resolution passed against Sri Lanka during the 18<sup>th</sup> session of the United Nations Human Rights Council; there are studies largely based on the notion of land rights; some civil society groups have organised themselves to work against land grabbing, and environmental groups are concerned about the impact of land use on the environment.

On one hand, land is a physical resource that can be mapped, quantified and studied within various fields of knowledge collectively known as earth sciences. But this physical aspect gets a totally different meaning through political and economic processes. This happens over time, and what we face today is a result of politico-economic history.

Some of the key steps in this politico-economic history of land took place during the colonial period. The establishment of the institutional framework for the modern Sri Lankan state in the 1830s, and the passage of the Crown Land Encroachment Ordinance of 1840, changed the nature of property relations on state land. The most important shift was establishing the need for documentary proof of ownership of land. The land where this could not be established came under the state. Along with these developments, the idea of 'encroachment on state land' came into being. In feudal Sri Lanka, this notion did not exist. As we shall see below, this notion of 'encroachment on state land', created during the colonial period, has become very useful for the ruling class in recent times.

The flip side of the enactment of the Crown Land Encroachment Ordinance was the sale of land to establish the plantation industry. This was the first major step undertaken to establish a capitalist mode of production in Sri Lanka. Capital came from Britain and labour from South India.

From the time the economy was liberalised in 1977, sometimes called the second wave of globalisation as opposed to the first wave during the colonial period, the government has allocated land for the expansion of the private sector. This demand for state land from private capital is bound to expand in the post-war period. The post-war stability achieved through military means has created better conditions for the expansion of capitalist relations in society and the private sector needs state land for this purpose. In addition, land is required to develop the infrastructure necessary for promoting capitalist growth.

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Along with these demands by capital, institutional reforms to consolidate private property rights and develop a land market for state land have entered into the policy debate. In a widely discussed report published in 1996, the World Bank recommended divesting state ownership of land and establishing institutional mechanisms for the market mechanism to operate on land. The main focus of the report was how to improve non-plantation agriculture. The authors of the report believed deepening market relations on state land would consolidate land among more productive farmers, leading to agricultural growth. The necessary laws were passed to make this a reality, and a land titling project was implemented. In addition, the government began to convert permits given through the Land Development Ordinance (LDO) to various other forms of ownership identified with names such as Swarnaboomi, Jayaboomi, etc. Although these were not title deeds, they conferred more rights on the owners of land. The Bim Saviya programme implemented under this government is the latest addition to the attempt to consolidate private property rights on land.

The liberal discourse of individual land rights, in contrast to articulating collective demands, supports the agenda of promoting private property rights and institutions on land. This will support capitalist development. This discourse can consolidate the rights of the marginalised only if individual land rights are combined with measures that would protect the poor from the pernicious effects of the market. Here we go beyond individual rights to collective needs.

While establishing institutional reforms for the development of a capitalist economy, the late colonial period also saw the beginning of land distribution for the purpose of improving the lot of the rural peasantry. The Land Commission of 1928 and Land Development Ordinance of 1935 were important in this regard. From this point onwards both colonial and post-colonial states of Sri Lanka had a series of policy measures distributing state land to the landless. State land was distributed through land settlement schemes; so called 'encroachments' were regularised, and land was distributed for village expansion. These policies continued even during the liberalised period of capitalism. In fact, the largest land settlement programme was implemented during that period. These policies were linked to development objectives such as improving agriculture and making the country self-sufficient in food.

This means that although a notion of 'encroachment' was constructed during the colonial period, for a long time the Sri Lankan state did not treat this idea in a narrow legalistic sense. In a country where a large proportion of the population was rural, the state accepted the fact that land that came under the state due to the Crown Land Encroachment Ordinance had to be distributed for the benefit of the rural population. In addition 'encroachments' were regularised for the same purpose.

The distribution of state land is part and parcel of a set of policies that subsidised and protected the smallholder peasantry. The vast majority of this peasantry is Sinhalese. This was a major plank of development policies of Sri Lanka. However, it is clear now that the impact of markets and some of the policy changes under liberal market policies have brought about a class differentiation in rural areas. At one end are the poor peasantry that have not benefited from policies promoted to protect smallholder agriculture. Small plots, subdivision of plots with every generation, production with family labour for home consumption and depending on various forms of casual labour for earning an income characterise

their lives. A significant proportion of income in poor rural households, comes from wage labour. At the other extreme is the rich peasantry, cultivating larger plots, able to use technology, hiring wage labour and producing a surplus. They are also involved in other means of income earning such as hiring out agricultural technology, trading, etc. Richer farmers are also influential in politics. Access to political power has allowed them to extend into other spheres of the economy. Therefore despite many years of land distribution there is land hunger among the poor peasantry in rural areas. Most of them are Sinhalese.

The policies aimed at tackling the land hunger of the peasantry that began in the 1920s excluded the population that lived in the plantations. Characterised as an 'alien population', they were not entitled to land distribution under the various settlement schemes. In other words, while the basis for Sri Lankan capitalism was established through plantations, the working class that produced a surplus for the modern Sri Lankan economy was excluded from the policy of distribution of state land. This situation has continued throughout the post-colonial period. Even now, although there are many from the plantation background earning a living as small farmers, many would fall into the category of encroachers.

Policies to protect the peasantry through distribution of state land became a major factor in worsening ethnic relations. The main issue was the settlement of people in the Eastern Province. Land settlement policies changed the ethnic composition of the Eastern Province and had an impact on electoral power. This became a fundamental reason for the civil war. Thus a policy that had a progressive dimension in protecting the poor peasantry became one of the factors contributing to an armed conflict.

As a result of this history, control over state land in the Northern and Eastern Provinces remains a major political issue in finding a political solution to the national question. It was a critical issue in all past negotiations. The 13<sup>th</sup> Amendment has limited answers to this question. But even this remains unimplemented. Nevertheless, with a presidential system that has centralised *de facto* power to a high degree, it remains to be seen how the state can be reformed to ensure devolution of power.

The constitutional debate on devolution of power over state land has been complicated by the numerous problems created by three decades of armed conflict. There are numerous land disputes in the Northern and Eastern Provinces. These have been recorded in a number of reports. A particular concern is the land cultivated by poor peasants in the Vanni. Quite a proportion of this land would have been cultivated under LDO permits or 'encroached'. There is no sign of any systematic effort to sort out these problems. Many of the institutions dealing with land issues have been undermined during the time of the war. This creates a better environment for land grabbing. In the post-war context, this land will come under pressure due to capitalist expansion to the North and East.

Finally, in the process of capitalist growth, urban areas are likely to become the most sought-after locations by capital, and the state will support this process by developing infrastructure. Cities become centres of accumulation, and it is often easier to understand the global process of capital accumulation by focusing on urban centres around the world and their linkages. This will put pressure on land occupied by the socially excluded and marginalised in urban centres, especially Colombo. Dispossessing the

marginalised of their land in cities can take place through market mechanisms, as well as through the use of state power. The notion of 'encroachment' will be a useful category for the latter strategy.

Thus in the post-war context there are several land issues if we are concerned with the socially excluded and marginalised. There are common problems faced by all of them, but there are also specific issues faced by each group. The poor peasantry, a significant proportion of which are Sinhalese, need land to make a living. The Indian Tamil population, who were left out of land distribution programmes from the beginning, need to be included as a special category in discussions on land policy. Poor Tamil and Muslim people have lost their land in the North and East due to war. The Tamil peasantry from the Vanni who face the possibility of losing their land also face similar problems to the Sinhala poor peasantry in making a living from land. It is useless to talk about livelihoods without tackling these fundamental issues. Finally, the land of the urban poor from diverse ethnic backgrounds will come under pressure due to expansion of capitalist development. Therefore, in analysing land demands of the marginalized, there is a need to combine both class and ethnic characteristics. More importantly, any kind of activism undertaken by civil society has to take into account this diversity. Focusing on some issues to the exclusion of others will make this activism a force that divides the struggles of the socially excluded and marginalised.

To end this note, there is a need to make a few comments about the policy-making process within the state. In dealing with problems faced by the socially excluded and marginalised, civil society groups spend a lot of time trying to influence state policies. Donors also encourage this and routinely want civil society to participate in formulating policies, which normally end up with a document. Then the next task is how to see that this is implemented. This is not a bad thing in itself, so long as we understand what the state is and how policy-making takes place in states. The dominant idea about the state that underpins these exercises is to view the state as an independent rational actor. Within this perspective, policy-making amounts to collecting information, analysing, making laws, creating new institutions if necessary, allocating resources and implementing. Well, if states were like this we would have very few problems in society.

The other view is to see states as arenas of struggles and conflicts. In the struggles, there are interest groups, politics and a messy process, a large part of which cannot be understood by looking at laws and formal processes. For example, when it comes to land policy, the dominant forces at present are those who support capitalist growth, Sinhala nationalism, those who want to use political power to get hold of state land and a political class that has used state land as a means of political patronage. The political forces that represent the socially excluded and marginalised are weak. Civil society will be more effective if it keeps in mind such a conception of state when trying to influence state policies. Of course, working with the state has to be coupled with identifying and being a part of the struggles of the socially excluded. If some dimensions are missing, trying to influence the state, while believing it to be a rational actor, amounts to being trapped in a discourse promoted by elites and their backers.

# The Northern Muslims: Problems of Return and Local Integration

*Farzana Haniffa\**

## 1. Introduction

The Law & Society Trust engaged in the Citizens' Commission exercise in 2009 – the report was released in 2011—in order to ensure that the expulsion of Muslims is recognized as a national tragedy that must be understood as a significant part of the troubled history of Sri Lanka's conflict. Thereby it was hoped that the incorporation of the Expulsion into the standard narrative of the conflict would help the process of institutionalizing measures for speedier resettlement of the northern Muslims. One of the factors that motivated the establishment of the citizens' commission was the lack of state acknowledgement of the expulsion and the minimal state recognition of the northern Muslims' unique experience.

During the time the citizens' commission was engaged in its work, the government's Lessons Learnt and Reconciliation Commission (LLRC) was also formulated and called for submissions. The citizens' commission secretariat decided to engage with the LLRC—despite many civil society actors' skepticism of the process, to ensure that the Northern Muslim perspective would be reflected in the commission's findings. The commission secretariat made written and oral submission to the commission. The inclusion of the northern Muslims in the LLRC report as well as the call for the formulation of a state policy on the speedy resettlement of northern Muslims as part of the implementation program was, therefore, a welcome development.

The Commission Report however, was an exercise concerned mainly with documenting the past; return and resettlement that was just beginning during the time the report was formulated, was reflected in one chapter alone. This article will therefore pick up where the commission report left off and discuss the inclusion of the issue in the LLRC report as well as some of the difficult issues faced by northern Muslims in the post war context. The report is based on the desk research conducted for the Commission process, additional desk research conducted after the commission report was released, and visits to Mannar in September 2011, January 2012, August 2012, and October 2012.

Some of the findings of these visits and desk research were:

1. The humanitarian actors lack of sympathy for the northern Muslims' predicament as well as their way of being "locked in" to a specific form of service delivery.
2. The lack of any justice concerns in the context of return due to the extreme control exercised by the government in implementing return movements.

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3. The absence of strong mechanisms with which to deal with the substantial land and resource related conflicts in the areas to which Muslims are returning.
4. The inadequate civil society engagement with the northern Muslim issue.

## 2. Northern Muslims and the LLRC

The Lessons Learnt and Reconciliation Commission Report (LLRC) called for submissions and the Commission Secretariat made both written submissions and oral representations before the Commission. The Citizens' Commission Secretariat's presentations before the LLRC were included almost verbatim in the final report and worked in to the recommendations as well.

The LLRC report makes a substantial reference to the Muslims – there are references on 47 of the 407 pages. And specifically on the northern Muslims in Chapter Five under the sub heading "Muslim Community in the North and East",<sup>1</sup> in Chapter Six under "Muslim families forcibly evicted from Jaffna and the Northern Province",<sup>2</sup> in "Resettlement of Northern Muslims"<sup>3</sup> in Chapter Eight, and in pages 370-371 under "Grievances of the Muslim Community" in Chapter Nine.

Prior to this, Muslim issues received little or no attention in state reports and on the rare occasions when some mention was made, it was ridden with errors. One example – the state report to the UN Committee on Economic Social and Cultural Rights is a case in point. The report stated that the Muslims were expelled from *Jaffna* in 1991. Not from the Northern Province, and not in 1990. When referring to the World Bank housing scheme in Puttalam,– the report mentioned assistance given for the building of partially damaged houses (damaged due to conflict), not partially built houses, again revealing a substantial lack of engagement with the northern Muslims' predicament of being protracted IDPs, who were driven out of their places with no possibility of return.

Therefore, to finally have a document – from the state—that engaged with the issues of the Muslim community, and not just the northern Muslims was a substantial achievement. And the representation of Muslim concerns in the LLRC, unlike in other government documents, is not cursory; it is substantial. Referencing the submission made by the Citizens' Commission, the LLRC states:

The Commission was told that the expulsion remains inadequately integrated into the history of the Sri Lankan conflict, and Northern Muslims feel that the State has not adequately acknowledged the Northern Muslims' experience of ethnic cleansing at the hands of the LTTE. A

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<sup>1</sup> See Lessons Learnt and Reconciliation Commission Report, pp. 192- 195

<sup>2</sup> See Lessons Learnt and Reconciliation Commission Report, pp. 207- 208

<sup>3</sup> See Lessons Learnt and Reconciliation Commission Report, pp. 281-282

Citizens' Commission has been established to investigate the history of the expulsion, the displacement experience of 20 years and the current experiences of return.<sup>4</sup>

It was further submitted that the Northern Muslims have long wanted the Government to establish a Presidential Commission of Inquiry into the expulsion. In order to return to their homes and lands and some form of normalcy, the Muslim Community of the Northern Province seeks assistance from the Government and other parties.<sup>5</sup>

We consider this a substantial achievement of the commission and a significant move forward for the institutionalization of the northern Muslim issue at the level of the state. Further evidence of the importance of the LLRC acknowledgement lies in the fact that in one section, the term "ethnic cleansing" is used to refer to the expulsion. Additionally, the recommendations recognize that northern Muslims, due to the protracted nature of their displacement will return and also choose to settle in Puttalam and both probabilities are acknowledged, and suitable actions recommended by the LLRC report.

In chapter 5 on Human Rights and again in chapter 8 on reconciliation, there are recommendations that reflect the northern Muslims' own position on the issue:

5. 149 Durable solutions should be found to address the plight of the Muslim Community as one of the long standing IDP issues arising out of the protracted conflict in Sri Lanka. This could be achieved through the creation of a uniform State policy aimed at resettlement of these IDPs and/or integrating them into the host community. This policy needs to be communicated to the IDPs so that they could take considered decisions with regard to the resettlement options available to them either in their original places of habitat or in the host communities.

5. 150 Such State policy should also include an assistance package including financial assistance and other material support such as support for housing construction.

5. 151 A special committee should be appointed to examine durable solutions and to formulate a comprehensive State policy on the issue, after having extensive consultations with the IDPs and the host communities.

The state mandated discourse on the conflict now includes a serious engagement with the northern Muslim issue. Further, the state action plan for implementation also includes a policy on northern Muslim IDPs. And given the government's commitment to implementing the LLRC in the aftermath of the UN Human Rights Council resolution in 2012— there was some hope of taking the issue forward more substantially.

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<sup>4</sup> See Lessons Learnt and Reconciliation Commission Report, Section 5.146, p. 195

<sup>5</sup> See Lessons Learnt and Reconciliation Commission Report, Section 5.147, p. 195

However, as stated above, problems continue. The state itself is following a path of greater and greater disregard for public institutions and public accountability and what little promise the LLRC also held is fading fast.

**The humanitarian actors lack of sympathy for the northern Muslims' predicament as well as their way of being "locked in" to a specific form of service delivery.**

As the commission report documents to some degree, the northern Muslims were discouraged from returning to the north immediately after the cessation of the war in 2009 for a variety of reasons. Demining in Muslim areas occurred at a slower pace than in other areas, UNHCR (United Nations High Commissioner for Refugees or the UN Refugee Agency) cash grants for returnees were made available only for those displaced after 2008, and Muslims were asked to wait, by the minister of resettlement until the Vanni IDPs were settled etc. Of these, the manner in which the UNHCR engaged with the return process also contributed to the delayed return of northern Muslims. The information obtained from the UNHCR for the Commission report indicated that the UNHCR was committed to assisting the post 2008 IDPs on a government directive. However, in conversations with UNHCR officials in January and February 2012, the UNHCR stated that their priority for assistance were the Vanni IDPs. While the UNHCR recognized Northern Muslims' right to return, assistance was a different issue, they said.

Humanitarian actors' mandates are formed on the basis of "saving lives" and their stated abstinence from political involvement is supposedly to guarantee that lives are thereby preserved or saved. There seems to be little acknowledgement in the humanitarian actors' perspective that they are then, by definition supporting and helping maintain the *status quo* in the guise of helping "save lives". In the case of the northern Muslims, there were two issues that were of concern – the first, the interference of northern Muslim minister Rishard Bathiudeen, pressurizing the UNHCR to offer assistance to the Muslim IDPs in addition to those displaced after 2008. The second was the UNHCR's own analysis of the needs of the northern Muslim IDPs and their judgment regarding the community's return movement.

During the interviews with UNHCR officials in both Colombo and Mannar in early 2012, they spoke of one return movement to Talai Mannar Pier that they were informed about by the minister and pressured to intervene and assist. However, when they got to the location, there were only about 20% of those registered with the DS who were actually physically present at the location. This incident is frequently quoted by the UNHCR as indicating an "insincere return movement" by the northern Muslim IDPs. When asked by the researcher what such an 'insincere return movement' might be, the response was vague. However, it was later clear that the UNHCR saw the northern Muslims as returning to claim the assistance in order to take it back to Puttalam. Puttalam in all of the UNHCR analyses was seen as a place of relative prosperity, and that the IDPs there were fine and therefore, as taking back scarce resources that were meant for people returning to the war ravaged north.

This report argues that the UNHCR analysis of the situation in 2012—they hopefully have changed their position now—was uninformed of the reality of northern Muslim circumstances and was insufficiently inclusive of all IDP experiences in the country.

As the Commission report had documented, the situation in Puttalam was far from optimal. While, due to two state housing projects spread out over 20 years, many of the displaced (though not all) had housing of a decent quality; there was little else that was positive about most IDPs lives in the Puttalam District.

The Northern Muslims were displaced in 1990 and lived in Welfare Centers and Relocation Villages mainly in Puttalam. A few families lived in rented accommodation and with host families. Although there are communities still living in Anuradhapura, Colombo, Mattakkuliya and other areas of Sri Lanka, the majority have been located in Puttalam. In Puttalam, the majority of northern Muslims lived in fairly abject conditions until very recently. When they first arrived, they settled among the Muslim community of Puttalam in the DS divisions of Mundel, Kalpitiya, Puttalam, and Wanathavillu. The Puttalam Muslims, while well represented in the urban areas of Puttalam town, also comprised many extremely poor interior villages. In fact, the three DS divisions of Mundel, Puttalam and Kalpitiya where the Muslim host community and the IDP population are currently living are considered the poorest in the district.<sup>6</sup> In fact the Kalpitiya and Mundel DS divisions have the dubious distinction of being the 5<sup>th</sup> and 6<sup>th</sup> poorest in the entire country!<sup>7</sup>

After the initial media attention in 1990, the IDPs in Puttalam were forgotten by all but the humanitarian aid community. The state distributed World Food Program sponsored food rations, and NGOs like Save the Children and Oxfam provided IDPs with basic facilities like food, water, health care, sanitation, education and limited livelihood support. Sri Lankan Muslim community organizations from outside Puttalam also contributed through small scale welfare activities. Some years later—specifically after the change of government in 1994—the presence of the UN and other INGOs increased significantly. Cathrine Brun has documented the manner in which the state – with the Ministry of Shipping, Ports, Rehabilitation and Reconstruction took on the task of looking after the IDPs more seriously at this juncture. UN INGO efforts worked to increase the health facilities at the two hospitals in Puttalam and provide other essential services that were not in adequate supply in the Puttalam area.

It should be noted here that the Muslims who were displaced had minimal sympathy from civil society groups in Sri Lanka during the conflict and therefore received very little attention in right based lobbying. As a group of persons that lived outside the conflict zone, they were not victims of the security restrictions and the constant harassment, or victims of constant multiple displacements experienced by IDPs still living in the north. They were therefore considered to be “better off” than other groups of displaced persons who were located within the conflict areas. The nature of the northern Muslims’ victimhood status was such that while they arguably escaped the greater part of the conflict due to the displacement but were deprived of any greater acknowledgement of their predicament due to the escalating and protracted war.

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<sup>6</sup> As cited in the FLICT District Profile – Puttalam District. FLICT 2009.

<sup>7</sup> <http://www.statistics.gov.lk/poverty/new%20119/summary%20information.pdf>

Arguably, there was a substantial NGO presence and the UN through WFP UNHCR and UNICEF were also active and a serious attempt was made to supply the IDPs basic needs. However, very little advocacy work was done about the injustice suffered by the northern Muslims or their predicament in Puttalam and elsewhere.<sup>8</sup> For instance, during the 19 years of displacement there were no substantial attempts by either the community leadership or the state to have them return to the north, or integrate locally-- by registering as residents and voters of Puttalam, for instance. It was this level of disregard that exacerbated the community's sense of being forgotten. Further, the problems that they experienced, with regards to access to livelihoods, inadequate health care facilities, deplorable living conditions, increasing incidence of gender based violence, were not issues that were discussed at fora in Colombo, or internationalized using human rights instruments.<sup>9</sup> Additionally, the northern Muslims who were Tamil speaking were compelled to live in an area where the administration was conducted entirely in the Sinhala language. While the local Muslim community among whom many of the visitors initially settled were Tamil speaking, the larger Puttalam area and especially those providing important services like the Police, the hospital, the civil administration, functioned in the Sinhala language. People often spoke about the fact that they had to spend money for translators when engaging with either the Police or the administration, and even then were not sure of the service that they were getting. Even the buses had signs in Sinhala and many complained that they were frequently mistreated and cheated while on private buses due to their lack of language skills. There is no evidence of any NGO trying to do Sinhala language training among the northern Muslim IDPs.

The Puttalam area where the majority of IDPs settled is dry, arid and somewhat remote – different from the urban center that was Jaffna or the fertile stretches that were the many agricultural villages of Mannar, Mullaitivu and Kilinochchi. Further, the DS divisions that the northern Muslims settled in were among the poorest in the country. The northern Muslim incursion nearly doubled the population in the area but the provision of services – like health care, and education, for instance, was slow to keep pace. In fact, as the commission report noted, the health sector continues to be overstretched.<sup>10</sup> The northern Muslim arrival and the fact that they stayed for twenty years has drained the resources of the area and strained relations with the host community. As one of the host community leaders stated during the commission visits – even if relatives visit, after two or three days the relationship becomes strained—in this case it has been close to twenty years.<sup>11</sup> The economy of the area was transformed, the influx of cheap labour brought down wages and deprived many host community members of their jobs, the traditional land use patterns changed with coconut and grazing land transforming into housing land. Some practices by NGOs in providing assistance only to IDPs and not the local poor caused tensions that continue to prevail.<sup>12</sup>

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<sup>8</sup> The report by the Norwegian Refugee Council in 2010 is a recent exception. *Protracted Muslim IDPs from Jaffna in Puttalam and their right to choose a durable solution*. Norwegian Refugee Council. June 2010 accessed at [http://www.nrc.no/arch/\\_img/9493105.pdf](http://www.nrc.no/arch/_img/9493105.pdf)

<sup>9</sup> In 2004, 14 years after the displacement, UNHCR carried out programs on gender based violence.

<sup>10</sup> *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. 2<sup>nd</sup> Edition. 2012. Colombo, Law and Society Trust. P115-119.

<sup>11</sup> Interviews in Puttalam. August 2009.

<sup>12</sup> Shanmugaratnam, N.(2000) *Forced migration and changing local political economies: a study from Northwestern Sri Lanka*. NORAGRIC.

The Vanni IDPs at the end of the war were a group that was devastated by the trauma of the last horrific days in Mullivaikal as well as years of brutalization under the LTTE and the general stress of living in a war zone. They were also the primary victims of the last days of the war as identified by the international coverage of the conflict, and the ones that the international community was accused of abandoning during the last phases of the war. Therefore it was perhaps understandable that the UNHCR would have prioritized the Vanni IDPs who according to them “had nothing” over the Northern Muslim IDPs “who had a plan B.” What is unfortunate however, was that through the UNHCR’s limited engagement of the gamut of displacement issues faced by the Sri Lankan community, they contributed towards the further marginalization of the northern Muslim experience, and they also contributed towards possibly exacerbating already existing tensions between communities on the ground.

As discussed above, the UNHCR’s understanding of the northern Muslims’ “plan B” was somewhat problematic; as was their understanding of their own responsibility as one of the lead agencies in first the humanitarian and later the resettlement response. During the interviews conducted in 2012, it became clear that they had little knowledge of the conditions in Puttalam where the northern Muslims lived. For instance, the official that I interviewed stated that after twenty years, at least some part of the population would have integrated into the local community. That considering them all as IDPs was unrealistic. When I asked if he knew that they were not registered as voters in the area, none of the UNHCR officials neither the field officer nor the person in Colombo, or the person at the helm at that time that I spoke to, were aware of this. Further, when I told them about the manner in which the rations were maintained for nearly twenty years they had little knowledge of that either.

Representatives of the UNHCR international staff working in Sri Lanka in 2012 that I spoke with had little knowledge of the actual conditions in Puttalam and elsewhere that northern Muslims were living, and regardless, remained unsympathetic. This lack of sympathy manifested itself in many ways. For instance, they were judgmental of the returning northern Muslims who gathered relief provisions and went back to Puttalam. They were coming, they felt, only to take back the rations. There was a substantial element of truth to this. The IDPs had been given rations—albeit in a rather haphazard and unreliable manner for the entirety of their stay in Puttalam. The ration was suspended without notice in late 2010. Many of the families, who lived in the Puttalam area did so without any stable or regular means of livelihood and the ration—when and if they could get it-- was important. The ration amounts had not changed since the early 1990s and they were not regular. The Puttalam IDPs were used to getting what they could when they could. This new move was no different. Therefore, when they were told that the rations would be discontinued in Puttalam and assistance would only be forthcoming if they register in the north, few hesitated.

Many registered in the north as returnees but did little to move entire families to the war ravaged villages where there were few houses standing and where infrastructure was destroyed. They were northern people who had lived long years outside of the north. Many did not see this as different from being northern people registered as returned to the north but who continued to live in Puttalam. No one conveyed to them a sense of urgency in relation to their own plans to return, and after twenty years, no one seemed surprised that there was none. Many gave reasons – that they were waiting till their children completed their

schooling before they returned; that they did not want to go back to being displaced persons in the north; that they wanted the restoration of all infrastructure facilities and housing assistance in order to make the trip back. There was a substantial sense of ambivalence about returning to the north – of giving up the life that many had built up with great effort – in Puttalam. However bad things were, there was housing, now in Puttalam, and the safety of community. However, the northern Muslims by and large had spent the entirety of their displacement thinking of themselves as northern. Therefore, a substantial proportion wanted to explore what possibilities existed for them in the north. And the earlier generation had strong memories of a more successful and happier existence in the north. However, the lack of a rush to pack up their homes in Puttalam and move to the north was read by many as an unwillingness or lack of commitment on their part to return.

The northern Muslims intentions regarding return were read in problematic ways by the different personnel engaged in assisting the return and resettlement process as well. There were officials in Jaffna who were quoted as asking Muslims why they had come back. Even the DS of Musali who is known to have substantially assisted the Muslim community despite the difficulties involved, saw the Muslim return as not fully committed to Mannar. He related the example of an old woman who said she has to go to her village – *Ur'k po onum*-- for the Ramazan festival as an indication that her Ur, or home place was Puttalam and not Mannar. He felt that this was an indication that the Muslim returnees had no real commitment to return. The slow and cautious return movement that the northern Muslims have been insisting on throughout the years as well as the manner in which most saw themselves after twenty years of protracted displacement as being people of both places --was not recognized or acknowledged either by the UNHCR or the INGOs concerned.

The Commission process that the Law and Society Trust was engaged in, since 2009 was motivated by the realization that the expulsion and the northern Muslims' experience was not adequately understood or appreciated by any of the political or social or professional international actors involved in the Sri Lankan situation. The manner in which the humanitarian actors viewed the northern Muslims was a further instantiation of this. There was little or no acknowledgement either among the Tamil leadership or the UNHCR and the NGO community that the driving out of the Muslims by the LTTE was an act of ethnic cleansing and that it was the government's and all other actors' responsibility to ensure that the ethnic cleansing exercise of the LTTE's is over-turned. If the northern Muslims are not facilitated to return, if as the UNHCR proposed, it was assumed that due to the passing of twenty years many would already have locally integrated, and then the LTTE's expulsion would be institutionalized by default. There was little or no conversation about this at any level, and no one addressed the issue in these terms. There are international precedents that have recognized the role that humanitarian actors can play in overturning such ethnic cleansing. In the case of the former Yugoslavia in the late 1990s the UN and Donor agencies actively designed their return and resettlement programs to ensure that the manner assistance was provided would not thereby institutionalize the ethnic cleansing in Bosnia- Herzegovina.<sup>13</sup> In the Sri Lankan case,

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<sup>13</sup> In fact, the programs actively encouraged return, even to areas where security and basic services were not guaranteed. Such return municipalities that allowed peaceful minority return were then given "open city" status and made eligible for more assistance. Hovey, Guy. *The rehabilitation of homes and return of minorities to Republika Srpska, Bosnia and Herzegovina*. Forced Migration Review 7. Pp 8-11.

perhaps for some of the reasons discussed above, overturning the act of ethnic cleansing is not seen anywhere as a policy priority.

### 3. Local Integration of Northern Muslims in the Puttalam District:

The IASC (Inter-Agency Standing Committee) framework on durable solutions for IDPs, place local integration as one of the ways in which a durable solution for internal displacement can be found. In the case of the northern Muslims, the history of their displacement experience, and particularly the manner in which their displacement was managed, made local integration not a process that happened inevitably through the passing of time, but a decision that many have to consciously make in the current post-war context. For anyone working with the northern Muslims in Puttalam, the fact that the IDPs are not fully integrated into the Puttalam community is fairly clear. Catherine Brun's 2008 Publication that has the issue in its title in fact speaks of the socio- economic and structural obstacles to such an integration. While there are delete 'a' substantial numbers who have married Muslims from Puttalam and others have started businesses and so on, the Puttalam Muslims continue to consider the northerners as outsiders – sometimes using derogatory labels like *ahathi*. Many northern Muslims on their part continue to consider themselves people of Mannar and Mullativu and Jaffna and identify as such. Given primarily that they do not vote in Puttalam and the state does not recognise them as local residents, northern Muslims have long remained a people out of place in Puttalam.<sup>14</sup>

In terms of the criteria laid out in the Inter Agency Standing Committee (IASC) framework on Durable Solutions, IDP life in the Puttalam district falls short on the following:

- Adequate Standard of Living: The lack of adequate healthcare, (Typhoid is at epidemic proportions in the Kalpitiya area, there are inadequate drinking water supplies.)
- Access to Livelihoods: lack of livelihoods for the young and often, for basic subsistence of the very poor. Wage labourers complained that they often did not have enough to eat.
- Participation in Public Affairs: IDPs do not exercise their right to vote in Puttalam. Due to the lack of language ability and the unavailability of services in the Tamil language they are prevented from participating fully in the community. They cannot engage with the civil administration, the police or the law courts in an informed manner due to the lack of language ability and the absence of provisions to accommodate Tamil speakers.
- Discrimination on the basis of language and the maintenance of the host IDP distinction still prevails across all of the criteria above.

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<sup>14</sup> Brun, Cathrine (2000) Finding a Place: Local Integration and Protracted Displacement in Sri Lanka. Colombo: Social Scientists' Association.

In Sri Lanka, primary residency status is decided by the presence of a person's name on the voter list of the GN division in which she/he is claiming resident status. Any citizen has the right to register as a voter in any GN division of his choice given that she can prove residency in that area (through the provision of utility bills in her name.) Although many other forms of registration have emerged as a consequence of the conflict – IDP registration, registration with the Police if one is Tamil and has arrived from the north etc. Residency registration is important as it is often the GN in the division where you are registered as a permanent resident that is responsible for certifying civil documents such as national identity cards, some social welfare provision, and impacts on education scholarships/quotas, and access to join cooperatives etc. For IDPs in Sri Lanka, registration is fixed in the GN division, DS division, district and province where they were last resident. If they are displaced within a province fewer issues arise although there are cases of such registration impacting on access to livelihoods (persons need to be registered as residents in certain locations to become members of fishing cooperatives and without membership they are not allowed to fish), social welfare, and civil administration (especially when the GN was also displaced) even within the same district. The Northern Muslim IDPs are perhaps the largest community of those displaced who are not only outside their district, but are also outside the province of displacement and had serious implications on local integration as a durable solution for the northern Muslim IDPs.<sup>15</sup>

Prior to January 2010, the northern Muslims in Puttalam were permitted to vote for their representatives under their respective districts in the north while maintaining their residence – as IDPs—in Puttalam. There were even facilities provided for voting in Puttalam itself through “cluster polling” - an option available to the state since 1988 under prevailing Sri Lankan election laws that has specifically been used to preserve IDP voting rights. (Brun 2003, p.388) IDPs have been voting in Puttalam for candidates in the north since 1994. A consequence of this practice is that the IDP relationship with the north was institutionalized and the relationship with Puttalam retained its transitory status. The institutionalization occurred through the fact that the IDP political leadership was always distinct from the political leadership in Puttalam. The voter registration process, however, was less than well run and thereby many IDPs lost the habit of voting in elections and many who were born in Puttalam were not able to register as voters in their places of origin after they turned 18.<sup>16</sup>

Even under these circumstances, few IDPs opted for registration as a voter in Puttalam. Brun explains this situation as one where the IDPs and the local administration (in 2001) had come to an informal agreement.

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<sup>15</sup> Brun, Cathrine, *Local citizens or internally displaced persons? Dilemmas of long term displacement in Sri Lanka*, Journal of Refugee Studies vol.16 no.4, 2003, p.388.

<sup>16</sup> Now too the voter registration continues to be a problem for the IDP population. One of the complaints after the deregistration process in Puttalam was that IDP's applications for voter registration were being rejected by the authorities in the north. Under the appeal process, all voters are permitted to go through the authorities who require them to provide proof of residence through phone and electricity bills. Most of them who lived in Puttalam for the past two decades are unable to provide such documentation. Therefore many northern Muslims are getting struck off the voter lists. This may be an incentive to register in Puttalam, however, communities complained that many were without voting rights anywhere. The issue of voter registration also speaks to criteria #7 in the IASC framework on durable solutions: participation in public affairs. The lack of voting rights anywhere is a huge issue that requires speedy redress and some special considerations on the part of the state.

If the IDPs were to be registered as voters in the Puttalam administrative divisions where they lived—they would have to give up their IDP status. If all IDPs had become voters in the divisions in which they were residing the ethnic balance of the areas votes would have shifted drastically in favour of the Muslims. Therefore, everyone was somehow better served through the maintenance of the IDP status as voters of the north. As long as the IDP status prevailed there was some authority by which the IDP was recognized.

In 2010, however, the government announced that they would no longer be facilitating cluster polling in Puttalam. Therefore, those who continued to claim voting status in the north had to physically apply to the northern authorities for voting rights and establish that they were residents there. Given that most northern Muslims who were resident in Puttalam could not provide utility bills etc for the six months period as requested, their applications were rejected and they became, essentially disenfranchised- albeit temporarily.

The establishment of the Secretariat for Northern Displaced Muslims (SNDM) in 2006, an administrative body to look after the interests of the displaced northern Muslims was also a measure whereby the northern Muslim specificity was further institutionalized by the state. Administrative matters that were dealt with earlier by the GN, the District Secretariat and local officials were now shifted to the SNDM and a certain number of GNs from the area were given the special task of dealing with IDP issues in connection with the SNDM. Again, even the tenuous links with the local community that were forged through the GNs and the District Secretaries were rendered ineffectual and the IDPs were again institutionalized in Puttalam as a separate group. (Quest for Redemption 2012, pp. 102-103)

Another issue of relevance to northern Muslims' continued IDP status in Puttalam is that – contrary to regular practices, the IDPs could not access state land grants through the various state land allocation schemes. The IDPs were not given ownership of land in Puttalam by the state (in some cases even after living on the land for ten years). In keeping with the 13<sup>th</sup> Amendment to the Constitution, the state is bound to refrain from any activities that will change the ethnic composition of a given area. Additionally, due to the manner in which large population groups – such as the northern Muslims may transform vote bases in given areas, large scale resettlement outside of the district of origin is a sensitive issue. The government's settlement schemes where landless Sinhalese were given land in the north and east have been called colonization schemes.<sup>17</sup> Therefore, land allocation for large groups from outside the district is a controversial process.

One state agency did facilitate the IDPs acquiring land. The ministry of Ports Shipping, Reconstruction and Rehabilitation facilitated the IDPs getting part of their housing grant early in order to facilitate land purchase. However, it is important that it is noted that the basis on which the assistance was made was unofficial. The IDPs were clearly regarded by the state as not entitled to land grants. By the process of telling IDPs that they are not entitled to land in Puttalam, the state reinforced their idea of separateness. Further, jobs like teaching and administration within the government – jobs that are highly valued by the educated intelligentsia all over the country—were administered by the provincial government and

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<sup>17</sup> Brun 2008, p.145.

available for locals only. If one is not on the local voter list then one is not entitled to such jobs. Therefore IDPs – if and when they were registered as northerners were not entitled to such jobs. However, it should be noted here that, locals often point out IDPs who have registered as Puttalam residents accessing such jobs and stating that they were actually stealing such jobs from the locals.

Brun noted in 2001 that the state too considered the IDPs to be temporary residents of Puttalam. Brun states:

According to interviews that I conducted at the Ministry of Development Rehabilitation and Reconstruction of the East in February 2001, the government's official policy is that the Northern Muslims are living temporarily in Puttalam as IDPs until they can return to their places in the north. The ministry emphasized the temporary status of the northern Muslims in Puttalam and that the northern Muslims are still registered as local citizens of the Northern Province. (Brun 2008p 146)

The UNHCR survey of 2004 also mentions the lack of substantial local integration of the population.

According to the survey report :

Local integration of the Puttalam WC population will therefore need to be officially supported through Government assistance to facilitate acquisition of land documentation as well as development assistance designed to improve physical infrastructure and access to public services. Without this assistance, sustainable integration will be difficult to achieve.

As stated earlier, therefore, local integration is a choice that the Northern Muslims are compelled to make today when they are faced with the need to physically relocate to the north in order to be counted as residents of the province. And many are making the decision; some are choosing to stay. In Puttalam, in February 2012, we encountered communities who were not interested in return. They were already registered as voters of Puttalam. The first group of persons was from Jaffna and had received World Bank housing grants in the Saltern 1 camp, and the others were in the Nagavillu- Erukalampiddy camp. Those in the Saltern stated that out of a total of 132 families, 82 registered to stay in Puttalam. Their mosque committee together with the local Grama Niladhari (GN) had held a meeting for all residents and asked them to decide on the settlement option they preferred. Those who wanted to stay had been assisted by the GN to register as voters in Puttalam. The women we met said “there is no point in going there if there is no place for us to stay.” There is very little land in Jaffna. The problem is so acute that the local leaders are asking people to refrain from returning if they do not have a place of their own.<sup>18</sup>

Those in the Erukalampiddy camp stated that they had decided to stay for the sake of their children. Citing the fact that no administrative assistance is forthcoming for those who are no longer considered IDPs in Puttalam, they—a total of 206 families-- had decided to register as voters in Puttalam in order to facilitate

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<sup>18</sup> See Quest for Redemption 2012 p. 189.

their children's education and their own everyday lives in Nahavillu. They stated that as IDPs they faced discrimination from the authorities and there were impediments to their development as a community. As evidence of the discrimination they faced as IDPs, they described the manner in which their school was treated by the local administration. They stated that the school –Erukalampity Maha Vidyalaya – had received very little attention from the education department since its establishment in 1996. Nahavillu in Erukulampiddy was established in 1996 by the Ministry of Ports, Shipping, Reconstruction and rehabilitation as a model village. The Erukulampiddy Maha Vidyalaya is the school that was established as part of this model village. The school was developed after 1996 through contributions from the community. They stated that most assistance that is earmarked for the school gets diverted to other schools in the area.

Last year, a library that was awarded to the school on the basis of the government's Navodaya school development scheme was diverted at the last minute (after all surveying and measuring was done and a date was set for work to commence). The library was finally given to the school in neighbouring Kadayamottai. This year, the school was chosen as one of 1000 schools countrywide that would be developed during the year. However, at the national and provincial level, the school had been struck off on the basis that it was an IDP school and that the children would all be returning to the north. We were told that a Director of Education in Puttalam had, in fact, issued a letter attesting to the fact that the school would not exist in the long term.<sup>19</sup> The people of Nahavillu cited the example of the school as one of the main reasons that they decided to stay and register as voters in the Puttalam district.<sup>20</sup> One of them said that he was a pensioner and he can receive his pension in Puttalam only if he was a registered voter of the area.

Due to the fact that there was no public recognition and no state endorsement of their decision to locally integrate, many were uneasy and skeptical as to their future in the area, their public position, the nature of their interaction with the host community and the impact on the politics of the area. They were also uneasy about the loss of opportunities that they would undoubtedly experience with the money that was going into the north. The government had proclaimed – unofficially—that 2012 was the year during which they would complete resettlement of protracted IDPs. Many felt that if they did not fight to get the benefits which were currently on offer, they would miss their chance. They pointed out that by choosing to stay they were foregoing all the advantages and assistance that people were promised through resettlement.

It should also be noted here that the Nahavillu community was clearly one of the best served and most successful of the communities of northern Muslims currently living in Puttalam. Their village had been built as a model village in 1996; they had decent jobs and possibilities of income outside the north and therefore did not stand to lose substantially from foregoing the relocation. They were also part of one of

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<sup>19</sup> It is to be noted that the numbers that are leaving from Puttalam to the north are not yet so significant that there is a notable reduction in the numbers that are attending the Puttalam schools or occupying the World Bank houses.

<sup>20</sup> We had no opportunity to verify this information or to get the local administrators perspective on the issue. Here the issue is included as indicating the northern Muslims' perception of discrimination on the basis of their residential/voting status in the area. It is included here as also indicating why this group of northern Muslims from the Nahavillu village claimed that they had little choice but to register as voters in the Puttalam district and the Northwestern Province.

the villages that the host community members pointed out as indicative of IDP success and wealth. Many stated that it was a difficult decision – that of registering in Puttalam. But it seemed to be one that they had very consciously and decidedly carried out.

The political leadership- especially the All Ceylon Muslim Congress – is reluctant to accept that a significant percentage of the population will stay behind in Puttalam.<sup>21</sup> However, conversations among the people indicate quite clearly that many will stay. There is no interest to date on the part of the government to consider assistance for local integration for the displaced communities anywhere in the island. There are no plans and no assistance programs for local integration. While initiatives like the World Bank housing scheme could be viewed as just such an assistance scheme, it is interesting to note that it was halted at the end of 2011- despite phase three not being completed—on a directive of the president.<sup>22</sup> Those that are registering to settle in Puttalam are apprehensive about their decision and see no state level endorsement. The local administrative officials, however, are pushing for the people to register. They do so by stating repeatedly that their assistance will be available only to those who want to become Puttalam residents. Additionally, if they register in Puttalam the population numbers in Puttalam will increase as will the resource allocation to Puttalam.

There were other activities too instigated by both the state and the IDPs themselves that emphasized and maintained the distinction between IDP and the host community. For instance, under the Unified Assistance Scheme of the mid 1990s, communities were encouraged to relocate together. They bought land and created large settlements and even named the settlement after villages in Mannar. (For instance, the settlement in Nahavillu has been renamed Erukulampiddy.) More recently, the health and education allocations of the Northern Province have been accessed to provide schools for IDP communities. There are currently six schools located physically in the north--western province that is administered by the northern province. The three new central dispensaries established in 2007 were also done under the northern province health allocation.

The northern Muslims maintained their religious organizations like the mosque committees, and the Jamiathul Ulama as separate from the same institutions that existed in Puttalam. According to a member of the host community, the local community expects these northerners—if they decide to settle in Puttalam—to become “Puttalam people” and no longer maintain their distinction as people from the north. This too does not sit well with the northern Muslims who have seen themselves quite clearly as from the north for the entirety of their time in displacement. The tension between the local and northern communities has to be taken into account in any discussion of local integration. Relations between the

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<sup>21</sup> Some representatives of the ACMC insists that 100% of the people will return. Other members of the ACMC accept that at least 30% of the IDPs will stay in Puttalam. However, they feel that return is the issue to be pursued. Understandable given that their constituency is the Vanni electorate. (All of the districts of the northern province excluding Jaffna.)

<sup>22</sup> Their request for a six month extension at the end of 2011 was refused by the treasury. (Interviews in Puttalam. Feb 2012)

IDPs and host community have soured in recent years and the trustees of the Puttalam grand mosque are not that friendly towards IDPs at this particular historical moment.<sup>23</sup>

The host community of Puttalam outside of the small wealthy business community in town consists of poor marginalized communities located in interior villages away from the main roads. Even in 1990 they constituted a backward area where the reach of the center was barely felt. The economy was sluggish and the people were by and large, poor. The community that arrived from the North, although destitute and virtually destroyed economically were from thriving urban and agricultural communities with a high education level and skill base. Even today, there is a perception among both the locals and the IDPs that the Northerners are more industrious.<sup>24</sup> For the first few years after the emergency, NGOs spent large amounts of money to make the area in Puttalam suitable for housing close to 60,000 people. This was perceived by many in the host community as a service provision to build up the IDP community while the host community continued to languish in abject conditions. Ten years into the displacement, INGOs and local NGOs started practicing the principles of Do No Harm including needy local communities in their program activities. However, this has not changed the perception that the IDPs got lots of resources while the local community was left destitute.<sup>25</sup>

Additionally, the assistance programs to the northern Muslims, including the World Bank housing scheme targeted more IDPs. The settlements that were supported by the World Bank also received roads and wells and support for maintenance in addition to housing. This was also watched by the locals who had few resources spent on the development of their settlements. As the commission report noted – the locals feel that they lost out by supporting the IDP communities. Many feel that the northerners should go back. Some however, according to the report, felt that the educational development that was brought to the area will be lost if the IDPs return.<sup>26</sup>

The IDPs themselves speak of the prospect of local integration with unease. They feel unsure as to what their status might be if they were registered as voters in Puttalam. They also fully recognize the fact that their IDP status was a safety net. They in fact stated “if we are not IDPs we will be just like the local people here. And they are left to their own devices. Who will help us then?” As stated earlier, they fear that they may lose out on the assistance and compensation that they are entitled to in the north.<sup>27</sup> Further, the IDPs through their large numbers (already there are significant numbers who have registered as voters in Puttalam) will alter the vote balance and ethnic balance of this area. There will be consequences for

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<sup>23</sup> The abduction and murder in 2012 of Pattani Razeek, a member of the host community by persons from the northern Muslim community have rendered the relations even less friendly. The time of Razeek’s funeral was a time of great tension and it was feared that clashes might erupt between the two communities. See Quest for Redemption (Chapter 8)

<sup>24</sup> Quest for Redemption, p. 144.

<sup>25</sup> Quest for Redemption, p.140-142.

<sup>26</sup> Quest for Redemption p.146-147.

<sup>27</sup> The state provided compensation for Northern Muslims who were government servants, and affected persons were able to apply for such compensation within a few years of the expulsion. However, this was a miniscule percentage of the population, the majority still awaits compensation.

local administration at the pradeshiya sabha level if the IDPs vote en block. In our discussion with a government employee in the area we were told “unofficially” that this may cause some ethnic tensions.

What was clearest from the interviews and field visits was that despite their difficulties and unease, large numbers of the northern Muslim community will remain in Puttalam (and register as voters there). The World Bank funded housing scheme provided housing assistance to a significant percentage of the northern Muslim population. Of the World Bank houses that we talked to people about, no one talked about the possible sale of such a house. They said that they built it with great difficulty – and that they would pass it on to a family member. Dowry houses too are in great demand and most families have a girl child for whom the house is already destined. Therefore it seems clear that few IDPs saw their return to the north as a complete severing of ties with Puttalam.

It should be noted however, that the state’s own response in the aftermath of the war is to encourage the northern Muslims to leave Puttalam and return to the north. The suspension of rations in Puttalam in 2010, the order to end the World Bank Project without a further extension, and prior to completion in 2011, the refusal to recognize the Nahavillu school as part of the 1000 schools program on the basis that it is an IDP school and the children will return to areas of origin--are all indications that the government wants the northern Muslims to relocate. At the same time there are no current programs for those who register as residents and voters of Puttalam. The analysis of why this is the case from various actors seems to indicate that it is at least partly a push by the ACMC to have its constituency relocate. However, the reality seems to be more complicated than that. There is a conflict over resources in Puttalam and many locals feel that the IDPs should go back. Additionally, there is the threat of the increasing Muslim vote in Puttalam. There also seems to be a recent government initiative to overturn many of the significant demographic shifts that took place during the conflict.<sup>28</sup> Recent reports have also indicated that northerners who are trying to register as voters in Puttalam are facing difficulties from the administration in doing so.

#### 4. Northern Muslim Return

Northern Muslim return continues to be difficult. The following section based on field visits to Puttalam and the North in January and September 2012 will lay out some of the reasons for this. Northern Muslims have been attempting return to the north since almost immediately after the expulsion. There were communities that returned to Uppukulam in Mannar in 1993, and there are communities that returned to Puthukudiyiruppu, Mannar in 1991. And at all opportunities that there was a cessation of hostilities, the northern Muslims attempted return; in 1994-5, in 2001 there were significant numbers that attempted to return. (In Musali for instance, 150 families are documented as having returned in 2002, and displaced again in 2007).<sup>29</sup> These returns were almost always spontaneous and *ad hoc* but most obtained assistance from government authorities after they returned to the north. However, there was no planned and sustained mass return process during the conflict years. Members of the northern Muslim community—in the midst of the difficulties they are having today with regards to return, lamented the fact that the community

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<sup>28</sup> Personal communication, senior government official.

<sup>29</sup> Hanifa and Rahman 2010.p.11

leadership did not have the foresight to return earlier.<sup>30</sup> Some blame the Muslim political leadership for a lack of foresight in not having them return earlier. The Commission report in fact documents that Muslim political leadership, especially the SLMC did not encourage northern Muslim return due to the SLMC leader M.H.M Ashraff's own larger political preoccupations. The Citizens' Commission report notes that the SLMC considered the northern Muslims their political "trump card."<sup>31</sup> The SLMC position was that the northern Muslims could not return with dignity to the north until a settlement to the conflict that takes Muslim aspirations into account was established. Such a settlement for the Muslims would be the establishment of the Muslim self-governing authority in the East with non-contiguous administrative areas in the north. It seems clear that the northern Muslim community was captive to and continues to be captive to the ethnic politics as played out by Muslim politicians in the country.

In the aftermath of the war, the government was under pressure to assist return and resettlement of those displaced in the government run camps in Menik Farm and other areas. The government's return and resettlement scheme for the IDPs displaced from the most recent hostilities, involved accelerated mine clearance and an assistance package that included Non-Food Items (NFI) pack from UNHCR, a cash grant and tin sheets to construct a shelter. Muslims too were considerably energized by the prospect of return—this was the first possibility of mass return after the expulsion. Previously return was always fraught with the possibility of another expulsion by the LTTE without safety guarantees monitored at the international level. However, in 2009 the government was insensitive to the prospect of Muslim return. A case in point is the manner in which return was designed to the DS division of Musali in the Mannar District. The Musali DS division was – prior to the expulsion in 1990-- the only Muslim majority DS division in the entire Northern Province.

As such it features very prominently in the northern Muslims' psyche. Musali, a primarily agricultural area with some fishing off the 30km long coastal boundary housed 21 Muslim majority villages. The whole of the Musali division consisted of 28 villages including one Sinhala village. When the government commenced its "180 day plan" to resettle 80% of the new IDPs by December 2009, they started the process in Musali. It was also the first area opened up as part of the *Vadakin Vasantham* (Northern Spring) development program. Mirak Raheem writing in 2009 and Hanifa and Rahman writing in 2010 pointed out that only those displaced and still living in the Mannar District were eligible to return to Musali. Those who were expelled in 1990 and were in Puttalam, or those who had returned to Mannar, but were again displaced to Puttalam were not eligible.<sup>32</sup> The fact that the larger Muslim population of Musali were not part of the plan for return to Musali during that first phase, the fact that the government was unaware of the importance of Musali in the psyche of Northern Muslims as the only Muslim majority DS division, is

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<sup>30</sup> Interviews in Mannar. September 2011.

<sup>31</sup> Quest for Redemption pp 32-33.

<sup>32</sup> Raheem, Mirak, The Other Half of the IDP Problem: The Old IDPs, Daily Mirror, 4 November 2009; Anberiya Hanifa and Mujib Rahman Resettlement Issues: Forcibly Evicted Muslims from Musali, Mannar. Research paper, unpublished, January 2010.

indicative of the relative absence of the northern Muslim protracted displacement experience from the thinking of planners at that time.<sup>33</sup>

The Report of the Citizens' Commission on the Expulsion pointed out that there was little or no encouragement for Muslim return for the entirety of 2009 and most of 2010. It was only during the end of 2010 and in 2011 that there was any progress with regard to Muslim return. Rishard Bathiudeen, Minister for Resettlement himself seemed powerless to do much. He kept saying that return of Muslims will be facilitated after the return of the "new IDPs." For northern Muslims this was a familiar refrain. They had seen the pouring in of aid in the aftermath of the tsunami and many had asked why a similar response was not forthcoming to deal with the losses of the expulsion (Haniffa 2007).<sup>34</sup> The old IDP new IDP distinction – where they invariably lost out, seemed to be more of the same.<sup>35</sup> The government declared in early 2012 that 2012 will be the year to end displacement in Sri Lanka, and that priority areas for the year should be the "Old" case-load, or protracted displacement. From the perspective of the northern Muslims, this was a welcome development. However, while 2012 has ended, issues with regards to northern Muslim return still remain.

Although there was no mass scale resettlement of northern Muslims, some did manage to return after pressurizing the minister. Hanifa and Rahman note that in 2009 while the initial resettlement in Musali commenced in April, IDPs were able to persuade the ministry to arrange for a "go and see visit" in August 2009, just prior to the commencement of the Ramazan fasting period. The ministry provided 15 buses and 273 families left on the 21<sup>st</sup> of August. Most of them opted to stay in Musali. Hanifa and Rahman note further that during this time, while the army had promised to clear the jungle, and those returning were registered to receive rations, conditions remained dire. Mine clearance was incomplete, there was the threat of wild animals and there was next to no infrastructure, no water, no electricity, no transportation and the cooperative for ration collection was 3 kilometers away and the trip was considered dangerous by the women. The report also notes that most of the Muslim return to Musali – until 2010--was done at the initiative of the IDPs themselves. During these early days the information provision by the ministry as to mine clearance and the possibility of resettlement was also inadequate. And IDPs complained that the closure of the Mannar – Puttalam road through the Wilpattu wildlife sanctuary was impeding Muslim return. The opening of the road in 2010 greatly eased travel time and cost and made it easier for IDPs to travel to Mannar and also maintain continued links with Puttalam.

On the 8<sup>th</sup> and 9<sup>th</sup> August 2009, the Government of Sri Lanka published a notice in the national newspapers requesting all IDPs to register with the Ministry of Resettlement and Disaster Relief Services, if they wished to return to their former homes. The Muslim Council of Sri Lanka (MCSL) decided to take the opportunity offered by the Government and assisted the Northern Muslims to express their wishes.

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<sup>33</sup>In the immediate post-war context the Northern districts were mostly off limits to civilians without the express permission of the Ministry of Defense. The need for mine clearance was one reason. And such clearance occurred according to the priorities of the government which did not reflect an understanding of northern Muslims need to return to their farmlands.

<sup>34</sup> See also *Sri Lanka: A Bitter Peace, Crisis Group Asia Briefing N°99, 11 January 2010*

<sup>35</sup> Haniffa, Farzana, *Twice Removed: Northern Muslim Refugee Women in Puttalam*. LST Review, Vol.19 Issue 250, August 2008, pp.1-22.

MCSL distributed forms to the Northern Muslims and Heads of Household were expected to fill in the forms in duplicate. MCSL received over 6000 forms in duplicate. One set was formally handed over to Mr. Rishard Baduideen, Minister of Resettlement and Disaster Relief Services.<sup>36</sup> Today, it is unclear as to what was done with this set of documents. The Secretariat for Northern Displaced Muslims stated in April 2010 that over 90% had registered to return. It is not clear if this number was based on actual return to the north or on the response to the call by the government.

In January 2011, many of the Muslim community who had not already done so went to the north to register themselves as returnees. Their registration as IDPs in Puttalam was cancelled and they were given the necessary documentation indicating this cancellation to enable them to register as returnees in the north. In this case, the researcher was informed that the Ministry of Resettlement provided buses and food for a day to facilitate the Muslims going to the north for registration purposes. Many NGO staff in Puttalam commented that some of the IDPs were not really clear about what they were doing or the consequences of their actions but followed along as instructed mainly by the Camp Officers appointed by the Ministry under the Secretariat for Northern Displaced Muslims. The researcher discovered that the signatories for the deregistration was the Commissioner of SNDM and the Camp Officer. The required signatures of the Grama Niladhari and the District Secretary were not obtained. However, it was revealed that the Grama Niladhari's were informed that all services to the displaced were to be suspended forthwith, and the special allowances paid to the GN's for work with the IDPs was suspended. The government seems to have instructed all its local government authorities in Puttalam to suspend providing special assistance to the IDP community.<sup>37</sup>

Most IDPs, although they registered in the North, did not stay. Many came back. Many however, also went to the north to collect the six months of rations that returning IDPs were entitled to. The IDP community that had received rations in a very unsystematic and *ad hoc* manner for twenty years in Puttalam was used to getting what they could when they could and did not see any harm in accessing their ration in the north. The Puttalam ration had been suspended without notice since December 2010, with no rations distributed for four months prior to that. However, the confusion in numbers that this caused the NGOs and INGOs was enormous and reflected badly on the question of Muslim return. As discussed above many state, NGO and UN representatives spoke of this as an insincere "show" of return, a problematic state of indecision by the Muslims, and as rendering them difficult to work with. As one NGO worker put it – the northern Muslims had "one foot in the north and one foot in Puttalam."

For northern Muslims, as stated earlier return is not just about survival. It is about making a choice regarding their preferred durable solution. The twenty plus years in Puttalam were spent constantly under the label of *ahathi*, a derogatory term for the displacement, and a feeling that one was constantly out of place. Therefore many continue to strongly feel that the North is "home," despite the fact that young

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<sup>36</sup> Haniffa and Rahuman (2010).

<sup>37</sup> Interviews in Puttalam; February 2012.

people may never have been there, they continue to refer to themselves as being from Mannar or Jaffna or Mualitiwu.<sup>38</sup>

In the many camps and settlements in Puttalam that the research team traversed, everywhere we heard that the people had “cut” their registration in Puttalam and are registered in the north. Given the long association of their identity with the north, the research team did not get a sense that the northern Muslims who had registered in the north were conflicted about this choice of registration. They were encountering many problems as a consequence but at no time did they indicate that they were forced to, or compelled to do so. It should be remembered however, that the IDP condition of the northern Muslims had also set in place certain ways of engaging with state structures—listening to what the camp officers advised people to do for instance—that were very specific. And choice, even informed choice, must also be understood as rarely based on the needs of a single individual or a family, decisions were based mostly on a collective decision of a community often influenced by the leadership, and more often than not, this was the trustee board of the community’s mosque. Additionally, during the time that each settlement area had a designated “camp officer”, the Secretariat for Northern Displaced Muslims, and the minister himself, had a ready made structure by which to communicate with and influence the people in Puttalam.

Some of the displaced were from wealthy urban or rural communities and owned large tracts of agricultural land. Given the social and structural factors that made the displaced maintain their northern identity, the north continued to be seen as a place of plenty. The commission on the expulsion also carries several examples of the manner in which the displaced romanticized their homes as areas of peace and plenty. For instance in the chapter entitled “The Loss of a Way of Life” the report includes the following quote from a Jaffna resident:

Alhamadulillah,, we were very happy to have been there because it is where we were born. It is a ‘small Singapore’. Our native place, Jaffna is a ‘small Singapore’. This is where our parents were born and where our parents were buried. It was a very prosperous place. Here even the food is not tasty. The vegetables are not tasty. They spray pesticides and chemical fertilisers (medicine) on everything. They engage in all sorts of harmful farming practices/methods. There it was different. No chemical fertilizers! If they planted the seeds in December, in January they would do the harvesting. All the vegetables were very tasty. The fish was also like that. The Sea fish was very tasty...the meat was also very tasty. The meat here gets stuck between the teeth.<sup>39</sup>

Further, displaced people also described the fact that in displacement they lived a very unhealthy life-style which was very sedentary and inactive. In their homes in the North, they said that they had access to fresh food and lots of exercise because they were constantly at work—even the women—in their home gardens. During the present research, Mannar returnees of Vidathalthivu said that all illnesses disappeared when they were back in their homes.

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<sup>38</sup> See Protracted Muslim IDPs from Jaffna in Puttalam and their right to choose a durable solution. Norwegian Refugee Council. June 2010 accessed at [http://www.nrc.no/arch/\\_img/9493105.pdf](http://www.nrc.no/arch/_img/9493105.pdf)

<sup>39</sup> Quest for Redemption p. 154.

Most northern Muslims interviewed were clear that they wanted to maintain their links with both places—Puttalam and the north. Therefore they did not understand either return or local integration as a severing of ties with either Puttalam or the north respectively. Those who moved to the north wanted a respite, periodically, from the hardship of life in another situation of impermanence and minimal facilities, and therefore moved to Puttalam for school holidays, during the fasting period and at other times.<sup>40</sup> For many IDPs who were planning to return to the north, Puttalam remained a base where their primary support networks continued to be located. We encountered people who were registered as voters in Puttalam but who traveled to Jaffna for work and returned every 15 days.<sup>41</sup> Then, when in Jaffna we also spoke to others who had gone to Jaffna, who were not happy with how things were, tried to go back to Puttalam but found that even more difficult.

We met activists who were determined to facilitate Muslim return to their traditional places of residence in the north and were facing enormous difficulties in doing so. They were attempting to restart schools, establish community infrastructure to persuade a larger segment of the population to return. Many of the leadership who want the communities to return are struggling to ensure that the IDPs don't stay back in Puttalam due only to the lack of facilities in the north at this time. For many middle class mosque trustee board members it was important that northern Muslims return and get their identity back. They felt that they lost their sense of who they were and who their community was in the twenty plus years of displacement. As one person very poignantly stated:

When I die my obituary will state that I was born in Mannar but lived in Dehiwela. And many Mannar people will attend my funeral. When I go to Jumma in Dehiwela there is no one with whom I can exchange *salaams* after prayers. There is no one there who knows me. And what about my children? They were not born in Mannar, they don't know anything about Mannar. And the people in Dehiwela don't really know them – they probably refer to them only as the people from Mannar. So where are they from? What will their obituaries say?<sup>42</sup>

Many of them feel also that their entitlement to assistance is a form of restitution for lost property, and lost education and lost opportunities. The vagaries of assistance are such that many feel that if they do not attempt to access what the government is proposing now, there is very little that they will get in the future.

During the research, in Puttalam Mannar and Jaffna, there was a considerable feeling of freedom that the northern Muslims expressed to the researchers about being able to return to the north. And as the above few paragraphs have attempted to illustrate, community members feel very strongly about re-establishing communities in the north. Additionally the research done among Musali Muslims by Hanifa and Rahman found that 95.4 % of households that they interviewed expressed that they wanted to return. They had surveyed a total of 438 respondents.

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<sup>40</sup> Interviews in Jaffna and Musali. January 2012.

<sup>41</sup> Saltern I Camp, Puttalam.

<sup>42</sup> Interview with Mosque Trustee, Mannar Island. January 2012.

But return for the northern Muslims has not been easy. Many feel that the local administration is not supportive of Muslim return. Even during the present research, returning Muslims in Jaffna complained about a female GN who was rude to them and constantly asked them why they came back. In certain areas the local civil and political leadership is not seen to be welcoming of Muslims. The Tamil politicians are yet to make any statement regarding Muslim return.<sup>43</sup> The Bishop of Mannar is quoted in the Commission report as stating that the Northern Muslim expulsion was a “blessing in disguise” due to the fact that they missed the war and therefore did not have to experience the deaths and the destruction that the Tamil community had to undergo. The Bishop’s response is an indication that the Tamil communities of the north today have little sympathy for the Muslim expulsion—unlike the communities in 1990 who tried to intervene to even persuade the LTTE not to go through with it. The legendary good relations between Muslims and Tamils that northern Muslims have talked about for twenty years seem to have disappeared.

It should be noted here that the Bishop does always reiterate that the Muslims have the right to return, and in fact the commission report notes that the church welcomed the return of Mannar to a plural polity. Returning Muslims, however, continue to complain that they have many problems with the church. They pointedly invoke the growing Catholic iconography in Muslim identified areas—Oosimukkanthurai, for instance, as an attempt to intimidate the Muslims. The Muslim community in Jaffna related a number of instances where the administration seemed to unnecessarily delay their paperwork—they said that people have difficulty transferring ownership of property, of passing development related work for the community. They also stated that there are instances where the Muslims are not given information regarding rate exemptions that the Municipality has already agreed upon.

In Mannar, there seemed to be a significant involvement of the middle classes in the bid to return. The mosque committees that we met, both in Moor Street, and in Erukampiti were committed to the restoration of their communities and were engaged in talks with government authorities and the Catholic Church to expedite return. In Erukampiti representatives of the mosque committee were eager to develop the school and the markets and the livelihood activities of the people. They spoke about the wealth that the community used to enjoy and the manner in which the LTTE raided the homes nightly immediately prior to the expulsion and extorted their jewelry from them. They spoke about the enormous amount of assets that they left behind. They said that if the state could only compensate them for their losses, they would not need assistance programs. They were finding it difficult to bring about the prosperity that was lost. They also said that land was not an issue in Erukampiti and that, if the state was committed to providing housing assistance, the community leadership would provide land to the landless. In fact, the mosque at that time of the field visit to Mannar had already instituted a scheme of land grants to the poor in anticipation of the state housing assistance schemes that were planned for 2012.

Return however, remained difficult. Assistance from the state towards developing schools, providing larger a teacher cadre, upgrading the school to include facilities for Ordinary level and Advanced Level

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<sup>43</sup> Before this document went to press M.A Sumanthiran, MP for the Tamil National Alliance made a presentation in which he recognized the Expulsion of Muslims from the Northern Province as an act of Ethnic Cleansing. See <http://www.colombotelegraph.com/index.php/secretariat-for-muslims-welcomes-sumanthirans-recognition-of-ethnic-cleansing-of-northern-muslims/>

examinations depended on the numbers who were registered as students. However, parents are not bringing their children back to the north worried that these schools do not have adequate services. Even in cases where men returned for cultivation, women stayed behind in Puttalam with their children. In Erukalampidy and in Jaffna there was a sense of sadness at the loss of a good school that contributed greatly towards producing the community's "educated people." While, as stated earlier, there was a certain leadership among the Mannar Muslims and return was happening fairly systematically, the situation in Jaffna was less promising. One of the main reasons, other than the absence of political representation was that there was no middle class return in any significant numbers to Jaffna. Many of the people that returned to Jaffna were the poor landless. Even the School – Osmaniya College did not have any qualified Muslim teachers—only two volunteers and one Maulawi. The absence of a significant "educated" Muslim population was lamented by the Muslims and even articulated as a problem by one of the Tamil teachers of Osmaniya College. She mentioned that the presence of government servants from the community that would interact on an equal basis with their Tamil counterparts would do much to address many of the complaints raised by the returning Muslims regarding the problems with the administration.

There are many houses in the wealthier parts of the Moor Street area in Jaffna that remain empty and abandoned. The people who own these properties are not returning. The people who had returned complained that the property owners, when they do return, renovate their properties and give them out on rent at very high prices. They ask for 1 or 2 lakhs of rupees as "key money" and 5-10 thousand as rent. Many lived in other people's houses with different sorts of arrangements. One family had made temporary repairs to the roof and was given permission by the owners to use the houses; others lived without the knowing when they might be told to move. Some of the families that lived in the Kadija school in Jaffna were unsure of when they might be asked to relocate. The local authority had provided a cleaned well and useable toilets for them and permitted them unofficially to access electricity from the common grid. Naked light bulbs without proper connections and fusing mechanisms seemed dangerous. Although the Kadija school was fairly well serviced comparatively, many others living in houses that they did not own in Jaffna stated that they had no toilets and found it difficult within an urban environment. Many also did not have electricity since they had no official documentation regarding the houses they lived in.

Conditions seemed quite difficult and as one woman in Jaffna put it, there really isn't much dignity or freedom to life in Moor Street today.

The great difficulty and sense of beleaguerment that they felt was palpable even in Mannar. But the reasons were different. The stories of discrimination by the local administration and the leadership of the Catholic Church were many. One that stood out was the story of the emergence of Catholic icons in Muslim areas.<sup>44</sup> The Muslims felt that this was a way in which the Church was attempting to make its presence felt, expand its area of influence and intimidate the Muslims. The Muslims used to be the largest community on Mannar Island, but this was clearly no longer the case. The mosque committees that we spoke with wanted the Muslims to reach their lost status but the road to such restitution was difficult. The

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<sup>44</sup> This was noted by the Commission Report as well. See *Quest for Redemption*, 2<sup>nd</sup> Edition. Page 187.

Muslim landowners also stated that the Catholic Church was claiming ownership of areas that the Muslims had deeds to, based on various ancient documentation. There was also a land dispute involving a school in the town. The Muslims claimed that the local authorities had even fabricated the documentation to deny Muslims the ownership. This claim could not be verified and is noted here only as an indication of the bad feeling that prevails over land issues in the area. Representatives of the Catholic Church confirmed that they were having land disputes with returning Muslims.

A further issue that was exacerbating tensions was the minister's interventions. Rishard Bathiudeen was using all his influence with the government to facilitate Northern Muslim return to Mannar. This was especially the case in Vidathalthivu and Talaimannar Pier, but not so much the case in Erukalampiddy or in other districts – such as Jaffna. The difficulties Muslims continue to face when returning as well as the complications caused by the minister's interventions have been documented by the Crisis Group.<sup>45</sup>

This is of course not to say that all Muslim Tamil engagements were acrimonious. The people of Uppukulam, Mannar, who had returned in 1994 stated, in fact that they lived quite harmoniously with the people of the area. Muslim leaders who spoke of the intimidation of the Catholic Church and the Bishop in particular mentioned in fact that relations between the communities remained very good. Then the NGO-Mannar Women's Development Foundation works with women from both communities while the patron is a northern Muslim activist. There are also efforts by the Catholic Church to engage with the Muslim leadership through the Mannar Citizens' committees. But the situation remains somewhat strained and difficult.

The situation in Jaffna with Muslim return was far more precarious than that of Mannar. While most commentators viewed the influence of the minister in the affairs of the Mannar community as problematic, the people of the respective areas had a different perspective. The people of Al Mannar camp in Puttalam who were planning to return to Talaimannar Pier stated that the response from other stakeholders was so unsupportive that without the assistance of the minister there would be no resettlement at all. And it must be said that within the political context of Sri Lanka the necessity of political support is a factor. For instance, as the UNHCR revalidation survey of 2006 notes, there have been no development programs of the scale of the World Bank housing scheme for the IDPs during the entire period of displacement. In 2006, 16 years after the displacement, only 28% of the displaced had permanent housing in Puttalam.<sup>46</sup> As the Citizens' Commission report argues, it is the presence of Muslim ministers in high places—and their embracing of the northern Muslim issue in some form that has brought about significant forms of assistance. (Ashraff in 1996, Bathiudeen after 2006) The people of Jaffna saw the absence of a powerful political representative as one of the main reasons for the slow pace of return in their areas. They felt that the Muslim people of Jaffna were the lowest priority for the Muslim politicians, the local administration in Jaffna and the state at large. They spoke about the manner in which inordinate delays were constantly experienced by them at every turn; they mentioned the various levels of discrimination that they were subjected to by the local authorities. A set of returnees spoke about a female GN who addressed them disrespectfully –“she would ask us “who told you to come? You are Puttalam people. You belong there.”

<sup>45</sup> *Sri Lanka: A Bitter Peace, Crisis Group Asia Briefing N°99, 11 January 2010.p06.*

<sup>46</sup> UNHCR Re-validation Survey 2006.

They said “no one needs to tell us to come. This is our home.” They also talked about the fact that the local media in Jaffna targeted them by referring to them as the people from Puttalam without adequately recognizing their northern roots.

Livelihoods were also a deciding factor in the return to the north. In Jaffna, the business of scrap iron collection was lucrative and many were engaged in it. However, others who were engaged in different sorts of enterprises – such as those who were sales people of “fancy goods”- mostly in Bazaars and pavements were finding it difficult to find space to sell their wares. The government had prohibited unlicensed pavement hawking, and Muslims were finding it difficult to access space in the markets in town and to regain lost rental properties. In Mannar, farmers were able to cultivate, but until the irrigation systems are fully functional, there is only one season of farming and they are idle for the rest of the time. Some assistance for them to do lift irrigation for vegetable cultivation would be good. The fisher people of Mannar stated that they were having great difficulties with fishing. Indian fishermen encroach on Sri Lankan waters, depleting the fishing grounds. In Erukampiddy for instance, women complained that the fish have simply died out. Men who used to return with 30-40 kilograms of fish are now returning with 3-4.

They also said that the small scale fishing that most communities in Mannar were engaged in could not compete with the Indian trawlers. Those in Talaimannar Pier stated that they were waiting for the completion of repairs to the railway and the reconstruction of the Thalaimannar Pier. The resumption of the ferry service to Rameswaram in India would increase employment opportunities for many in the area.

## **5. More Recent Developments**

Since the Muslims began returning in large numbers after the end of the war, the commission has consistently reported conflicts – mostly small scale and individualized – between returning Muslims and Tamils. However, recently, one of these conflicts flared up into a national incident. This particular conflict and some of the ways in which responses were made to it are also indicative of larger problems that returning Northern Muslims are facing. The reason for featuring this conflict is to outline these problems that are occurring between the two communities and to call for some form of action at the level of the state, international humanitarian actors and the local human rights community to alleviate the tensions that are inevitable in such a situation.

The Kondapitty fishing harbor is a tiny stretch of beach off the Muslim village of Uppukulam in Mannar town on Mannar Island. Fishing rights to this harbor have traditionally belonged to the Muslim community living in the village. During the conflict, these rights were handed over temporarily – somewhat under duress, somewhat voluntarily – to a particular Tamil Catholic community. This Catholic community had been displaced to Mannar Island from the mainland village of Vidathalthivu in 2001. This group of persons is now settled in Joseph Vaaz nagar, a settlement village established by the Catholic Church and wants to maintain their lives in Mannar Island. They have no plans to return to Vidathalthivu. Now

Uppukulam is in the heart of Mannar town and the harbor is an extremely convenient location from which to access the main market of Mannar town.

After returning in 2009, the Muslims tried repeatedly to obtain ownership from the Tamils but to no avail. The local administration recognizes the Muslims' right to fish in the harbor; the Vidathathivu fishermen have agreed to relocate (at a meeting at the Mannar police station on the 7<sup>th</sup> of June, 2012) if they are found an alternative harbor. The administration, however, have to date, been unable to find the Joseph Vaaz fisher people an alternative to enable them to vacate the place. One alternative that was found was later discovered to be land that was privately owned. Other alternatives that have been suggested have been rejected ( to relocate to Vidathalthivu for instance.)

Within the larger background of the above incident, the situation leads to a violent fracas outside the Mannar Magistrate's courts on 18<sup>th</sup> July 2012. The sequence of events that led to the incident is as follows: The Vidathalthivu fisher people stopped fishing off the harbor in anticipation of the state officials finding an alternative on the 29<sup>th</sup> of June. However, by the 11<sup>th</sup> of July they had resumed fishing. The Uppukulam people had then made complaints to the police. The case then went to court. The Mannar Magistrate found in favour of the Vidathalthivu people and gave them permission to fish once again from the Konthaipitty harbor indefinitely until a suitable solution was found for them.

The protest outside the Mannar courthouse was in response to the Magistrate's ruling. What started off as a peaceful protest turned violent with the crowd pelting stones at the magistrate's court and the Police using tear gas, beatings and random arrests of those in the vicinity. It was also reported that one of the tear gas canisters lobbed at the protestors was thrown back into the Magistrate's court and that had caused a fire in the record room. In addition to the above, northern Muslim cabinet minister Rishard Bathiudeen and his supporters were accused of both orchestrating the protest and, the minister is accused of calling the Magistrate and threatening him regarding his decision in the case.

Within this issue there are several other factors that need to be taken in to consideration. Firstly, the Mannar GA, in his attempt to find an alternative fishing harbor for the Joseph Vaaz fisher people had called a meeting of all of the fishing societies of Mannar Island and asked if any one would be willing to share their space with the Joseph Vaaz people. None had been willing to do so. This speaks to the real and complex resource issues that are being faced by the communities in the north.

Secondly, there are a large number of cases pending in the Mannar Magistrate's courts with regard to land disputes between returning Muslims and the Catholic community. Muslims have not experienced many to go in their favour. Therefore, the trust in the judicial system in the area had eroded. Muslims we interviewed also stated that they felt that there was a Catholic conspiracy against them where the Bishops' writ seemed to hold sway over all that was going on in Mannar. It is now one year since the incident. To date, the Vidathalthivu/ Joseph Vaas Nagar fisher people continue to fish off the Kondapitty harbor while several returning northern Muslims in Uppukulam languished for months in jail.

Thirdly, the manner in which the fracas outside the courthouse was interpreted by civil society in Colombo did little to highlight either the difficult resource issues that were faced during the resettlement process or the simmering conflict between the Muslims and Catholics in Mannar. The protest outside the courthouse, the deterioration of the protest into stone throwing and baton charging combined with the minister's alleged call to the Magistrate were seen by many as evidence of the manner in which agents of the state were disregarding the independence of the judiciary. Certainly, if proven, the alleged conduct of the minister in calling up the Magistrate is reprehensible and should be dealt with in a suitable manner. However, the issues around the incident were not limited to those alone. The Sri Lankan legal fraternity's response to the incident—where they viewed it only as an issue regarding the independence of the judiciary, and also the manner in which international reports commenting on Sri Lanka have represented the incident are causes for concern.

The report released by the International Commission of Jurists is one example of such a report. In this report the event is referred to in the following manner: "In July 2012, a Government Minister Rishad Bathiudeen threatened a Magistrate in Mannar and then allegedly orchestrated a mob to pelt stones and set fire to part of the Mannar courthouse."<sup>47</sup> In looking at the incident in Mannar only in relation to an attack against the judiciary, the report missed a vital element essential to the analysis of the situation. In reducing the people who protested to nothing, but the mob that Bathiudeen allegedly orchestrated to pelt stones and set fire to the Court house is shockingly reductive of what happened. There is not enough of an analysis of the politics in Mannar, and the very real issue of the fishing harbor that remains unresolved to date.

The fact that the police later rounded up every Muslim in the vicinity of the courthouse (regardless of who did or did not participate in the protest,) that they beat up both men and women, and later dragged people who were receiving treatment in hospital to jail for instance are completely omitted in the report. A journalist that we spoke to in Mannar in September 2012 stated that on that day just as all Tamils were suspected of violent activities during the days of the conflict, all Muslims were suspected of participating in the violence outside the court house on that day, and all were arrested and detained. The fact that 47 of these Muslim returnees spent 2 months in jail without bail is also absent from the discussion. The fact that institutions like the ICJ are highlighting the issue regarding the judiciary—a serious crisis faced by the country is valued. And given the impeachment of the chief justice that followed, it was more than timely.

But the fact that such a report could include a reference to the incident in Mannar while omitting a more complete picture of it is troubling and can actually have material consequences. This is exactly what happened to the issues faced by Muslims during the conflict. The larger conflagration was considered more important and the Muslims' issues—both regarding the expulsion from the north as well as the deteriorating relations and LTTE attacks in the east--fell by the wayside. The issues suffered from a lack of coverage and a lack of theorizing. Today Muslims continue to suffer because of that. Larger Sri Lankan civil society actors are generally sympathetic to work that is done to raise the profile of Muslim issues. However, when Muslim specific issues seem to collide with other issues – the threats against the judiciary, in the current context, but earlier in terms of the legitimacy of the LTTE's Tamil nationalist claims-- there

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<sup>47</sup> "Authority Without Accountability: The crisis of impunity in Sri Lanka". International Commission of Jurists. November 2012. p.6.

seems to be very little attention paid to really thinking, listening, and attempting to incorporate the Muslim perspective into the analysis. Later in 2012, the Magistrate withdrew from the case and handed it over to the civil administration. A resolution of the issue is still pending.

The tension in Mannar and the polarization between the communities is continuing. The language through which the leadership of both parties is engaging the issue is doing little to mitigate tensions. For instance, Muslim civil society representatives are stating that there is a conspiracy to chase them out of Mannar, and the agitations against the Minister around the incident of the harbor is one such attempt. The Bishop of Mannar and certain Catholic civil society actors claim that the Muslim minister is ignoring due process and established procedures and favouring Muslim resettlement over the Tamils. This is seen further, as the Muslims colluding with the government. When we visited in September 2012, the Bishop of Mannar also stated that the Uppukulam fisher people were not really fishermen, that they were mostly traders—this seemed to justify taking the ownership of fishing rights away from the Muslim village inhabitants in a context where resources are stretched. Fortunately, the administration seems to have accepted the responsibility of relocating the Kondaipitty fisher people.

A more recent report by the Center for Policy Alternatives has illustrated the escalation of hostility between the Catholic and Muslim communities in Mannar. The report describes the tension between the communities due to two land disputes – one in Sannar and the other covered above – the Uppukulam paadu. Although both issues have been dealt with to an extent ill feeling remains. For instance, the report too notes that it is essential that an alternative paadu is found for the Vidathalthivu fisher persons. Their continued use of the Uppukulam paadu amidst heightened tensions does not bode well for the future. If some substantial state led intervention is not made the good relations will be destroyed with repercussions for years to come. Further, the report also notes that the leadership of both communities must find alternative ways to access assistance for their respective communities. Highlighting the needs of one at the expense of the other is contributing to the increasing tension between the communities.<sup>48</sup>

## **6. Conclusion and Recommendations**

The northern Muslim return processes to the North have not seen much progress in recent months. However, given that the LLRC report has recognized the issue as a priority, and that the LLRC implementation plan makes specific reference to a policy on northern Muslim return, and given also that implementation of the LLRC remains one of the areas that the government seems committed to carrying out its promises, it is necessary that the government is pressurized to address the issue. Sri Lanka currently has no legislation or a spelt out policy on internal displacement of any of its many war affected ethnic and religious groups.

This is lamentable given the large numbers in the country who have suffered displacement. The opportunity opened up by the state through the LLRC then, must be capitalized upon to introduce a policy

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<sup>48</sup> Raheem, Mirak and Priya Thangaraja. (2013) Tamil Muslim Tension and Coexistence in Mannar. Colombo: Center for Policy Alternatives.

for displacement in general with a view to minimizing conflicts that might emerge due to the destruction and polarization brought about by the conflict.

The formulation of a policy on the resettlement of northern Muslims is an urgent need; however, given the dire straights in which the resettlement of all IDPs currently languishes, it is also an opportunity to revisit the government's entire resettlement framework. In the aftermath of a debilitating conflict four years where the guns were mostly silent has been welcome. However post war reconstruction and forward movement has been seen only in relation to economic "growth." Further, the manner in which this growth is conceptualized is also in relation to large-scale investments by high net worth individuals and companies mostly located in the south. There needs to be a more people-centered approach to recovery and development of every aspect of the north. Currently, the people of the north are not enjoying the peace dividend. For them to be the beneficiaries of peace all aspects of recovery need to be prioritized emphasizing the needs of the people. The formulation of a national policy on the resettlement of northern Muslims could be a means by which many of the issues that remain unaddressed in relation to the entire resettlement process could be rethought and reframed. The points below highlight the importance of overturning ethnic cleansing, of understanding the different displacement experiences, and the need for much more proactive state engagement in providing livelihoods and incentives for local people to participate in the economy. It also highlights the urgent need for reconciliation measures in order that the people of the north are no longer compelled to think of themselves in ethnic terms alone.

The Citizens' Commission together with the LST Northern Muslim project proposes the following as possible recommendations towards the formulation of such a policy:

1. Recognize that the Northern Muslim Expulsion was a systematic and planned act of ethnic cleansing by the LTTE in order to bring about a mono ethnic province in the north. Recognize, therefore, that it is the responsibility of all concerned actors to ensure that this act is reversed. All possible measures should be taken to prevent this act of ethnic cleansing from becoming institutionalized by default.<sup>49</sup> Towards that end
  - a. Measures must be taken to ensure that the northern Muslims return in significant numbers to the north in order to restore the historic presence of Muslim communities in the province.
  - b. These can include but not be limited to responses to the issues already identified – such as landlessness, the need for improvements in education and health services, reconstruction of roads, and irrigation infrastructure and the provision of temporary shelters ;

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<sup>49</sup> This may be extended to a recognition of all acts of ethnic cleansing by both the state and the LTTE and institute claims for compensation for all who can identify as being subjected to ethnic cleansing.

- c. While great inroads have been made by the state in the building of infrastructure this has so far been limited to the main roads and not to those leading to interior villages. This must be taken in to consideration.
- d. The unavailability of land and housing is a serious problem. Recognize that the displaced and expelled have a compelling right to return to their places of origin. Giving land to landless families is one way in which to provide incentives to return.
- e. Recognize that twenty years also caused a significant increase in population. The children and grandchildren of those who were driven out also have the right to return if they so desire and incentives—in the form of land grants and housing assistance have to be made available to facilitate their return.
- f. Recognize the necessity for housing assistance to all northern Muslims and their family members who want to return. Housing assistance was provided to northern Muslims in Puttalam on the basis that the head of household who is eligible must have been a resident of the north at the time of the expulsion. However, given the protracted nature of the displacement, there needs to be a recognition of natural increase of the population, and an accommodation of the claims of the expanded families of the expelled Muslims.
- g. Have a means by which returning displaced are able to apply for concessionary loan schemes for house construction and the starting of businesses – especially so if they are found to be ineligible for housing assistance due to them having accessed such assistance through the World Bank housing scheme.
- h. Given that land in today's context is a contentious issue such land grants when done for one community should be done in a transparent and equitable manner that does not damage the sensibilities of any of the ethnic groups in the area.
- i. Such land grants should not preclude members of other communities accessing available and suitable state land as well.
- j. The government has so far been dependent on NGOs to provide assistance with regard to livelihoods. While some of this assistance would be welcome for returning northern Muslims as well – for instance, the inability to cultivate during two seasons in certain parts of the north compels great hardship during one season. Therefore assistance with alternative income generation activities would be welcome. However, there is a possibility that returning northern Muslims may also want to access concessionary loans etc. to start businesses on their own and expand the local economies. This should be encouraged.

- k. Recognize the need to strengthen all communities in the north and east and thereby encourage coexistence through shared economic activities between Muslim and Tamil communities.
- l. Increase the government's own investment in the resettlement and housing construction process in order to expedite the return of normalcy in the formally conflict affected areas.
- m. Expedite the livelihood assistance schemes in order that normalcy and self sufficiency is speedily increased. Ease restrictions on NGO access to conduct livelihood programs.
- n. During the 4 years after the war when return has been possible, northern Muslims have been investigating the possibility of return. However, return and reintegration into the north after an absence of nearly two decades has been difficult. There are emerging tensions with regard to access to land and other resources necessary for livelihood and due to perceptions of discrimination by the local leadership, and discrimination at the national level in terms of prioritizing resettlement issues. Muslims are also sometimes seen as outsiders given the residual remainders of LTTE ideology regarding the Muslims. Further, a generation in the north does not have a memory of the good relations shared by Muslims and Tamils. Therefore it is necessary that both the state and NGOs actively engage in reconciliation activities that prevent new conflicts emerging, and exacerbating existing conflicts over land and livelihood activities.
- o. The discussion regarding compensation in Sri Lanka is at a very early stage. The fact that it is flagged by the LLRC is welcome. The policy on northern Muslims should also at a minimum acknowledge the need for compensation on an equitable basis.
- p. Due to the protracted nature of their displacement many northern Muslims have settled in Puttalam and elsewhere, and do not anticipate return. The choices made by these families must be acknowledged and respected, they must be enabled to regularize their residency in their settlement areas of choice and their right to compensation regardless of return must be ensured.
- q. In the past there have been several attempts to formulate a legal/ policy framework through which to address the issue of displacement in Sri Lanka. *The Protection of Internally Displaced Persons Bill* of 2007 was one such attempt. The *National Action Plan for the Protection and Promotion of Human Rights* formulated in 2011 by the Office of the Special Envoy for Human Rights also contains a substantial section on IDPs. The current policy should, at a minimum be informed by the thinking underlying the IDP legislation and the Human Rights Action Plan.



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