

LANDLESSNESS AND LAND RIGHTS IN POST-TSUNAMI SRI LANKA



Centre for Policy Alternatives
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International Federation
of Red Cross and Red Crescent Societies

THE INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES

The International Federation of Red Cross and Red Crescent Societies is the world's largest humanitarian organization, providing assistance without discrimination as to nationality, race, religious beliefs, class or political opinions. The International Federation's mission is to improve the lives of vulnerable people by mobilizing the power of humanity.

Founded in 1919, the International Federation comprises 183 member Red Cross and Red Crescent societies - with an additional number in formation - a secretariat in Geneva and offices strategically located to support activities around the world. The International Federation coordinates and directs international assistance to victims of natural and technological disasters, to refugees and in health emergencies.

The tsunami that surged across the Indian Ocean on 26 December 2004 had taken hundreds of thousands of lives and destroyed the livelihoods of many more, leaving them homeless and numb with grief. Almost immediately, support came from the International Federation which coordinated technical expertise and funds from around the globe.

The International Federation of Red Cross and Red Crescent Societies supports the coordinated Red Cross Red Crescent Movement Tsunami response in Sri Lanka. This response is comprised of the Sri Lanka Red Cross Society, the IFRC, together with the International Committee of the Red Cross (ICRC) and 23 National Red Cross and Red Crescent Societies. The International Red Cross and Red Crescent Movement continues to provide vital medium to long term support to tsunami survivors in the sectors of housing, health, relief, livelihoods and disaster management.

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The Centre's programmes are implemented through five units - Legal and Constitutional, Media, Peace and Conflict, Social Indicator (polling unit) and Vibhasha (translation). CPA is also part of the Centre for Monitoring Election Violence (CMEV) which is activated during times of elections and monitors election related violence and malpractice.

In fulfillment of CPA's mandate, the Legal and Constitutional Unit undertakes research and advocacy on issues of constitutional and law reform and human rights. This is done through public interest litigation, seminars, workshops and public lectures, research projects and publications. Human rights work undertaken by the Unit has covered areas such as land and property, internally displaced persons, labour, trafficking, HIV/AIDS, migrant workers, and children.

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1 OVERVIEW

The objective of this study commissioned by the International Federation of Red Cross and Red Crescent Societies, is to understand better the problems of landlessness and homelessness in Sri Lanka, so that the assistance provided by IFRC in the post-tsunami recovery and reconstruction process may be more targeted. As the single largest donor for post-tsunami housing, IFRC's aims to ensure that its interventions complement existing programmes and contribute to the country's long-term development, whilst especially protecting vulnerable groups. Looking more generally, the total amount of funds pledged to Sri Lanka by all donors, including IFRC, may be sufficient, in purely monetary terms, to go a long way in solving the country's housing needs. But to achieve this donors cannot focus on tsunami-affected areas in isolation. Reconstruction must be carried out with an understanding of the context in which it is to take place and with sensitivity to competing needs and priorities on a national scale. In furtherance of this objective, but within the limited time frame available, the present study will look at both pre-existing land and housing policies in Sri Lanka as well as those policies formulated to deal with housing loss and damage following the tsunami, and attempt to draw out some conclusions and recommendations for future action.

Issues of landlessness and land rights are most often country-specific. Even the concept of landlessness varies according to the particular political and social underpinnings of different communities. Landlessness in the most general sense means the lack of a right to possess or occupy any land. However, amongst those who do not have any formal right to possess land, there are people who have been in unauthorised occupation for many years, use the land as their own and are not at any real risk of having their occupation challenged. Considering such persons landless is somewhat artificial, particularly in the Sri Lankan context where forced evictions are untypical.

Land in Sri Lanka is divided principally between agricultural land (including the plantation sector) and urban land, and the problems of landlessness vary according to their location. At the outset it should be mentioned that there is a lack of recent data on landlessness, and what data there is tends to focus on agricultural land.

In post-independence Sri Lanka, attempts to address the problem of landlessness by the state has been closely linked to reviving agriculture. While the lack of irrigation systems did not hinder agriculture in the wet zone of the country, a large proportion of the land in the dry zone remained uncultivated or under-utilised due to the shortage of water. Successive governments put in place irrigation schemes for dry zone lands, the largest of which was the Mahaweli Development Scheme begun in the 1970s in order to make optimal irrigation use of the country's longest river. The legal mechanism used in the resettlement of people under these schemes was the system of giving them permits to occupy and cultivate the land according to legislation such as the Land Development Ordinance (see below). These schemes, however, were unable to cater to the growing land needs of the second, and successive generations of the settlers. This led to encroachment on other state lands, including forest areas. The permit system was then also used to regularise encroachments. A significant function of the office of the Land Commissioner General and, after devolution of power to the Provinces, of the Provincial Land Commissioners, is the regularisation of unauthorised occupation. A surprisingly high proportion of the land in Sri Lanka, i.e. over 80%, remains owned by the state, but this figure includes land which is developed or

cultivated by private individuals under permits or grants issued by the state, as well as a relatively large area of forests and other protected areas.

There is no clear definition of urban areas in Sri Lanka. Colombo is clearly the urban hub of the country, with urbanisation even in larger cities such as Kandy being relatively low. Sri Lanka has had a slow rate of urban growth and the urban population remains below 25% of the total population. The level of migration from rural to urban areas is also low. A 2001 survey has identified a total of 77,612 families living in 1,614 low-income settlements in Colombo. These include slums, shanties and unserviced semi-urban neighbourhoods. While in certain slum areas occupiers have definite legal rights to their land, shanties are characterised as unauthorised shelters constructed by urban squatters on state or privately owned land, with residents having no legal rights of occupancy. Many shanty settlements along canal banks and road reservations have been regularised under housing and canal improvement projects. In the 1970s legislation was introduced to enable the state to take over individually-held land above a certain limit so that the excess could be distributed amongst those who had no land.¹ These and other policies saw direct housing construction by the government to meet the housing needs of the urban poor along with provision of tenure rights to slum dwellers and the regulation of ownership, size and cost of construction. A perceptions survey reveals that the urban poor consider land as their single most important asset and the lack of freehold rights to their land as a major cause of their poverty. Despite the results achieved by urban rehousing schemes, some feel that they are constantly under the threat of eviction, and point out the need for consultation with them in relocation programmes so as to avoid adverse effects on their livelihoods.²

The issue of land and property rights took on a different and more urgent dimension following the ethnic conflict in Sri Lanka which displaced 800,000 people in the North and the East. While the country was struggling to find durable solutions which would adequately provide for the needs of these persons and had brought down the numbers of conflict-displaced to 350,000, the tsunami struck in December 2004, displacing 800,000. Amongst them were those who had already been displaced by conflict, sometimes more than once. The number of tsunami displaced reduced rapidly as people rebuilt and returned to their houses or moved in with host families. But interestingly the number of people living in transitional shelter, having gone down to 169,000 by the end of January 2005, crept up to 250,000 in June. One explanation for this could be that people are no longer able to stay with host families and therefore rejoin the numbers of displaced.

The buffer zone of 100 metres on the South-West and 200 metres on the North-East coasts announced by the government added to the confusion, creating uncertainty as to where residents within the zone would be relocated and what would happen to the land they were occupying in the zone when the tsunami struck. Concerns were expressed by some groups that this was a pretext to move poor people and small enterprises out of the coastline and to move in big business interests such as major tourism operators who would take control and possession of the coast. The buffer zone rules have very recently been modified, and the position somewhat clarified, but inconsistencies and questions remain.

In summary, those within the buffer zone will get new properties outside the buffer zone, regardless of whether they could show ownership to the property. If they owned the property

¹ Ceiling on Housing Property Law No.1 of 1973

² The information in this paragraph has been obtained from Sevanatha, *Urban Slums Reports: the Case of Colombo, Sri Lanka*, 2003

they will retain such ownership, but will not be able rebuild houses or live there. The government has not set out a clear policy regarding the type of tenure which would be granted to these people. Those whose properties were affected outside the buffer zone will be provided financial assistance to rebuild on the same land, provided they owned the land. This has caused a sense of grievance amongst those outside the buffer zone who cannot show ownership, since they cannot obtain assistance to rebuild on a par with house-owners. The feeling of discrimination is aggravated by the fact that the assistance policy for those *within* the buffer zone does not differentiate according to whether the damaged property was owned by the occupier or not. Within the buffer zone unauthorised occupiers (which include squatters and encroachers) are entitled to a new house on an equal footing with house owners.

According to data collected by the Department of Census and Statistics only about 70% of the houses damaged by the tsunami were owned by the occupiers. The rest were rented or leased, fell within coastal reservation zones, or were occupied on some other unidentified basis.

In keeping with the terms of reference given by IFRC, this paper will attempt to address some of the emerging issues relating to landlessness and the state's response thereto, while setting out some of the background in which these issues will play out, including existing laws and policies.

Land distribution between state and private sector in Sri Lanka (1982)

Category	Area (Mn ha)	% Share
Country square area	6.57	100
State-owned	5.50	84
(Large inland waters)	(1.20)	(18)
(Forests and forest reserves)	(2.18)	(33)
(Agricultural land)	(1.72)	(27)
Privately owned	1.07	16

Source: Institute of Policy Studies, *State of the Economy 2004*

2 LAWS AND POLICIES

2.1 The Constitution

The right to land, property or adequate housing is not expressly guaranteed as a fundamental right under the Sri Lankan Constitution. Whilst the Constitution does recognise that the state should ensure “the realisation by all citizens of an adequate standard of living...including adequate housing” as a Directive Principle of State Policy, these policies are not legally enforceable. Furthermore, the Sri Lankan Constitution does not specifically include the right to life as a fundamental right, which, as has happened under the Indian Constitution, can be used as a doorway to a number of rights including rights relating to shelter, housing and property.

The Sri Lankan Constitution does guarantee to all citizens the freedom of movement and of choosing one’s residence within Sri Lanka (Article 14(1)(h)). The exercise of this right is subject to specified restrictions such as the interests of national security, public order, protection of public health or morality, and “of meeting the just requirements of the general welfare of a democratic society.”

2.2 Other laws

Sri Lankan law mixes many legal systems. Roman-Dutch law is the common law of the country but many areas, including land, are now governed by legislation. Principles of English law are also used to add to or complement the common law. Sri Lanka also recognises three principal systems of customary or personal laws, which operate alongside the general law. These are based on the traditional rules and customs of different religious or ethnic groups, and comprise Muslim law, Thesawalamai (applicable to the Tamil population of the North) and Kandyan law. Private property is generally governed by the common law as modified by statute. State property is governed entirely by statute. Sri Lanka has a plethora of laws dealing with various aspects of land rights. For the purposes of this study, examination will be limited to the principal laws relevant to the issue of landlessness.

2.2.1 Allocation of state land

The state allocates land to individuals under a variety of schemes. As mentioned previously these are used to provide security of occupation to persons resettled by the state and also to regularise³ encroachments.

The Land Development Ordinance⁴ (LDO) provides for state lands to be alienated⁵ under permits and grants for the purposes of land development. In keeping with the idea that encroachers are the best developers of land, more recently land alienation has been

³ “Regularisation” involves giving the encroacher some form of legal right to the land. This may be rights of use and possession or conditional ownership rights.

⁴ No.19 Of 1935

⁵ “Alienation” is the legal term used in Sri Lanka to denote the disposition by the state, to private persons, of rights to any land.

undertaken with the objective of regularising unauthorised occupation of land. Initially, the land is alienated under a permit, which is issued subject to certain conditions and, which may be cancelled if the conditions are not met. The permit is issued for a nominal fee. Complying with the stipulated conditions gives the permit-holder the opportunity of applying for a grant of the land. The final approval of the President is required for alienation under a grant⁶. Land alienated under grants may not be re-alienated or seized by the state even under a Court order.

There are several restrictions placed on the grantee's freedom to deal with land alienated under the LDO. A grantee may not divide the plot or transfer or mortgage the land without the prior permission of the Divisional Secretary. On the death of the permit-holder or grantee, his or her spouse is entitled to succeed to the permit or grant, subject to stated conditions. A spouse (where he or she is not the nominee of the permit-holder or the grantee), loses rights to the property on remarriage. Where there is no nominee in the case of a grant, the holding devolves – subject to the rights of the spouse – on the person entitled under the Third Schedule to the Ordinance.⁷ It must be noted that the scheme of inheritance discriminates against women, as preference is given to male heirs over female heirs.⁸

The State Lands Ordinance⁹ empowers the President, on behalf of the Republic, to make absolute or provisional grants of state land or issue permits for the occupation of such land. It also provides for state land to be sold, leased or otherwise disposed of. Under this Ordinance, land is made available to individuals, and government and private sector institutions for agricultural, residential, industrial and commercial purposes¹⁰. A special grant or lease of state land may be made at a nominal price or rent or gratuitously for any charitable, educational, philanthropic, religious or scientific purpose or for any other purpose which the President may approve. No condition will be deemed to attach to any disposition unless the condition is inserted in the instrument of disposition.

Alienation of state land may also be undertaken under the Land Grants (Special Provisions) Act¹¹. The Land Reform Commission was established under the Land Reform Law¹² which fixed a ceiling on privately held agricultural land and vested all lands in excess of the ceiling in the Commission so that it could dispose of such land in order to increase productivity and employment. The Land Grants (Special Provisions) Act empowers the Minister in charge to vest such land in the state for the purpose of transferring it to the landless, free of charge. Notice is taken of the lack of ownership of any other land, level of family income of the prospective transferee and his or her ability to develop the land. For such a transfer to take place there must be prior written consent of the Land Commissioner (now Land Commissioner General) and, the land may be disposed of by the grantee only with the prior

⁶ A total of 997,158 grants have been issued under the LDO upto 2002, while 3,311 grants were issued in 2004 - *Performance Report of the Land Commissioner General's Department 2004*.

⁷ The legal provisions in this regard are detailed and complex. What is attempted here is a summary highlighting the key points. For greater detail it is recommended that the Third Schedule itself be referred.

⁸ Women's groups and others have long campaigned for an amendment to the Third Schedule which would make succession gender neutral. The latest indications are that Cabinet has granted approval for the amendments and they are in the process of being drafted.

⁹ No.20 of 1931

¹⁰ *Performance Report of the Land Commissioner General's Department 2004*. According to the report 65 allotments in 2003 and 22 allotments in 2004 were distributed under free and special grants.

¹¹ No.43 of 1979

¹² No.1 of 1972

written permission of the Land Commissioner General. The land will revert to the state if the transferee does not fulfill conditions stipulated in the grant¹³.

Research is currently underway to ascertain the implications of lifting the restrictions placed on the disposal of, and other dealings with, land alienated by the state. Liberalising permits and grants would certainly provide the permit-holder or grantee greater freedom to deal with the property as he or she wishes. Concerns are raised, however, that converting state grants to freehold title may leave grantees vulnerable and lead to distress sales, thereby increasing agricultural landlessness and pushing rural dwellers into already crowded cities.¹⁴ Another emerging finding is that, in practice, landholders under permits and grants often transfer and otherwise deal with their properties as if they were freehold owners, bypassing the statutory restrictions.

2.2.2 Individual rights to private land

The law provides for individuals to acquire privately-owned land in numerous ways, such as sale, gift and inheritance. Transfers of immovable property are subject to formalities such as requirements of attestation by a notary and witnesses.

Encroachers and squatters on private land may obtain rights under the law of prescription. Prescription is a Roman-Dutch law concept, under which a person, having been in possession of a certain property for a period of time fixed by law, may acquire title to that property. Currently, the law relating to prescription is to be found in the Prescription Ordinance¹⁵. The Ordinance provides that undisturbed and uninterrupted possession for a period of 10 years by title adverse to, and independent of¹⁶, that of the other party gives a statutory title by prescription. If the owner is under certain disabilities at the time when the right to sue first accrued (i.e. infancy, idiocy, unsoundness of mind, lunacy, absence beyond the seas), the period of prescription by the adverse party is required to be 30 or more years. It is important to note that prescriptive title may not be claimed in relation to state-owned land.

Sri Lankan law provides for a number of possessory remedies. Possession consists of the physical element of control, custody and occupation, and the mental element of possessing the property for oneself. The possessory action serves the basic purpose of enabling a person who had possession of property, to recover possession which has been unlawfully interfered with. The rationale underlying possessory remedies is that the question of legal entitlement to property can be investigated only after the status quo has been restored, and the threat to public tranquility averted¹⁷.

¹³ 167 grants were issued under this Act in 2003 and 140 in 2004.

¹⁴ The Institute of Policy Studies (IPS) and the Institute for Participatory and Interactive Development (IPID) are currently carrying out this research, commissioned by the World Bank.

¹⁵ No.22 of 1871

¹⁶ The fact that possession has to be by "title adverse to, and independent of" the other party is an important element of the law of prescription. This has been explained in the Ordinance to mean "a possession unaccompanied by payment of rent or produce, or performance of service or duty or by any other act by the possessor, from which acknowledgement of a right existing in another would fairly and naturally be inferred". Therefore, merely the fact that a tenant, for example, has been in possession of a property for 10 years would not give him or her prescriptive title – there must be a substantial act by which adverse possession can be inferred, such as the non-payment of rent.

¹⁷ Peiris, G.L (1976) *The Law of Property in Sri Lanka*, Reprint 1999, Stamford Lake Publications, Singapore, p. 231.

The Prescription Ordinance provides that a person dispossessed of immovable property (other than by process of law) has a right to institute proceedings against the dispossessor *within one year* of dispossession. On proof of dispossession the plaintiff will be entitled to the restoration of possession without proof of title. The Primary Courts Procedure Act¹⁸ provides for inquiries into disputes affecting land, where a breach of the peace is threatened or likely. Any party to the dispute may file an affidavit setting out the facts and the relief sought. On conducting an inquiry, if the judge is satisfied that any person who has been in possession of the land has been forcibly dispossessed within a period of two months immediately prior to the date on which the information was filed, he or she may make an order directing that the dispossessed party be restored to possession. The Roman-Dutch law provides for separate action for declaration of title, which the possessor or anyone else may bring in order to demonstrate full ownership going beyond the right to possess. Action under the Primary Courts Procedure Act is intended to redress an immediate unfairness pending full investigation into title.

Special provisions with regard to prescription have been made by the Tsunami (Special Provisions Act)¹⁹. Accordingly, adverse possession which commenced prior to 26th December 2004 by a person affected by the tsunami will not be considered to have been interrupted for a period of one year, if that person was prevented from continuing in possession as a result of the tsunami. Similarly, possession by a person affected by the tsunami will not be considered to have been interrupted only by reason of the fact that the property was in the possession of any other person from 26th December 2004 to 26th December 2005. The effect of this provision is that, if a person was unable to continue in possession of a property due to the tsunami, this inability would not be counted against such a person in the calculation of the 10 years necessary to claim prescriptive title. Even if the person was not actually in possession of the property between 26th December 2004 and 26th December 2005, that period of one year will be included in the calculation of 10 years. This would be so even if some other person was in possession of the property during the period.

Furthermore, in calculating the time period within which a possessory action may be instituted, the period between 26th December 2004 and 26th December 2005 will be excluded. The intention behind these legislative provisions is that no person's prescriptive or possessory rights to land should be adversely affected by reason of their having been victims of the tsunami.

2.2.3 State acquisition of private land

In implementing initiatives to combat landlessness and lack of housing, the state may resort to the acquisition of private land. While a number of Acts provide for state acquisition for specified purposes, the statute under which the acquisition is effected is the Land Acquisition Act²⁰. The Act provides for the acquisition of lands and servitudes for "public purposes", which is interpreted in the Act to "include a purpose, which under this Act or any other written law, is deemed to be a public purpose". For example, the National Housing Development Authority Act (see below) provides that where the Minister certifies that any land, other than state land, should be acquired by the government for the purpose of carrying

¹⁸ No. 44 of 1979

¹⁹ No.16 of 2005

²⁰ No. 9 of 1950

out any housing object, such a purpose is to be considered a public purpose on being Gazetted. The land may then be acquired under the Land Acquisition Act for the purposes of the Authority or be disposed of to any other person under the provisions of the National Housing Development Authority Act.

The Act provides for the payment of compensation on acquisition by the state. Once a written declaration is published that the land is needed for a public purpose, the acquiring officer is required to publish a notice stating, among other things, that claims for compensation may be made to the officer. The notice should also direct interested persons to notify in writing the particulars of the claim, the amount of compensation and the details of its computation. The Act lays down procedure for inquiries into claims for, and the assessment of, compensation.

2.3 Public Sector Housing Programmes

While there is an absence of a comprehensive national housing policy in Sri Lanka, the main objectives of the state with regard to housing may be found in the National Housing Development Authority (NHDA) Act²¹. The Act established the NHDA, the principal implementor of state housing programmes.

The objects of the **National Housing Development Authority** (NHDA) include the alleviation of the housing shortage, the clearance and re-development of slum areas and, making land available for housing development. The Authority may also provide financial or other assistance to persons engaged in any activity similar to any of the objects of the Authority. The following programmes are being implemented by the Authority at present:

- Providing housing assistance to low-income families – the Authority provides a grant or low-interest loan of Rs.50,000 to enable the construction of homes. The recipient is expected to supplement the grant/loan with other sources of income. In most cases the cost of labour does not arise as construction is undertaken with the assistance of family, friends and neighbours.
- The Direct Construction Programme – constructs low-cost housing to be purchased or leased from the Authority at affordable rates.
- The *Sevana Piyasa* Programme – provides permanent roofing materials to poor households. The poorest segment is entitled to receive an additional financial grant of Rs. 10,000 to meet the cost of the roof structure.

The Authority has undertaken targeted housing programmes in the past - the Hundred Thousand Houses Programme (1979-83) provided free housing to those living in extreme poverty, the Million Houses Programme (1984-89) and 1.5 Million Houses Programme (1989-94) provided housing assistance to low-income families (the housing assistance programmes requires the beneficiary to construct his or her house by supplementing the grant/loan with other sources of income). The target for 2005 has been set at housing assistance for 80,000 houses, of which assistance has so far been provided for 55,000, according to Authority officials. This is independent of the housing needs created by the tsunami, for which different reconstruction and assistance programmes have been formulated (see below).

²¹ No.17 of 1979

Another state housing initiative has been the **Sustainable Townships Programme (STP)**, under the purview of the Ministry of Housing. The implementing arm of the STP is the Real Estate Exchange (Pvt) Ltd (REEL), whose shareholding comprises a number of statutory authorities including the NHDA. The objective of the programme is to house the approximately 66,000 slum and shanty dwellers in Colombo, while at the same time releasing prime land occupied by such dwellers for development purposes. This resulted in one compact township in 2001. The original township concept appears to have come to a standstill at present. However, there are plans to construct 630 apartments in selected areas (Nawam Mawatha, Greenpass) in Colombo city by the end of 2005.

Certain public sector housing programmes have been implemented targeting specific communities. For example, a number of schemes have been initiated by the **Ministry of Fisheries and Aquatic Resources** since the 1970s to assist fishing communities. The following programmes are currently being implemented by the Ministry:

- The *Diyawarapura* programme – the relocation of fisher-families in close proximity to the coast. The flats, constructed at a cost of Rs.675,000 to Rs.800,000 per unit are given free-of-charge to such families.
- The *Diyawara Gammuna* programme – the construction of fishing villages in proximity to the coast or an inland water source; not limited to fisher-families. Each family is given a grant of Rs. 50,000 for the construction of a house, and is expected to supplement this with other sources of funds. The Ministry undertakes the construction of the common elements in the village.
- The *Visiri Niwasa* programme – providing housing assistance of Rs.50,000; not limited to fisher families. To be eligible for this grant the beneficiary must be living in sub-standard housing (i.e. shacks) and has to have good title to the land he or she is living on.

With regard to housing in the plantation or estate sector, which is in the central hilly part of Sri Lanka where the tea plantations are located, a key role is played by the **Plantation Human Development Trust (PHDT)**. In 2004, the PHDT continued with implementing several housing construction and upgrading programmes in the estate sector, under the Plantation Development Support Programme²².

The **Mahaweli Development Scheme** is the largest resettlement scheme in the country. Under the Kotmale and Victoria Development Projects close to 58,000 families were displaced. A large proportion of the displaced have been relocated in the Mahaweli area. However, resettlement under the scheme is not limited to those displaced due to dam constructions. There are three other types of settlers: inhabitants of the “purana” (ancient) villages from the area, early encroachers on state land in the area and landless people (primarily from the South). The selection criteria for such housing includes agricultural experience and knowledge, participation in community activities, family circumstances and landlessness. Deeds under this programme are for user rights (not freeholder rights), which do not permit the sale of the land. Fragmentation of the land is also illegal. In hindsight there have been a number of weaknesses identified in the Mahaweli Resettlement Programme²³:

²² *Central Bank Report 2004*

²³ FORUT seminar on Post-tsunami Housing Reconstruction, May 2005

- Selection of resettlement areas – lack of sufficient water, man-wildlife conflict, prevalence of malaria and other diseases.
- Continued bureaucratic control of technical infrastructure – farmers want more autonomy and control over lower level structures.
- Ethnic as well as class biases in the selection of beneficiaries - allegations that the more powerful ethnic groups in an area have been favoured with the most fertile land plots.
- Strong element of force in consolidating the present settlement pattern – beneficiaries may still be considered “forced migrants”, as they are not free to sell their land and move.

2.3.1 Conflict- and tsunami-related housing programmes

The **North East Housing Reconstruction Programme** (NEHRP), has been implemented with World Bank support in January 2005, to provide housing assistance to conflict-affected areas of the North East. The programme is to be implemented for a four-year period in eight districts of the North East and the basic beneficiary selection requirements are that the:

- land title should be regularised
- house should be damaged or destroyed in the conflict
- beneficiary should not have been affected by the tsunami
- land should not fall within the buffer zone
- beneficiary should be permanently resettled in the village
- monthly family income should be less than Rs. 2,500

The North East Provincial Council (NEPC) in Trincomalee is the implementing agency for this programme, while a National Steering Committee under the chairmanship of the Secretary to the Ministry of Relief, Rehabilitation and Reconciliation is charged with overall monitoring. The programme is being managed by the North East Housing Reconstruction Unit (NEHRU) established by the NEPC.

With World Bank support, a Land Task Force (LTF) has also been established in order to further the resolution of land disputes. The objective of the LTF is to assist Provincial Land Commissioners, Divisional Secretaries/Assistant Government Agents to resolve issues related to state land ownership. The proposed operational structure for the land title issues resolution programme is as follows: the Provincial Land Administration Department, District LTF, District Land Tribunal.

The **Rehabilitation of Persons, Properties and Industries Authority** (REPPIA), established in 1987, provides assistance in the rehabilitation of persons and properties affected by civil commotion, terrorist activities or political violence. The Authority is empowered to assist owners or, in certain cases, tenants of any affected property to repair and restore such property either by way of an outright grant or subject to reasonable conditions.

Recognising the absence of a national housing policy, *Basic Guidelines for Planning, Design and Implementation of Cluster Housing Settlements* have been formulated by the Ministry of Housing, subsequent to the tsunami, to guide “individuals and developers to formulate and implement housing projects that ensure minimum housing and environmental standards for

healthy and safe living for people”. These guidelines are expected to be adopted by all prospective developers/promoters of cluster settlements in Sri Lanka. The guidelines provide inter alia for specifications for a housing unit, land-use standards and physical infrastructure. Clearance and approval for settlement projects must be obtained from the NHDA and the relevant local authority. The *Guidelines* also provide, in its annexure, typical conceptual architectural designs for fishing settlements.

In addition to the larger nationally-driven housing programmes it appears that there are also smaller scale, ad hoc housing programmes being carried out at district and divisional level (e.g. Mannar District).

The **Tsunami Housing Reconstruction Unit** (THRU) has been established under the purview of the Urban Development Authority to deal with post-tsunami housing needs. Under the tsunami reconstruction plan, houses will be built on small plots donated by the state for those whose houses were damaged within the buffer zone, and housing loans will also be offered to repair houses situated outside the buffer zone. It has been stated that while all efforts will be made to use state-owned lands for this initiative, if authorities are unable to find enough state lands under the provisions of the Urban Development Authority Act, the Land Ministry would take action to acquire privately-owned land in cases where owners were either refusing to sell or were increasing prices unfairly²⁴. A dispute resolution procedure has been established under this plan as well. Where there is a dispute as to ownership of the land, the District Secretary is to refer the matter through THRU to the Attorney General or the District LTF for necessary instructions²⁵.

²⁴ Dr. B.M.S Batagoda, CEO – THRU, in an interview with the *Sunday Observer*, 19th June 2005.

²⁵ *Ministry of Finance and Planning Circular No.NBD/TH/01* dated 14.07.2005

3 LANDLESSNESS AND ENCROACHMENT

According to officials at the Ministry of Land and the Department of Census, no data on general landlessness has been collected to date. However, data on landlessness in the agricultural sector has been collected through the *Census of Agriculture (Small Holdings Sector)* in 2002:

District	No. of Landless Agricultural Operators
Colombo	1,421
Gampaha	4,159
Kalutara	3,152
Kandy	5,038
Matale	4,060
Nuwara Eliya	4,681
Galle	4,480
Matara	6,879
Hambantota	9,438
Jaffna	2,015
Killinochchi	1,677
Mannar	1,159
Vavuniya	946
Mullaitivu	3,026
Batticaloa	997
Ampara	6,698
Trincomalee	2,266
Kurunegala	14,267
Puttalam	7,502
Anuradhapura	18,223
Polonnaruwa	5,620
Badula	7,199
Moneragala	8,993
Ratnapura	12,105
Kegalle	3,544
Total	139,465

According to these statistics, in 2002, 7.9% of agricultural operators did not own the land they operated on. According to the *State of the Economy Report 2004*, compiled by the Institute of Policy Studies, 27% of peasants are deemed to be landless. The report also states that the current per capita availability of land is 0.29 ha, and that with a projected population of 25 million in 2030, the per capita extent of land will be reduced to 0.22 ha.

The following statistics on encroachers on state land are to be found in the *Performance Report of the Land Commissioner General's Department 2004* :

Deputy Land Commissioner's Division	Total Encroachments*
Anuradhapura	6355
Polonnaruwa	7594
Debarawewa (Hambantota District)	3180
Ampara	8820
Trincomalee	3401
Kantale (Trincomalee District)	1495
Mahiyanganaya (Badulla District)	5049
Monaragala	838
Total	36,732

*The last Survey of Encroachments was conducted in 2003

Out of this total, 7,855 encroachers have been regularised upto September 2005²⁶. It must, however, be noted that subsequent to the Thirteenth Amendment to the Constitution, the Land Commissioner General's purview is limited to inter-provincial land development projects, while provincial land matters fall under the purview of Provincial Land Commissioner. Data at provincial level has been unavailable. Therefore, the above statistics are limited to inter-provincial areas.

3.1 Factors leading to landlessness²⁷

27% of peasants are deemed to be landless, while there is no clear data on urban landlessness. 77% of the population live in rural areas. Landlessness combined with the relatively large population competing for land has placed increasing pressure on agricultural land and assisted in the high levels of encroachment on state land and decrease in forest cover. While it is easy to see the adverse consequences of landlessness, it is more complicated to work out the factors leading to landlessness.

Several inter-related factors could be identified which contribute to the situation. There is an absence of a proper land policy in Sri Lanka. Although a Land Use Policy Planning Division was established within the Ministry of Land and Land Development in 1979, no significant progress was made until very recently in formulating a policy. There appears to be a draft National Land Policy and a draft National Land Use Policy which were due to be finalised this year, but are likely to be delayed due to the tsunami and the new land issues which it has thrown up. In addition, there are a number of institutions with overlapping jurisdictions which impede the proper administration and allocation of land. The intention behind the Thirteenth Amendment to the Constitution, which devolved a wide range of powers including those over land to the provincial level, was to simplify land administration and make it more efficient. The desired result has not been achieved and if anything has added to the confusion.

²⁶ Primary data from the Deputy Land Commissioners Divisions, contained in an internal review report. Interview with Mr. M.M. Nayeemudeen, Assistant Land Commissioner, 21st October 2005.

²⁷ This section is largely based on information in *State of the Economy 2004*, above.

Currently the land that can most easily be made available for private use is being held by the Land Reform Commission. This is approximately 6% of the total land. It has been suggested that this land be opened up to the private sector for development, thus meeting a significant proportion of the country's needs. It is argued that in this light land availability in Sri Lanka is more an issue of land policy than land markets.

In the rural sector the limited availability of agricultural land is a factor in landlessness. This combined with the scarcity of off-farm employment opportunities has resulted in a growing rural population becoming landless. In some areas, urban populations are growing leading to the conversion of agricultural land to urban and suburban uses. While this has meant population expansion in these areas, it has also seen land prices escalate in urban and suburban areas, which affects both those living in towns as well as those migrating from the countryside. High transaction costs in land transfers exacerbates the problem.

3.2 Problems/weaknesses in public sector housing delivery

The following have been identified by past research²⁸:

- Tendency of occupants to return to their former living conditions – most occupants are reluctant to move away from the area they are used to or that gives easy access to schooling, jobs and hospitals, regardless of the fact that they live in sub-standard living conditions. In one programme undertaken by the NHTDA, quite a number of relocated slum dwellers sold their houses and returned back to the slum area. Fisher-families, too, are generally reluctant to move.
- Psychological and social attitudes – there is a general reluctance to live in flats/apartment complexes.
- Political interference – politicians tend to influence the selection of beneficiaries, in favour of party supporters.
- Dependence on the government in power – even though authorities devise long term plans for housing development, the carrying out of these plans is dependent to a large extent on the government in power. Many housing programmes come to a standstill or face difficulties with a change of government – e.g. the Sustainable Townships concept, expansion of the *Diyawara Gammana* project.

3.3 Land and housing issues arising from the conflict

The ethnic conflict of almost 20 years, now in a period of shaky peace, has had its impact on land and housing rights in Sri Lanka. Around 800,000 persons in the North and East were displaced by the armed conflict. The number had reduced to 362,000 by the end of June 2005. Due to the predominant population in the North and East (taken together) being Tamils, they have been the largest ethnic group to be displaced. Estimates are that 78% of those displaced are Tamil, 13% Muslim and 8% Sinhalese.²⁹

²⁸ Informal survey conducted by students of the Faculty of Law, University of Colombo on *Housing Rights: Access and Delivery*, December 2003.

²⁹ Centre for Policy Alternatives, *Land and Property Rights of Internally Displaced Persons*, 2003

Many internally displaced persons (IDPs) do not own land to which they can return, even if cessation of armed conflict means that physical safety is no longer a factor impeding their return to their areas of origin. The following categories of both *de jure* and *de facto* landless persons have been identified.³⁰

- Those who reached adulthood during displacement – Many who have grown up in their areas of displacement, do not own land in those areas but do not wish to return to their areas of origin. For instance, in Puttalam, where many Muslims relocated from the North, the number of Muslim displaced families has increased from 14,000 as at the time of displacement to 17,000 as at 2003. It is estimated that 50% of the new generation in Puttalam has no land to return to and no desire to settle in the North.
- Illegally or temporarily relocated landless persons - In some areas host communities have illegally “sold” their land to IDPs. This is land held under state permits or grants, transfer of which is restricted by law (see above, land under LDO and similar legislation), e.g. Puttalam. A particularly complex scenario is that of IDPs being settled (by paramilitary groups or political parties) on land belonging to others displaced from the area, e.g. Vavuniya. As former conflict areas become safer, those returning to such areas find their property occupied by others, who had in turn been displaced themselves from somewhere else. This situation has led to considerable land and property disputes, while leaving the secondary occupiers at risk of eviction. In many instances relocation appears to be a temporary measure and no property documents are handed over to the relocatees.
- Those who were in the process of regularising their occupation of state land at the time of displacement – These persons are unsure of their status and some of them do not wish to go back to their earlier areas of settlement.
- Those whose lands are situated in High Security Zones (HSZs) or otherwise occupied by the Army – The HSZs have been highly contentious in peace negotiations, with the LTTE pressing upon the government to vacate them and the government claiming it essential to keep control of them due to their strategic importance. According to a 2003 report, an estimated 30% of the Jaffna peninsula was occupied by the Army. People displaced from these areas are sometimes living in camps a few hundred metres away from their properties, but are unable to return to them. No relocation or compensation programmes have been devised to assist these people. A fundamental rights application was filed in the Supreme Court to permit owners to return to their lands within the HSZs. In 2004 the Supreme Court ordered the Sri Lankan Army to report on the possibility of allowing cultivation in the agricultural lands falling within the HSZ in Jaffna. The case is pending.

Some of the key obstacles in vindicating their rights, for those who wish to return to their original place of residence, are the loss or destruction of property documents such as deeds or land permits, and difficulties in identifying land boundaries.

The main programme to address the housing problems facing North East IDPs is the North East Housing Reconstruction Programme (NEHRP) referred to above. However a basic requirement for assistance under this scheme is that the beneficiaries should construct on land which they own. It is therefore not directly a scheme to assist the landless. Furthermore the

³⁰ Op. cit.

war resulted in damage to 58% of the housing stock in the North East. NEHRP covers only about 11% of the required housing.

After the tsunami concerns rapidly arose over equity for conflict-affected and tsunami-affected people. With the massive outpouring of international financial assistance it was soon clear that there would be enough funds to meet the housing needs of all tsunami-affected persons. But there appears to be no rational basis on which to treat those affected by a natural disaster differently or more favourably than those in equally desperate circumstances caused by human conflict. Some donor agencies are attempting to take a holistic view and provide assistance based on district-wide needs and priorities instead of focusing only on tsunami-affected areas or people within a district, which would indicate a more equitable and sustainable approach to rebuilding and development.

Estimated houses damaged by the conflict

District	No. of Houses Damaged	District share %
Ampara	11,342	3.9
Batticaloa	57,943	19.9
Trincomalee	38,310	13.2
Mullaitivu	22,871	7.9
Jaffna	105,064	36.2
Kilinochchi	27,363	9.4
Mannar	20,082	6.9
Vavuniya	7,640	2.6
Total	290,615	100.0

Source: Presentation by Project Director, NEHRP – FORUT seminar May 2005

4 TSUNAMI DAMAGE TO HOUSING, AND RELIEF AND RECONSTRUCTION POLICIES

The Department of Census and Statistics of Sri Lanka (DCS) has issued detailed statistics relating to the destruction caused by the tsunami. The statistics with regard to the number of houses destroyed as announced by the DCS have been set out below.³¹

District	No. of Houses Destroyed
Galle	10,409
Gampaha	928
Colombo	5846
Matara	5742
Hambantota	2035
Puttalam	56
Trincomalee	8458
Kalutara	5651
Batticaloa	17,551
Jaffna	4992
Kilinochchi	253
Mulaitivu	5396
Total	67,317

The statistics provided by TAFREN (Task Force for Rebuilding the Nation) for houses damaged or destroyed by the tsunami add up to 95,783. Approximately 50,783 of them were within the buffer zone, and 45,000 outside.³² Even with the inclusion of figures for Ampara, which are absent in the DCS data, the TAFREN and DCS data do not appear to tally. The most recently accepted estimate appears to be that about 80,000 houses have been damaged or destroyed.

Reconstruction of houses inside the buffer zone is being funded by the private sector, NGOs, INGOs, etc., and 338 agreements have been entered into with land allocation for 31,753 houses. Construction has commenced on 13,092 houses and land acquisition is in progress for about 12,000 houses.³³

With regard to houses damaged or destroyed outside the buffer zone, 33,780 affected persons had received the state grant by 18th August 2005. This process is co-funded by World Bank, ADB and others.³⁴ The Damage Assessment Teams and Grievance Redressal Committees are currently in operation and technical supervision and quality auditing are also being carried out.

³¹ <http://www.statistics.gov.lk/Tsunami/index.htm>. It must be noted that statistics on the destruction caused in the Ampara District have not been included in the DCS figures.

³² <http://www.tafren.gov.lk/pdf/presentation.pdf>. These figures reflect the 100/200 metre buffer zone as initially announced. With the very recent change in the buffer zone demarcation the numbers are expected to change.

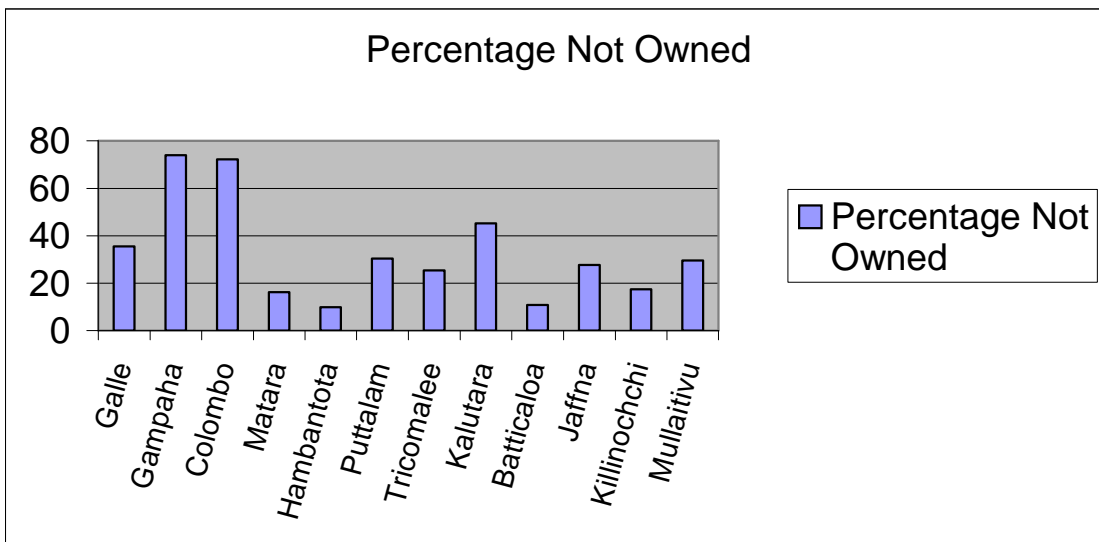
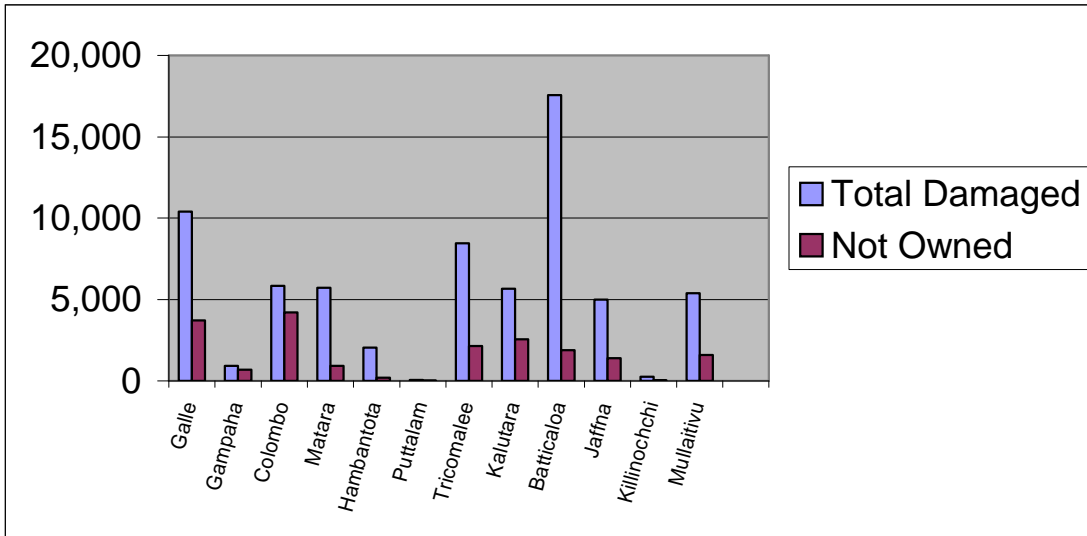
³³ Ibid.

³⁴ Ibid.

The DCS survey sets out the number of houses damaged by the tsunami by ownership of land. This has been further broken down by the number of houses belonging to the family, rented/leased, on coast reservation, “other” and non-reported cases. By deducting the number of houses built on land belonging to the family, the approximate figure for those who did not own the land on which they lived has been disaggregated in the table below. It should be noted that in some districts the figures under the category titled “other” were high. There is no explanation of this category, or an indication of the kind of occupancy of people in the category. It should also be noted that all those in who are in the “non-owning” categories are not necessarily landless. This data only pertains to ownership of the damaged houses, and not to the general status of land ownership of occupiers. Those who did not own the houses they occupied on the coastline may have owned land elsewhere in the country.

District	No. of Houses not owned by occupier/s
Galle	3707
Gampaha	686
Colombo	4164
Matara	855
Hambantota	201
Puttalam	17
Trincomalee	2144
Kalutara	2555
Batticaloa	1892
Jaffna	1385
Kilinochchi	44
Mulaitivu	1598
Total	19,248

The following graphs have been prepared on the basis of the above DCS data:



There are in place two main programmes of relief measures for those affected by the tsunami, depending on whether their houses were damaged/destroyed within the buffer zone or outside the buffer zone. The first is also known as the “donor-driven” programme since the houses are built by “donors” or private agencies i.e. NGOs or INGOs in land outside the buffer zone, and the latter as the “owner-driven” programme since the owners of the lands rebuild their houses with financial assistance from the government.

4.1 Within buffer zone

4.1.1 Assistance policies

Construction of houses is not allowed within the buffer zone. The government will identify land closest to the affected village and provide houses to the affected families. It further seeks to ensure that the relocation process will keep communities intact.³⁵

The following assistance policy will apply to households within the buffer zone:³⁶

- No reconstruction of houses (partially or fully damaged) will be allowed within the buffer zone.
- All affected households will be provided with a house built with donor assistance on land allocated by the state. *Households will not be required to demonstrate ownership of land.*
- The new homes will be built in line with guidelines issued by the Urban Development Authority (UDA) and will have a floor area of 500 sq. ft. and would be equipped with electricity, running water, sanitation and drainage facilities.
- The proposed houses in urban and rural settlements will have facilities such as road systems, recreation, etc.
- *The households will be permitted to retain legal ownership of their lands in the buffer zone even if they move to new land.*
- In the case of extended families living together, separate houses will only be given if the households had separate assessment numbers.

Reconstruction of houses damaged within the buffer zone which is fully funded by the private sector, NGOs and INGOs, is based upon a Memorandum of Understanding (MoU) entered into between the donor and the Secretary of the Ministry of Urban Development and Water Supply, who is the representative of the government.³⁷ Donors interested in engaging in reconstruction of houses and townships are required to send in an Expression of Interest (EOI) addressed to the TAFREN Chairman along with the following information:³⁸

- Total donation value
- Number of houses the donor intends to build
- The districts/ DS/ Grama Niladhari Divisions the donor wishes to operate in.

³⁵ <http://www.tafren.gov.lk/pdf/policy.pdf>

³⁶ Ibid.

³⁷ http://www.tafren.gov.lk/pdf/implement_guide.pdf

³⁸ Ibid.

Thereafter a high level committee chaired by the President in consultation with the donor will introduce the donor to potential projects in areas preferred by the donor. In the event that there are no projects available in the preferred areas, the committee will guide the donor to an alternate project in another area.

The type of house to be built in the selected settlement will be indicated to the donor by the UDA. The type of housing is as follows:³⁹

- Single storied individual
- Single storied terrace
- Two storied terrace
- Multi storied condominium

The type of house to be built will be based on the number of houses to be built at the location, availability of land and the risk hazard assessment of the location.

Upon the clarification of the above, the donor will visit the potential resettlement site for verification and review of the potential settlement location and assess if it matches with the donor requirement and the resources available. In doing so, the donor will consider land, location, logistics, and facilities for construction and any other requirement.⁴⁰ The MoU is entered into once the donor is satisfied with the location, requirements, and the resources available.

4.1.2 Problem areas

A study carried out by the Institute of Policy Studies⁴¹ (IPS) has identified a number of issues with regard to the relocation of tsunami-affected living within the buffer zone. Generally, many people have expressed fear of living very close to the sea and are willing to move if they are provided with *suitable* lands. The results of the study show that, contrary to popular thinking, there is no significant reluctance to move among fishing households – this is, in fact, more apparent among agricultural households. Households with elderly individuals were also less willing to relocate – perhaps due to the attachment to the original place of residence.

The government has identified certain new lands for relocation and in some cases building has commenced. However, in many cases lands identified by the government are not seen as suitable and people would prefer alternative lands or to stay within the buffer zone. Concern about new land has been expressed with regard to distance to the sea and the original land, mainly because there is a fear of a loss of livelihood. At the same time, cultural factors such as having to leave places of worship behind, issues relating to caste⁴² and, the desire for a community to stay together also play role. Access to infrastructure, and, problems of flooding have been stated as practical concerns. According to the study, government lands have been rejected in about half of the Grama Niladhari Divisions in which the study was undertaken, for various reasons including the fact that the land offered is too far from the sea or from the

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Institute of Policy Studies, *Listening to those who Lost: Survey and Analysis of Rebuilding and Relocation of Tsunami Affected Households in Sri Lanka*, August 2005

⁴² The IPS study states that relocation debates have unleashed many social conflicts over religion and caste, which need to be carefully monitored.

original settlement. Shortage of state lands is also a problem and many of the lands identified are private lands.⁴³

Those who lived within the buffer zone as tenants are not eligible for any form of housing relief. While one may understand why the government opted for this policy, some of the affected persons may have been long-term tenants, with children in schools and jobs in the area who would find it difficult to find alternative accommodation quickly. In addition anecdotal evidence suggests that property as well as rental prices in the tsunami affected areas increased following the tsunami, putting tenants in these areas in an even more vulnerable position.

The most recent shift of government policy on the buffer zone has given rise to some uncertainty. The shrinking of the buffer zone will result in some families who were within the buffer zone now being out of it. The government's position seems to be that such persons can opt to come either under the donor-driven or the owner-driven programme. Given the situation this is probably the fairest approach. Where houses have already been built for these people, but now they opt to rebuild where they were, beneficiaries will have to be carefully reselected for the pre-built houses.

A final but key question to which no full or clear answer has been officially given, is what type of tenure will be provided to those for whom houses are built outside the buffer zone. While it has been mentioned generally, and accepted by many at face value, that the relocatees would be given freehold title to the new properties, this masks the complex tenure systems under which state land is usually alienated, e.g. the system of giving permits which may be converted to grants under the Land Development Ordinance (above). At a public meeting the Land Commissioner General suggested that the new lands would be given as grants under the State Lands Ordinance⁴⁴. They would be subject to the condition that the grantee may not transfer the land except within the family for 10 years, after which freehold title is enjoyed with full rights of transfer. However this is yet to be spelt out publicly as an official government policy.

The most pragmatic solution for those moved out of the buffer zone is that they are given a uniform type of tenure, such as the one mentioned above under the State Lands Ordinance. It must however be noted that in doing so, there is an imposition of a blanket system for holding property where a variety of systems existed before, including informal tenure systems and those under customary or personal laws. Some of these systems specially protected women's rights to land and property. For instance Muslims in the East of Sri Lanka followed the practice of conferring ownership of the parental home to the daughter on marriage, so that the daughter and husband moved into the parental home while the parents and other siblings would set up home in another house in the same compound.⁴⁵ One problem which has already arisen is the non-recognition of entitlement by separate families in an extended family system, presumably even if they had separate houses on one plot of land (subject to separate houses being given where there were separate assessment numbers, see above). There is also the risk of erasing traditional legal practices, such as the matrilineal one mentioned above, which have built up over the years to safeguard legitimate interests.

⁴³ Ibid.

⁴⁴ No. 20 of 1931

⁴⁵ Centre for Policy Alternatives, *Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni*, September 2005

Linked to this is a larger question as to whether title will be granted only to one person as head of household. The “head of household” practice effectively discriminates against women, since it is most often the male partner in a family who is designated as such. Women’s groups and others in Sri Lanka have for some time now been advocating a move towards joint ownership of property. While the concept of joint ownership is not without its complications, on balance it appears to provide women with real leverage in relation to access to property and the advantages such as credit opportunities that come with it. Indications are that joint ownership would not be accommodated in the case of grants under the State Lands Ordinance.

4.2 Outside Buffer Zone

This programme, which is co-ordinated by TAFREN, is managed by the following three institutions:

- Tsunami Housing Reconstruction Unit (THRU) operating under the Secretary to the Ministry of Urban Development and Water Supplies, to assist line ministries and agencies engaged in housing construction in affected areas and to facilitate donor assistance
- North and East Housing Reconstruction Unit (NEHRU) operating under the Ministry of Relief, Rehabilitation and Reconciliation⁴⁶.
- South and West Housing Reconstruction Unit (SWHRU) operating under TAFREN.⁴⁷

4.2.1 Assistance policies

The damage classification and relief distribution with regard to reconstruction outside the buffer zone are as follows:

Extent of damage caused	Completely destroyed	Partly destroyed
Identification	Cost of repairs is more than 40% of the cost of reconstruction	Cost of repairs is less than 40% of the cost of reconstruction
Aid policy	Financial assistance of Rs. 250,000/= is paid in four instalments	Financial assistance of Rs. 100,000/= is paid in two instalments irrespective of the extent of damage caused
Release of instalments	1 st Instalment – Rs. 50,000/= 2 nd Instalment - Rs. 60,000/= 3 rd Instalment - Rs. 80,000/= 4 th Instalment – Rs. 60,000/=	1 st Instalment – Rs. 50,000/= 2 nd Instalment – Rs.50,000/=
	Plus eligibility to apply for concessionary loan of Rs 500,000 disbursed through Bank of Ceylon and Peoples’ Bank upon borrower’s demonstration of repayment capacity and offering of acceptable security	

⁴⁶ See Section 2.3.1

⁴⁷ <http://www.tafren.gov.lk/pdf/presentation.pdf>

Those who can establish their ownership to houses situated outside the buffer zone are eligible to apply for this governmental financial assistance. Thus, entitlement to financial support for reconstruction of houses destroyed by the tsunami, depends upon demonstrating ownership of land. Accordingly, a preliminary survey is to be conducted in every Grama Niladhari Division by the Damage Assessment Team (DAT) consisting of the Provincial Technical Officer of the NHDA, the Grama Niladhari (GN) of the area, a representative of the District Sponsors Consortium nominated by the District Secretary and a Member of the Village Rehabilitation Committee. The certificate issued by the DAT will be proof of damage by the tsunami. The beneficiary must also establish that he or she is a citizen of Sri Lanka, and ownership of the land/house.⁴⁸ Where there is a dispute as to ownership, the District Secretary should refer the matter through the Tsunami Housing Reconstruction Unit to the Attorney General or to the District Task Force on Lands for necessary instructions.

Multiple families or extended families living in one house is a common phenomenon in the social fabric of Sri Lanka (this is especially prevalent among Muslim families in the South and the East). In such cases, though ration cards have been issued and common amenities bills given to several families, where there has been an extended family or more than one family unit residing in a house, financial assistance will be provided for the reconstruction of only one house. However, where separate assessment numbers have been issued by the local authority, such families may be entitled to financial assistance for the reconstruction of more than one house⁴⁹.

Where the damaged house belonged to a relation of the occupant, the occupant family can apply for financial assistance to repair or reconstruct the house with an affidavit from the owner that he has no objection to such assistance being granted. However, the tenants are not entitled to this assistance.

Families that have reconstructed and repaired their houses without support from sponsors are also entitled to this housing grant provided that the DS certifies that it has been reconstructed without a sponsor's support.⁵⁰ It should further be mentioned in the list published by the DCS as a damaged house and is subjected to the direction of the DS in the area. Depending on the nature of the repairs carried out, the DAT will determine whether it is a completely destroyed house or a partly damaged house and decide on the amount of financial support to be provided. The amount will be released in instalments except where the repairs/reconstructions have been completed, when all instalments are released at once. Where the repairs had been affected to a certain extent with the support of sponsors, the DAT will assess the remainder and decide upon the amount of financial support to be extended.⁵¹

⁴⁸ Ministry of Finance and Planning Circular No.NBD/TH/01 dated 14.07.2005

⁴⁹ Ibid.

⁵⁰ Lawyers for Human Rights and Development, *Laws, Regulations, Policies and Circulars Relevant to Tsunami Survivors for Obtaining Relief and Support and Lost Documents (A Manual)*, 2005

⁵¹ Ibid.

The following policies have been set out in the Ministry of Finance and Planning Circular No.NBD/TH/01 dated 14.07.2005⁵²:

Problems	Approved Procedure
Inaccuracies in the list of damaged houses maintained by the GN	The list of beneficiaries available with the Grama Niladhari (GN) will be compared with the list published by the Department of Census and Statistics (DCS). In the event of a discrepancy, the Divisional Secretary should call for further information from the DCS.
Where the house is situated on the boundary line of the buffer zone	If the greater part of the house is situated within the buffer zone, the family is not entitled to financial support. They are entitled to a house constructed by sponsors on land provided by the government or to financial assistance to construct a house on a land outside the buffer zone in the same district.
Families that have lost all documents relating to title	The Damage Assessment Team (DAT) should identify the families and seek the assistance of the DS. On the recommendation of the Village Rehabilitation Committee, the DS would issue a permit for construction of the house. However, an application should be made later to the relevant institutions in order to obtain required documents.
Where the owner of the land or the chief occupant is dead	The next senior-most relation is entitled to financial assistance.
Where the damaged house is situated on co-owned land	An affidavit must be presented through a Notary that the co-owners have no objection to the reconstruction of the house.
Where the damaged house is in unauthorised occupation, though situated outside the buffer zone	Such households are not entitled to financial assistance to reconstruct on the land. But where they own land outside the buffer zone in the same district they are entitled to financial assistance to construct a house on such land.

⁵² As translated into English in Lawyers for Human Rights and Development, *Laws, Regulations, Policies and Circulars Relevant to Tsunami Survivors for Obtaining Relief and Support and Lost Documents (A Manual)*, 2005

Where more than one family was occupying the house.	In such cases, though ration cards have been issued and common amenities bills given to several families, financial assistance will be provided to one house only. However, where there are separate assessment numbers issued by a local government body, each family will be entitled to financial assistance separately.
Where the occupant of the damaged house is a tenant	Tenants are not entitled to receive financial assistance under this scheme ⁵³ .
Where the person is the owner of more than one damaged house	Such a person is entitled to financial assistance in respect of each damaged house.
Where the beneficiary has obtained additional support for reconstruction	Where assistance was received from a relative or friend, they remain entitled to this financial assistance. If reconstruction was carried out with funds received from an NGO/sponsor, the DS should individually approve such cases in order to prevent the receipt of benefits twice.
Where the owner of the damage house is a resident outside the DS area	The owner is entitled to financial assistance.
Approval for repairs or reconstruction	For the disbursement of financial assistance for housing reconstruction, the approval of the local authority or the UDA (Urban Development Authority) is not required. Such approval must be obtained later in order to legalise the construction.

4.2.2 Problem areas

Persons in unauthorised occupation outside the buffer zone are not entitled to financial assistance to reconstruct on the land. Such persons, particularly those who have been on the land for many years, feel a sense of grievance that they are not eligible for any form of assistance to rebuild. This is exacerbated by the fact that those within the buffer zone do not have to show ownership to the land on which they lived in order to receive a new house.

⁵³ However the Tsunami (Special Provisions) Act provides that tenancy or leasehold rights will not be terminated by reason only of the fact that the property occupied was damaged by the tsunami.

The same issues relating to tenants, and to extended families living on one plot of land, as arose in relation to those affected within the buffer zone, are replicated in the assistance policies for those outside the buffer zone.

The IPS study referred to above has highlighted a number of problems with regard to households outside the buffer zone. There is a concern that grants are too small, given the rising cost of labour and building material. However, according to the survey carried out by IPS, over 40% of the households affected by the tsunami have reported having houses worth less than Rs. 250,000 prior to the tsunami. A larger percentage of households in the Eastern Province have reported having houses worth less than Rs. 250,000 compared to the Southern Province. Assuming that the cost of rebuilding is equal to the value of the lost house, this indicates that, given the current policy of a grant of Rs. 250,000, 40% of the affected households will be able to improve upon their pre-tsunami housing situation, depending on the rise in labour and material costs.

The IPS study has identified the lack of clarity as to what is meant by ownership as an issue that may arise during proposed reconstruction efforts. The study recommends that it is publicised that requirements for land “ownership” covers those legally living on state land. The study also discovered that over one-third of the households preferred not to rebuild in the same place and therefore, recommends that there should be flexibility in allowing project funds to be used for rebuilding within one’s own or neighbouring divisional secretariats, and to purchase land.

5 BUFFER ZONE

5.1 Pre-tsunami⁵⁴

The Coast Conservation Act⁵⁵ defines the “Coastal Zone” as an area lying within a limit of 300m landwards of the mean high water line and a limit of 2km seawards of the mean low water line. In the case of rivers, streams, lagoons or any other body of water connected to the sea either permanently or periodically, the landward boundary extends to a limit of 2km measured perpendicular to the straight base line drawn between the natural entrance points.

No development activity may take place within the Coastal Zone except under the authority of a permit issued by the Director of the Coast Conservation Department. Development activity is broadly defined to mean any activity likely to alter the physical nature of the Coastal Zone, and includes the construction of buildings. No person may construct any unauthorised structure on any part of the Coastal Zone. Fishing, planting of vegetation and cultivation of crops which do not destabilize the coast may be engaged in without a permit.

The Director of Coast Conservation is required under the Act to prepare a Coastal Zone Management Plan which is to be gazetted and revised every four years. Permits for activity within the Coastal Zone are issued in keeping with the Plan. The Plan provides the detail regarding the regulation of Coastal Zone activity, and further sub-categorises the Zone according to specific localized vulnerabilities. The Plan last gazetted was in 1997. A new one has been prepared in 2004, and amendments to it are being considered in the light of the tsunami of December 2004.

In addition, the coastal zone area 1km from the mean high water line was designated a “Development Area” falling under the purview of the Urban Development Authority (UDA).⁵⁶ The approval of the UDA was therefore required before any development activity could take place within this Development Area. This means that the UDA and Coast Conservation Department have overlapping jurisdiction to control activity within the 300m Zone, and that a permit from both institutions, applying different criteria, have to be obtained before carrying out almost any activity in the Zone. Development activity includes the formulation and carrying out of integrated planning and development projects, including infrastructure development and housing schemes.

Many of the people who had put up structures in the Coastal Zone did so with no permits from either authority, and therefore illegally.

5.2 Post-tsunami

On 27 February 2005, the government issued two separate Public Notices regarding the coastal area, one dealing with housing and the other with tourism business premises. The one dealing with housing was issued jointly by the Ministry of Finance and Planning, Ministry of

⁵⁴ Taken from Centre for Policy Alternatives study on land laws for UNHCR, September 2005, to be published.

⁵⁵ No. 57 of 1981

⁵⁶ This area was declared an Urban Development Area by the Gazette (Extraordinary) No. 223/16 dated 17 December 1982 under the Urban Development Authority Law No 41 of 1978.

Urban Development and Water Supply and TAFREN. The one dealing with tourism premises was issued jointly by the Ministry of Tourism, Ceylon Tourist Board and TAFREN.

The notices state that the government has introduced the “Coastal Conservation (Buffer) Zone (CCZ)” in order to “better safeguard the lives of the coastal population and to protect the coastal environment from any future natural disasters.” The proposed CCZ is divided into two zones as follows:

Zone 1 – 100m landwards from the mean high water line	Zone 2 – 200m landwards from the mean high water line
Coastal belt within the Killinochchi, Mannar, Puttalam, Gampaha, Colombo, Kalutara, Galle, Matara, Hambantota districts	Coastal belt within the Jaffna, Mullaitivu, Trincomalee, Batticaloa and Ampara districts

The notices provide that there will be no development activity within the CCZ, except for the following: (i) coastal conservation structures and vegetation; (ii) activities in connection with the fisheries industry such as harbours, piers, anchorages, warehouses and ancillary facilities; (iii) agricultural activities approved by the CCD; (iv) historical monuments and archaeological sites; and (v) essential infrastructure facilities.

Houses

Reconstruction of damaged houses within the 100/200m CCZ will not be permitted. Instead, the government will provide, free of charge, a house that is a minimum of 500 square feet “in close proximity to the original location”. For the owners of damaged houses outside the CCZ, the government will provide grants and concessionary loans for rebuilding purposes. (For greater detail, see above.)

Tourism

The government will establish special Tourism Zones by 31 March 2005. Tourism business premises that were (i) undamaged, (ii) only partially damaged,⁵⁷ or (iii) under construction but were undamaged or only partially damaged⁵⁸ by the tsunami will be permitted to remain within the CCZ, provided they had regulatory approval prior to 26 December 2004. Tourism businesses completely destroyed by the tsunami will not be permitted to be reconstructed within the CCZ, and will be given land free of charge in Tourism Zones to rebuild their businesses.

The government has also stated that additions and alterations to existing buildings that require planning approval by the UDA/CCD will not be allowed within the buffer zone, and that all repairs, re-construction and additions after 26 December 2004 will be deemed as unauthorised structures.⁵⁹ Governmental authorities have taken steps to strictly enforce this decision in certain areas, and have demolished several hundred houses reconstructed by the

⁵⁷ A tourism building is deemed to be partially damaged if the cost of repair is below 40% of the replacement value of the building.

⁵⁸ Buildings under construction (with all relevant approvals) that were damaged by the tsunami will be allowed to be completed provided the cost of completing the buildings does not exceed 60% of the value of the building when completed.

⁵⁹ Housing and Township Development, Assistance Policy and Implementation Guidelines, published jointly by the Ministry of Urban Development and Water Supply, the Ministry of Housing and Construction, the Presidential Secretariat and TAFREN, 1.2

people after the tsunami.⁶⁰ The Survey Department has completed surveying and fixing the boundaries of the buffer zone, and according to the Deputy Surveyor General, there are over 800,000 permanent structures within the marked area.⁶¹

The Cabinet of Ministers granted approval in principle for the 100/200 metre buffer zone proposal on 26 January 2005 on the basis that implementation modalities would be developed in consultation with the relevant authorities.⁶² This was however subject to further review due to questions raised nationally and internationally regarding the rationale of the 100/200 metre rule both scientifically and in view of the large-scale dislocation it would cause.

The most recent decisions emanating from the government, as of mid-October, are set out below. In brief the latest system announced retains the 100/200 metre rule as a general one, but allows exceptions to it in specified areas. The government, it is said, has recognised the need for a long term coastal hazard management approach, which will attempt to minimise loss of life and destruction by combining proper management guidelines with an early warning system. In order to arrive at this, the following studies and investigations have been recommended as a priority: preparation of contour maps, a detailed technical study which would determine areas as additional buffers; assessment of vulnerable areas for coastal hazards such as tsunami and cyclones; assessment of socio-economic impact of setbacks; formulation of design criteria for buildings located in unstable coastal areas.⁶³

Pending the results of these more detailed studies, the government has decided to adopt certain interim guidelines and buffer zones (setback standards), until the finalised buffer zones and guidelines are formulated based on the findings of these studies. Putting together the information contained in the different documents available the following appear to be the main guidelines applicable for future construction on the coast.⁶⁴

- 1 A 300 metre structure-free buffer zone from the Mean High Water Line for the coastal areas of Wilpattu and Yala-Kumana-Panama national parks
- 2 A 100 metre structure-free buffer zone from the Mean High Water Line for development activities in the West and South coast from Kala Oya river mouth to Kirindi Oya river mouth
- 3 A 200 metre structure-free buffer zone from the Mean High Water Line for development activities from Kirindi Oya river mouth the East and the North coast.
- 4 The most recent decision as contained in a government press release of 14 October 2005⁶⁵ is to exempt certain areas from the 100/200 metre rule and subject them instead to smaller, individually specified setback zones as found in the table below.

⁶⁰ Lawyers for Human Rights and Development, op. cit.

⁶¹ Ibid.

⁶² Press Release by Ministry of Urban Development and Water Supply, 14 October 2005

⁶³ Interim Guidelines for Development Activities within the Coastal Zone

⁶⁴ Ibid.

⁶⁵ See FN 55 above

Recommended set back standard

District	Divisional Secretariat	Grama Niladhari Division	Recommended set Back
Colombo	Thimbirigasyaya		55m
	Dehiwela		55m
	Ratmalana		45m
	Moratuwa	Angulana(W) to Egodaunya (S)	45m
Kalutara	Panadura	Sagara Pedesa to Molligoda	45m
	Kalutara	Pohoddaramulla to Kalamulla	35m 60m
	Beruwela	Maggona (H) Beruwela Mradana	40m 60m
Galle	Bentota	Angagoda to Warahena Randoembe (H)	40m
	Balapitiya	Ambalangoda Police Station area (H)	45m
	Ambalangoda	Narigama Thiranagama	45m
	Hikkaduwa	Patuwatha	35m
	Galle	Closenberga (H) Rumassala (H) Unawatuna to Pihilagoda (H)	25m
Habaraduwa		40m	
Matara	Weligama	Kapparatota (H) Mirissa (H)	35m
	Devinuwara	Nilwella (H) Wawwa (H)	35m
	Dickwella	Waththegama North to Dodampahala Central	35m
	Matara	Browns Hill, Eliyakanda (H)	25m
Hambantota	Tangalle	Goyambokka (H)	35m/60m(depend on specific site)
	Hambantota	Pallemalala	60m
Ampara	Potuvil	Arugam Bay	50m
	Kalmunai		65m
Batticaloa	Kaththankudi		80m
Trincomalee	Muthur		
	Kinniya		50m
	Kuchchaweli		
	Kadawathsathara		
Jaffna	Maruthankemy		
	Point Pedro		100m

6 CONCLUSION AND RECOMMENDATIONS

Above is a brief account of issues relating to landlessness and land rights in Sri Lanka, and the approach to property rights in the current reconstruction programme following the tsunami. While on the one hand the state has been attempting to address the problem of landless farmers and homeless urban poor, on the other the problems of landlessness and homelessness have been aggravated by both the man-made and natural disasters of the ethnic conflict and the tsunami.

With regard to the ethnic conflict there has not been any comprehensive policy to compensate or offer restitution to those who lost their land and property in various ways. With the tsunami the huge amounts of funds provided by the international community to assist the affected people meant that the state could draw up programmes to cover the entire affected population and see that their rights, including rights to housing and land, are protected. In focusing on finding solutions for the tsunami-affected, however, other vulnerable groups such as conflict-affected landless and homeless, must not be overlooked. For long-term development and for a durable peace, it is necessary that these groups be treated equitably.

The tsunami cannot be seen as a direct cause of landlessness. Indeed to an extent, landlessness of people within the buffer zone would be ameliorated since those hitherto without land rights will be given land rights and housing. Furthermore, those who owned land within the buffer zone will be allowed to retain ownership. The ownership of land of people outside the buffer zone has not been impacted by the tsunami. However those in unauthorised occupation of land outside the buffer zone may become more vulnerable since they do not receive assistance to rebuild their dwellings. The distinction should also be noted between rights to *land* along the coast and rights to *build or rebuild* on such land. The first, is a question of ownership of the land and the second, of necessary permits from the authorities (CCD and UDA). The issue of permits for reconstruction only becomes relevant if the occupier had a right to occupy the land in the first place (e.g as freehold owner or under a state permit or grant). Where there was no such right, the proper procedure should be to first obtain that right before any application for a permit to rebuild.

For those who had some rights to land, those rights do not become extinguished overnight due to an event like the tsunami. The practical difficulties associated with vindicating one's property rights should not be confused with losing those rights. Those who at some time gained rights to land, whether as freehold owner or on a state permit or grant, do not easily lose such *de jure* rights, unless they divest themselves of those rights by transfer or sale. Correspondingly it is also not easy to obtain rights to property if a person has never had any.

What emerges from the above, is that successive Sri Lankan governments have made serious attempts and adopted a variety of strategies to address the problems of landlessness and homelessness in the country. Thus, it is clear that post-tsunami reconstruction does not, and cannot, occur in a vacuum. In order to achieve optimal results, such reconstruction efforts must complement well thought-out, ongoing state programmes and not counter them. Furthermore, lessons must be learnt from failures of the past, so that mistakes in both formulation and implementation of policies are not repeated. Some of the key issues to be noted are highlighted below.

Equity

It is recommended that a district-wide approach be adopted with regard to recovery and reconstruction. What this entails is that donors do not focus exclusively on tsunami-affected persons, households or villages in providing assistance, but look more holistically at the needs of other neighbouring persons or villages within a district. Often there may be little difference between the two in terms of poverty and adequacy of housing, so that there is no objective justification for assisting only the tsunami-affected. Making space in programming to accommodate other underserved villages in the same district will ensure that any intervention is durable and designed to avoid future conflicts between beneficiaries and others.

Consultation

It is a simple observation that unless beneficiaries are happy with the alternative housing provided, they are unlikely to inhabit it for a long period of time. International experience has shown that location is one of the primary factors which determines the success or otherwise of rehousing projects. All of these have to be discussed with beneficiaries, through some suitable forum such as a public meeting, before construction. Therefore where land for rebuilding is identified by the state it is important that the donor carries out an independent verification of the land to double-check its suitability both for quality and for the views of the beneficiaries as to how far it matches up to their preferences. As advocated in the IPS study, strong encouragement should also be given to the government to engage in a dialogue with people about alternative sites, if beneficiaries feel that government-identified sites are not suitable.⁶⁶

Consistency

It would be best if donors arrived at some kind of agreement as to the minimum and maximum values of the houses they would construct. This involves striking a balance between different donors' conceptions of the "ideal" house to be constructed for tsunami-affected persons within their budgets, and the avoidance of significant variation between the houses built in terms of square area, facilities etc. This is not to advocate building according to the lowest common denominator. Nor is it a suggestion that homes be built everywhere according to a set formula, regardless of regional variations and beneficiary preferences. What it really calls for is to build with a consciousness of the larger national context in which reconstruction is taking place, so as to avoid a sense of grievance in some beneficiary communities by the existence of a wide gap in expense, quality etc. of homes built.

Vulnerable/unassisted groups

It is important to note that government tsunami assistance policies, wide-ranging as they are, do not cover the land and housing needs of all categories of persons affected by the tsunami. It is recommended that donors remain alert to the needs of such groups and, within the space available, devise methods to assist such groups. Two which have already been identified are persons in unauthorised occupation of land *outside* the buffer zone, and tenants, both within and outside the buffer zone.

⁶⁶ Institute of Policy Studies, op. cit.

Unauthorised occupiers outside the buffer zone – Under the owner-driven programme persons who can show ownership of their land outside the buffer zone are entitled to financial assistance to rebuild their houses. This excludes unauthorised occupiers or encroachers who by definition cannot show a legal right to be on the property. Amongst them may be some persons who have occupied the land for a relatively long period of time, undisturbed, and thus can be said to have had *de facto* rights to the land. Some of these persons may have sufficient means to rebuild their homes, and they may decide to do so and remain on the property. Others may have other land in the same district, in which case they will be entitled to assistance in building on such land. Yet others may not have the finances to rebuild, and it is they who are potentially vulnerable. If they own no land anywhere else, and are unable to rebuild the only shelter they possessed on the tsunami-affected land, they are at risk of being rendered homeless. However the answer here is not necessarily that they be given housing assistance as a first step. Our view is that this would be unwise for donors to do, since in effect it would be supporting illegal encroachment.

The first step therefore would be to investigate the possibility of regularising the occupation of the affected persons, if they do wish to reside permanently on the same land. Where this is possible, the best solution would be to have the occupation regularised, but this cannot be done in a hurry. The principal requirements for such persons are: assistance in regularising their occupation, including obtaining the necessary permits (CCD, UDA) to rebuild; financial assistance to rebuild homes after regularisation and issuance of permits; and suitable temporary accommodation in the meantime. Where occupation cannot be regularised (for instance, due to the land being reserved areas around wetlands and other bodies, or necessary permits cannot be issued due to coastal or other regulation), it is worth considering securing alternative land with tenure rights, on which houses are built for affected persons, under a similar system to pre-built houses for those within the buffer zone.

Tenants – As pointed out in the study, no assistance is offered by the government to persons renting property whether inside or outside the buffer zone. While the Tsunami (Special Provisions) Law states that a tenancy shall not be deemed ended solely on the basis of tsunami damage to the rented property, in real terms tenants will have to find somewhere else to stay either in the short- or long- term until the house is repaired, for which there is no time limit. With rents increasing along the coastline, and with less buildings to rent in any event due to tsunami damage, such persons may face real hardship in finding suitable accommodation. Tenants are therefore a potentially vulnerable group whose needs must be assessed and met where feasible.

Security of tenure

As mentioned above there is no clear policy regarding the type of tenure under which land will be given to those within the buffer zone. Indications are that they will be given grants under the State Lands Ordinance. These grants will be subject to the condition that grantees do not transfer the land to anyone except within the family for a period of 10 years, after which they can dispose of it in any way they wish. In other words after 10 years the title becomes freehold. This seems to strike a sensible balance. But it has not yet been publicly confirmed as official policy. Government has a responsibility to clarify the policy as soon as possible. In the absence of government action, donors have considerable leverage in encouraging government to make a clear policy decision regarding the type of tenure proposed to be given to those within the buffer zone. This is both for the sake of the

beneficiaries who should have a precise understanding of their property rights when they settle into their new homes, and also for donors' own benefit, so as to avoid any later criticism. It is further recommended that the current opportunity be seized to introduce joint ownership for lands alienated by the state, giving equal tenurial rights to both partners jointly occupying a property and thereby giving meaning to the phrase "building back better."