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# Policy Brief on Humanitarian Issues

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# Acronyms

- **ACF** - *Action Contre La Faim* (Action Against Hunger)
- **AHRC** – Asian Human Rights Commission
- **AFHRD** – Asian Rights Forum for Human Rights and Development
- **ALRC** – Asian Legal Resource Centre
- **BBC**- British Broadcasting Corporation
- **CCHA** - Consultative Committee on Humanitarian Assistance
- **CMC** – Civil Monitoring Committee
- **CPA** – Centre for Policy Alternatives
- **CTMPC** - Coalition of Tamils and Muslims for Peace and Coexistence
- **FDL** – Forward Defense Line
- **DS** – Divisional Secretariat
- **DRC** – Danish Refugee Council
- **FMM** – Free Media Movement
- **GS** – Grama Sevaka
- **HSZ** – High Security Zone
- **IASC** – Inter Agency Standing Committee
- **ICRC** – International Committee of Red Cross
- **IDP** – Internally Displaced Person
- **IHL** – International Humanitarian Law
- **IMADR** – The International Movement against All forms of Discrimination and Racism
- **INGO** – International Non Governmental Organization
- **LST** – Law and Society Trust
- **LTTE** – Liberation Tamil Tigers of Ealam
- **MDM** - *Medecins du Monde*
- **MSF** - *Medicine Sans Frontiers* (Doctors Without Borders)
- **NEHRP** - The North East Housing Reconstruction Program
- **NGO** – Non Government Organization
- **SAHR** – South Asian for Human Rights
- **SCF** – Save the Children Fund
- **SEZ** – Special Economic Zone
- **SCOPP** – Secretary for Coordinating the Peace Process
- **TAFREN** – Task Force for Rebuilding the Nation

- **TMVP** - TamilEela Makkal Viduthalai Pulikal
- **TRO** – Tamil Rehabilitation Organization
- **UN** – United Nations
- **UNHCR** – United Nations High Commissioner for Refugees
- **UNICEF** – United Nations Children Fund
- **UTHR** – University Teachers for Human Rights
- **WMC** – Woman and Media Collective
- **ZOA** – ZOA Refugee Care

# 1. Introduction

This policy brief seeks to highlight key issues, trends and developments relating to the humanitarian situation of 2006-07. The report provides an overview of the fundamental policy issues that need to be addressed by policy makers in addressing the human rights and humanitarian situation.

Sri Lanka is currently experiencing a humanitarian crisis. The sheer scale of displacement alone makes clear that the situation requires international attention. Following the upsurge in violence in 2006 entire communities were forced into displacement with the number surging beyond 200,000 in the latter part of 2006.<sup>1</sup> Currently the figure of recently displaced stands at 208,459 thereby including Sri Lanka along with Sudan, Iraq, and Columbia as countries with the highest number of internally displaced persons.<sup>2</sup> Humanitarian crises are not new in Sri Lanka. In the recent past, Sri Lanka has faced multiple large-scale disasters, both man made and natural, leaving thousands dead and many more displaced. As a result of the two-decade-long conflict more than 800,000 were internally displaced Sri Lankans and currently over 515,200 continue to be internally displaced persons (IDPs).<sup>3</sup> The tsunami that struck Sri Lanka on the 26<sup>th</sup> of December 2004 resulted in over 516,150 IDPs. More than 15,000 have fled Sri Lanka and sought asylum, mainly in India over the course of the last two years.<sup>4</sup> It is also estimated that as a result of the conflict more than 124,800 people are currently living as refugees.<sup>5</sup> The humanitarian crisis goes beyond displacement, as it impacts civilians in multiple ways, creating entire affected populations.

The humanitarian crisis is a direct consequence of the upsurge of violence in April 2006. As the peace process between the Government of Sri Lanka and the LTTE that was ushered in by the signing of the Ceasefire Agreement in February 2002, rapidly unravelled, the number of CFA and human rights violations mounted. While there were efforts to re-start negotiations in 2006, the violence intensified, moving into a new phase in April 2006 with military operations to seize territory. Over the year 2006 the East experienced multiple military operations in Sampur, Mutur, Vaharai and Western Batticaloa resulting in the Government seizing control of areas dominated by the LTTE in the Eastern Province. Operations and attacks in the North also continued. These military operations had a dramatic impact in terms of displacement, destruction of houses and infrastructure and violence against civilians. It is estimated that at least 4,000 people died as a result of the recent phase of the conflict.<sup>6</sup>

## 2. Beyond displacement

IDPs are officially recognised as such by the Government of Sri Lanka and there are official government figures of IDPs. There are many forms of displacement some of which are not always captured in government statistics. This section focuses on aspects of displacement but which are often perceived to fall outside the direct scope of displacement and humanitarian assistance. A key issue that needs to be kept in mind is that there are countless numbers of IDPs, civilians and communities who have been and are being affected by both man made and natural disasters.

### **Causes of displacement**

Communities have been forced into displacement largely due to the violence as military operations and attacks against civilians have intensified. The ‘humanitarian operations’ by both the State and the LTTE have directly led to mass displacement, hence the ‘liberation’ of LTTE-controlled areas in the East or in Silvathurai, Mannar has contributed to the large numbers of IDPs in Sri Lanka. In most instances of large scale displacement, such as Mutur, Vaharai and Western Batticaloa the communities fled en masse when the use of artillery bombardment and ground operations increased. In other instances, mass displacement followed particular incidents, such as the claymore attack in Kebetigollewa in June 2006 that killed 61 people, which led to the mass flight of communities in the area.<sup>7</sup> Fear has been a key force driving displacement as families and communities have fled homes and livelihoods in order to find safety, sometimes risking their lives to do so, as in the case of asylum seekers crossing to India by boat illegally.<sup>8</sup> Some communities have faced multiple displacements. From April 2006, the Tamil communities in Sampur were subject to aerial and artillery bombardment, which intensified from August 2006.<sup>9</sup> In some cases families moved more than five times as military operations moved southwards, forcing the displaced to Eachalampattum then to Vaharai and then to government-controlled Batticaloa.<sup>10</sup> Other communities have been displaced and have attempted to return and then being re-displaced. The villagers from Mullikulam were displaced as a result of the military offensive in September 2006; they were displaced in previous phases of the war and even fled to India as refugees but continue to attempt return.<sup>11</sup> In the tsunami-affected areas, some of the communities that faced displacement in 2006 were also affected and displaced by the tsunami, such as the communities in coastal Vaharai.

### **Multiple Forms of Displacement**

Displacement takes multiple forms. Official recognition as a displaced person requires the registration of that person by the Government. Through official registration the IDP gains access to government food rations, and is in a more advantageous position to be accepted as a beneficiary by humanitarian agencies. There are various categories of persons who sometimes fall through the “cracks” of official displacement.

While many displaced end up in sites such as public buildings or transitional sites which are treated as welfare camps, displaced persons also seek shelter with host families, including friends and relatives. This is a local coping mechanism for dealing with humanitarian disasters. It needs to be assisted and strengthened, particularly if the displacement is long-term and the host community is itself struggling to cope with the various impacts of the conflict.<sup>12</sup> Puttalam district is home to one of the larger long-term displaced populations. Given that this is a district with a significantly high level of poverty, problems such as the limited public facilities and employment opportunities have intensified.<sup>13</sup> Displaced families living with host families do not always get registered and therefore cannot access humanitarian assistance. Humanitarian agencies and the Government are increasingly aware of this phenomenon so the statistics of displaced now also specifically make reference to those staying with host families. According to the official statistics of October 2007, all the IDP's in the Mannar D.S division are residing with host families.<sup>14</sup>

Another common form of displacement that is not always identified or addressed is 'night time' displacement. This is where communities do not move out of their villages or towns but find shelter and security at night communally in public buildings or in particular houses. In Kanguveli village in Trincomalee for instance, it was reported that for a number of months the residents would sleep in the school building as there had been a number of killings in the village.<sup>15</sup> From a protection perspective, 'night time' displacements indicate a high level of insecurity and also serve as a warning that further displacement may take place unless the security issues are addressed.

In addition to being displaced from their homes, communities and local areas, there are also instances where affected families have been separated due to the speed and nature of flight, human security threats and other reasons. For example, it was reported of members of several families being separated when fleeing Vaharai to government-controlled areas in Batticaloa district in December 2006 and January 2007, with limited or no assistance to facilitate the reunion of families by the Government actors and humanitarian agencies.<sup>16</sup> Similarly, in addition to force being used to resettle IDPs, there were also reports of families being separated in the speed with which IDPs were taken to transitional sites.<sup>17</sup>

## **Impact on Communities**

Beyond displacement, communities in and around the North and East are affected in multiple ways. There are circumstances where the humanitarian situation is grave, regardless of whether people are displaced or not. For example, restrictions in the free movement of goods, services and people result in high prices, shortages of goods and limitations in employment opportunities. Increased hostilities and fear also leads to outsiders being less willing to provide services to affected areas and communities. Within communities, people may also be afraid of getting caught up in the violence so may curtail activities critical to sustaining their livelihoods, be it due to unexploded ordinances or targeted killings.<sup>18</sup> Hence, farmers may not visit their fields, fishermen may not go out on boats at night or traders and itinerant labourers may not travel out of their communities. Local economies are thus heavily impacted and it becomes increasingly difficult for families to maintain a steady income which also limits their purchasing power. This in turn impacts the health and well-being of family members, leading to poverty, malnutrition, psycho-social problems and even gender-based violence in extreme cases.

In Jaffna, as a result of the closure of the A-9 road, the peninsular experienced shortages of goods which in turn created a sharp rise in prices. The violence, security restrictions and lack of economic growth limited the employment opportunities making it increasingly difficult for families, particularly the poor, to feed themselves.<sup>19</sup> The

media reported at least one instance of death due to "starvation."<sup>20</sup> A study on welfare camps in Jaffna revealed that the majority of the camp's residents were skipping a meal every day (87%, most resident were eating 2 meals per day), were reducing the size of each meal (91%) and were reducing adult consumption (88%).<sup>21</sup>

## **Post-Resettlement Challenges**

While the resettlement process promised to restore normalcy and a range of projects and initiatives, the process of rehabilitation and return has not been without problems. Families were resettled without assessing whether their houses were still standing, as seen with the return of families to Panchchienkerni, Vaharai.<sup>22</sup> In the areas that had been controlled by the LTTE, 'liberation' has meant that particular projects such as electricification and the NEHRP project have been able to move faster. Rations were provided for the initial months of return, but the restoration of livelihoods has been difficult due to the loss of crops and of equipment or particular restrictions. The fishermen in Mutur for instance have to obtain three-month fishing permits. They are not allowed to use engine boats and can fish only up to two kilometres from the shore and only during the day time. Returnees in particular areas also reported that they had lost possessions from their house. In particular areas houses were also damaged either as a result of the fighting (Mutur and Panchienkerni) or due to elephants (Vavunathivu and Eachalampattu).<sup>23</sup> While in general, the security situation of the resettled areas has improved, especially compared to the weeks preceding displacement, these communities still continue to face various human rights violations at the hands of the various armed actors including the Armed Forces, the Karuna Group and the LTTE. The additional financial burden as a result of the LTTE taxation seems to have been removed but in some areas this has been replaced by a new tax regime by the Karuna Group.

## **Security of IDPs**

Displaced families and communities have faced various forms of insecurity. Internal flight is not always an easy or safe option. For example, IDPs fleeing Vaharai to government controlled areas in December 2006 and January 2007 had to flee through the jungle. Some resorted to fleeing from Vaharai to Pesalai by boat, with several capsizing and five killing IDPs.<sup>24</sup> In some instances affected communities have not been able to flee from areas under attack. Civilians in LTTE-controlled Wanni are trapped, as the LTTE is not allowing the free movement of civilians even when the entry/exit points are open. Further, humanitarian agencies have to provide a guarantee that their local staff members will return to the Wanni if they make a visit out. There are also specific incidents where the LTTE has obstructed the flight of civilians. It was reported that the LTTE prevented civilians moving and furthermore, fired at civilians who attempted to flee Vaharai.<sup>25</sup>

If civilians do manage to flee LTTE-controlled areas, their security is not guaranteed as the Security Forces and the Paramilitaries view them as LTTE suspects.<sup>26</sup> Tamils from the North and East are finding it increasingly difficult to find refuge in the South of Sri Lanka. The only mode of transport out of Jaffna is by air and sea only. Tamils from the North and East who have sought refuge in the Southern areas of Sri Lanka are particularly vulnerable during cordon and search operations and at check points and, risk even be abducted or disappeared.<sup>27</sup> The eviction of Tamils from the lodges of Colombo by the police and the armed forces on 7 June 2007 made clear that even temporary refuge was all the more difficult. Tamils from the North and East need to obtain a police report from the place of origin and the local police where they are temporarily residing. As was recently illustrated this paperwork does not suffice during police sweeps.<sup>28</sup>

Furthermore, even welfare camps and other displacement sites do not necessarily provide protection to the displaced. On 8 November 2006 the Kathiravelli School, which was also serving as a welfare site, came under artillery attack, killing 62 people.<sup>29</sup> Other public buildings and sites where people seek refuge in times of attacks have also come under attack such as the schools in the Mutur offensive of August 2006 where several thousands Muslims and Tamils sought shelter in the schools and other public buildings. Three shells hit the Arabic College and its vicinity, killing 19 civilians on the spot and injuring several others.<sup>30</sup> The residents of Allaipiddy fled to the local church which was hit by artillery on 14 August 2006, where 15 civilians died and more than 50 were injured.<sup>31</sup> During various phases of the conflict, the Madhu Church in Mannar became a refuge for fleeing civilians. Apart from a few incidents, both the Government forces and the LTTE treated it as a peace zone and did not move their armed combatants into the site, recruit from the site or launch attacks against it. In March 2007 the LTTE moved in and forcibly moved the displaced from the site.<sup>32</sup>

IDPs who fled their homes and communities in the hope of security have to endure further human security threats by armed actors.<sup>33</sup> For instance IDPs in welfare camps in Batticaloa for instance witnessed human rights violations including disappearances, abduction of children by the armed groups, security round ups. which made clear that even in displacement civilians were under threat.<sup>34</sup> The attacks are either targeted due to affiliations or former affiliations of IDPs, mistaken identity or random attacks. In Batticaloa this has been most severe with IDPs and civilians being identified as either supporters of the LTTE, Karuna faction or others. Attacks have not been solely targeted towards adults, with children also at the receiving end.<sup>35</sup> Batticaloa witnessed a steep increase of child abductions and recruitment by the LTTE and the Karuna faction being the main offenders. There were also reports of gender-based violence in camps, including domestic abuse.<sup>36</sup>

In general, it was clear that the general violence in areas with high levels of human insecurity also affected displaced populations.<sup>37</sup> Hence the various violations of human rights and international humanitarian law committed by the armed actors has far reaching impact on all civilians, increasing the vulnerability of the more exposed among the population.

## **Women and Children**

Life in displacement has several dimensions which affect women in particular. A frequent problem with living in welfare camps is the overcrowded environment with many families living in one space. Problems such as lack of privacy are regularly reported. In addition, females also experience hardships with sanitation. In some situations, there are either limited toilets or no toilets in and near the welfare camps resulting in women having to use nearby jungle area or having to travel far. This puts women in dangerous situations having to trek far, sometimes alone and in areas with limited lighting and armed men. Gender based violence is another issue that has been reported from camps.

Women often have to take up the main challenge of care and responsibility of sustaining family life, especially in the case of female-headed households. Women often do not necessarily have the space to participate in decision-making processes and face social challenges in taking up leadership roles or even in merely demanding their rights. In conflict situations women are forced to take up a more active role but this also makes women more vulnerable. For instance, it is mothers who most often have to report the abductions of their children by an armed group to the authorities and agencies, and then visit the armed groups and beg them to release their child.

Children are also a group that has special needs and require special attention. Children have been affected in multiple ways by the conflict including killings, recruitment as combatants, assault, abductions, inability to attend school, limited access to sufficient food, medicine and other essential items to name a few. Children living in displacement have been affected physically, psychologically and emotionally. Having witnessed losing one's home, land, loved ones to living in welfare camps and with host families, fear, uncertainty and insecurity faced in displacement, all create a significant impact on a IDP child's life. Their rights also could be curtailed during displacement when restrictions are imposed on their movement or when they do not have adequate food and shelter.

## Recommendations

- The Authorities and humanitarian agencies need to ensure that all forms of displacement get recorded and ensure that local actors understand the benefits of registration of displaced persons.
- The Authorities and humanitarian agencies need to adopt a more comprehensive view to assessing the humanitarian situation in conflict-affected areas and mapping out vulnerabilities in order to devise more comprehensive policies and programs.
- All armed actors to desist from human rights violations and take actions against members involved in such violations. Armed actors should recognize the non-combatant status of civilian and take due measures to ensure their protection.
- Protect and desist from acts of violence against places of refuge such as religious institutions, schools and welfare camps.
- Recognize the Madhu Church as a Peace Zone. The Government and the LTTE should recognize the neutrality of this space and should not use any form of violence or intimidation within the precincts of the peace zone. Humanitarian access needs to be provided to the peace zone.

# 3. Human Rights Framework: Policy and Legal Issues

## International Framework and applicability in Sri Lanka

Sri Lanka has ratified numerous international instruments that provide for the protection and promotion of human rights. There are also several instruments that ensure the protection of IDPs, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR), Guiding Principles on Internal Displacement, Pinheiro Principles on Housing and Restitution for Refugees and IDPs which Sri Lanka is subject to. Though the applicability of international law in Sri Lanka was questioned by the Supreme Court in the Sinharasa case,<sup>38</sup> it is accepted practice that certain basic principles contained in customary international law apply in the Sri Lankan context regardless of ratification and accession. The Geneva Conventions and the Additional Protocols provides the basis for the protection of civilians, humanitarian, medical and religious actors during conflicts and provides the framework for their continuous unhindered work in difficult situations including the establishment of peace zones and humanitarian corridors. It is generally accepted that international human rights and humanitarian law provides the broad framework for the protection of IDPs, even though there is no specific international treaty focusing on IDP rights. Further, customary international legal norms recognise and provide protection for vulnerable persons and actors involved in humanitarian interventions. The Guiding Principles on Internal Displacement provides specific recognition to certain groups with special needs including children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons.

## National Framework

The Constitution of Sri Lanka includes a fundamental rights chapter that protects the rights of all citizens including the right to equal protection, freedom of movement, right to choose one's residence, freedom of expression, freedom from cruel, inhuman treatment to name a few. These rights can be restricted in certain situations including in the interest of national security, public order and the protection of public health or morality by invoking the Public Security Ordinance (PSO), which empowers the President to declare a State of Emergency and adopt Emergency Regulations if s/he believes they are necessary "in the interests of public security and the preservation of public order". A State of Emergency was declared in Sri Lanka in August 2005 following the assassination of Foreign Minister Lakshman Kadirgamar. Emergency Regulations were brought into force at that time and have been renewed on a monthly basis ever since. There are several Emergency Regulations that impact the rights of IDPs such as detention and arrests, and the setting up of a High Security Zone (HSZ) in Sampur in May 2007. Other than the Constitution, there are other national laws such as the Penal Code and the Prevention of Domestic Violence Act that provide protection on specific rights.

Displacement places IDPs, their families, communities and host families in vulnerable situations including threats to security and limited availability of essential services. There are threats including curtailment of their freedom of movement, right to shelter, food, clothes and other essentials, right to education, right to livelihood being a few. International and national norms provide that all are treated equally and ensure that there is no discrimination towards a particular group. The framework as discussed above also facilitates humanitarian interventions. Beyond accepting such norms and standards at a normative level they need to be implemented and incorporated into policies and practices to ensure that the rights of IDPs are respected, promoted and protected.

An issue that also needs special reference is IDP's and returnees rights to and access to their land and property. As several studies have highlighted, there are several obstacles in claiming/re-claiming ownership and accessing land including security, administrative, policy and legal issues.<sup>39</sup> For example, due to the presence of landmines and UXOs, HSZs and the occupation of houses and properties by armed actors, many people are displaced. There are also the issues of secondary occupation, problems faced by women headed households in owning and accessing land, prescription laws and ownership laws that are discriminatory and outdated, which need to be addressed by policy makers.

These and several other issues that have been discussed in this document highlight the critical importance of human rights in protecting IDP rights and humanitarian actors' rights.

## National Structures

The main coordinating actor for human rights and humanitarian issues of the Government of Sri Lanka is the Minister of Disaster Management and Human Rights. There are also other actors that play a key role in relief, resettlement and reconstruction initiatives including the Ministry of Resettlement, Ministry of Nation Building, Ministry of Relief Services, National Human Rights Commission and Resettlement Authority to name a few. The multiplicity of ministries and agencies with overlapping mandates and duties at times lead to delayed responses, bureaucracy, lack of coordination and duplication. Parallel to this there is also centralised decision making in this regard, with many of the decision made in Colombo and then communicated to local actors with limited or no consultation taking place.

A positive development recently was the setting up of the Consultative Committee on Humanitarian Assistance (CCHA) which includes the Commissioner General of Essential Services, the Secretary to the Ministry of Foreign Affairs, the Secretary of Defense, the UN and a number of key Ambassadors. This forum has been a useful mechanism to raise issues and create a dialogue with the government actors and others. A criticism with the CCHA and other government forces is that there is often a significant time lag between commitments at high-level meetings and implementation of those decisions on the ground. Further, critics have also pointed out that CCHA is being used as an excuse by the authorities to claim that issues are being addressed when in actual fact limited progress has been made in the ground with humanitarian work including access issue, movement of goods, visas and work permits.

The above issues and problems are not limited to relief, rehabilitation and reconstruction efforts but are a structural problem common to many areas. Therefore it is imperative that the Government takes the lead with the assistance of all other stakeholder in ensuring that there is strong rights based policy and legal framework which is implemented speedily and effectively.

## Recommendations

- Establish a coherent national policy and legal framework that is compliant with international standards on human rights, including the Guiding Principles on Internal Displacement.
- Increase awareness of and the need for complying with such policies and legal standards among all relevant actors, including local actors.
- The Authorities should streamline the operations of various line ministries, authorities and government actors in order to avoid duplication, ill-coordination and implementation gaps.
- The Authorities should allow local actors to perform activities that they are capable of without over-centralizing decision making and implementation

# 4. Restrictions on Freedom of Movement

Sri Lanka has witnessed several incidents where a citizen's movement has been restricted on the basis of security. The violence and the security restrictions have made movement in and around the North and East in particular extremely difficult. Movement is affected at multiple levels: within the community, in particular localities, within districts, and between districts and regions. As illustrated above, this has a direct impact on lives and livelihoods, increasing the vulnerability of displaced and affected populations.

## General restrictions

Severe restrictions on movement to LTTE-controlled areas and Jaffna have been imposed over the course of the last two years. In August 2006 the A-9 was closed at Muhamalai and Omanthai. While the Omanthai check point has been opened it is subject to severe restrictions and frequent closures. Similarly, roads entering Vaharai were shut in late 2006 and most recently the entry point to Mannar West and Madhu, the Uliankulam point of entry has been regularly closed with the intensification in fighting in 2007.<sup>40</sup> The Jaffna Peninsula is currently cut off by land, and can only be accessed by air or sea.

The restrictions on freedom of movement and denial of access is also a tool of war whereby food, fuel, medicine and other essential items are limited to a particular area so as to increase the pressures on the actor in control of that area. Both sides in the Sri Lankan conflict have in previous phases of the conflict and during this phase used this tool. The Government has re-introduced a partial economic embargo on particular goods that had been removed following the Ceasefire Agreement of 22 February 2002, which includes a ban on particular items such as cement and restrictions on other essential items such as kerosene.<sup>41</sup> The LTTE has targeted vessels or crafts carrying goods to government-controlled areas such as Jaffna.<sup>42</sup> The LTTE has repeatedly demanded that the A9 be re-opened<sup>43</sup> and has even refused agree to the proposal by the ICRC to guarantee security to boats carrying civilians and goods to Jaffna under the ICRC flag.<sup>44</sup>

The restrictions have an obvious impact on day-to-day life. The restrictions have led to shortages of goods and price hikes. Even humanitarian agencies have faced a variety of restrictions limiting their ability to effectively deliver goods. It affects the effective functioning of essential services including that of the government, humanitarian and medical services. For instance the construction of permanent tsunami housing or the NEHRP housing for conflict affected have been directly affected. The difficulties in crossing lines of control have resulted in other problems such as making it difficult or impossible for people to commute from their homes in government-controlled areas to their place of employment in LTTE-controlled areas, including government servants and NGO workers. The militarised context in the areas results in even humanitarian and medical convoys having to negotiate with the security forces and the LTTE, leaving limited or no space for the civilian administration to play a role.

Furthermore, the closure of the Omanthai checkpoint in Vavuniya in August 2006 also led to civilians being trapped on both sides of the line of control.<sup>45</sup>

Just as movement across the lines of control has become more difficult, so has moving within and to and from the North and the East. In the previous phase of the war in the 1990s and early 2000, the movement of Sri Lankan citizen's movements from the North and East was curtailed through the practice of issuing a pass for civilians to move from the North and East to the South. Though this was established as a security measure, this created massive hardships to the affected communities. In November 2001 and January 2002 fundamental rights petitions challenging the pass system in operation in Vavuniya were filed in the Supreme Court. The Supreme Court held that the practice of the pass system was a violation of one's right of movement and ordered the authorities to do away with it.<sup>46</sup> Currently, there is no pass system but vehicles from the North and East have to obtain a vehicle pass and to undergo security checks. The increased checking of vehicles has resulted in delays and increases in prices in particular areas such as Mannar, even in items such as fertilizer where the State has established a cut off price.<sup>47</sup>

In addition the Security Forces have also imposed specific security restrictions, such as on fishing in the North and the East. The fishing restrictions vary across the region. In most areas there is a complete ban on night-time fishing. Following specific incidents, a complete ban on fishing is sometimes introduced as in the case of the fishing community of Pesalai in June 2006 in the wake of a Sea Tiger attack in the area. The ban was reduced to a night-time restriction. However, day time fishing is problematic as the fishermen have restricted times which are further limited by security checks both when going out to sea and coming back to shore.

## Restricted and Forced Movement

Civilian displacement is often a result of violence and fear but it can also be deliberate. Through launching military operations, or even through particular acts of violence, armed actors will attempt to force displacement. Displacement of a civilian population can facilitate military operations as it becomes more difficult for the opposing side to hide behind civilian populations and minimizes civilian victims. It should be noted that the manner in which the war is being fought suggests mass displacement is a key aspect of the military strategy. Through a sustained barrage of gunfire into particular areas it is expected that the civilian population will flee, making it easier for the security forces to secure control of areas.<sup>48</sup> The LTTE has launched attacks on particular civilian targets including civilians in border villages. While armed actors are called on to take measures to protect civilians including allowing them to evacuate, they have the responsibility to ensure that they avoid launching attacks on civilian targets and exposing civilians to attack, in addition to addressing the needs of the displaced and protecting their property in the areas of fighting.

Displacement can also run counter to the military and political objectives of the actors who control the areas concerned. In such a context, there have been occasions where IDP movements have been restricted. In some situations the inability to move results in communities being trapped, increasing their insecurity. In August 2006 civilians from Allaipiddy, Jaffna peninsula, were restricted from leaving their villages by the security forces.<sup>49</sup> On 22 September 2006 handbills were distributed by an unknown group demanding that the Muslim civilians flee the Mutur area. Fearing an attack by the LTTE, Muslim families attempted to flee Mutur but were stopped by the security forces who even imposed a ban on motor boats from taking any civilians across to Trincomalee town. These restrictions in movements were seen as an attempt at using civilians as human shields. In December

2006 civilians attempting to flee the Vaharai area in Batticaloa district due to the continuous shelling were restricted from fleeing LTTE controlled areas by the LTTE who even shot at civilians attempting to flee.<sup>50</sup>

Force has also been used to move people from one area to another. Since September 2006 the Government has resettled displaced communities from Mutur, Vaharai, Western Batticaloa and Eachalampattu in their places of origin. While these initiatives have allowed the displaced to return to their homes and rebuild their lives, the manner in which the resettlement was carried out raised a number of concerns, including whether the resettlement process was voluntary. In order to resettle the displaced a variety of coercive measures were used. In September 2006 the military moved into the displacement camps and forced the people into vehicles. The Minister of Resettlement and Relief Services, Rishard Badurdeen acknowledged that an element of force was used.<sup>51</sup> This method was also used with the displaced from Vaharai.<sup>52</sup> The displaced from Trincomalee in Palacholai, Chenkalady were threatened by the military on 15 March 2007 who told the families that if they did not leave they would grenades into their huts and shoot.<sup>53</sup> The use of military personnel at the point of transport is a tool that has been repeatedly used making opposition to the resettlement drive by the Government highly unlikely.

Other measures have also been used such as the threat of cutting off of rations and the closing of welfare centres. All these measures clearly demonstrate that the voluntary nature of resettlement is clearly in question.<sup>54</sup> The displaced were not consulted as to whether they wished to return and did not have the opportunity to object but were merely informed when they would be resettled. The displaced often expressed a desire to return but were wary of returning immediately, primarily due to security concerns.<sup>55</sup> While in some of the more recent resettlement initiatives the Government has attempted to arrange 'go and see visits' this process needs to be more representative in order to allay fears of resettlement. Restrictions on humanitarian agencies accessing resettlement sites only intensified the displaced community's apprehensions of return.<sup>56</sup> There are other push factors such as the poor conditions within the camp, including over crowding, sanitation, flooding which make displacement increasingly unliveable. The Government also uses inducements such as housing assistance and the continuation of rations. Agencies also expressed concern that the security of the displaced could not be assured due to unexploded ordinances and the possibility of violence recurring in areas of resettlement.<sup>57</sup>

Another instance of forced movement of civilians was the eviction of 376 Tamils from Colombo who were taken to areas in the North and East by the security forces on 7 June 2006. Several reported cases indicated that many who were evicted had fled the North and East due to the increased hostility and insecurity. There were reported cases of women, children, elderly and the sick being forcibly taken and put in buses with no information provided as to the cause of the eviction or where they were being sent to. In a fundamental rights petition filed by the Centre for Policy Alternatives (CPA), the Supreme Court held that the eviction of 376 Tamils from Colombo was a possible violation of right to movement, right to residence, right equality and freedom from inhuman and cruel treatment. The Supreme Court issued an interim order halting any future evictions taking place and ordering authorities not to stop anyone entering Colombo. The case is continuing and it is to be seen what the final outcome would be. In subsequent newspaper reports it is alleged that lodge owners in Colombo have been instructed not to allow persons from the North and East to stay for a period longer than a month.<sup>58</sup>

The establishment of High Security Zones (HSZs) in Jaffna and most recently in Sampur in the Trincomalee district are other extreme examples of restrictions on movement. Many thousands of Tamil people have lost their lands, homes and livelihoods due to the demarcation of particular areas as off limit to civilian access. HSZs account for some 18% of the entire Jaffna Peninsula and are the primary cause for the non-return of the majority of persons in Jaffna's welfare centres.<sup>59</sup>

The HSZs have been challenged in court. Though the judiciary was positive and recognised the infringement of the right to movement in the two previous cases mentioned, there have been instances where national security has been held as paramount, even at the expense of fundamental rights. In 2003 the Jaffna HSZ was challenged in the Supreme Court by a petition filed by TNA MP Mavai Senathirajah and others. The case is still pending though the Chief Justice has requested that an arrangement is reached with the military commander of the area and the Government Agent in Jaffna to ensure that the HSZ is reduced and some of the land returned to the civilians. A contrary position was taken when the HSZ in Sampur was challenged by two petitions in June 2007, one filed by CPA and the other by four affected IDPs of the area. The Supreme Court held that this was a matter of national security and that resettlement will take place in due course. What is significant with the Sampur HSZ is that it was created under Emergency Regulations, making it extremely difficult for parties to challenge it and thereby providing the space for the authorities to continue maintaining it as a security measure. What is not well known is that while the HSZ in Sampur prohibits civilians of that area from entering their own land, the authorities have also planned to establish a Special Economic Zone (SEZ). There is clear evidence of the discriminatory nature of what is happening in Sampur, with civilians not being allowed to enter their land and homes, while potentially big businesses can establish their economic ventures.<sup>60</sup> Like many other instances, national security has been used as an excuse which cannot be questioned by either IDPs, affected communities or others in courts or other forums.

## Recommendations

- The Authorities and other armed actors need to ensure that all steps are taken to provide for the unrestricted movement of civilians and humanitarian actors. While recognising restrictions may be imposed on security reasons, these should be only imposed due to necessity and adhering to international and national standards.
- The Authorities and armed actors need to ensure the freedom of movement for affected populations to flee violence prone areas and to ensure humanitarian access to displacement sites.
- The Authorities needs to ensure that resettlement is a voluntary and consultative process and that the process meets national and international standards. Humanitarian agencies need to facilitate the resettlement process while ensuring that issues such as protection, access and sustainable return are addressed.

# 5. Space for Humanitarian Actors

This section focuses on issues related to humanitarian actors and their engagement in Sri Lanka with special attention to the difficulties they have faced due to administrative and security reasons, and the overall impact the curtailment of humanitarian activity has on affected communities and IDPs.

## **Access of Humanitarian Agencies**

One of the main challenges humanitarian actors have to face in conflict contexts is that of access. In recognition of the neutrality of and the critical role played by humanitarian agencies, they are usually granted access and are not subject to the same restrictions as other categories of civilians. Security and safe access of humanitarian actors is accepted in international humanitarian law and dealt specifically with the Geneva Conventions and Additional Protocols. It is inevitable that in situations of conflict, humanitarian actors are denied access to particular areas for certain periods, especially during intense battles. However, in most conflict zones humanitarian agencies are granted the right to function with restrictions in order to access communities trapped behind battle lines. Over the years 2006 and 2007 humanitarian agencies have in fact been subjected to a series of restrictions that have obstructed and hampered their ability to access affected areas.

Access to areas by humanitarian actors has been restricted largely on security grounds by various armed actors. This has been particularly pertinent with regard to the LTTE-controlled areas. As military operations have intensified in particular areas, access was restricted to areas such as Sampur, Vaharai, Western Batticaloa and Wanni. With regards to LTTE-controlled Wanni for instance the Government granted entry only to twenty agencies. With the commencement of hostilities including artillery exchanges, aerial bombardment, ground troop movements and shifting lines of control, only a handful of agencies are willing to operate, and only a fraction of them, usually the ICRC, are allowed to do so by the military and the LTTE. In such contexts, it is necessary to secure a humanitarian corridor whereby the armed actors agree not to engage in military operation along an identified supply route for a particular time period. For example, following the intensification of violence in Vaharai in August 2006 access was highly restricted. During one rare instance when the UN convoy received the approval of both parties the fighting resumed putting the convoy at risk. Humanitarian corridors continue to remain a priority to access the LTTE-controlled Wanni.

The restrictions on humanitarian actors have also been extended to areas which have been recaptured and are being resettled by the Government such as Sampur, Vaharai and Western Batticaloa. Initially the military claimed that due to security concerns access could not be permitted. Each of these areas has been subsequently opened up to particular humanitarian agencies that have been granted permission by the relevant military authority. Agencies involved mainly or solely on protection issues are not among those agencies that are allowed early access.<sup>61</sup>

Humanitarian agencies have also been subject to increased restrictions including being subject to checks and searches. Prior to the commencement of hostilities, most vehicles of INGOs were not subject to searches at checkpoints and on certain occasions were even fast tracked. During the current phase of the conflict, the security forces particularly at entry/exit points stop even UN vehicles. The LTTE has also intensified its searching of INGO vehicles reportedly following an incident where an INGO vehicle was used by civilians to flee LTTE-controlled Wanni. The situation for local NGOs is even more restricted. If local agencies do access the Wanni, these individuals and the organization risk being identified as LTTE sympathizers. Local agencies also find movement from the districts from the North and the East all the more difficult as they have to obtain vehicle permits.

## **Registration and visa issues**

The Government has also established more stringent regulations for INGOs in Sri Lanka. In 2006 all international aid agencies were called to register with the Ministry of Social Welfare. Subsequently international aid workers had to register with the Ministry of Defence. The registration process was for individuals rather than agencies but given the type of information required it was clear that this was a way of monitoring INGOs especially in the North and East.<sup>62</sup> INGOs had to obtain new work visas for their expatriate workers. Personnel who did not receive work permits faced possible arrest.<sup>63</sup> Although the majority of agencies received their work permits, many faced delays in obtaining them. Restrictions were also imposed in the geographic areas of operation with a time limit for the duration of the visa. In 2007 INGOs were also required to obtain police clearance forms for their local staff. While agencies recognize the primacy of national security, the bureaucratic hurdles have meant that they have had to invest time and energy in meeting additional demands instead of working on humanitarian projects.

## **Security of Workers in Humanitarian Agencies**

Over the course of the last two years aid agencies and workers have increasingly become victims and targets of various forms of violence. Sri Lanka has become one of the most dangerous places in the world for humanitarian agencies, "There is a concern about the safety of Humanitarian workers themselves and the record here is one of the worst in the world from that point of view"<sup>64</sup> The killing of 17 personnel from the international agency Action Contre La Faim (ACF) in Muttur in August 2006 is the most notorious example. However, it is one case in a series of violations and threats. In 2006 it is estimated that 39 humanitarian agency workers were killed or disappeared in Sri Lanka. In 2007 the figure as of December 17 2007 stands at 22.<sup>65</sup> The most recent casualty was a humanitarian worker from the Sri Lanka Red Cross who was abducted and killed in the most brutal fashion in Jaffna on 16 December 2007.<sup>66</sup> Looking at incidents of killings and disappearance alone, the figures for Sri Lanka are comparable to some of the statistics from other conflict areas such as Iraq, Afghanistan and Sudan.

All of the victims of these killings and abductions are locals, making it clear that they are most under threat. It needs to be noted that it is mostly young Tamil males who are victims, reflecting the general pattern of the conflict. Some of these killings may be due to humanitarian workers getting 'caught in the crossfire' of the conflict, such as the victims of claymore attacks. It is also clear that in certain situations the killings have been targeted in execution type killings. The killings could be the result of multiple factors such as the targeting of particular I/

NGOs, as well as other factors such as ethnicity and individual reasons such as the political associations of the victims, personal disputes.

All the incidents - especially of killings and disappearances - demonstrate a clear disregard by the armed actors', including the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), for International Humanitarian Law (IHL), including the provisions guaranteeing the protection and neutrality of humanitarian actors. According to common Article 3 of the Geneva Conventions, which specifically applies to internal armed conflicts, civilians must be treated humanely and must not be subjected to violence to their life and person. Even though Sri Lanka has not signed up to Protocol II of the Geneva Conventions, including article 18 which deals specifically with humanitarian workers and has not included common Article 3 in the national enabling legislation for the Geneva Conventions,<sup>67</sup> it can be argued that it is still bound by customary international law.<sup>68</sup> Intentional attacks on civilians, including humanitarian workers constitute war crimes. States are therefore required to prosecute those responsible for such crimes.<sup>69</sup>

The violence against and the attacks on humanitarian agencies have resulted in the agencies curtailing their movement, suspending projects and even withdrawing from particular areas which has a direct impact on affected communities. Both the Government and the LTTE have condemned specific incidents but in none of the cases have the perpetrators of the crimes been prosecuted.<sup>70</sup> The contestation of figures by the Government still remains and this is a critical problem that has to be addressed by the humanitarian community in particular. While it is essential that humanitarian agencies identify the motives for each of the attacks, so as to better identify the security threats they individually face, they need to recognise the cumulative impact of all these killings and disappearances and that they are being targeted.

In addition to killings and disappearances, humanitarian agencies have faced a range of other forms of violence. Agency offices and vehicles have been damaged either as a result of aerial bombardment, artillery, grenades, claymores and other attacks.<sup>71</sup> In addition to being the victims of killings and disappearance agency personnel have also been injured in the violence.<sup>72</sup> Agency staff have also been subjected to abductions. In LTTE-controlled Wanni, the local staff of humanitarian agencies are being forcibly recruited by the LTTE despite guarantees that it would not do so.<sup>73</sup> An additional problem is that of 'taxation' where the agencies, or most usually their local partners, contractors and even beneficiaries are forced to pay armed groups. The Inter Agency Standing Committee (IASC) complained that in addition to killings, disappearances and harassment of civilians in the East by armed groups, they groups had also looted shelter material from the camps.<sup>74</sup>

Many of these 'minor' forms of violence have not been made public. Individual agencies are willing to list out incidents confidentially that have not been publicly reported to the media and in some cases even to the authorities - particularly cases of abduction and release, threats and intimidation - revealing a much broader climate of insecurity and impunity. Despite several coordinating institutions of international and local humanitarian agencies and numerous Government institutions to oversee human rights, there is no systematic and comprehensive documentation of incidents against humanitarian workers. This lacuna allows the issue to be dismissed and marginalized.

## **The Shrinking Space for Humanitarian Actors**

The rise in violence against humanitarian actors coupled with the increasing constraints and security restrictions imposed by the authorities and the armed actors have had a dramatic impact on the space for humanitarian

actors. The shrinking of space is not unique to the humanitarian community as other critical actors such as religious institutions, the media and civil society have all come under attack.<sup>75</sup> The incidents of violence thus seem to form a part of a war strategy practiced by both sides to ensure silence and compliance by the civilian population.

In addition, humanitarian actors have also faced a political backlash in Sri Lanka. This is fuelled by a nationalist fear of international intervention in Sri Lanka and public suspicion of non-governmental organizations. Humanitarian and non-governmental organizations are also perceived to be sympathetic to the LTTE and therefore any project in LTTE-controlled areas or in collaboration with the TRO is a confirmation of this suspicion.<sup>76</sup> NGOs and INGOs were also tainted by the problems in the tsunami recovery process, including delays, and charges of corruption and financial impropriety. In this highly charged context, politicians and the media, both state-owned and private, have claimed that particular agencies have provided the LTTE resources or materials.<sup>77</sup> While these agencies have provided explanations to the Government and the media, the publicly made charge of collaboration with the LTTE remains, increasing the level of insecurity.<sup>78</sup> The State and the other armed actors have challenged the neutrality of humanitarian agencies making it increasingly difficult for them to work. For instance both the armed forces and the LTTE have been accused of using shelter material on which the insignia of the agency concerned is clearly marked, for their bunkers and checkpoints.

## The Challenges to Constructive Engagement

The multiple assaults on the humanitarian community have made an effective response to the humanitarian situation and the attacks all the more difficult. There is increasing fear on the part of humanitarian agencies of being perceived to be challenging the Government, so agencies prefer a more ‘diplomatic’ approach. Similarly, there is a tendency for issues to be taken up as an issue affecting a particular agency rather than one affecting the humanitarian community. This is also the approach adopted by agencies in dealing with the abduction of staff by the LTTE. The fear that the Government or even that the LTTE will expel them also acts as a constraint on taking up the issue.

As a result particular sets of issues, such as protection and the human rights of IDPs due to their controversial nature get downplayed. Local groups and communities often turn to international humanitarian organisations such as UNHCR to take up these concerns with the Government and other armed actors due to the sensitivity associated with this issue. As international agencies are better protected and have more leverage, they are better able to take up these issues. While certain actors on certain issues have made some progress, in general international agencies have come under criticism for soft peddling these issues and focussing more on project implementation and the provision of material benefits to the displaced.<sup>79</sup>

The humanitarian community has, however attempted to use the multiple advocacy tools available to it in order to seek redress to the problems faced by individual agencies and the community at large. In addition to bilateral discussion between individual agencies and the Government, there are other key fora such as the CCHA and the IASC which provide useful platforms to address particular issues. Agencies also rely on the diplomatic community to take up certain concerns directly with the Government. Overall, this engagement has serious limitations. While agreements can be reached at the Colombo level at these forums or even with the Ministry of Defence but on the ground the problems and restrictions continue. The situation is dynamic so procedures and restrictions are constantly changing making it difficult for advocacy purposes.

The mass resettlement program in the East carried out by the Government demonstrated both the strengths and the weaknesses of the humanitarian community. From September 2006 the Government initiated a series of mass resettlement drives of the displaced back to their homes in Mutur, Vaharai, Western Batticaloa and Eachalampattu. Humanitarian agencies had multiple concerns including the use of coercion and pressure on the returnees, security problems including unexploded ordinances, the lack of shelter and infrastructure in the areas of return. From September 2006 UNHCR as the principal agency made its position clear regarding its opposition to forced resettlement and the rights of the displaced, which it has repeated with subsequent resettlement drives, most recently in its November 2007 statement on returnees fleeing Eachalampattu to Batticaloa.<sup>80</sup> Other humanitarian agencies also supported this position resulting in the IASC issuing a notice detailing IDP rights relating to resettlement. These notices were put up in welfare camps in the East.

Agencies, however also faced significant pressures to work in the resettled areas, both out of a sense of obligation to the affected communities and a desire to impress the Government. Inter-agency and intra-agency tensions and differences also made a collective response to the resettlement issue difficult. Agencies such as UNHCR also demonstrated a desire to work with the Government on resettlement both in terms of the resettlement process, such as providing shelter for the transitional sites in Kilivetti<sup>81</sup> and the public statements such as the May 15 UNHCR statement which characterized the Porathivu resettlement as "voluntary and in line with international standards"<sup>82</sup> The IASC issues a statement which also reiterated this point and also referred to the standards for return. It was noteworthy that the IASC referred to a number of problems with return including unexploded mines and ordinances, agriculture based livelihoods and sustainable food security without commenting on whether these violations of the accepted standards.<sup>83</sup> Even though agencies have serious concerns about voluntary and sustainable return, they still get involved in projects for returnees. This made it more difficult for the humanitarian community to adopt a unified stance. The fear of confrontation with the Government also makes advocacy difficult as evidenced by the restrictions on the distribution of the IASC commissioned paper on "Displacement related to the Conflict" due to fears that the document was too controversial.

## Recommendations

- The Authorities, political groups and other armed actors need to take steps to facilitate the work of humanitarian actors, ensuring that unnecessary restrictions and obstacles are removed in carrying out their functions.
- The Authorities and humanitarian community need to agree on a national framework to monitor the work of humanitarian workers and others. Such a framework should facilitate humanitarian actors in their work and not add more bureaucratic hurdles for humanitarian work.
- The Authorities and other actors need to take steps to facilitate a safe environment for humanitarian work. All steps need to be taken to investigate attacks and threats against civilians and humanitarian actors and thereby address the culture of impunity prevailing in Sri Lanka.
- Humanitarian corridors and humanitarian access needs to be ensured by the armed groups so as to ensure that civilians have access to basic items and services.

# 6. The Response to Humanitarian Crises: Key Issues

This section briefly focuses on a few issues that have emerged in the response to the humanitarian crisis. Through examining aspects of the response including equity, ethnicisation of humanitarian assistance, politicisation, centralisation, militarisation and disaster preparedness, using examples from the conflict and tsunami it is clear that there is scope for improvement both from the side of the Government and the humanitarian communities.

## **Equity: The treatment of affected communities and persons**

Equity is a central principle in ensuring that affected communities and persons are treated fairly and are not made more vulnerable through assistance schemes and policies that could be discriminatory, and that could create tension and resentment among different groups. Equity ensures that people affected by similar circumstances and situations, are treated equally and are not put in a position where they have to compete with each other. Equity also ensures that people's rights are respected and protected, through measures that are non discriminatory, participatory, transparent and accountable.

Humanitarian interest in the principle of equity intensified in the post-tsunami context. The unprecedented amounts of money that came in after the tsunami, with little or no funding restrictions left considerable flexibility as to how and the amount of money that could be used. By comparison, practical challenges and funding constraints/restrictions resulted in limited assistance to conflict affected. This resulted in inequitable treatment between the tsunami and the conflict affected IDPs. For example, the tsunami affected were provided a weekly sum of Rs.375 worth of food rations per person, Rs.5000 rupees worth of cash per family for whose homes were destroyed and Rs.2500 per family for the purchase of kitchen utensils.<sup>84</sup> Compared to this, the conflict affected received far less: a conflict affected person receives rations of Rs.336 per month and a family of five or more receives only Rs.1260 Rupees per month based on prices fixed by a circular formulated in 1995. It needs to be noted that there are disparities even among particular sets of conflict IDPs as 'older' caseload receive the Government rations based on the 1995 formula while newer IDPs receive WFP rations set on calorific terms.<sup>85</sup>

Further, the housing given to the tsunami and the conflict affected raises concerns of equity. Many conflict affected IDPs are still living in temporary shelters more than a decade after being displaced, such as in areas of Puttalam and Jaffna, whereas the tsunami affected are already residing in permanent houses. There are also equity concerns within the tsunami housing constriction. Questions have been raised by the tsunami affected as to why Hambantota district has received better assistance compared to the other affected districts and even

has a surplus of houses.<sup>86</sup> In areas such as Amparai there are still areas where the permanent houses have not been completed. There are also disparities between the amounts allotted between various housing projects because there were a number of humanitarian agencies with tsunami funding who provided top ups of up to Rs.550,000. In addition to the speed of building housing, the tsunami affected also received better assistance in rebuilding their houses. A grant of Rs.250, 000 was given in instalments has been promised for those whose houses have been destroyed outside the buffer zone and a Rs.100, 000 grant given in instalments for those whose houses have been partially destroyed. In response the amounts for NEHRP housing project to the conflict affected were increased to the same amounts.<sup>87</sup>

The tsunami and conflict disparity reflected a previous debate regarding conflict and host communities. The Government and agencies would attempt to rehabilitate conflict-affected communities in close proximity to poor host communities. In some cases, the construction of permanent houses with toilets and access to water for the displaced caused tensions with local communities living in thatch or wattle and daub houses. Some agencies have become more sensitive to this issue and have designed their programs accordingly. For example, the World Bank housing project in Puttalam makes provision for housing and infrastructure assistance to the host community in order to off-set problems that could hamper the implementation of the project and to aid the overall development of a border district affected by the conflict.

Programmes for conflict IDPs have been largely focused on providing them with the minimum rather than assisting them in establishing their livelihoods and making them self-sufficient. Compared to this, the tsunami response has been more comprehensive and more focused on long term recovery, assisting with livelihoods and houses and ensuring people and communities are less dependent on assistance and capable of income generation. There appears to be a very distinct shift in approaches and responses to the two disasters. The phrase used by the Government in tsunami response, “Build back better” clearly demonstrates the intention to provide for a better living condition for affected communities with long-term interest in hand. This approach needs to be extended to the conflict affected areas not just in terms of macro-infrastructure projects but also in terms of family livelihoods and local economies.

## **Ethnicisation of Humanitarian Assistance**

Charges of ethnicisation of humanitarian assistance were made in response to the differential treatment of IDPs particularly in the speed of the response and the quality of services provided to the affected persons. For example, media reports have questioned why Tamil people displaced in Trincomalee town have been side lined and not received assistance compared to the influx of assistance for the displaced in Kebethigollewa.<sup>88</sup> The displaced in Kebethigollewa received temporary shelter within a month, compared to many in the North and East including areas such as Trincomalee where IDPs were residing in schools and religious buildings for many months. Additionally, there has been a continued effort to provide assistance to the IDPs in Kebethigollewa, with the Government deciding to continue the supply of monthly dry rations in addition to the bag of food items provided by the World Food Programme.<sup>89</sup> This should be compared with the plight of the displaced in parts of the North and East including areas in Trincomalee, Batticaloa and Pesalai there was no sustained effort to address the needs of the IDPs nor provide dry rations.<sup>90</sup> These issues raises concerns on the unequal treatment provided to the IDPs due the recent hostilities, with concern over better treatment being given based largely due to ethnicity.

The differential treatment to various sets of IDPs is due to a number of factors including ethnic bias as well as the scale of displacement, accessibility and quality of the displacement sites. For instance Kanthale saw repeated waves of displacement from Eastern Trincomalee seeking shelter in late 2006.<sup>91</sup> While the response to the Muslims influx from Mutur in August 2006 was poor and witnessed mainly Muslim relief organisations playing a primary role in providing emergency relief, the assistance to the Sinhala displaced from Serunuwara in December 2006 seemed better coordinated.<sup>92</sup>

The ethnicised targeting of communities through violence also needs to be taken note of. It is primarily the Tamil community in the North and East that is most affected by the violence and most likely to be displaced. The other communities such as the Sinhalese in the border villages and Muslims communities in the North and East have also experienced violence and displacement in the last two years. Not taking into account the ethnicised violence that is a defining aspect of the conflict into the design of humanitarian response is dangerous and has severe repercussions. For instance offering relocation as a durable solution can be politically charged given that both sides in the conflict have attempted to alter demographic balances through colonization and development schemes and violence. The involvement of humanitarian agencies in schemes of resettling forcibly expelled communities in particular such as the Tamils from HSZs or Northern Muslims without, at the very least making clear to the authorities and the beneficiaries that the right of return needs to be adhered. The failure to do so could result in the neutrality of agencies being called into question and challenges accepted guiding principles of humanitarian agencies such as conflict sensitivity.

Trends of ethnicisation are also apparent in the differing approaches to the resettlement of the three communities with greater consideration for the security concerns of Sinhala communities and more apprehension of resettling Tamil IDPs in key areas such as Sampur, strategically placed in Eastern Trincomalee. The resettlement drives in Trincomalee indicate that HSZs, landmines and other security reasons are provided in not allowing Tamil IDPs to resettle in their own land but at the same time allowing Sinhalese families to settle in other parts of Trincomalee district. The reports of names being changed from Tamil to Sinhala in certain villages which for many decades have been called by a Tamil name also raises concerns of plans to change the ethnic demographics in the area.<sup>93</sup> From the above examples it is apparent that such measures providing humanitarian assistance and resettlement drives are clearly based on ethnic lines and creates a new situation of ethnicisation playing a key factor even in humanitarian contexts. There are also claims of resettlement plans in Trincomalee district involving settling Sinhalese people in land belonging to Tamils or Muslims, raising fears of possible land colonisation in order to change ethnic demographics and electoral politics.<sup>94</sup> The TMVP has also taken up a role in managing humanitarian assistance and has tried to influence local government servants and humanitarian actors in the East to work with particular communities. It has also played on the ethnic dimension and played a role in encouraging the construction of shelters on lands in Arayampathy which are claimed by Muslims.<sup>95</sup> This local situation also revealed a larger problem throughout the conflict-affected areas where communities have fled their homes and even through the peace process were afraid of returning or were unable to return and hence could not re-claim their lands and properties.

Recent events in the East also indicate larger forces at play in the long term development of the area with far-reaching implications for ethnic relations which need to be addressed. The establishment of a High Security Zone and Special Economic Zone which could prevent the permanent resettlement of Tamil villages has raised serious concerns that national security and national development are mere covers for a Sinhala agenda.<sup>96</sup> The issue of land in particular is highly sensitive one, especially in a context where people have been forced to abandon their homes and properties due to the violence and intimidation and others have occupied these same

lands. The involvement of the state and armed groups such as the LTTE, Tamil paramilitaries and home guards, only further complicates this issue, especially when the competing claims are from different ethnic communities. At a local level communities from various ethnicities have, however demonstrated a willingness to help other affected communities. The Sinhala communities in Serunuwara for instance provided water to the fleeing Muslims from Mutur in August 2006 while the Muslim Community in Kathankudy provided food and other forms of assistance to the Tamils displaced in Arayampathy in March 2007.<sup>97</sup>

## **Politicization, Centralization and Militarization**

The humanitarian situation in Sri Lanka has become highly politicized. The Sri Lankan Government as the principal actor responsible for dealing with the humanitarian situation has attempted to respond through a variety of humanitarian initiatives but has also increasingly politicized the situation making it more difficult for other actors to respond effectively. For instance, the Government publicly questioned UNHCR's IDPs figures. Foreign Secretary Palitha Kohona stated that "in the view of the government, IDP figures issued by some international agencies were inflated and were being exploited for propaganda purposes and UN agencies should be more conscious of this issue."<sup>98</sup> This is in spite of the fact that the UNHCR figures are based on the statistics provided by the District Secretary in each district, who in turn is provided the information by the Divisional Secretaries and the local Grama Sevakas. The Ministry of Human Rights and Disaster Management and the Ministry of Nation Building agreed to this procedure for compiling figures. There were issues of duplication and omissions in the IDP figures but the manner in which the issue was addressed suggested it was a political attack. The Government's main strategy in contesting the figures appears to be to minimize the scale of the humanitarian disaster. High IDP figures are an embarrassing indicator of the situation. UNHCR stopped putting out public figures from April 2007 to October 2007. The Government's contestation of the scale of the humanitarian situation it becomes more difficult for the international community to make an accurate assessment of the situation and therefore raising funds for Sri Lanka become more difficult.

The Government has used a number of methods to demonstrate that displacement was not as significant an issue as was claimed by the humanitarian community and human rights actors. One method was verbal attacks on the agency responsible for putting out the figures, whereby Government officials and ministers claimed that the figure was exaggerated.<sup>99</sup> Another tool used by the Government is to carry out mass resettlement programs where the voluntary nature is clearly in question. Furthermore, in particular instances, the Government has also prevented the re-registration of recently resettled persons as displaced persons. For example, it has been reported that in November 2007, 106 families from Eachalampattu fled back to Batticaloa and attempted to register as displaced persons but they were not registered as the Grama Sevaka claimed that they have not been given the power to do so. There are other aspects of politicisation which hamper assistance. For instance there were reports that the Government's statement that no civilians were killed as a result of the fighting in Vaharai, made it difficult for the displaced to claim a death certificate for civilians who had been killed in the military operations.<sup>100</sup>

The politicisation of the humanitarian situation has other facets. Various political actors with particular agendas are involved in particular displacements, making equitable treatment of IDPs more difficult. For instance the number of visits by Ministers to Kebethigollewa and Kanthale as opposed to Batticaloa symbolized the level of attention paid by the Central Government. The politicization of humanitarian activities also makes it difficult for humanitarian activities to work. For example, the presence and involvement of Red Star, the relief wing of the

JVP, in Serunuwara to assist Muslim IDPs who fled Mutur has been documented.<sup>101</sup> This incident demonstrates how a politically backed relief entity can play a crucial role in displaced communities, creating a dependency and trust among affected communities as well as creating the space for affected communities to critique the role of other political actors.

An additional problem with disaster preparedness has been the centralization of projects and confusion over responsibility, which is a part of a larger problem in Governance in Sri Lanka. IDPs are the responsibility of at least three ministries. The Central Government also took up some of the essential roles which could have been done by the district actors. For instance in the case of large numbers of IDPs arriving in Batticaloa Town from December 2006 and January 2007, there was confusion as to who was the key agency in charge of registration. Discrepancies in the registration of IDPs have serious implications for the distribution of assistance, dry rations, compensation, resettlement and relocation plans. The Central Government needs to play a critical role in large-scale disasters but has to avoid duplicating work and centralising decision making processes that can be done at the district level. In particular the Central Government needs to play a more vigilant monitoring role and step in when it is clear that none of the actors are taking responsibility for completing tasks. This became apparent during the tsunami recovery process where there were multiple and successive institutions to deal with the housing issue but two years later, when problems are emerging particularly with donor built relocation sites there is no one to take responsibility. Centralization by the Government can result in disputes between the Government and humanitarian agencies. For instance agencies attempt to follow a consultative and bottom-up approach to designing and implementing projects so will often conduct public consultations with the villagers as a first step. The centralized approach can result in projects being designed at the District Secretary's office or even Colombo with little or no consultation of the beneficiaries. Thus issues of transparency, consultation and peoples' participation in projects are a key priority for agencies and an issue of concern particularly with some of the current humanitarian and development projects in the East. Thirteen key donors adopted a set of Guiding Principles for Humanitarian and Development Assistance which included impartiality, non-discrimination and respect for human dignity which could serve as benchmarks for donor engagement.<sup>102</sup>

The lack of public consultation and participation is key problem faced by the displaced on numerous issues. The lack of consideration for the affected people was demonstrated most vividly during the Government's resettlement when people were not asked whether they would like to return but in most cases were not even provided information regarding their return as in some returns they were told on the day of return (Mutur and Vaharai) while in others they were merely informed of the date of return (Western Batticaloa). More information helps allay people's fears. These processes of consultation and participation were used in tsunami reconstruction projects but during the conflict displacement and resettlement they have been perceived as problematic by the authorities.

Increasing militarization in the North and East has also impacted the delivery of humanitarian assistance, resettlement, reconstruction and development initiatives. For example the appointments of former military officials as the Governor of the North and East Province, as Government Agent of Trincomalee district, as officials of Resettlement Authority raises concern about the increased military role in affairs that previously were within the ambit of the civilian administration. The increased military role in governance and in providing humanitarian assistance has resulted in I/NGOs having to go through the military establishment and former military personnel for approval and continuation of their projects and programmes. Arguably the militarization has made it more difficult for a return to normalization and a strengthening of civilian rule. The military presence and increased powers they wield in the areas, also raises concern in the future plans in store for the areas. For example, the Competent

Authority for the HSZ in Sampur in the area is the Commander of the Security Forces in the East, who is also the sole actor who determines as to who can enter and remain in the land covered under the HSZ. Tamil IDPs who are original residents of the area are required to apply to him if they want to visit the land. With fear and insecurity felt by the majority of Tamil IDPs, it is very unlikely that there will be any applications made by displaced Tamils out of fear of further intimidation and repercussions.

The focus on the military agenda by both the Government and the LTTE has resulted in civilians finding it increasingly difficult to sustain their day-to-day lives. The LTTE has conscripted from every family making it even more difficult for families to cope. The Government's resettlement program has little correlation in terms of the timing to planting and fishing seasons so the villages of Silavathurai will miss their main fishing and planting season.<sup>103</sup>

## **Challenges to Disaster Preparedness**

The responses to the cycles of displacement in 2006/07 clearly demonstrate the glaring deficiencies and delays in providing assistance to IDPs, despite Sri Lanka having experienced multiple disasters, man-made and natural, and being the recipient of capacity building trainings on disaster preparedness. In both the case of Muslim IDPs from Mutur who were displaced to Kanthale in August 2006 and the Tamil IDPs from Vaharai and Eastern Trincomalee who fled to Batticaloa, there were delays in providing assistance by the State authorities. The disaster response in 2006-07 also demonstrated that there were serious short falls of trained and experienced personnel to handle the massive humanitarian crisis, thereby delaying and hampering the provision of humanitarian assistance to affected communities.<sup>104</sup> This raised concern with regard to the resources and time spent on developing capacity of local actors since the Tsunami of 2004, raising questions as to the long-term benefits of such programs. Looking at a local level, the response to the second wave of displacement to Kanthale in December 2006 by the Government officials in the D.S office however suggested that there were lessons learnt and procedures fine tuned. There was also increasing dependence on international and national non-governmental organisations (I/NGOs) to step in and take over a function that is a primarily responsibility of the State. The increasing reliance on international agencies taking up the primary role in areas such as shelter in a disaster context raised other concerns such as the marginalisation of local groups and even of local State actors from decision making and implementation processes.

A critical gap in the disaster response is the lack of preparedness by state actors. This is seen most vividly in the State's response to the humanitarian consequences of military operations. While the armed forces intensified the military campaign and encouraged civilians to flee the LTTE's control in the East, it became clear that there was little planning as to how the displaced were going to be sheltered or fed. There seemed to be little coordination between the military and civilian authorities or line ministries as the army provided some assistance such as petrol for vehicles coming via Riditenna but had to flag down vehicles going to Batticaloa so that the displaced could be transported.<sup>105</sup> Even the identification of sites took time, even though it was clear that a mass influx into Batticaloa was likely. The state also revealed a lack of preparedness in its resettlement program by not preparing shelters even when moving the displaced from Sampur to a transitional site in Kilivetti.<sup>106</sup> It should be noted that in the Silavathurai operations in September 2007 the State and the armed forces seemed better prepared.<sup>107</sup>

The humanitarian agencies also revealed their limitations in disaster preparedness as seen with the mass displacement from Mutur. Agencies appeared to be caught off guard by the sheer scale of displacement even though the agencies had access to statistics.<sup>108</sup> This resulted in camps being over crowded, a lack of adequate shelter and sanitation facilities, and poor camp organization.<sup>109</sup> Humanitarian agencies have faced constraints to disaster preparedness such as the shortage of funds and of particular items such as rice but there is a need to improve responses.<sup>110</sup> It needs to be noted that the capacities of various actors varies depending on the district and areas. In the displacement from Silavathurai, Mannar in September 2006 the local Catholic Church played a crucial role in dealing with the displacement and in attempting to mediate with the security forces and the Government.<sup>111</sup> It should be noted in the response to the displacement of Muslims from Mutur many local Muslim NGOs played a primary role in running the welfare camps. The experience of dealing with the tsunami seemed to have improved both the speed of the response and the manner in which agencies responded.

It has also become apparent that the response to disasters has a short-term focus, hence the long-term implications of assistance programs are not necessarily addressed. For example, the continued displacement in the East in 2006-07 demonstrated the delays and discrepancies in disaster response by the State. As already mentioned there was a dependency on I/NGOs to assist with providing assistance with food, shelter, water, sanitation and other essential items. During 2006-07 there was limited progress made by State actors to address the shortcomings of disaster response and looking beyond the short-term response and more on the long-term impact and assistance required. While Further, there also needs to be more consideration given to durable solutions and implementing recommendations that have been discussed and documented previously.

## Recommendations

- The Authorities and the humanitarian community need to ensure that equity is upheld in assistance programs so that affected communities are treated fairly. Both the Government and agencies need to take a more active role in monitoring assistance programs and projects in order to ensure equity.
- The Authorities and Humanitarian Agencies need to address the long-term impact of humanitarian measures such as resettlement and of development projects on ethnic relations and on local communities and ensure that they are conflict sensitive.
- The Authorities and Humanitarian Agencies need to increase public consultation and participation of displaced and affected communities.
- The Government, political actors and armed actors need to take measures to not politicise and militarise humanitarian assistance and initiatives. Every effort should be taken to facilitate the work of humanitarian actors to reach the affected areas and communities with minimum bureaucracy and politicisation. The Government should also ensure that humanitarian initiatives fall under the civilian administration, with experienced civil servants taking the lead and working in partnership with humanitarian actors.
- The Authorities need to take the lead and work in partnership with humanitarian actors to formulate and implement disaster management plans and programmes that addressed the immediate and long term needs of IDPs and affected communities. Such plans need to be formulated in a transparent, inclusive and participatory manner, ensuring that voices and views of local officials and communities are represented in the decision making.

- The Authorities needs to address the problem of land disputes through the formulation of legislation and policies and amending of existing legislation. Effort also must be taken to create or strengthen existing mechanisms to mediate solutions between rival claimants.

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<sup>4</sup> UNHCR.lk, “Global Appeal 2007”, Pg 1

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<sup>25</sup> BBC, South Asia, "Civilians' Plight in Sri Lanka", 24 October 2006

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<sup>27</sup> CMC, FMM, LST – "Public Report on Killings and Disappearances from - Jan-Aug 2007", <http://www.lawandsocietytrust.org>

<sup>28</sup> The recent arrests and detentions of Tamils in Colombo and other areas demonstrated the arbitrary nature of arrests and detentions with security forces not following established procedures. CPA was one of two petitioners who filed a fundamental rights petition challenging the arrests and detentions. The case is presently before the Supreme Court of Sri Lanka. Please check [www.cpalanka.org](http://www.cpalanka.org) for information on statements and other documents on this issue.

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<sup>30</sup>HRW, "Improving Civilian Protection", September 2006, Pg 33, UTHR(J), "Hubris and Humanitarian Catastrophe", August 2006

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<sup>32</sup> ALRC, Congregation of Our Lady of Charity and Good Shepherd and IMADR, "Killing and Enforced Disappearances of Religious Leaders and Attacks on Places of Worship in Sri Lanka", 3 September 2007, Pg 4

<sup>33</sup> South Asians for Human Rights (SAHR), "Report on the Fact Finding Mission to the North and East of Sri Lanka to Assess the State of Displaced Persons", August 2007, Pg 9

<sup>34</sup> CPA, INFORM, LST and WMC, "Batticaloa Fact Finding Report", April 10-11 2007, Pg 8

<sup>35</sup> CPA, INFORM, LST and WMC, "Batticaloa Fact Finding Report", April 10-11 2007, Pg 8

<sup>36</sup> LST, "Report of the Field Visit to Trincomalee & Mutur", 1st-3rd of November 2007, Pg 4

<sup>37</sup> CPA and IMADR, "Batticaloa Fact Finding Report", January 2007, Pg 8

<sup>38</sup> On 16 September 2006 the Supreme Court headed by the Chief Justice ruled that the Sri Lankan Government's accession to the Optional Protocol of the International Covenant on Civil and Political Rights was inconsistent with the Constitution of Sri Lanka. In the case in question, the Petitioner, Nallaratnam Sinharasa, had made an application to the Supreme Court to effectuate, on the basis of the Court's "inherent powers", the findings of the United Nations Human Rights Committee at Geneva established under the International Covenant on Civil and Political Rights in Communication No. 1033 of 2000 which found the Sri Lankan State responsible for violations of Sinharasa's human rights in the conduct of his initial arrest, prosecution and conviction in 1995. The court held that the accession was unconstitutional and invalid, on the grounds that the treaty conferred a public law right which was a purported exercise of the legislative power and therefore was within the realm of Parliament and the people at a referendum. The Court further held that the Optional Protocol also amounted to a purported conferment of 'judicial power' on the Committee in violation of Articles 3 and 4 of the Constitution, which reposed 'judicial sovereignty' in the people.

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<sup>95</sup> CPA and IMADR, Batticaloa Fact Finding Report, January 2007

<sup>96</sup> CTMPC, “Remembering Mutur, 2006: The Continuing Saga of War and Peace in the East,” August 2007, page 5

<sup>97</sup> Transcurrents, D.B.S. Jeyaraj, “Kathankudi Muslims help Tamil IDPs in Araiyampathy,” 20 March 2007

<sup>98</sup> Daily News, "Reports on IDP Resettlement Positive – WFP Regional Director", 23 May 2007

<sup>99</sup> Kattankudi Muslims help Tamil IDPs in Aariyampathy, March 20<sup>th</sup> 2007, by D.B.S Jeyaraj, [www.transcurrents.com](http://www.transcurrents.com)

<sup>100</sup> CPA and IMADR, “Trincomalee Fact Finding Report”, 10-11 April 2007, Pg 11

<sup>101</sup> CPA, IMADR and INFORM, “Kanthale and Serunuwara Fact Finding Report”, August 2006, Pg 9

<sup>102</sup> “Guiding Principles for Humanitarian and Development Assistance in Sri Lanka,” available on [www.humanitarianinfo.org](http://www.humanitarianinfo.org)

<sup>103</sup> CPA, IMADR INFORM , LST, “Mannar Fact Finding Report,” November 2007, Pg 6

<sup>104</sup> CPA, INFORM, LST and WMC, “Batticaloa Fact Finding Report,” 10-11 April 2007, Pg 4

<sup>105</sup> CPA and IMADR, “Batticaloa Fact Finding Report,” January 2007, Pg 4

<sup>106</sup> CPA and IMADR, “Trincomalee Fact Finding Report” 23-27 April 2007, Pg 6

<sup>107</sup> CPA, IMADR, INFORM, LST, “Mannar Fact Finding Report,” 6-7 October 2007, Pg 8

<sup>108</sup> See also CPA and IMADR, “Batticaloa Fact Finding Report,” January 2007, pg 4

<sup>109</sup> CPA and IMADR, “Batticaloa Fact Finding Report,” January 2007, pg 5. The same report documents incidents where camps had no water or toilets including the Sathurukondan Camp which was in existence for over a month with no toilets being installed.

<sup>110</sup> CPA, IMADR, INFORM and LST, “Batticaloa Fact Finding Report,” 10-11 April 2007, pg 3

<sup>111</sup> CPA, IMADR, INFORM and LST, “Mannar Fact Finding Report,” November 2007, pg 6-7