

**LAND AND PROPERTY RIGHTS
OF
INTERNALLY DISPLACED PERSONS**



From the ruins of Palai railway station © Tim Dickinson

CENTRE FOR POLICY ALTERNATIVES

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INTRODUCTION

On 22 February 2002, a Cease Fire Agreement (CFA) was signed between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE) which paved the way for a peace process to put an end to two decades of war in the island.

Although long-term peace is not guaranteed, the situation has stabilised enough for those affected by the war to renew their hope and start their lives over again. Out of the estimated 800 thousand persons internally displaced due to the conflict, many are returning home and many others are contemplating doing so. At this stage, land and property issues affecting displaced persons and returnees in the North East have become issues of crucial importance.

Land has a particular importance for the people in Sri Lanka. For some, the extent of land one owns is a status symbol. For others, identity is closely connected to land, with the loss of land symbolising a loss of identity. Moreover, in Sri Lanka, which is traditionally an agricultural economy, a majority of the population is dependent on land for their livelihood and security. Since land is a scarce resource, competition for land is increasing drastically with the population growth.

In the context of the conflict that has ravaged the North East and the power play between the GOSL and the LTTE, land has always been an important factor. The extent of land under the control of each party has been an indication of the control each party wields in the regions. As such, land has been and continues to be a core issue of the conflict and its resolution.

Aim

This short-term study aims at identifying the main land and property issues currently emerging in the North East and at providing principled and practical recommendations to relevant decision makers to address challenges regarding land and property, resettlement, relocation, rebuilding and restoration of normalcy in the region. This report is thus for the attention of the Government of Sri Lanka, the LTTE, donor agencies and all other stakeholders.

Methodology

The study was conducted from September to December 2002 and is the result of five research foci. First, the research team carried out desk research and interviews in Colombo to ascertain the structure of the institutions involved in land and property issues, applicable policies, and to obtain different perspectives on related issues.

Thereafter, a three week field trip was undertaken in the Northern and Eastern provinces. The geographical areas covered in the Northern Province included Government-controlled Puttalam, Vavuniya, Mannar, Jaffna, the LTTE-controlled Mullaitivu and Kilinochchi districts as well as the LTTE-controlled areas of Mannar and Vavuniya Districts. In the Eastern Province, the research team covered the districts of Batticaloa (Government-controlled coastal area and the LTTE-controlled inland) and Trincomalee. The research team conducted interviews with IDPs in 'Welfare Centres' and elsewhere, relocated IDPs as well as with spontaneous returnees. In addition, interviews were carried out with local and international NGO personnel, UN Agencies, Government officials, LTTE officials, and professionals, such as lawyers.

A media review was carried out to keep up-to-date with recent political developments and initiatives affecting return and relocation and matters connected to land and property. Researchers also conducted a review of laws applicable to property, both privately-owned and state-owned. Finally, the research team conducted a comparative study of Kosovo, East Timor and Guatemala, countries which have experienced transition from conflict to peace with a view to identifying problems encountered during mass return and successful or problematic mechanisms set up to deal with land and property challenges. The findings of this comparative research has fed into the recommendations provided in the report and is available on the CPA website (www.cpalanka.org).

Content

The findings of the study highlight a number of issues, including occupation of property by individuals, the armed forces, the police and the LTTE; the threat of landmines and unexploded ordnance (UXOs); the issue of lost documents and proving ownership; the extent of damage and destruction of property; the shortcomings of Government and other assistance; the difficulties in identifying boundaries, etc. Land and property rights are intertwined with the right to choose one's residence and freedom of movement. This in turn carries an ethnic dimension, with distrust and apprehension being common among Muslim, Tamil and Sinhalese IDPs and returnees. Therefore, a number of issues which have arisen with regard to voluntary resettlement and relocation are also highlighted in the report. These are but a few pressing issues which this report addresses. The sections regarding the institutional framework and the laws applicable to land and property are mostly descriptive. Where an institution or legislation poses a particular challenge in terms of land and property issues, it is analysed under the relevant thematic section. The section on women draws most of its substance from the extensive field research carried out by Ms Sophia Elek and Ms Hemashini Ramanadhan of the Centre for the Study of Human Rights (CSHR).

Limitations

This report does not claim to be comprehensive. It highlights key land and property issues and suggests recommendations. Though all possible measures were taken to understand the situation thoroughly, the limitation of the study period to 4 months cast heavy constraints on the researchers. Meeting officials from the GOSL and the LTTE was particularly difficult, especially in the midst of the Peace Talks. CPA attempted to meet the LTTE leadership on three occasions, failing which a brief questionnaire was sent to obtain the views of the movement on land and resettlement. Unfortunately, no response was received.

The study relied more on qualitative than quantitative data. Other data, including statistics, were obtained at Government Departments and is thus subject to gaps and inconsistencies since up-to-date information is often unavailable. IDPs are not a homogenous group and land and property issues affecting displaced persons vary greatly depending on regions of origin, area of displacement, caste, class, ethnicity, creed and gender. This short term study, however, focuses primarily on low income IDPs of all ethnic groups and has not attempted to capture the diversity of displaced communities. It must further be noted that Sinhalese IDPs are under represented, as less information is available concerning this group.

Process

Following the completion of drafts reports, CPA co-organised with UNHCR two workshops in Kilinochchi, on 29 January 2003, and Colombo, on 10 & 11 February 2003, with a view to obtaining critical feedback and to consolidate draft recommendations. The proceedings of the workshops are available on the CPA website (www.cpalanka.org) and a summary of the recommendations is available in Annex 2 of this report.

Acknowledgements

The study was conducted by three researchers, Ms Vanessa Gosselin, Ms Eranthi Premaratne and Ms Renuka Senanayake with invaluable assistance from Ms Rathini Selvanayagam and Mr P. Vijayashanthan. They wish to thank the following persons for their assistance, contributions and support: Ms Jana Rumminger, Ms Sophia Elek, Ms Hemashini Ramanadhan, Mr Mirak Raheem.

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EXECUTIVE SUMMARY

With the cessation of hostilities, the improvement of living conditions in the North East and the prospect of a settlement to the conflict, hope has arisen for Sri Lanka's estimated 800,000 Internally Displaced Persons (IDPs) of returning to their areas of former residence. Some displaced families as well as refugees from India have already spontaneously returned to their homes; many others have visited their property to assess the possibility of returning.

As a result of these developments, the issue of land and property rights of displaced families has taken centre stage. Restitution of property, access to land, destruction and landmines, assistance and legal redress are some of the issues which this report has identified as pressing land and property challenges facing returnees, the Government, the LTTE, and the international community in their efforts towards restoring normalcy in the North East.

Landmines

Landmines and unexploded ordnance (UXOs) remain the main safety issue affecting returnees and IDPs in the North East. Landmines are concentrated in areas where military operations took place, lines of control demarcated by the LTTE and the Sri Lankan Army and military camps. The presence of landmines and UXOs is a security threat to spontaneous returnees and prevents the return of thousands of displaced families. In addition, landmines render large expanses of land unusable for agriculture and cattle grazing.

Mine Action activities by the LTTE, the SLA and INGOs, including surveying, marking, education and demining, have started in conflict affected areas. There appears, however, to be regional discrepancies in the focus of demining efforts. In certain areas, such as the LTTE-controlled Vanni, surveying, marking, Mines Risk Education and de-mining are underway, and local personnel have been trained in demining to international standards. However, in Government-controlled areas and the Eastern Province, with the exception of the Jaffna peninsula, only *ad hoc* Mine Action work is being undertaken, mostly by the Sri Lankan Army.

The lack of demining in Government-controlled areas is compounded by a dearth of Mine Risk Education for potential returnees. Thus, it appears that only when IDPs actually return are the areas surveyed and education provided. As far as could be ascertained, no Mine Risk Education is provided in IDP camps or settlements prior to return.

Freedom of movement

UNHCR continues to advise against the organised return of IDPs and to monitor the voluntary nature of return. While the Central Government and the LTTE appear to be committed to respecting freedom of movement of IDPs, in practice, however, this commitment to freedom of movement and to voluntary and dignified return is not always applied in policy terms and at the local level.

For instance, a Government policy detrimental to the freedom of movement of landless IDPs states that IDPs cannot be relocated on State land in any District other than that of their origin. However, many landless IDPs expressed the wish to be granted land in the area where they are currently residing, in particular in Mannar island and Vavuniya town.

As such, this relocation policy will compel these landless IDPs to remain in camps, become homeless or return to an area against their will. Landless IDPs include Upcountry Tamils who settled in the North and worked as tenant farmers prior to displacement; the new generation of displaced persons who reached adulthood during displacement and are property-less; illegally or temporarily relocated landless persons; settlers without documentation and so-called “encroachers.”

Interviews with IDPs reveal that a number of strategies have been used at local level to compel, or strongly encourage, IDPs to return to their areas of origin. These have included threats of stopping dry food rations or closure of camps and camp facilities, such as schools. At the end of September, the authorities closed the Madhu Church Welfare Centre, compelling 1,600 families to return to their areas of former origin.

Ethnic tension among IDPs and returnees of the three main communities of Sri Lanka remains high and impedes return and access to land and property. Ethnic tension is often articulated as real or perceived discrimination, both past and present, in the allocation of state resources and assistance as well as real or perceived security threats.

In the Eastern Province, there is a long standing perception of discrimination against Tamil residents in the allocation of land and resources by the State, interpreted as an attempt to alter the ethnic ratio of the Province. As a consequence, distrust at the return or presence of Muslim and Sinhalese IDPs remains high. Furthermore, despite repeated assurances by the LTTE leadership, Sinhalese and Muslim IDPs, victims of forced displacement in the North and East, remain distrustful of the movement’s invitation to return, among continued reports of harassment, extortion and abductions.

Damage to property

Damage to property and infrastructure in the North East caused by fighting, looting and neglect, is considerable.

In the LTTE-controlled Vanni, cement or brick structures are a rare sight, usually situated in town centres. Most inhabitants live in cadjan huts set up temporarily. Certain towns have been razed to the ground. In Government-controlled areas, more buildings are still standing, though the majority have been damaged and most non-occupied buildings have no roofs.

Building materials, drinking wells, household items and any movable property left behind by IDPs have been looted or have decayed due to neglect. In some instances, even the foundations of buildings have disappeared. Overgrowth has taken over the land.

Upon return, identifying land boundaries has become a problem for some property owners. The overgrowth, coupled with the destruction of property means that identifying the land and its exact boundaries is a difficult process. Though this is at present a relatively minor issue, disputes over land boundaries are likely to rise with the increasing return of IDPs. Identifying property will be all the more problematic for the second generation of IDPs, where the owner is deceased and the heirs unfamiliar with the land.

Infrastructure, including schools, hospitals, community centres, local administration buildings, power and water supply, telecommunications and roads, has also been devastated and is impeding the return of IDPs. Where infrastructure is intact, the severe shortage of personnel and resources hinders service delivery.

Restarting livelihood

The loss of economic assets due to displacement and conflict is colossal and the majority of returnees need to restart their livelihood from scratch.

In addition to lost revenue due to displacement, farmers have lost their livestock – cattle, goats, chicken – agricultural implements, tractors, carts, sprayers, fertiliser, herbicide, seeds, harvest, etc. The land has been taken over by overgrowth and needs re-conditioning before it can be used for agricultural purposes. Coconut plantations have been devastated by aerial bombing and shelling. Fishermen have lost their boats, motors, nets and other fishing equipment. Business persons have lost their stock, equipment, premises and business leases.

Property loss and financial difficulties are compounded by a number of other obstacles which impede economic activity, in particular in the North. These include: the lack of infrastructure; lack and loss of skill, especially for the new generation of displaced persons; taxation by the LTTE; the lack of a market and low purchasing power of residents; the lack of employment opportunities for wage labourers; fishing restrictions; the lack of identity and property documents which makes it difficult to prove ownership and to obtain bank loans or insurance.

Assistance

While IDPs who have financial facilities have returned to their property, most do not have the means to rebuild their houses and restart livelihood. They require assistance from the State or NGOs in the form of either a resettlement package or resettlement schemes.

Returnees are entitled to receive a resettlement package from the Government: the Unified Assistance Scheme. Officially, displaced families, which total 227,000, are entitled to a UAS package of Rs 65,000 upon resettlement. In practice, however, due to the severe financial constraints of the Government, very few families benefit from any financial assistance. In the Northern Province, the package has been reduced to the first few instalments totalling Rs 15,000, while in the Eastern Province, a small number of returnees have received between Rs 7,000 and Rs 65,000. Since the Cease Fire Agreement, the international community has pledged \$30 million to be used for resettlement assistance, which would allow the Government to grant all returnee families Rs 13,000 under the UAS. The Government plans to increase the UAS to total Rs 100,000 per family and to distribute it in 2 instalments of Rs 25,000 and Rs 75,000. Current funds, however, will only allow 50,000 families to benefit from the first instalment and 10,000 families from the second.

A further issue of concern with regard to the UAS is that all returnees receive a standardised amount, regardless of the needs of the family or of the extent of damage to their property. Women heads of households, in particular, need more flexibility in the use of financial resettlement assistance as they may be obliged to hire workers to assist them in building temporary housing, repairing their houses, or clearing overgrowth.

Lack of assistance is compounded by the lack of compensation for loss of life or property which is currently only granted to some public servants. Furthermore, even though returnees are not at present given any financial assistance to restart income generating activities, dry food rations are stopped six months after resettlement.

Only returnees who re-register to receive dry food rations in the area of return are entitled to receive government resettlement assistance. As a result, returnees who decide to phase their return, leaving their families behind while the men rebuild dwellings and livelihoods are not entitled to receive assistance to help them in clearing land and setting up temporary shelter.

Similarly, UNHCR distributes Non Food Relief Items (NFRI), the beneficiaries of which are identified by the Government Agents as they re-register for dry food rations at the Grama Niladaris. Returnees whose families continue to be registered for dry food rations in the area of displacement are thus left out. This particularly affects Muslim and Sinhalese returnees, many of whom decide to leave their families behind pending a more stable environment for permanent return.

Temporary accommodation is urgently needed to cater to the needs of returnees who are unable to live in their former property upon return. This may be due to the fact that the house has been destroyed or too seriously damaged to inhabit, the land mined or the property occupied. Similarly, IDPs who leave or are evicted from the property they are occupying upon the return of the owners often have no land to which they can then go to. At present spontaneous returnees who cannot stay on their property are either staying with neighbours, friends or relatives, or occupying vacant property temporarily. The Government has also accommodated returnees in 'Welfare Centres.'

Secondary occupation

Some properties left vacant by IDPs are occupied when they return. Occupiers are often displaced persons themselves who have no choice but to occupy other people's premises.

The relationship between returnees and occupiers seems to be cordial and it appears that, at least for the time being, conflicts will be resolved amicably. In some instances the occupiers have been given a time period to move out by displaced owners who now wish to return. In other cases the occupiers have been asked to buy the property or to pay rent.

There are certain instances, however, where disputes have arisen with regard to illegal occupation. This appears to be the case when the occupiers cannot return to their own properties or when they have worked on the land or house which they are occupying and now consider it to be their own. Some demand payment before handing over the property or raise legal defences such as prescription.

Army and police occupation

In addition, a substantial land area is occupied by the Sri Lankan Army (SLA) and the Police in the North-East, in particular in Mannar and Jaffna Districts. There are also concerns that the Army has been expanding or creating new High Security Zones (HSZ). In addition to HSZs, a high number of Army and Police posts located on people's properties have still not been vacated.

As a consequence of Army and police occupation, many IDPs are unable to return. At the time of writing no solutions had been devised to assist affected IDPs through relocation programmes or compensation packages. The policy of the Army with regard to the payment of rent for occupation of property appears to be *ad hoc*, with only certain affected IDPs being granted rent.

A Sub Committee on De-Escalation and Normalisation (SDN) was set up following the second session of the first round of the Peace Talks with a mandate to look into the issue of, *inter alia*, High Security Zones. Following the fourth session of the first round of peace talks, the SDN was deactivated, leaving the issue in limbo. The parties agreed, however, on an Action Plan for the Accelerated Resettlement of the Jaffna District, which will look into the

vacating of areas in the vicinity of High Security Zones. Disputes over occupation by the Armed Forces is presently resolved at District Level.

LTTE occupation

Most abandoned lands in LTTE-controlled areas have been taken over by the LTTE, in particular the properties of Muslims evicted in 1990, refugees in India and emigrants. The land has been subsequently either rented, given to the families of LTTE cadres or used by the LTTE to host their administrative structures. The LTTE has reportedly allowed IDPs to settle on other people's lands. It is also to be assumed that some LTTE camps are located on the land of IDPs. The LTTE has reportedly instructed occupiers to vacate the lands of returnees.

The return of the property of Muslim IDPs is an issue which has come to the fore. Whilst the LTTE leadership has reiterated its commitment to returning the land of Muslims, Muslim IDPs remain suspicious of their good intent. A number of Muslim lands have been used to build LTTE administrative or other structures and it appears unlikely that the land will be returned to the owners. It is noteworthy that while a handful of Muslims entered into agreements to receive rent from persons occupying their business premises in Kilinochchi town, none are expected by the occupiers to return permanently.

At the time of writing, the LTTE had asked the SLMC to hand over a list detailing the particulars, names, locations and extent of land of Muslims.

Proving ownership & lost documents

While the law protects property rights, proving ownership may be problematic, as many IDPs have lost property documents during displacement.

Obtaining copies of property documents is complicated by the fact that in the North East, Government institutions, such as the Land Registries and Divisional Secretariats, which keep copies of such documents, have lost volumes and records as a consequence of the conflict or of natural disasters. Copies of private deeds as well as State Permits and Grants are not kept centrally. Residents of the North are all the more affected as public buildings of Northern Districts were severely damaged during the conflict. On the other hand, most property documents of the Eastern Province are intact.

Even when duplicates of documents are available, it is unclear whether Land Registries or Divisional Secretaries have the capacity to respond to the number of demands for certified copies. The volume of demands has sharply increased since the signing of the Cease Fire Agreement in February 2002 and the subsequent return of IDPs to their property. These demands are likely to increase further.

Compounding the matter, many IDPs have lost proof of identity such as National Identity Cards or Birth Certificates, which are necessary to obtain copies of property documents. Property inheritance may also be impeded by the loss of Marriage or Death Certificates.

Some IDPs were in the process of regularising their occupation of State land when they were displaced. They have therefore no documentary proof that they were in occupation of the land in question prior to displacement. Current procedures for proving occupation need to be revised to assist these people in resuming their applications.

Illegal alienation of land

Both private and State land has been illegally transferred or sold. Lands belonging to IDPs have been sold to others while some IDPs have been illegally given or sold land (alienation) which they now consider their own. With the increasing return of IDPs, illegal alienation of land is likely to be the cause of numerous conflicts as competing claims of ownership come to the fore.

Illegal alienation of land also affects relocated IDPs who wish to remain in their area of displacement. Thus, in Puttalam, after 1994, an estimated 70% of IDPs were encouraged to relocate by a 1995 Government policy granting Rs. 10,000 assistance to IDPs who could prove ownership, through a deed, of 10 perches of land. It is estimated, however, that 60% of the land on which IDPs relocated is State land which was fragmented and illegally sold by local Permit or Grant holders to groups of IDPs. The Legal Aid Foundation IDP project has received several complaints relating to such illegal alienation of land.

Obtaining redress

At present, a number of government departments and institutions as well as NGOs are involved in assisting in the restitution of the property of the internally displaced. These include District Courts, the Bar Association of Sri Lanka, the Legal Aid Foundation, the Human Rights Commission, Mediation Boards, the Legal Aid Commission and the Police.

While some of these institutions have adopted a legal approach to resolving issues concerning land and property, others have been creative and applied principles of conflict resolution that factor in the experiences of both occupiers and title holders to amicably resolve property issues. However, there is a concern that these institutions lack the capacity or the mandate to respond to the rising demand for redress as the return of people increases.

Land and property issues in LTTE-controlled areas come under the purview of both the Government and the LTTE administration, which may cause confusion in cases where policy or law differ. The LTTE has set up a parallel administrative structure and runs its own judicial system. Reportedly, IDPs occupying property are permitted to remain until the owners make a claim for the property. If the occupiers have made improvements to the property, such as clearing forest or farming, the claimant will be expected to pay the occupiers some compensation. Claimants first approach the Village Committees that operate in LTTE-controlled areas. The Tamil Eelam police also attempts to resolve property disputes, failing which cases are filed in Tamil Eelam courts.

Women IDPs

Land and property issues affecting women are intimately intertwined with women's human rights issues, living conditions, and questions regarding livelihood. The situation is particularly precarious for the estimated 60% of IDP families which are female-headed.

Land and property issues facing women both in 'Welfare Centres' and upon return are numerous. Such issues include inadequate assistance and compensation, obstacles to women gaining legal title to land and property, the practical challenges of clearing land and rebuilding houses and burdens of livelihood resulting from women being the sole providers for their families.

Development and land use policy

The current development and land use policy pursued by the Government may hinder the sustainable resettlement of displaced communities, in particular in the case of small land holders.

A number of legal and policy changes which confirm the Government's aim to encourage privatisation and rural to urban migration, in line with the World Bank recommendations have been, or are in the process of being, introduced. These changes emphasise the shift in Government policy towards a decrease in state subsidies for, and assistance to farmers and a greater role of the private sector, including in reconstruction and rehabilitation of the North East. Returnees, however, in particular farmers, need the assistance of the State to restart their economic activities in the form of subsidies, land grants, etc. Reforms and amendments of concern include amendments to the Land Development Ordinance and land titling, the Agrarian Law, which endangers the rights of share croppers, the possible introduction of water property rights and of a Seeds Act which aims at privatising the sector.

RECOMMENDATIONS

LANDMINES

Education

Mine Risk Education is presently given at points of entry into LTTE-controlled Vanni or upon resettlement. Education is not provided prior to return in camps or in IDP settlements. As a consequence, IDPs who have returned to mined areas unprepared have been injured by landmines. According to conservative estimates, there have been more than 2 mine accidents on average per week since the signing of the Ceasefire Agreement in February 2002.

- ◆ **CPA recommends that Mine Risk Education be provided to IDPs prior to return. The relevant authorities should consider, *inter alia*, holding seminars at IDP camps and schools, disseminating leaflets in IDP settlements, and using the mass media to raise general awareness on landmines and UXOs.**

Coverage

Mine action (surveying, marking, education and demining) is not carried out uniformly in all affected areas. In the LTTE-controlled Vanni, demining is taking place with the assistance of international organisations and mine action appears to be undertaken in a co-ordinated manner and to be up to international standards. By contrast, in the LTTE-controlled East, demining is carried out by LTTE engineers who have not received training from the international community. In Government-controlled areas of the North and East, only the Sri Lankan Army carries out minimal mine clearance. The Sri Lankan Army has not been trained in demining to international humanitarian standards as a consequence of which, accidents continue to be reported in areas supposed to have been cleared by them.

- ◆ **CPA recommends that co-ordination of mine action activities be improved to ensure that all affected areas benefit from surveying, marking, education and demining. Furthermore, the international community should consider providing training to the LTTE in the East and the Sri Lankan Army in demining to international standards.**

Committed donor funding

The pace of demining is not at present keeping up with the increasing return of IDPs. There is therefore a need to expedite the demining process, which at the current rate would take an estimated minimum of 3 years.

- ◆ **CPA recommends that the donor community commit further funds to speed up the process of demining.**

FREEDOM OF MOVEMENT

Relocation policy

With regard to relocation,¹ the current policy of the Government states that no one may be relocated on State land in a District other than the District of origin. Government authorities state that this policy receives validity from Appendix II, 2:7 of the 13th Amendment to the Constitution, which states that inter provincial irrigation and land development projects, should be done as far as possible so as not to 'disturb the demographic pattern of the Province

¹ Relocation is the settlement of displaced persons in a location other than that of their former residence

and in accordance with the principle of ensuring community cohesiveness in human settlements.’ This principle applies to displacement caused by irrigation and development projects and not to conflict-induced displacement.

A significant number of displaced persons are landless. These include Upcountry Tamils who fled to the North and have since been displaced, the new generation of displaced persons and those who were occupying land without documentation. Many have expressed the wish to relocate in the area of their current displacement, where they have been living for as long as 13 years. The above mentioned policy will compel those landless IDPs to either remain in camps until those are closed or to return to the area of their former residence against their will. There is a further concern that the current relocation policy may be applied in a discriminatory manner as it may exempt Sinhalese IDPs.

- ◆ **CPA recommends that the right of landless IDPs to choose their area of residence be honoured by doing away with the current policy.**
- ◆ **In addition, to facilitate the relocation of landless IDPs, CPA recommends that the Government undertake a land survey to ascertain the availability of State land and create a Land Bank.**
- ◆ **The extent and location of available land should be made public and beneficiaries, as well as the host community, should be fully involved in the distribution procedure.**

Forced return

UNHCR continues to advise against the organised return of IDPs as the ground situation is not yet conducive to safe and dignified return. The Central Government has stated its commitment the voluntary return of IDPs to their areas of former residence. However, there have been instances of forced and unplanned return of IDPs, such as the closure of the Madhu Church Welfare Centre.

- ◆ **CPA recommends that the freedom of movement of IDPs be fully respected. The Government should ensure that its commitment to voluntary return of IDPs is implemented at the local level.**

Ethnic tension

Many IDPs fear to return where they are an ethnic minority. Ethnic tension caused by perceived or real ethnic discrimination and past human rights violations thus stops certain IDPs from safe and dignified resettlement.

- ◆ **CPA recommends that civil society organisations initiate, and the donor community generously fund, reconciliation programmes at community level.**
- ◆ **CPA recommends that the LTTE, in order to ensure the proper implementation of their invitation to return extended to Muslims and Sinhalese, establishes proper administrative mechanisms to receive and monitor the security of minority populations or allow for independent monitoring in areas under their control.**

Refugees

Sri Lankan refugees currently residing in India lack personal documents. Furthermore, many refugee children born in India have not been issued birth certificates by the Sri Lankan High Commission. Lack of documents will impede the safe return of refugees.

- ◆ **CPA recommends that the authorities issue to refugees without delay all documentation necessary to return to Sri Lanka.**

DAMAGE TO PROPERTY

Subsidies

Reconstruction of the devastated North East is at present hampered by the excessive cost of construction material in those areas and the lack of resources of conflict-affected persons.

- ◆ **CPA recommends that the Government subsidise construction material and that the LTTE ensure that no taxes are imposed on such material. Moreover, the Government should create low interest Bank loans to facilitate speedy reconstruction.**

Infrastructure

Return is also dependent on the availability and capacity of infrastructure, such as schools, hospitals and transport.

- ◆ **CPA recommends that priorities in reconstruction programmes be given to schools, hospitals and transport and that incentives be given to attract qualified professionals to staff public service institutions.**

Temporary accommodation

At present many returnees are unable to reinstate their property due to excessive damage.

- ◆ **CPA recommends that, in reconstruction programmes, special attention is given to community buildings to provide shelter to returnees who cannot make use of their property.**

LIVELIHOOD

Restarting economic activity in the North East is impeded by a number of factors:

Subsidies

Many of the displaced who were engaged in farming and fishing prior to displacement have lost their equipment and implements. Therefore, they are unable to restart economic activity.

- ◆ **CPA recommends that the Government subsidise items essential for agriculture (fertilizer, tools, seeds, planting material, water pumps, sprayers, etc.) and fishing (nets, engines, boats, etc.).**

Taxation

A further impediment to restarting economic activity is the taxation imposed by the LTTE on goods and services in the North East. Such taxation increases the cost of goods and services and constitutes a double taxation since farmers, fishermen and traders are also taxed by the Sri Lankan Government.

- ◆ **CPA recommends that both parties to the conflict agree upon financial procedures which will fund services provided by the LTTE while avoiding double taxation in the North East. In the meantime, the LTTE should make public their taxation rates and ensure that such rates are applied uniformly in areas under their control. The LTTE should investigate all allegations of extortion and harassment and take necessary action against perpetrators.**

Infrastructure

Lack of infrastructure is an impediment to establishing business.

- ◆ **CPA recommends that the Government prioritise and the international community generously funds the rehabilitation of infrastructure in conflict affected areas, taking into account the impact of infrastructure development on sustainable resettlement.**

Finances

Lack of capital and financial resources are a serious hindrance for the creation and continuation of local business enterprises.

- ◆ **CPA recommends that the business community increase investment in the North and East, particularly in ventures that will benefit the local industry and community and help them find the financial capital to rebuild their livelihoods.**
- ◆ **CPA further recommends that the Government make available low interest loans and NGOs set up revolving loan funds and other small and medium scale credit programmes to support income generating activities.**

Lack of skills

Many IDPs have lost their work skills due to the lack of practice, while the new generation and widows are untrained in income generating skills.

- ◆ **CPA recommends that Government and NGOs initiate skills training programmes with a special focus on female headed households and youth.**

RESETTLEMENT ASSISTANCE

Unified Assistance Scheme (UAS)

Returnees are officially entitled to a sum of Rs 65,000 as a resettlement allowance (UAS). In practice, however, due to financial constraints, the UAS is not distributed, save to a handful of families. The Government plans to increase the UAS to Rs 100,000. However, lack of funds means that only a few returning families will be able to benefit from such assistance.

In the past, UAS was distributed in instalments, each assigned to a specific use, such as purchasing tools, temporary shelter and permanent housing. This lack of flexibility in the distribution of funds has affected the efficient use of such funds.

Furthermore, resettlement assistance can only be given to returnees if the entire family returns. In practice, however, the men often return alone to clear land and restart income generation and rebuild dwellings. Such returnees cannot receive resettlement assistance necessary for preparing the return of the family.

CPA recommends that:

- ◆ **the Government increase the UAS to Rs 200,000 and distribute it as a lump sum to be used at the beneficiaries discretion.**
- ◆ **vulnerable groups, such as female headed households, the elderly, and large families be given priority in the distribution of UAS and receive an extra allowance.**

- ◆ **the UAS be given to all returnees, including those who choose to phase their return.**
- ◆ **the donor community generously fund the resettlement package, which at present is only sufficient to give an average of Rs. 13,000 per family.**

Food assistance

At present, the policy with regard to food assistance for the displaced states that returnees are only entitled to receive dry-food rations for a duration of 6 months following resettlement, irrespective of the needs of the family.

- ◆ **CPA recommends that food assistance only be discontinued following an assessment by the Government, with the assistance of relevant international bodies, of the needs of the families, which would take into account the degree of self sufficiency of returnees.**

Fairness and ethnic tension

- ◆ **CPA urges all relevant authorities to ensure that resettlement assistance, whether financial or in the form of housing schemes, benefits all ethnic communities.**

OCCUPATION

Secondary occupation

Land, houses and businesses belonging to IDPs are occupied by other persons, many of whom are displaced themselves, as well as by the Armed Forces, the Police and the LTTE. As a consequence, many IDPs are unable to retake possession of their property upon return.

- ◆ **CPA recommends that in reconstruction programmes, priority must be given to community buildings to provide shelter to returnees whose property is occupied and to evicted occupiers.**

High Security Zones & Army and Police posts

A substantial number of properties are occupied by the Armed Forces and the Police, some of which are located within declared High Security Zones. In addition, the Armed Forces and the Police occupy property which they use as posts and checkpoints. As a result, many IDPs are unable to return. CPA is aware that the issue of High Security Zones is politically sensitive and the subject of continuous discussion as part of the peace process. However, until a solution is arrived at by the parties to the peace talks, all relevant authorities should ensure the welfare of affected IDPs.

- ◆ **CPA urges the Armed Forces and the police to vacate wherever possible properties currently used as checkpoints or posts.**
- ◆ **CPA recommends that the Armed Forces do all in their power to grant maximum access to IDPs whose lands and properties are located within military zones. As many IDPs have lost personal and property documents, the Armed Forces should not make access conditional on such proof of ownership.**
- ◆ **CPA recommends that alternative accommodation be provided to returnees who are unable to live in their former homes as a result of occupation by the Armed Forces. Should no solutions be devised in the medium term, the Government should consider offering relocation alternatives to affected IDPs.**

- ◆ **CPA urges the Government to ensure that adequate rent is paid to all affected IDPs and that compensation is granted for loss of revenue due to inability to access property or land.**

LTTE Occupation

Some lands belonging to IDPs, in particular migrants, refugees and Muslim and Sinhalese IDPs, have been taken over by the LTTE. Those lands have either been given or rented to others, or are used by the LTTE to host their administrative structures or business ventures.

- ◆ **CPA recommends that the LTTE hand back the properties to their rightful owners with due regard for the welfare of current occupiers. As many IDPs have lost their personal and property documents, the LTTE should not make the handing back of property conditional on showing such proof of ownership.**
- ◆
- ◆ **CPA recommends that the LTTE grant adequate compensation to the owners of properties which cannot be handed back.**

LEGISLATION

Joint ownership

At present, when granting State land under the Land Development Ordinance, the grant is made to the head of household and does not recognise joint ownership of land. Thus, the female spouse has no control over such land. Further, she will not have legal ownership of the land and therefore will not be able to deal with such property or access credit.

- ◆ **CPA recommends that the Land Development Ordinance be amended to recognise joint ownership and enable inheritance resulting from joint ownership.**

Inheritance of State land

Land distributed under the Land Development Ordinance can only be passed on to one person as the land cannot be further divided. When no inheritors have been nominated by the owner, the ownership of the land passes to the eldest son, in preference over female children.

- ◆ **CPA recommends that provisions of the Land Development Ordinance which discriminate against women be abolished.**

Prescription

The Prescription Ordinance permits a person to acquire the property of another through uninterrupted and undisturbed possession for ten or more years. While it appears that the application of this law will not disentitle the displaced of their property due to the inability to prove 'adverse possession' by the claimant, regaining control over one's property would nevertheless include a lengthy and expensive Court case.

- ◆ **CPA recommends that application of Section 3 of the Prescription Ordinance in the North and East be suspended for the duration of the conflict. We would suggest that it be suspended from 1980.**

Missing persons

Many persons are missing as a result of the conflict. For the families left behind dealing with the missing person's property, obtaining compensation and other entitlements is problematic as they are unable to obtain death certificates.

- ◆ **CPA recommends that an Act similar to the defunct Registration of Deaths (Temporary Provisions) Act 2 of 1995 be introduced to enable the displaced to obtain Death certificates for missing persons.**

DISPUTE RESOLUTION MECHANISMS

In practice many returnees attempt to solve their property disputes informally, whether personally or with the assistance of civil society actors. However, when disputes cannot be solved informally the only recourse left is to seek redress from the legal system, which may be problematic.

Principles of law are based on rights and duties that would serve the aims of justice in normal times. However, the application of these same principles of law in times of conflict would result in substantial injustice to conflict-affected communities. For instance, secondary occupiers may be unfairly evicted, while prescription may be applied against displaced owners.

In addition, the high costs of litigation, the difficulties in accessing Courts, the lack of infrastructure and human resources in the districts affected by the conflict as well as the lengthy Court proceedings imply that complainants will not be able to avail themselves of the services of the judiciary or obtain redress speedily and effectively.

- ◆ **CPA recommends that all relevant authorities invest in existing dispute resolution mechanisms and establish alternative ones. CPA proposes a three pronged approach, comprising of 1) strengthening of informal mediation mechanisms at village level, 2) extension of Mediation Boards to conflict-affected areas, and 3) the creation of a quasi-judicial body.**

(1) Informal mediation

Informal mediation to resolve property disputes already takes place at village level, with the assistance of, *inter alia*, civil society actors, the police and government officials. Informal mediation not only resolves land and property disputes, but could also facilitate ethnic reconciliation.

- ◆ **CPA recommends that the donor community, the Government and the LTTE promote informal mediation by strengthening existing initiatives and by encouraging the creation of further initiatives by providing financial support and training.**

(2) Mediation Boards

According to the provisions of law, mediation boards have been established to resolve, through mediation, complaints with regard to movable and immovable property, contracts and certain other disputes.

- ◆ **CPA recommends that these Mediation Boards be extended to the North and East as a dispute resolution mechanism. Moreover, CPA recommends that their powers be extended to avail themselves of the assistance of other relevant bodies which could assist in dispute resolution, such as Government Agents, Land Registries, Registrars of Persons, Registrar of Birth and Deaths, etc.**

(3) Temporary Land & Property Council

The first two mechanisms stated above may be inadequate to deal with some of the disputes, such as when different ethnic groups are concerned, or the parties to the dispute may be unsatisfied with the conclusions reached by the mediation boards. As explained above, recourse to the existing judicial system is problematic and it is therefore necessary to establish a quasi judicial body to resolve such disputes.

Such a body would have to be established by an Act of Parliament if it is to be suitably empowered to carry out its functions as a dispute resolving mechanism and to circumvent existing legislation. The establishment of a quasi judicial body established by an Act of Parliament will no doubt need to receive the approval of the LTTE if it is to function in LTTE controlled areas. The mechanism for establishing such a body will therefore have to be devised with the concurrence of the two parties (GoSL and LTTE) to the peace process.

♦ **CPA therefore recommends that a quasi judicial Temporary Land & Property Council be established with the mandate to:**

- 1. Settle land & property disputes arising out of the conflict, enforceable by the police, ensuring that just and sustainable solutions are found for those evicted, such as temporary accommodation;**
- 2. Make recommendations for the allocation of State land to the landless in keeping with Constitutional guarantees of freedom of movement and other human rights principles;**
- 3. Issue procedures for replacing lost documents - Birth, Marriage, Death Certificates and property documents - binding on the local administration.**
- 4. Review all contracts/leases which could not reach their full term due to displacement and devise just settlements for affected persons (compensation, alternative buildings and land, etc.)**
- 5. Review illegal land alienation and devise just settlements for affected persons (compensation, alternative land, etc.)**

Disputants would approach this Council as the Court of first instance and have a right of appeal to the Provincial High Courts only in the event that such Council's decision is *ultra vires*, that is, beyond the scope of the Council's mandate.

To ensure impartiality, the Council should comprise of qualified representatives of all three ethnic groups and members of the international community with expertise on land and property issues.

CPA recommends that the Sub Committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN) take the initiative for establishing such a Council.

DOCUMENTS

As a result of the conflict, IDPs have lost their copies of personal and property documents. In some instances obtaining copies is not possible as the duplicates kept with Registries and Secretariats as well as protocols (copies) kept by the notaries have also been lost. Furthermore, personal documents necessary to prove identity and access inheritance are also missing. There is no centralised registry in Sri Lanka.

With regard to State land, where all copies of permits and grants have been lost, certain procedures are being followed by the North East Province Land Commissioner and the Land Officers at Divisional Level to assist affected persons in proving ownership. No such procedures have yet been adopted to assist persons who have lost private deeds in proving ownership, where no duplicates are available.

- ◆ **CPA recommends that owners of private property, where no copies of the deed exists, be allowed to submit an affidavit to the District Land Registry claiming ownership, supported by testimonies by competent witnesses (neighbours, grama sevakas, etc.).**
- ◆ **CPA recommends that permit or grant holders who have lost their documents and where no copies exist, be allowed to submit an affidavit to the District Secretariat claiming ownership, supported by testimonies by competent witnesses (neighbours, grama sevakas, etc.).**
- ◆ **Such affidavits should be made public and accessible to allow for competing claimants to come forward. All affidavits should be accessible in District Secretariats and, in view of the large number of refugees and migrants, in High Commissions and on the Government website. Competing claims should be made to the Land Registries and District Secretariats, who should refer such claims to the Temporary Land & Property Council described above. The Council should be open to receive competing claims for a period of two years from the reaching of a final political settlement.**

WOMEN

The number of female headed households has increased as a result of the conflict. These women are the sole providers for their families. Problems faced by women upon return include inadequate assistance and security concerns. Women face practical challenges such as clearing land, rebuilding houses, competing for limited employment opportunities and access to primary health care. Mothers heading households cannot find employment unless facilities for child care are available.

CPA recommends that:

- ◆ **all relevant actors design assistance programmes to meet the special needs of women, such as skills training.**
- ◆ **financial assistance for resettlement be increased and made more flexible so that women can hire labour where necessary to clear land and rebuild houses.**

credit schemes be made more accessible to women and that credit schemes at low interest rates be introduced especially designed to meet women's needs

- ◆ **the Government give priority to providing child care facilities as well as health and reproductive health care services.**
- ◆ **special efforts be made to inform and educate women on assistance available to them.**

CHILDREN

Many children have been orphaned or abandoned as a result of the conflict. Such children constitute a particularly vulnerable group and may be left destitute without a safety net. In addition, their custodians many have property to which such children are entitled.

- ◆ **CPA recommends that efforts be made to trace parents and relatives of unaccompanied children in order to identify and secure their inheritance rights.**
- ◆ **CPA recommends that the welfare of orphans or abandoned children be ensured by granting them a financial package, identifying carers and monitoring their welfare.**

PATTERNS OF DISPLACEMENT AND RETURN

Displacement

Sri Lanka currently counts upwards of 800,000 internally displaced persons (IDPs). The draft findings of a recent survey initiated by the Ministry of Rehabilitation, Resettlement and Refugees (MRRR), with the assistance of UNHCR and the Census and Survey Department, indicate that the number of IDPs island-wide could total over one million persons.

Most waves of displacement have been a consequence of the military operations in the North and East during the past twenty years, or as a result of ethnic cleansing in contested areas. Other causes of displacement have included human rights violations by all parties to the conflict, including forced displacement and child recruitment.

By virtue of their geographical concentration in conflict-affected areas, Tamils have been most affected by displacement numerically. The exact ethnic breakdown is not available, but it is estimated that 78% of the displaced are Tamils, 13% Muslims and 8% Sinhalese.¹

In the LTTE-controlled Vanni², it is estimated that 80% of the population is displaced; 91.75% in Kilinochchi District, according to the Kilinochchi Government Agent.³ In Government-controlled Northern areas, a substantial number of persons remain displaced in Vavuniya, the Jaffna peninsula and Mannar. In 1990, approximately 90,000 Muslim residents were evicted en masse by the LTTE from the North and continue to live in precarious conditions in Puttalam, Anuradhapura and Kurunegala (see below). In the multi-ethnic Eastern Province, Tamils, Muslims and Sinhalese residents have all been displaced, often as a result of attacks on their villages. Most have settled in their District of origin.

Northern Muslim IDPs

In the third week of October 1990, Muslims were ordered by the LTTE to leave the North within 48 hours or face death. On 30 October 1990, Muslims in Jaffna's Moor Street were given no more than 2 hours to leave. An estimated 90,000 Muslims fled, leaving all their valuables. They were allowed to carry with them only Rs 300 and a change of clothes. They were not allowed to use or hire vehicles. The Tamil population was asked by the LTTE not to provide shelter, water or food to those fleeing and to refuse any items, even donations, from Muslims.

The two areas to which Northern Muslims fled were Kalpitiya, by boat, and Vavuniya, by road. Few arrangements had been made to assist those fleeing with food, shelter or transport. The Northern Muslims eventually reached Puttalam, Anuradhapura and Kurunegala Districts, where most continue to reside to date.

Prior to their eviction, Northern Muslims were the second largest community in the North East, forming approximately 5% of the total population. They were present in all Districts and, in the Northern Province, were concentrated in Mannar District, Jaffna town and Mullaitivu town. The majority of the Muslims, 62%, were residents of Mannar District, mostly in Mannar Island, Musali and Manthai.⁴

Most IDPs have found shelter with friends and relatives or have settled on unoccupied land; others are living in ‘Welfare Centres’ provided by the Government. The State has provided dry food rations to displaced persons island-wide, albeit irregularly. Some displaced persons, such as “day and night IDPs” in border villages, mostly in the Eastern Province, live within the district of their former residence and may have access to their property during the day.



Welfare Centre, Puttalam

Two features characteristic of displacement in Sri Lanka are duration and the pattern of multiple displacement. Some IDPs, such as Northern Muslim displaced families, have been unable to return to their former area of residence for more than 10 years, while some Sinhalese IDPs in Trincomalee District were displaced as far back as 1985. Many IDPs in camps have been displaced for 5 years or more. Statistics gathered by UNHCR in 2000 in the LTTE-controlled area of Madhu show that 22% of displaced families have been displaced more than five times and 31% have been displaced three times.

Table 1 - Registered Internally Displaced Persons in Northern Districts

District	Non Displaced	Locally Displaced	Displaced from other Districts	Total
Uncleared areas				
Kilinochchi	27,510	53,291	67,244	148,045
Mullaitivu	51,133	28,218	84,854	164,205
Mannar	3,696	11,748	19,677	35,121
Vavuniya	244	9,215	461	9,920
Sub Total	82,583	102,472	172,236	357,291
Cleared areas				
Mannar	43,984	8,527	11,156	63,667
Vavuniya	74,876	19,288	42,040	136,204
Jaffna	456,347	85,655		542,002

Source: Situation Report, Vavuniya District, 30 September 2002, Government Agent; Population of Jaffna Peninsula as at 31/08/02, District Secretariat, Jaffna

Table 2 - Registered Internally Displaced Persons in the Eastern Province

District	Displaced Families
Batticaloa	6,836
Trincomalee	7,626

Source: Resettlement Programme 2002-2005, Trincomalee District, District Office, Ministry of Eastern Development; V. Shanmugam, Additional Government Agent, Batticaloa, 2 December 2002

Return

After the ceasefire agreement in February 2002 and the cessation of hostilities, the improvement of living conditions in the North East and the prospect of a permanent settlement to the conflict, some displaced families have spontaneously returned to their former homes and many others have visited their property to assess the possibility of returning.

According to the UN Inter-Agency Working Group on IDPs, an estimated 220,762 IDPs had returned to their areas of former residence as of November 2002. As of July 2002, 200 Sri Lankan refugee families in India had made the perilous trip by boat across the Palk straits to return to Sri Lanka.

Table 3 - Return in some North East Districts

District	As of	Returnees
Jaffna	15 October 2002	134,776 persons
Mannar	15 October 2002	23,403 persons; mostly Indian refugees and Muslims from Puttalam
Vavuniya	30 September 2002	3,264 persons sent back to their place of origin
Kilinochchi	23 August 2002	11,388 families
Mullaitivu	28 November 2002	29,396 persons
Trincomalee	30 November 2002	2,051 families from Vanni
Batticaloa		Number of spontaneous returnees not known

Source: Government Agents

It is noteworthy, however, that a majority of the displaced have not returned. In view of the uncertain political climate and ground conditions in the North East, UNHCR continues to advise against the large scale organised return of displaced persons. Interviews carried out by CPA in the North East indicate that a majority of propertied IDPs wish to return. The findings of an island-wide survey of IDPs should determine the actual ratio of IDPs wishing to return or to relocate. The reasons for delaying return vary greatly depending on the ethnic groups, the size of the family, the locations of current and former homes, the length of displacement, and current employment. These include security concerns, damage to housing, lack of infrastructure and assistance, landmines and lack of livelihood opportunities.

Many IDPs also wish to return in groups and are waiting for the rehabilitation of their villages. Of the IDPs who wish to return, many are expected to leave early 2003, which will mark the end of the monsoon season and of the school year.⁵ Some of the impediments to return are described in the rest of the report.

1 LANDMINES AND UXOs

1.1 General overview

Landmines and unexploded ordnance (UXOs) remain the main safety issue affecting returnees and IDPs in the North East. According to conservative estimates, as of January 2003, more than 2 persons had been injured every week since the signing of the Cease Fire Agreement⁶ as a result of landmine accidents. Spontaneous returnees are particularly vulnerable to accidents as they attempt to access their property or clear their land. Landmines, or the potential presence of landmines, also make large expanses of land unusable for resettlement and agriculture or cattle grazing.

There are no reliable estimates of the number of landmines laid by the Sri Lankan Army and the LTTE, though landmines appear to be concentrated in past or current militarily strategic areas. According to Government sources, 1.3 million landmines have been purchased, out of which 900,000 mines have been laid.

Mine Action activities, including surveying, marking, education and demining, have started in conflict-affected areas though there appears to be regional discrepancies in coverage.

In the LTTE-controlled Vanni, surveying, marking, Mines Risk Education and de-mining are underway, and local personnel have been trained in demining to international standards. In Government-controlled areas and the Eastern Province, however, only *ad hoc* Mine Action work is being undertaken, mostly by the SLA.

The lack of demining in Government-controlled areas is compounded by a dearth of surveying, marking and Mine Risk Education. Surveying and marking of mine fields enable demining groups to inform the population of areas which are not mined and safe for resettlement.⁷ It appears that, in practice, only when IDPs actually return are the areas of their return surveyed and education provided. As far as CPA could ascertain, as of December 2002 no Mine Risk Education was provided in IDP camps or settlements.

1.2 LTTE-controlled Vanni

Mined areas in the LTTE-controlled Vanni appear to be concentrated in Vadamarachy East, Elephant Pass and Pallay in the North, Mullaitivu on the Eastern coast, Vavuniya North in the South and the Forward Defence Line (FDL) in Mannar mainland in the West.⁸

The majority of the mines found in LTTE-controlled areas are Sri Lankan Army mines. Of the mines used by the LTTE, the longevity of the batteries of the Jony 95 mine is reportedly 6 to 12 months; the mines are further impaired by water. However, these landmines, if not removed, will remain dangerous as UXOs.⁹



HDU Deminers at work, Kilinochchi © Tim Dickinson

Two foreign NGOs, the Mine Action Group (MAG) and the Norwegian People's Aid (NPA) are currently assisting White Pigeon and the Tamil Rehabilitation Organisation's (TRO) Humanitarian Demining Unit (HDU) respectively.¹⁰ MAG is involved in Mines Risk Education as well as surveying and fencing off mined areas. NPA is training HDU deminers in humanitarian demining to international standards. As of November 2002, 130 deminers had been trained and provided with helmets and protection jackets. NPA planed to train 600 HDU deminers. The demining equipment consists of basic gardening tools such as garden rakes and sickles. Despite the simplicity of the equipment used, the process is reported to be very effective and safe.¹¹



Demining equipment used by HDU

Priorities for demining are determined by TRO based on potential and actual returnee movements.¹² The return of IDPs to the LTTE-controlled Vanni from Government-controlled areas is monitored at the LTTE checkpoints while that of IDPs from within the LTTE-controlled Vanni is monitored by the LTTE local administrative representatives.¹³

1.3 Government-controlled areas

By contrast, demining in Government-controlled areas has been a slow and somewhat *ad hoc* process.

The Sri Lankan Army has cleared some of the areas it has vacated. There are concerns, however, that demining has not always been completed to international standards, or in some cases at all, such as in the case of Selavathurai, Mannar District. The safety procedures of the SLA have also been criticised since, according to one NGO, 36 out of 90 Sri Lankan Army deminers have been injured.¹⁴ The US military was due to train the Sri Lankan Army in demining to international standards, though as of February 2002, no training had been undertaken.

The HALO Trust has started demining in the Jaffna peninsula and can be called in to clear explosives that have been sighted. However, there appears to be no demining activities and Mine Risk Education in other areas, in particular Mannar District and the Eastern Province. The HALO Trust did visit Mannar District but no further action had been taken as of December 2002. The Project Director, Rehabilitation, at the Mannar District Secretariat, stated that they had informed the Ministry of RRR of the presence of landmines in a number of villages.¹⁵ A 51 year old man from Alankada relocation village, Puttalam, was slightly injured when the tool he was using to clear his land in Silavathurai, Mannar District, fell on a landmine on 20 September 2002.¹⁶

There are no estimates of the number of landmines in Batticaloa District, though landmines may be present near Army camps. As IDPs have not returned to those areas, the presence of mines is unknown.¹⁷ The Sri Lankan Army is believed to have demined certain areas under their control. As of January 2003, there were no other demining groups active in the District, though UNICEF and UNHCR have assured the LTTE that they would undertake Mine Risk Education if mines were found.¹⁸

Some surveying is currently undertaken in Trincomalee District. UNICEF has initiated a survey among the local population on their knowledge of the existence of mines in their area. The HALO Trust has also reportedly undertaken a mine survey in Thiriyai. Landmines are also likely to be concentrated near SLA camps. The location and number of landmines laid by the IPKF during the late 1980s, however, remains unknown.

1.4 Co-operation and funding

It is unknown how long the demining process will last. According to the UNDP Mine Action Programme, demining in Sri Lanka might be helped by the fact that maps of current minefields are available and that mines have been laid principally in battle areas and other militarily strategic areas. UXOs may be more problematic to identify and remove as they may litter the North East randomly.¹⁹

As of November 2002, at least 18 organisations were involved in Mine Risk Education, mapping, marking of minefields and clearing of landmines and UXOs, alongside the Sri Lankan Army and the LTTE.²⁰

With the assistance of the Army, the LTTE and the donor community, the demining process could be as fast as that of Kosovo, namely 2,5 years, though mines and UXOs will remain for years to come.²¹ According to NPA, most demining in the LTTE-controlled Vanni, could be completed within a period of three years depending on committed funding from donors. The HALO Trust anticipates demining all areas in Jaffna within 40 months.²²

Since the beginning of the peace talks on 16th September, donors have pledged the release of funds for demining activities. It appears that the donor community would be more willing to fund such activities if the Sri Lankan Government ratified the Mine Ban Treaty.²³ It has to be noted however that the signing of the Mine Ban Treaty is intrinsically linked to security concerns of the Sri Lankan State. Such concerns, including de-commissioning, are in the process of being addressed as part of the on-going Peace Talks and are likely to take a long time to be resolved. Committed donor funding, therefore, should not be made dependent on such a ratification.

2 FREEDOM OF MOVEMENT

2.1 General Overview

The Sri Lankan Constitution guarantees the right to choose one's residence and freedom of movement. However, the movement of IDPs in Sri Lanka has been severely restricted in the past both by the LTTE and the Government through the use of pass systems and closed camps.

UNHCR continues to advise against the organised return of IDPs and to monitor the voluntary nature of return. The Central Government appears to be committed to respecting freedom of movement of IDPs. In practice, however, as the instances below illustrate, the Government's commitment to freedom of movement is not always applied in policy and at local level. For their part, Sinhalese and Muslim IDPs are still doubtful that the LTTE leadership's invitation to return will actually be honoured on the ground.

The case of Sri Lankan refugees in India deserves special attention. The Government only endorses birth certificates of the children of refugees issued by the Indian Authorities if the certificates have been approved by the Sri Lankan High Commission. The latter is situated in New Delhi and therefore out of reach of most refugees in Tamil Nadu. The lack of birth certificates will make it difficult for refugee parents to return as they will be unable to prove the identity of their children.²⁴

Respect for the right to freedom of movement at this juncture is all the more necessary as the peace process is in its infancy. Many IDPs, having been displaced more than once, prefer to wait for a more permanent settlement to the conflict before making the journey home. In addition, in numerous cases the situation on the ground is not conducive to safe and durable resettlement. Landmines threaten the security of IDPs, while overgrowth and damage to housing and infrastructure make restarting livelihood difficult.

2.2 Relocation policy & the landless

A considerable number of IDPs do not own land to which they could return. A Government relocation policy currently threatens the right to freedom of movement of landless IDPs. There are different categories of *de facto* and *de jure* landless persons:

- ◆ *Upcountry Tamils who settled in the North and worked primarily as tenant farmers prior to displacement.*

Following independence, migration of Tamils from the Sinhalese-dominated South, in particular the Hill Country, occurred due to periodic anti-Tamil riots. It is estimated that 40% to 45% of the families in 'Welfare Centres' in Vavuniya are of Up Country origin. They fled the Up Country, *inter alia*, in 1971, 1977, 1981 and 1983 and settled in Northern Districts working as tenant farmers or occupying vacant State land, and were subsequently displaced due to the conflict.

- ◆ *The new generation of displaced persons who reached adulthood during displacement and are property-less.*

Many IDPs have married following displacement or grown up in their areas of displacement and do not own land. This is particularly true in the case of the Muslims who have been displaced for more than 12 years, but also in the Eastern Province where some IDPs have been displaced since 1985. For instance, the number of Muslim displaced families in Puttalam has increased from 14,000 at the time of displacement to 17,000 at present due to population increase.²⁵ RDF estimates that 50% of the new generation in Puttalam has no land to return to and no wish to settle in the North.



Displaced children, Puttalam

- ◆ *Illegally or temporarily relocated landless persons.*

In some cases, local holders of State Permits or Grants (see section 6.3) have fragmented and sold their land to IDPs for relocation purposes, even though State land cannot be legally sold. Thus in Puttalam, it is estimated that 60% of the land on which IDPs were relocated as part of a State-sponsored programme in 1995 is state land illegally transferred (see section 5.4 on illegal alienation). In Vavuniya, political parties/paramilitary groups have settled landless IDPs in 8 colonies on land which belonged to others.²⁶ IDPs from Mannar District who were temporarily relocated, such as those relocated on

Church land as part of the 100 Housing Scheme, are also uncertain about their future.²⁷ Some IDPs have been relocated in various areas in the Vanni by the State or NGOs. Many of the relocation villages appear to be temporary measures and no documents have been handed over to the residents.



Relocation village, Mannar

- ◆ *Settlers without documentation and so-called “encroachers,” some of which were in the process of regularising their situation when they were displaced.*

Landless IDPs who were previously occupying State or private land fear to return as they are uncertain of regaining the land they were occupying.²⁸ Some landless persons had been in the process of applying for Land Development Ordinance Permits for the land they were occupying when they were forced to leave. These people hope that they will be given the opportunity to continue with the application process from where they stopped (see section 5.3) or be given alternative land.

While some landless IDPs wish to return to their area of former residence, the vast majority of those interviewed by CPA expressed the wish to be granted land in the area where they are currently residing, in particular in Mannar island and Vavuniya town. This is confirmed in Vavuniya by UNHCR.²⁹

According to a Government policy, however, IDPs cannot be relocated on State land in any District other than that of their origin. This policy, which originates from the 13th Amendment³⁰ to the Constitution, appears to be motivated by the wish not to alter the ethnic ratios of Northern and Eastern Districts. In the case of multi-ethnic Vavuniya this would imply not increasing the number of Tamil residents.³¹

In the 13th Amendment to the Constitution, this principle applies to displacement caused by irrigation and development projects and not to conflict induced displacement. While the principle may have been devised to protect communities from politically motivated population settlements, it is discriminatory towards landless persons displaced due to the conflict and inadequate to address the particular situation facing them at present.

In Vavuniya, a number of relocation programmes have been carried out for landless IDPs from the District. The latter have been granted between $\frac{1}{4}$ and $\frac{1}{2}$ an acre of State land under the Land Development Ordinance.³² According to the Vavuniya Project Director for Rehabilitation, however, there are no relocation programmes planned for this year. It appears that the authorities have renamed the process of relocating landless IDPs from the District as “resettlement.” Six hundred and four landless families from Vavuniya District have indeed been relocated as part of special “resettlement” programmes within the District.³³

In Puttalam, since the 1995 relocation programme, it appears the policy has been to not issue state land to IDPs.³⁴ There are allegations that this policy is applied in a discriminatory manner as 35 Sinhalese displaced families were granted state land to relocate.³⁵ Furthermore, in Kalpitiya, people from outside the Puttalam District, but not from the North, were issued Permits for State land.³⁶

The majority of IDPs, regardless of how long they have resided in a District, are not considered by the local authorities as permanent residents and therefore are disentitled from benefiting from current “resettlement” programmes. Proof of residency in a District is determined by whether or not the name of the person has been included in the electoral register of the said District. Most IDPs, however, have not been included in the voting lists of their District of displacement since they were considered to be only temporary residents.

While the Government remains officially committed to respecting the choices of IDPs, this relocation policy will compel landless IDPs to either remain in camps or return to an area against their will.

A further argument put forward by the authorities to justify this policy is the dearth of State land in Sri Lanka. It is noteworthy, however, that CPA was unable to obtain even estimates of land already alienated by the State, land privately owned and available State land from any department under the Ministry of Lands or any District officials. While there is available State land for relocation purposes in Vavuniya District, there are no statistics as to the number of people requiring relocation and the extent of available land.³⁷ In Mannar District, due to the absence of survey maps and statistics, it is similarly unclear how much State land would be available for relocating landless displaced persons. According to one lawyer, the landless in the LTTE-controlled Vanni will be given $\frac{1}{4}$ acre up to a maximum of 1 acre, depending on the purpose for which the land is to be used.³⁸

2.3 Push factors

A number of strategies have been used at the local level to compel, or strongly encourage, IDPs to return to their areas of origin. These have included threats of stopping dry food rations or closure of camps and camp facilities, such as schools. In November 2002, there appeared to be plans to close Pesalai and T-Madhu ‘Welfare Centres’.³⁹ The Government Agent, Vavuniya, and TRO have been providing transport to spontaneous returnees, while the scaling down in the distribution of dry ration is interpreted by some as a national policy to incite IDPs to return to their areas of origin. In November 2002, in T-Madhu, IDPs complained to CPA that ‘foreigners’ had asked them to vacate the camp by January.

At the end of September 2002, 1,600 families returned to Manthai West and Kilinochchi from Madhu Church.⁴⁰ The Madhu Church Welfare Centre which once hosted some 8,455 persons,⁴¹ was reportedly closed by the Church authorities. The Government Agent used a UNHCR truck to transport IDPs to Kilinochchi where they were left in the District Secretariat grounds. IDPs were told to go as their rations would be stopped and no transport would be arranged for them at a later date if they remained. The Kilinochchi Government Agent was given no notice of the arrival of those families. Following protest by UNHCR, the use of the truck to forcibly resettle IDPs has been stopped.⁴² While the Government states that IDPs from Madhu Church ORC wished to return to their areas of former origin, it remains the case that the centre was closed, leaving no choice to the residents but to return. A handful of families remain in the centre as they are unable to return or are employed there. The school is not functioning and their rations have been stopped. They have also been asked to leave.⁴³

2.4 Ethnic tension and impediments to the return of Muslim & Sinhalese IDPs

Tension among IDPs and returnees of the three main communities of Sri Lanka remains high and impedes return and access to land and property. All three communities have been displaced as a result of the conflict and human rights violations committed by both parties to the conflict.

Ethnic tension is often articulated as real or perceived discrimination, both past and present, in the allocation of state resources and assistance as well as real or perceived security threats. Such perceptions are numerous and we give instances of only a few concerns voiced to CPA regarding return and the land issue.

In the Eastern Province, there is a long standing perception of discrimination against Tamil residents in the allocation of land and resources by the State, interpreted as an attempt to alter the ethnic ratio of the Province. Thus, Government colonisation schemes in the past mostly benefited Sinhalese landless persons. Furthermore, it is perceived that Sinhalese displaced communities were assisted by the State and the Sri Lankan Army and benefited, for instance, of special relocation programmes. There are also allegations that the Eastern Ministry, traditionally headed by a Muslim politician, has favoured Eastern Muslims over the Tamil population in the allocation of resources and turned a blind eye to occupation of Tamil lands by Muslim persons.

Sinhalese and Muslim IDPs, victims of forced displacement at the hands of the LTTE in the North and East, remain distrustful of the LTTE's commitment to peace, despite repeated assurances by the movement's leadership. The LTTE has reportedly instructed occupiers to hand over land belonging to Muslims. Following complaints that this instruction was not being applied on the ground, the LTTE demanded that the SLMC provide a list of the particulars of Muslim property owners in the North East (see section 5.3). Mistrust is exacerbated by continuing reports of harassment and extortion of Muslims in the Eastern Province.

The majority of displaced or relocated Muslims whom CPA interviewed in Puttalam strongly wished to return to their areas of origin, for the most part in Mannar and Jaffna Districts. However, as of October 2002, except for Mannar Island, where 325 Muslim families have resettled, only a handful of Muslim families have returned to the North.⁴⁴ As of October 2002, 34 families out of 2,837 had returned to Jaffna town; 20 to 30 families to Mullaitivu.

The main reason for Northern Muslims' reluctance to return appears to be fear for their security. Most require a permanent solution to the conflict and a security guarantee before considering returning permanently. CPA did not encounter any Muslim IDPs in Puttalam who were ready to return unconditionally.

Since the signing of the Ceasefire Agreement, however, many Muslim IDPs have undertaken visits to check the state of their land and property, in both government and LTTE-controlled areas. In some instances, Muslim men have gone back to their properties on their own leaving their families behind in Puttalam. CPA met Muslim male returnees in Musali Division, Mannar District who were clearing their lands and rebuilding their houses aiming at restarting income generating activities prior to resettling their families.

CPA did not meet any of the Sinhalese IDPs evicted from the Northern province in 1990 though as far as we have ascertained, none of those displaced families had returned in December 2002. In the Eastern Province, however, Sinhalese IDPs whose land is situated in LTTE-controlled territory expressed fear to return and might need to be relocated elsewhere. Those IDPs who have suffered at the hands of the LTTE are refusing to return until the LTTE lays down their arms permanently. Sinhalese IDPs currently in the Mihindupura camp, Trincomalee District, require security guarantees before they return. Of approximately 300 families in the Thamalagama area only about 125 had returned as of December 2002; others are waiting for the conditions to stabilise.

3 PROPERTY DAMAGE AND LOSS

3.1 Damage to land & housing

The main factors impeding resettlement remain damage to property and infrastructure in the North East caused by fighting, looting and neglect, coupled with uncertainty as to the Peace Process.



Damaged property, Chavakacheri, Jaffna Peninsula

Most IDPs have had to rebuild their dwellings as many times as they have been displaced. While IDPs who have financial facilities have returned to their property, most do not have the means to rebuild their houses and restart livelihood. They require assistance from the State or NGOs in the form of either a resettlement package or resettlement schemes.

This is compounded by the high cost of construction material in the North East. A bag of cement costing Rs 300 in Colombo, will cost Rs 450 in Jaffna. Taxation by the LTTE and paramilitary groups, as well as corruption, are also responsible for the inflated prices of building materials.

In Batticaloa, prior to the CFA, the following illegal taxes were reportedly imposed on bricks manufacture and transport:⁴⁵

Table 4 – Illegal taxation of bricks prior to the Cease Fire Agreement, Batticaloa

Amount	Component taxed	Responsibility
Rs 1,500	1 group of 3 staff manufacturing bricks per 9 month season	LTTE
Rs 500	1 bull cart load of firewood necessary for the manufacture of bricks	LTTE
Rs 250	For 1,000 bricks loaded onto a truck	LTTE
Rs 15	Per 1,000 bricks	PLOTE
Rs 50	At each police checkpoint crossed	Police Force

Most private houses located in the conflict area have been damaged to varying degrees, mostly due to shelling and aerial bombing.

In the LTTE-controlled Vanni, cement or brick structures are a rare sight, usually situated in town centres. Most inhabitants live in cadjan huts set up temporarily. Certain towns, such as Paranthan or Mankulam, have been razed to the ground and almost no structures remain.

In Government-controlled areas, more buildings are still standing, though the majority have been damaged and almost all non-occupied buildings have no roofs. While some buildings can be inhabited with minor repairs, many more require complete reconstruction. In Trincomalee, an estimated 42,896 houses have been damaged or destroyed. Of those, only 14,938 houses have been reconstructed to date.⁴⁶ An estimated 90% of Muslim houses in Jaffna Town are ruined; 2% are habitable and 8% have been renovated.⁴⁷

Building materials, household items and any movable property left behind by IDPs have been looted or have decayed due to neglect. In some instances, even the foundations of buildings have disappeared. Houses of IDPs which are occupied are in better condition than those which have been totally abandoned.

Overgrowth has taken over the land and much work will be needed to clear it. After six months, Muslim men interviewed in Musali Division had been able to clear only a fraction of their land area. Drinking wells also need to be rehabilitated. Elephants now roam around abandoned land and pose a security threat to returnees.



Pallai Railway Station © Tim Dickinson

Infrastructure, including schools, hospitals, community centres, local administration buildings, power and water supply, telecommunications and roads, has also been devastated. Many IDPs refer to the absence of schools, transport and hospitals as a main reason for not returning. IDPs await the reconstruction of schools before returning, while the authorities may prioritise school reconstruction in areas where IDPs have already returned. The participation of IDPs in the planning of reconstruction and rehabilitation of infrastructure is necessary to avoid such vicious circles.

Even where infrastructure is intact, the severe shortage of personnel and resources hinders service delivery. Thus, the Base Hospital Vavuniya serves 4 Districts – Vavuniya, Mannar, Kilinochchi and Mullaitivu – totalling 600,000 persons, while the Hospital suffers from severe shortage of staff and medical equipment.⁴⁸ In LTTE-controlled Mannar, only one Medical Officer is available to serve a population of 34,142.⁴⁹

3.2 Identifying Land Boundaries



Muslim returnee standing in the ruins of his house, Musali Division, Mannar District

Upon return, identifying land boundaries has become a problem for some property owners. The overgrowth, coupled with the destruction of property, means that identifying the land and its exact boundaries is a difficult process. This is especially so for returnees whose property is located in areas where mass destruction occurred as well as for the poorer owners who only had temporary structures which may not be visible any longer. Most IDPs use the trees as landmarks for identifying their land.

Many Muslim houses have been destroyed by shelling and bombing. Building materials were also looted following the sudden eviction of Muslims from their properties in 1990. In certain cases, foundations of houses have been removed. One displaced person explained that while cement foundations were still visible, stone foundations may have been looted because the stone is more valuable.⁵⁰

Unfortunately, documents prove to be little assistance in identifying boundaries, as survey maps or plans have not been automatically included in either private deeds or state Permits and Grants. Furthermore, both deeds and Permits/Grants under the LDO define the boundaries of a property by the ownership of the adjoining North, South, East and West lands. This may prove problematic in cases where the property of a returnee as well as those adjoining are not identifiable due to the overgrowth and the lack of foundations.⁵¹

Though this is at present a relatively minor issue, disputes over land boundaries are likely to rise with the increasing return of IDPs. Identifying property will be all the more problematic for the second generation of IDPs, where the owner is deceased and the heirs unfamiliar with the land.

3.3 Restarting livelihood

While, prior to displacement, residents of the North East had been engaged in all sectors of economic activity, fishing, agriculture and business were the main occupations. The difficulty in restarting economic activity is one of the main issues slowing return.

There is at present scarce assistance to returnees from the Government aside from the Productive Enterprise Grant given to a handful of families (see section 3.4). Some NGOs have provided IDPs with livestock or skills training. However, assistance is much needed as the loss of economic assets due to displacement and conflict is colossal and the majority of returnees need to restart their livelihood from scratch.

In addition to the loss of revenue due to displacement, farmers have lost their livestock – cattle, goats, chicken – agricultural implements, tractors, carts, sprayers, fertiliser, herbicide, seeds, harvest, etc. The land has been taken over by overgrowth and needs re-conditioning before it can be used for agricultural purposes. Coconut plantations have been devastated by aerial bombing and shelling. Fishermen have lost their boats, motors, nets and other fishing equipment. Business persons have lost their stock, equipment and premises.

In addition to property loss, financial difficulties and lack of assistance, a number of other obstacles impede economic activity, in particular in the North. These are not listed in order of priority:

- ◆ Lack of infrastructure including transport and roads, irrigation systems, market places, power supply.

- ◆ Lack and loss of skill: the new generation of displaced persons has been unable to engage in the trade of their parents, such as farming or fishing, by virtue of their displacement. Many were engaged in casual labour and are in need of skills training.
- ◆ LTTE taxation: the LTTE reportedly imposes taxes on economic activity, in particular business, but also agriculture, which is cited by many IDPs, especially Muslims, as a main obstacle. Taxes on paddy farming are reportedly Rs 1,000 per acre and Rs 20 per 50kg bag of paddy.
- ◆ In areas where few IDPs have returned, there is no market to sell products. This is compounded by the fact that many residents and returnees have low purchasing power.
- ◆ Wage labourers have few opportunities for employment, especially since they depend on business owners or landowners for their employment, many of whom have not returned.
- ◆ Fishing restrictions: despite the CFA, fishermen continue to be restricted in their movements by the Sri Lankan Navy.
- ◆ Business leases have expired and the holders are unable to retrieve their former business premises. Thus, in Jaffna town, a number of Muslim businessmen who previously had Leases for business premises ask either to be given the premises back or to be compensated for the loss of their initial investment.
- ◆ Lack of identity and property documents makes it difficult to prove ownership and to obtain bank loans or insurance.

As a consequence of the difficulties, many IDPs have chosen to phase their return or to return in groups. Since the signing of the CFA, some Sinhalese IDPs in Mihindupura camp have returned to their fields in Namalwatta and Welgamvehera to clear the overgrowth. As of December 2002, they were visiting their fields by day and returning to their dwellings by night. None had restarted cultivating their land. In Love Lane Welfare Centre, some of the Sinhalese men would go fishing for a few days in their area of former residence after which they would return to the camp in Trincomalee. Similarly, Muslim male heads of household have returned to their property in the North to restart cultivation and income generation. Unfortunately, assistance from Government as well as non-Government actors appears to be dependent on the returnees having de-registered from their area of displacement. The returnees described above are therefore not entitled to assistance (see section 3.4). Moreover, as many IDPs are planning to return as a community or village, the authorities and I/NGOs should consider prioritising rehabilitation of areas in consultation with and in accordance to the needs of the communities.

Northern Muslims

Northern Muslims had been engaged in agriculture, fishing and business. The area called Moor Street in Jaffna town was host to 75% of the Muslim population of the peninsula. Most of the residents were employed in trade and services, ranging from owning or working in shops to driving vehicles. In Mullaitivu and Mannar District, Muslims were employed in agriculture, fishing, tailoring and trade and commerce. Muslims were also settled in Vavuniya District, in particular Vavuniya South, and a few areas in Kilinochchi District.⁵²

An extensive study undertaken by Dr S.H. Hazbullah in 1991 gives an indication of the loss of economic and community movable and immovable assets of evicted Northern Muslims. These include:

- ◆ Muslim institutions, such as mosques, shrines and madhrasas (Islamic schools), and associated property, such as agricultural land, buildings, vehicles, etc.

- ◆ Revenues for at least 33,000 acres of paddy land, coconut land, and highlands, agricultural equipment and implements as well as livestock and poultry.
- ◆ Fishing and fishing related equipment, including boats, motors and nets.
- ◆ Stock, premises, revenues for approximately 2,395 commercial and industrial establishments.⁵³



Damaged Mosque, Moor Street, Jaffna

In addition to the loss of economic assets, houses and household items, such as TVs, radios, refrigerators, furniture, electrical and electronic equipment, and vehicles were also left behind. Most of these losses are not recoverable as the property left behind would have been looted, spoilt through neglect or destroyed by fighting.

In Puttalam, the situation of the displaced has been precarious. Until 1994, they received scarce assistance from the government. Following the 1990 eviction, the population of Puttalam nearly doubled in the space of a few days, putting much pressure on the local economy and the capacity of the local public services. As a result, displaced persons have been discriminated against with regard to access to government jobs, education, health, social services and Samurdhi assistance. To date, 78% of the workforce among the displaced remains unemployed.⁵⁴

Muslim IDPs who were interviewed mentioned taxation by the LTTE and control over certain markets, such as gold, iron and fisheries, both in Government and LTTE-controlled areas, as major deterrents to restarting economic activities in the North.⁵⁵ The LTTE also reportedly controls Muslim coconut plantations in the Vanni.⁵⁶

3.4 Government & other assistance

Unified Assistance Scheme (UAS)

Returnees are entitled to receive a resettlement package from the Government: the Unified Assistance Scheme. The UAS is distributed by the local administration with funds channelled through the Ministry of RRR's RRAN for the Northern Province and the Eastern Rehabilitation Ministry's REPPIA for the Eastern Province.

Officially, as of December 2002, returnees were entitled to a UAS package totalling Rs 65,000. In practice, however, due to the severe financial constraints of the Government, very few families benefited from any financial assistance. As the examples below illustrate, the distribution of the meagre resources allocated by the central government appears to be determined at the discretion of local authorities.

In the Northern Province, the package has been reduced to the first few instalments totalling Rs 15,000, while in the Eastern Province, a small number of returnees have received between Rs 7,000 and Rs 65,000.

In Point Pedro, Jaffna District, which counts 35 GS Divisions, an average of 3 families per division have benefited from Rs 15,000 UAS. In GS divisions 401 and 403, which host 134 and 160 returnee families respectively, only 5 families in each division benefited from Rs 15,000 UAS. The Grama Niladhari determined the 10 beneficiaries according to the size and income of the families as well as on a first come, first served basis.⁵⁷

In Kilinochchi, 1,800 families have benefited from Rs 15,000 UAS out of 11,388 returned families. According to the Government Agent, Rs 172 million would be required to pay UAS to returnees while only Rs 29 million has been received from Central Government.⁵⁸

In Batticaloa, the UAS has been paid in full, including permanent housing, for a total of Rs 65,000 to IDPs resettled in two model villages, Kiran and Kankenoday.⁵⁹ In Kiran, 20 perches of State land is being given to 100 Tamil families. In Kankenoday, 150 houses are being built on private land, to resettle displaced Muslim families. As of January 2003, there were no more funds to grant UAS to any other returnees.⁶⁰

By contrast, in Trincomalee, approximately 300 returned families out of a registered total of 2,051 benefited from Rs 7,000 for temporary housing.⁶¹ It is noteworthy that the Trincomalee District Secretariat already has UAS arrears to be paid to families resettled prior to December 2001 for a total of Rs 59,934,000.⁶²

Table 5 - Resettlement Package: Unified Assistance Scheme (UAS) in the North

UAS	Past	Planned	Presently in the North
Settling in Allowance	Rs 2,000	Rs 25,000 as a lump sum to be spent at beneficiary's discretion	Rs 2,000
Productive Enterprise Grant	Rs 5,000		Rs 5,000
Agricultural implements	Rs 1,000		Rs 1,000
Temporary Housing	Rs 7,000		Rs 7,000
Permanent Housing	Rs 50,000	Rs 75,000	X
TOTAL	Rs 65,000	Rs 100,000	Rs 15,000
BENEFICIARIES	Some resettled and relocated IDPs	All resettled and relocated IDPs	Average 3-15% of returnees

Following the Oslo Conference on 25 November 2002, the international community pledged US\$30 million, which would allow the Government to grant all returnee families Rs 13,000. An issue which will come to the fore as/if more funds for UAS become available is the fact that all returnees receive a standardised amount, regardless of the needs of the family or of

the extent of damage to their property. Women heads of households, in particular, need more flexibility in the use of financial resettlement assistance as they may be obliged to hire workers to assist them in building temporary housing, repairing their houses, or clearing overgrowth.

Furthermore, the components of the UAS described in table 5 are not flexible, even though some individual components may not be useful to all families. For instance, some IDP families may already have agricultural implements, while others may not need temporary housing but simply repairs to their former house. Alternatively, some families may need more assistance to restart economic activities than for housing.

The Ministry of RRR plans to increase the UAS to Rs 100,000 and to distribute it in two instalments, the first one consisting of a lump sum of Rs 25,000 to be spent at the beneficiary's discretion.⁶³ 100, 000 of 227,000 affected families are to benefit from this assistance. At the time of writing, however, funds were only sufficient to give the first instalment of Rs 25,000 to 50,000 families while 10,000 families will be able to receive the second instalment at this stage. The Government has not yet determined whether the new UAS will be distributed to IDPs who returned prior to 1 January 2003, which may cause tension among newer and older returnees.⁶⁴

Lack of funds for resettlement assistance is compounded by the lack of compensation for loss of life or property. Under a RRAN scheme, anyone is entitled to claim compensation for damages to house or property. The general public is entitled to Rs 100,000 or 20% of the cost of the damage, whichever is less.⁶⁵ In practice, however, the granting of compensation has been *ad hoc* and at present only some public servants are compensated for property damage.

Other assistance issues

Even though returnees are not at present given any financial assistance to restart income generating activities, dry food rations are stopped six months after resettlement. This is one reason why most IDPs are not returning or the male head of household returns alone to clear the land while his family stays behind to continue receiving dry food rations.

Those who phase their return are not only disentitled from receiving Government assistance, but also from receiving other assistance such as Non Food Relief Items (NFRI). Both TRO and UNHCR distribute NFRI to returnees. UNHCR distributes NFRI, the beneficiaries of which are identified by the Government Agents as they re-register for dry food rations at the Grama Niladaris.⁶⁶ Returnees whose families continue to be registered for dry food rations in the area of displacement are therefore unable to receive UNHCR NFRI to assist them in clearing land and setting up temporary shelter.



Muslim male returnees, Musali, Mannar District

This particularly affects Muslim and Sinhalese returnees, many of whom decide to stay registered pending a more stable environment for returning permanently. Thus, in Veppankulam, Mannar District, approximately 10 male villagers have returned, leaving their families behind in Puttalam. The men have put up a temporary shelter in the ruins of the local mosque. They are clearing their overgrown lands to build their houses and start paddy farming. These people do not receive any assistance from UNHCR or the Government, since they are still registered as IDPs in Puttalam. However, they have received assistance in the form of seeds and temporary shelter from a Muslim organisation. The houses, the mills, the schools and the hospital of the village have all been destroyed.

Emergency accommodation

Many IDPs are unable to live in their former property upon return. This may be due to the fact that the house has been destroyed or too seriously damaged to inhabit, the land may be mined or the property occupied. Similarly, IDPs who leave or are evicted from the property they are occupying upon the return of the owners often have no land to which they can go.

At present, spontaneous returnees who cannot stay on their property are temporarily either staying with neighbours, friends or relatives, or occupying vacant property. The Government has also temporarily accommodated returnees in 'Welfare Centres'. For instance, in Trincomalee, 301 families who are unable to return to their properties in Kuchchaveli and in the town have been temporarily settled in Alles Garden and Nilaveli 'Welfare Centres'.

Temporary accommodation is urgently needed to cater to the needs of returnees and evicted displaced occupiers. This is particularly urgent for villages where community buildings have been destroyed and where there is therefore no building in which to take shelter. For instance, in Jaffna and Kilinochchi, Muslim community property has been destroyed, including 24 Mosques, 17 community buildings and 5 cemeteries.⁶⁷ In a letter to the District Secretary on 4 September 2002, the Displaced North Muslims Organisation asked for a transit camp for returning Muslim IDPs in Jaffna Town and suggested that the Osmaniya College in Moor Street, which is slightly damaged, be used for this purpose.

4 WOMEN IDPS

Although women comprise a majority of the IDP population in Sri Lanka, the specific issues facing women IDPs are rarely highlighted or adequately addressed.⁶⁸ Women face the loss of family members and male spouses, increased responsibility to provide for and protect children and family members, threats to physical safety, including rape and sexual violence, psychological insecurity, and more general issues of social marginalisation and lack of power. Land and property issues affecting women are intimately intertwined with women's human rights issues, living conditions, and questions regarding livelihood.

In one interview, members of the NGO Consortium in Vavuniya District stated that 60 percent of IDP families were female-headed households (FHH).⁶⁹ Those interviewed expressed concern about discrimination against FHH, as well as economic, legal and family issues.⁷⁰ Another person interviewed highlighted the fact that there were 21,400 widows in 1995, raising today's figure to more than 25,000.⁷¹ The Trincomalee District counts 8,757 widows heading households in its IDP population, out of a total of 56,745 families displaced between 1983-2001.⁷² These figures only further emphasise the need to better understand and begin to address issues affecting women IDPs as part of the transition toward an end to the conflict.

Land and property issues facing women both in 'Welfare Centres' and upon return are numerous, ranging from inequitable policies for distributing assistance and compensation, to possible obstacles to women gaining legal title to land and property, to practical challenges of clearing land and rebuilding houses, to burdens of livelihood resulting from women becoming the sole providers for their families.

4.1 Distribution, Acquisition, and Ownership

Government and Emergency Assistance/Compensation

Several of the policies and procedures for distributing aid and compensation are inequitable in their application to women.

For example, the lists of families given to the UNHCR by the GA are organised according to male family members, so assistance must technically be distributed through a male family member. Representatives from UNHCR report that, in practice, they try to distribute rations to female members of a household, following the longstanding notion that aid distributed to a female family member reaches a family more effectively than if given to a male member.⁷³ The official policy of documenting families and distributing aid should recognise the role of women in supporting and sustaining the family, and allow women to represent their families when receiving assistance.

In order to grant women compensation for the death of a spouse, the state requires evidence of how the husband died. If there is no record that the death was witnessed or admitted to by perpetrators, the woman cannot be granted compensation.⁷⁴ In cases of disappearances, deaths that occur without witnesses, or deaths from unknown circumstances, the woman will be left without compensation. One woman reported that when bodies of the deceased were delivered, authorities, before releasing the body, often forced a family member to sign a statement that the death was at the hands of the LTTE or an actor other than the SLA. As a result, the family members, including the widow, were not able to collect compensation for the death.

The government currently has the opportunity to address some of these inequities in granting assistance and compensation. A first step in this direction can be seen in the new method of distributing funds under the GOSL Unified Assistance Scheme, which was set to commence 1 December 2002, which specifies that female-headed households are one type of returnee family eligible to receive assistance on a priority basis.⁷⁵ As the government continues to develop procedures, however, it should take into account the altered roles of women as the sole or primary providers for the family. As such, the women may need increased levels of assistance because they may have to hire labourers to help with rebuilding on and clearing the land. The procedures must also be conveyed to women IDPs so that they understand how assistance and compensation are distributed. One fear is that if such distribution procedures are not transparent and widely publicised, there is a danger of women being compelled to perform sexual favours in order to get assistance.⁷⁶

Legal Title to Land and Property

Women potentially face obstacles in gaining legal title to land and property, whether it is acquired through transfer of land, resettlement schemes, or inheritance. Without legal ownership of property, persons cannot receive loans, subsidies or credit, all of which may be necessary for building on, improving, and repairing land and property.⁷⁷

For state land distributed under the Land Development Ordinance, there is no joint ownership of land, so the title is held only by the head of household. This has implications for situations in which a woman's spouse has been killed or disappeared. If women are the heads of household, but are not recognised as such, they will be unable to legally hold title to the property. This is especially a concern for situations in which the husband's death is not documented or the man is missing. If both spouses survived the conflict, the man, as head of household, will have legal ownership over property. Thus, without the possibility for joint ownership, the woman will have no legal control over the property, and therefore no control over its use.

While the government does not officially discriminate with regard to access to land for settlement schemes, women often are under the impression that they will not receive land, and therefore do not ask for it.⁷⁸ Women's entitlement to land in resettlement schemes should be widely publicised to alleviate this problem.

Another property issue that might arise as families resolve matters relating to the conflict involves inheritance rights. Upon the death of the Grant holder, the property is inherited by one nominee. Widows are not able to inherit from their deceased husbands unless they are nominated by the husband to receive the land.⁷⁹ Different inheritance issues arise for private ownership under the Common Law, the law of Tesawalamai, and Muslim law (see section 8.1).

4.2 Issues of Return

Beyond these issues relating to property acquisition and ownership, women IDPs face numerous difficulties upon return to their land, with human rights and security questions intertwined with needs relating specifically to property and land.

Security

One element preventing women IDPs and their families from returning to their land is the issue of security. When families send the men to clear the land, the women fear the separation

because of the large number of disappearances in the past.⁸⁰ Returning to land in LTTE-controlled areas raises fears of child recruitment. When women travel back and forth between their lands and the 'Welfare Centres', they face potential harassment and the threat of sexual violence at checkpoints.

Infrastructure

Another problem facing women is the destruction of infrastructure in the war-torn areas. This often disproportionately affects women, as they generally bear the responsibility for child care and accessing health care. Without schools and medical facilities, women would have to handle these responsibilities at home. Female headed households would be responsible for these duties in addition to financial support. Many IDPs reported that they will not return until infrastructure is developed and facilities have been rebuilt. The lack of influence of women, especially women IDPs, in shaping policy priorities means they are less able to propose how and when infrastructure will be rebuilt.

Landmines, Land Clearance and Rebuilding

Once families resettle on the land, women generally and FHH in particular face the challenge of clearing and rebuilding on the land. Men have traditionally taken responsibility for farming and maintaining structures on the land. Women who have lost spouses and other male family members must decide how they will farm their land and use it to support their family. One person interviewed by the Centre for the Study of Human Rights for its report on displaced women said, "Who is going to clear the land and build for the women? There would be so much gossip if a woman engaged labour from men, even if she could afford it."⁸¹

Livelihood and Employment

Some positive developments have been made in the areas of employment and livelihood. The non-traditional sphere is expanding, and women are finding employment through various income generation projects and activities. NGOs are training women in jobs tailored for their needs and skills, both in the traditional sphere of women's activities (sewing, weaving, animal raising, cooking) and in jobs not traditionally held by women (mechanical work). Where infrastructure requires development, women are using new skills to help to set up and manage various facilities. In these situations, women often face fewer prejudices and stereotypes because of the overwhelming need. Generally, income generation projects not only serve as a source of income, but also to empower women. One person interviewed mentioned how, before displacement, women did not come out and were afraid to speak, whereas now they have organisations and are involved, working in government factories, NGOs, and shops and going to meetings and seminars.⁸² Another person interviewed in the Vavuniya District mentioned that 65-70 percent of employed women are self-employed in the non-traditional sphere.⁸³

Despite these positive developments, major livelihood and employment problems remain for women affected by displacement. Where male spouses have been lost, women become the principal income generators in a household, adding to their traditional duties of sustaining and supporting the welfare of children and extended family.

One of the main problems is that there are limited options available for wage labour in general and for wage labour for women in particular. For instance, in Vavuniya, men were employed for an average of 5-15 days per month; the figures were lower for women.⁸⁴ The Trincomalee District reports declining fish production from 1980 through 1998, a reduction

in the cultivation of paddy land, and declining milk production from 1981 through 2001.⁸⁵ Where wage labour options are available, they generally go to men.

In addition, many people interviewed reported that salaries given to men and women for the same work is different. One NGO in the Puttalam District said that IDPs receive the same as the local salary, but women are paid less for the same work. Thus men receive on average Rs 170 per day and women Rs 90 per day.⁸⁶ Women residents of a resettlement village in the Vavuniya District stated that women were paid only Rs 100 per day where men were paid Rs 200 per day.⁸⁷

5 RESTITUTION OF PROPERTY – OCCUPATION

5.1 Illegal Occupation

An issue which has arisen and is likely to come to the fore as more IDPs return is the occupation of both private and state owned property by displaced persons who often have no choice but to occupy other people's premises.

The relationship between returnees and occupiers often seems to be cordial and it appears that, at least for the time being, conflicts will be resolved amicably. In some instances the occupiers have been given a time period to move out by displaced owners who now wish to return. In other cases the occupiers have been asked to buy the property or to pay rent. Since the signing of the CFA, some Sinhala owners in Trincomalee have been paid Rs 1,000 per acre for their land, which is currently occupied by Tamil farmers.

At times, occupation is with the consent of the owners who have moved and settled in other parts of the country or abroad. For instance, many of the returnees in the Kaaraitivu and Kayts islands are living on and cultivating their former neighbour's land with the latter's consent. Consent is often given with conditions attached, such as that the occupiers will leave on request by the owner or as soon as they have rebuilt their own dwellings.

Some Sinhalese IDPs in Morawewa, Trincomalee District, are now occupying land and buildings belonging to the Tamil people of the area. Occupation appears to be with the consent of the owners and so far has been without any conditions attached. None of the occupiers have been requested to leave or pay rent.

On the other hand, there are certain instances where disputes have arisen with regard to illegal occupation. This appears to be the case when the occupiers cannot return to their own properties or when they have worked on the land or house which they are occupying and now consider it to be their own. Some demand payment before handing over the property or raise legal defences such as prescription (see section 8.1).

There is also evidence that, in Jaffna town, illegal occupation is used by some to earn money or settle old scores. When news of the return of the owners is received, some people start occupying the particular property and demand money in return for vacating.

Facilitating Dispute Resolution at Village Level – the Thalaimannar case

In Thalaimannar at the western end of Mannar Island, Tamil and Muslim communities were living in neighbouring villages before the start of the conflict and were subsequently displaced. The Navy established a camp on the location of the Tamil villages and is still located there to date. When Tamil villagers returned, they were therefore unable to resettle in their own villages and therefore occupied Muslim villages. The Muslim villagers have now begun to return and conflict between the communities seemed unavoidable.

The Dutch organisation CORDAID facilitated a series of meetings between the two communities focusing on their common problems with a view to identifying common solutions to their inability to resettle. As of November 2002, the villagers were to hold a second meeting and had drafted a common letter to the Government Agent addressing their needs.⁸⁸

5.2 High Security Zones & Army and Police posts

A substantial land area is occupied by the Sri Lankan Army (SLA) and the Police in the North-East, in particular in Mannar and Jaffna Districts.



High Security Zone, Point Pedro, Jaffna District

The Ceasefire Agreement requires parties to the conflict to list their High Security Zones. In practice, however, the SLA continues to occupy areas which are not listed as HSZ. There are also concerns that the Army has been expanding or creating new High Security Zones.⁸⁹ In addition to HSZ, a high number of Army and Police posts located on people's properties have still not been vacated.

A Sub Committee on De-Escalation and Normalisation (SDN) was set up following the second session of the first round of the Peace Talks with a mandate to look into the issue of, *inter alia*, High Security Zones. Following the fourth session of the first round of peace talks, the SDN was deactivated, leaving the issue in limbo. The parties agreed, however, on an Action Plan for the Accelerated Resettlement of the Jaffna District, which will look into

the vacating of areas in the vicinity of High Security Zones. Disputes over occupation by the Armed Forces is presently resolved at District Level.

As a consequence of Army occupation, many IDPs are unable to return. Some IDPs remain stranded in camps located a few hundred metres from their properties, such as in Point Pedro. No solutions have been devised to assist these people through relocation or compensation. A number of IDPs whose property is situated in the vicinity of Army-occupied areas also mentioned that they were not returning out of fear for the security of female family members.

In Mannar District, Army and police occupation of property is a serious impediment to resettlement.⁹⁰ The Navy continues to occupy the Western-most area of the island in Thalaimannar. The Army also occupies areas on both sides of the Vavuniya Mannar Road, a section of which runs parallel to the Forward Defence Line. Pockets of the coastal areas are also occupied.

A group of families displaced from Ganeshapuram/ Uliyankulam, on the road which runs parallel to the Forward Defence Line, were forcibly brought back in 1999 from Madhu, where they had taken refuge. They currently occupy their neighbours' land, as their property is on the other side of the road and used by the Army or mined.⁹¹

In Jaffna, an estimated 30% of the peninsula is occupied by the Army. Army presence is not only an impediment to the resettlement of IDPs but also to economic activity in the peninsula, in particular fishing.

In Batticaloa, the SLA occupies between 200 and 342 houses, according to the Government and the LTTE respectively, mostly in so-called Border Areas, coastal areas and the airport.⁹² In addition, the SLA occupies numerous public buildings, including the Kachcheri. A meeting of the SDN took place in Vanaitivu in late 2002, which yielded some results. While both parties understand the need to maintain camps at this stage of the Peace Process, they exchanged their main concerns and agreed to re-open a number of roads to the Public.⁹³

In a few cases, in the Jaffna Peninsula, the Army has been conciliatory and has either reduced the extent of its HSZ or allowed owners to check on their property. It must be noted, however, that the Army requires proof of ownership before allowing IDPs to enter HSZ, which, in many cases, IDPs cannot provide due to the loss of documents (see section 6). In Batticaloa, no access is granted to IDPs.

With regard to payment of rent for occupation of property, the policy of the Army appears to be *ad hoc*. Business owners whose premises are occupied by the SLA appear to be paid rent while only certain house owners are paid rent. Due to insufficiency of funds, rent pledged is not always forthcoming. Owners whose houses are located within HSZ but are not occupied by the Army are not paid rent.

5.3 LTTE occupation

Most abandoned lands in the LTTE-controlled North East have been taken over by the LTTE, in particular the properties of Muslims evicted in 1990, refugees in India and emigrants.

The land has been subsequently either rented, given to the families of LTTE cadres or used by the LTTE to host their administrative structures. Though CPA could not gather any evidence of this, it is to be assumed that some LTTE camps are also located on the land of IDPs. The LTTE has also allowed IDPs to settle on other people's lands. In Batticaloa, some Muslim lands are being farmed by, or with the knowledge of, the LTTE.

Restitution of property of Muslim IDPs in LTTE-controlled areas

Following the eviction of Muslims from the North, many Muslim lands, houses and business premises were taken over by the LTTE.⁹⁴ The properties were subsequently either used by the LTTE, as in Kilinochchi, or rented to others. It appears that the LTTE has instructed occupiers of Muslim lands to vacate the properties. In many cases, Muslim families who had visited their former homes stated that the occupiers had agreed to leave when they returned and/or would pay rent. In Veppankulam, where a number of Muslim men have returned to work on their lands, the Tamil occupiers who were farming Muslim lands left the properties without any problems. It is noteworthy however that the former occupiers are now unemployed and that no arrangements have been made to cater to their needs. In other cases, the occupiers have agreed to pay rent.

In the LTTE-controlled Vanni, the movements of Muslims appear to be closely monitored; in Kilinochchi, there are indications that they may not be allowed to resettle.⁹⁵ It is noteworthy that while a handful of Muslims entered into agreements to receive rent from persons occupying their business premises in Kilinochchi town, none are expected by the occupiers to return permanently.⁹⁶ There are rumours that Muslims will not return to Mullaitivu.⁹⁷

A number of Muslim lands have been used to build LTTE administrative or other structures and it appears unlikely that the land will be returned to the owners. For instance, the grounds of the newly completed LTTE guesthouse, Kamathenu, belongs to Muslim IDPs.

According to the Northern Muslims' Rights Organisation, even though the LTTE has stated it would give Muslim lands back, Tamil occupiers and the LTTE have not vacated the properties. The Organisation stated that it favoured peaceful informal solutions rather than resorting to the judicial system.⁹⁸

Following the third session of the first round of the Peace Talks held in Oslo, the LTTE reiterated that it was be prepared to hand over Muslim lands. The LTTE had however asked that a list detailing the particulars, names, locations and extent of land be submitted to them. The Muslim Rights Organisation has been charged with this task.⁹⁹

6 RESTITUTION OF PROPERTY - PROVING OWNERSHIP

6.1 General Overview

While the law protects property rights, proving ownership may be problematic, as many IDPs have lost property documents during displacement.

As is detailed below, obtaining copies of property documents is complicated by the fact that in the North East, Government institutions, such as the Land Registries and Divisional

Secretariats, which keep copies of such documents, have lost volumes and records as a consequence of the conflict or of natural disasters. Copies of private deeds as well as State Permits and Grants are not kept centrally. Residents of the North are all the more affected as public buildings of Northern Districts were severely damaged during the conflict. Most property documents of the Eastern Province are intact.

Even when documents are available, it is unclear whether Land Registries or Divisional Secretaries have the capacity to respond to the number of demands for certified copies. The volume of demands has sharply increased since the signing of the Cease Fire Agreement and the subsequent return of IDPs to their property, and demands are likely to increase further. In the Musali Division of Mannar District, there is currently no Divisional or Assistant Divisional Secretary, and 15 key administrative posts are vacant in the District. The Mannar Government Agent notes that “even retired persons are not available in the District for recommendation to the RRR Secretariat.”¹⁰⁰ Similarly, there are no Divisional or Assistant Divisional Secretaries in Vavuniya North Division.

Moreover, many IDPs have lost proof of identity, such as National Identity Cards or Birth Certificates, which would be necessary to obtain copies of property documents. Legal claims to property inheritance may also be impeded by the loss of Marriage or Death Certificates.

Lastly, many displaced persons do not appear to be aware of the importance of, and the procedure for, locating or obtaining copies of their documents.

Table 6 – Types of Property Documents

Type of land	Document	Copies kept by
Private	Deed	Owner
		Notary Public
		District Land Registry
State	Annual Permits/ LDO Permits	Owner
		Divisional Secretariat
	LDO Grants	Owner
		District Land Registry
		District <i>or</i> Divisional Secretariat
	Leases & other grants under the State Lands Ordinance	Owner
		District Land Registry
		District <i>or</i> Divisional Secretariat
		Land Commissioner’s Office, Colombo

6.2 Private property: Deeds ¹⁰¹

Ownership of private property is documented by a deed. Deeds are drafted by Notaries Public and subsequently registered at the Land Registries of the relevant District Secretariats. Copies of the deeds are kept by the District Land Registry, the Notary Public and the owner. There is no centralised Land Register in Sri Lanka.

Persons who have lost their deeds may apply for a certified copy at the relevant District Land Registry for a search fee of Rs 2.50. The process is considerably slowed down if the owner does not know the particulars of the deed in question as all the land volumes will

have to be searched randomly. Particulars include: 1) the reference number of the deed; 2) the name of the Notary Public; 3) the date of registration at the Land Registry.

Obtaining a copy, however, may be impossible since many volumes of the Land Registries have been destroyed during the conflict or damaged for other reasons (see table 7).

If this is the case, the claimant may draft a “deed of declaration” whereby s/he declares ownership of a specific property. Such a deed is registered at the Land Registry and the claimant can continue possession of the land until another person challenges his/her claim, where applicable. Deeds of declaration can be drafted by bona fide owners but also by others, including those wishing to claim prescription.

Where a deed has been lost by the owner and/or the Land Registries, the following options remain available to prove ownership:

- ◆ The reference number of the deed of one’s neighbour is usually just before or after one’s own reference number, which may assist IDPs when applying for a copy;
- ◆ Claimants may approach the Notary Public who drafted the original deed and obtain a copy or certificate from him/her, though in many Northern areas, the Notary Public would have been displaced and the documents lost;
- ◆ The claimant may obtain a certificate from the Grama Niladhari to the effect that s/he was in occupation of a particular plot of land prior to displacement, though this would require the Grama Niladhari to be the same as the one prior to displacement;
- ◆ Electricity and water bills, election registers and inland revenue or council tax may also assist in proving ownership.

6.3 State owned land: Permits, Grants & Leases¹⁰²

An estimated 82% of the land mass in Sri Lanka is owned by the State.

Under the Land Development Ordinance (LDO), certain families may be granted State land vested with the Land Commissioner. State land can only be granted to persons who settled on the land before 15 June 1995, except in the case of special relocation or resettlement programmes.

Permits & Annual Permits

Landless families may apply to their Grama Niladhari to be granted State land. Upon receiving applications from Grama Niladharis to obtain State land, Land Officers of the Divisional Secretariats identify suitable land and make a recommendation to the Provincial Land Commissioner to hold a Land Kachcheri, a meeting to select beneficiaries. The Divisional Secretary, Land Officer and other key persons from the area form the Land Kachcheri, on whose recommendations the North East Land Commissioner may give permission to issue a Permit. Beneficiaries are selected according to need among landless families from rural areas earning less than Rs 24,000 annually for married applicants, and Rs 18,000 for single applicants.

The use of State land carries a number of conditions in terms of land use and development. Permits may be cancelled by the Provincial Land Commissioner following two prior notices if those conditions are not met. In particular, the Permit holder:

- ◆ must live on the land;
- ◆ cannot sell or transfer the land save to a nominated successor, usually the eldest male child;¹⁰³
- ◆ must develop the land according to the schedule of the Permit, namely cultivate paddy for low land and crops for high lands;
- ◆ must build a permanent building on the land.

Previously, Annual Permits renewable yearly were also issued. Their cancellation did not require prior notice and annual rent had to be paid by the beneficiaries. Since 1990, the Government stopped issuing Annual Permits and started to gradually convert Annual Permits into Permits.

Grants & Leases

Permit holders may apply to the Land Commissioner for their Permits to be converted to the status of Grants. To be eligible, the applicant must have fulfilled the particular conditions set out in the schedule of the Permit, developed the land to the satisfaction of the District Secretary, paid any instalments owed to the Land Commissioner and have lived on the land for a minimum period of 3 years for irrigated agricultural land and 1 year for housing land.

Grants confer legal ownership and cannot be taken back by the State except under the Land Acquisition Act. They do however also carry a number of conditions; in particular, the grantee cannot sell, fragment or transfer the land. S/he may mortgage the land in State Banks.

Grants are registered at the District Land Registry. Copies are kept by the Divisional Secretary, the District Land Registry and the owner.¹⁰⁴

At the time of writing, a Land Ownership Bill was being drafted by the Legal Draftsman's Department under which Grant holders will be able to sell their land and pass on the land to the eldest child regardless of gender.

Under the Crown Land Ordinance, middle income families and those in urban areas may be leased State land for residential, business, agricultural or other purposes. The highest bidders following a tender notice or auction are selected for Leases. Leases are usually renewable every 30 years, though the time limit for Leases may be as short as 5 years. Like Permits, Leases can be cancelled if the holder fails to comply to the land use assigned to the land.

State Land of IDPs

A Circular issued last year forbids the cancellation of the Permits of displaced persons. According the North East Land Commissioner, Permits of IDPs were not cancelled prior to the Circular. It appears, however, that to reinstate the land, enquiries will be made as to whether the claimant was genuinely displaced due to the conflict.

A number of displaced persons interviewed were in the process of applying for Permits when they were displaced. According to the North East Province Land Commissioner, if such persons can prove that they were settled on the land prior to 15 June 1995, they may continue with their application and have their 'encroachment' regularised by a Permit. Proof includes election registers, electricity and water bills and other official documents. The North East Province Land Commissioner also has a list of "encroachers" prior to 1995 and may check that the claimant is on the list. It has to be noted, however, that the list is not

comprehensive as the survey was not carried out in some areas due to the conflict. In addition, by virtue of the unlawfulness of their occupation of State land it is unlikely that “encroachers” have been registered on the voters’ list or have had any official documents. The North East Province Land Commissioner will not accept statements by Grama Niladharis or neighbours as evidence in favour of a claimant.

It is unclear what the policy will be for IDPs who were living on leased land. Where their lease expired, they may have wanted to but been unable to renew it. The same applies to leases for business or agricultural purposes.

Obtaining copies of Permits, Grants and Leases

Persons who have lost their Permits may apply for certified copies at the Divisional Secretariats. After 1989/1990, Divisional Secretariats were required to keep copies of all Permits, Grants and Leases. District Secretariats, which had kept documents until then, were required to hand over all documents to the Divisional Secretariats, though even at the time of writing, not all documents had been transferred. Many District and Divisional Secretariats, in particular those of Mullaitivu and Kilinochchi Districts, were seriously damaged during the conflict, as a consequence of which land documents were lost. This is particularly problematic for Permits as no other copies are available in other State bodies.

According to the North East Province Land Commissioner, plans from the Survey Department may assist in determining whether a claimant is the genuine Permit holder of a plot of land. Neighbours who have kept copies of their Permits may also assist claimants in proving ownership, as the plan in the Grant documents mentions the ownership of neighbouring lands.

Persons who have lost their Grants may apply for certified copies at the Land Registries and the Divisional Secretariats. Only State land granted or leased under the State Land Ordinance is recorded centrally at the Land Commissioner’s Office in Colombo.

Table 7

DAMAGED/LOST DOCUMENTS¹⁰⁵ AT THE DISTRICT LAND REGISTRIES IN THE NORTH EAST
<p>Jaffna Land Registry Post-1940 documents of the Jaffna District were shifted to private premises eight times after 1986. On one of these occasions, the house where the documents were stored had been used by the LTTE and was captured by the IPKF in 1987. The IPKF reportedly used the registers as fuel during the raining season. Of the post-1940 documents, 1,325 volumes have been lost; all pre-1940 registers have been lost.¹⁰⁶</p>
<p>Kilinochchi Land Registry Prior to the opening of the Land Registry in 1990, registers for the Kilinochchi District were kept in Jaffna. All deeds registered before 1990 are still being kept in Jaffna; all those registered after 1990 are kept in Kilinochchi. Civil Servants from the Registry removed the registers to Shantapural in 1995 as a precaution. The registers were shifted anew due to displacement in 1996. Most post-1990 documents are still intact. Kilinochchi volumes which were kept in Jaffna were destroyed by the IPKF in 1987.¹⁰⁷</p>

Mullaitivu Land Registry

The Mullaitivu Land Registry was opened in 1984. Following heavy fighting in 1990, the Registry was destroyed and, according to the Jaffna and Vavuniya Land Registrars, all Mullaitivu Registers were destroyed.¹⁰⁸

Vavuniya Land Registry

Approximately 30 volumes from the pre-1940s have been damaged due to the poor quality of the paper.

Mannar Land Registry

Approximately 30 volumes have been destroyed due to the poor quality of the paper.

Batticaloa Land Registry

No land documents have been lost by the Land Registry, though a number of volumes were damaged following the 1978 floods.¹⁰⁹

Trincomalee Land Registry

No documents have been lost by the Land Registry as a result of the conflict. However, a number of volumes from before 1970 have been damaged due to the poor quality of the paper and storage, and following the 1964 cyclone.¹¹⁰ In addition, a small number of documents which were located at the Court were destroyed when the building was burnt down on two occasions.¹¹¹

6.4 Illegal alienation of land

Both private and State land has been illegally transferred or sold.

Some lands belonging to IDPs have been sold to others while some IDPs have been illegally given or sold land which they now consider their own.

With regards to private deeds, the Notaries Public do not always check the legality of the alienation of land. In particular, they do not always ascertain who the legitimate owner of the land is in cases of transfer. The Registry has no power to investigate and consequently there are many cases of double registration of deeds in District Land Registries.¹¹² Double registration of land has happened all over the island and appears to be a common problem in Mannar.¹¹³

Similarly, State land belonging to IDPs has also been illegally alienated. In Vavuniya, during the past five to eight years, paramilitary groups have settled landless IDPs on land belonging to absent owners. This illegal relocation programme has taken place without the knowledge of the Government authorities. IDPs who were relocated now risk expulsion as the owners are returning to their land.¹¹⁴ The additional Registrar General in Vavuniya confirmed that State land belonging to persons who had left abroad or to Colombo had been illegally distributed.¹¹⁵

The case of Puttalam IDPs and the 1994 relocation programme

Most Northern Muslim IDPs have been residing in Puttalam, Anuradhapura and Kurunegala Districts since displacement. The majority, 85%, headed for Puttalam District, 58% of which settled in Kalpitiya Division. In addition, 1,000 Sinhalese families sought refuge in Puttalam and Kalpitiya.¹¹⁶

After 1994, IDPs were encouraged to buy land and thus relocate by a Government policy granting Rs 10,000 assistance to IDPs who could prove ownership through a deed of 10 perches of land. Nine thousand families of a total of 14,000 relocated in groups in 87 relocation villages and benefited from this assistance. A further 1,000 families received Rs 25,000 to build permanent housing.

It is estimated, however, that 60% of the land on which IDPs relocated in Puttalam is State land which was fragmented and illegally sold by local Permit or Grant holders to groups of IDPs. The Legal Aid Foundation IDP project has received several complaints relating to such illegal alienation of land.¹¹⁷ In one incident in 1996 in Kandakuliya, IDPs were sold parcels of State land by a local person in exchange for an “Agreement to transfer” that held no legal validity.¹¹⁸

Other cases are coming up now which illustrate how IDPs’ vulnerability was exploited during the relocation programme. In one case, in Karambe, a local person filed a case to evict IDPs who had settled on land which he had abandoned several years before. The case was decided *ex parte* as the IDPs in question failed to come to courts, probably due to the financial cost of travel.¹¹⁹ There have also been cases of forged deeds or deeds acquired by the owner after the land had been unofficially sold to IDPs.¹²⁰

7 RESTITUTION OF PROPERTY – REDRESS

7.1 Government institutions and NGOs

At present, a number of State institutions and NGOs are involved in assisting in the restitution of property of the internally displaced. These include District Courts, the Bar Association of Sri Lanka, the Legal Aid Foundation, the Human Rights Commission, Mediation Boards, the Legal Aid Commission and the Police.

While some of these institutions have adopted a strictly legal approach to resolving issues concerning land and property, others have been creative and applied principles of conflict resolution that factor in the experiences of both occupiers and title holders to amicably resolve property issues.

Such flexible and informal initiatives are to be encouraged. Twenty years of conflict have changed the distribution of, and access to, land and resources in conflict affected areas. Such changes must be taken into account in resolving land and property disputes. Principles of law applicable in peace times may result in substantial injustice if applied uncritically to disputes arising as a direct result of the conflict. The situation of landless or displaced occupiers is a case in point. A legal redress mechanism which simply restores an occupied property to its legal owner without assessing the situation of the current occupiers and providing alternatives or sustainable solutions for all concerned would exacerbate local conflicts and result in injustice. Furthermore, access to land and resources has been at the centre of the conflict itself. Redistributing land and property along the identical ethnic and class lines as before the conflict would also engender grievances and injustice.

With regard to formal dispute resolution mechanisms, existing institutions or organisations often lack the capacity to respond to the demands that may be made on them as the movements of people increase. Aside from problems of capacity, these institutions may not have an adequate mandate or sufficient flexibility to perform these functions. What follows is a brief description of institutions currently involved in formal dispute resolution.

District Courts

District Courts deal with cases relating to ownership of land, actions by landlords to eject tenants and actions to recover debts in excess of Rs 1,500. A person faced with a problem with regard to land and property can file a case in a District Court to vindicate his/her rights, recover property, enforce a legally binding obligation, obtain compensation for an injury done or for a threatened wrong.

However, litigation is expensive and time consuming, and the results, which are based on principles of law, are never wholly predictable. The Courts also recognise the unrestrained right of appeal, which often means that it could take many years before the issue at hand is resolved and redress obtained.

Bar Association of Sri Lanka, Legal Aid Foundation

In 2001, the Bar Association of Sri Lanka, with the assistance of UNHCR, launched a legal aid programme to assist internally displaced persons. IDPs earning less than Rs 6,000 a month are eligible for assistance. While the Association has a field presence in Jaffna, Mannar, Puttalam, Trincomalee, Vavuniya, Anuradhapura, Polonnaruwa and Batticaloa, it has no presence in the LTTE-controlled parts of the North. Further, the Association is represented by only one lawyer in each of these areas, raising questions as to their capacity to deal with problems that might arise in areas where there are large concentrations of IDPs and possibly large movements of people in the foreseeable future. At present the Association attempts to resolve issues through means of litigation.

Human Rights Commission

The Human Rights Commission (HRC) is a statutory body that was established by Act No 21 of 1996. Its powers and functions are enumerated in the Act. Accordingly, the Commission can accept complaints about violations of Fundamental Rights enshrined in the Sri Lankan Constitution. The Commission is empowered to resolve such issues through mediation and conciliation. The Commission can engage in research, monitor welfare of detainees and carry out human rights education. The Commission is also empowered to inquire and investigate into procedures of State bodies to ensure their compliance with fundamental rights enshrined in the Constitution and to advise and assist the government in formulating legislative and administrative directives and procedures to promote and protect fundamental rights.

The HRC's capacity and mandate to deal with complaints of land and property is limited. For instance, in Jaffna, the Commission attempts to find a solution when the complaint is against the State. When the complaint is against a private individual, it is forwarded to the (BASL) Legal Aid Foundation. The Commission states, however, that it is unable to intervene when the complaint is against the LTTE.

In the Jaffna peninsula the HRC regional office mediates between the owners and the SLA in a bid to get the army to vacate property. On complaints being lodged by the owners, the HRC liaises with the Commanding Officers to facilitate a quick return of property. However the HRC regional offices do not have the mandate to mediate in instances where the LTTE is the party occupying. Complaints are then referred to the HRC Head Office.

Mediation Boards

Mediation Boards were set up by Act No 72 of 1988. Boards can accept complaints to be resolved through mediation with regard to movable or immovable property, contracts, or issues that would amount to a cause of action in a court of law not exempted by the Act. Potential litigants cannot institute complaints against the State or public officers executing a public duty involving recovery of money or other dues and in cases where the Attorney General is the prosecutor.

The objectives of the Mediation Boards are to make parties resolve disputes by reaching an amicable settlement. On reaching a settlement, the Board issues a certificate of settlement. When a settlement is forwarded to a court, the court enters a decree in accordance with the settlement. On failure to reach a settlement, the Board will issue a certificate of non-settlement and disputants can appeal to a court of law. The time limit for concluding a complaint is 30 days from the date the Board was formed. The Mediation Board system is not operative in the North. In the East, there are twenty-one Mediation Boards, with five in Batticaloa and sixteen in Ampara.¹²¹

Legal Aid Commission

The Legal Aid Commission is a state-funded body established by Act No 27 of 1978. Its objectives are to provide legal aid to deserving persons. To be eligible for legal aid, the litigant's income must be less than Rs 5,000 a month. The head office of the Commission is in Hulftsdorp, Colombo. The Commission has five branches, located in Galle, Anuradhpura, Kandy, Kurunegala and Trincomalee. The Commission also has representatives in Hamabatota, Ampara, Monaragale, Kegalle, Chilaw, Matale, Batticaloa, Mt. Lavinia, Moratuwa and Nuwara Eliya.¹²² In 1999, the Commission established a Bureau to assist women and children. The Legal Aid Commission does not have a presence in the North East.

Police

The duty of the police is primarily to maintain law and order and preserve peace. As such, the main mandate of the police is to ensure compliance with the criminal law of the country. With regard to civil complaints, however, the police can record complaints, which can later be used as evidence in courts.

In Jaffna, the police attempts to assist in resolving disputes over land and property. Police officers state that when they receive complaints that persons are in occupation of an owner's house, they advise such persons to leave. In some instances they suggest that the owner pay the occupiers a sum to leave. Their intervention is not always successful, particularly as occupiers are aware that they do not have a mandate to intervene in such matters and are therefore not bound to abide with agreements entered into with the police in this regard.

7.2 LTTE-controlled areas

The LTTE has set up a parallel administrative structure and runs its own Judicial system. Land and property issues come under the purview of both the Government and the LTTE administration.

In the LTTE-controlled Vanni, land occupation is an issue resolved by the Government administrative structures, namely the District Secretaries and Grama Niladharis, along with the Tamil Eelam Police Force.¹²³

Reportedly, IDPs occupying property are permitted to remain until the owners make a claim for the property. Claimants first approach the Village Committees, which operate in LTTE-controlled areas. The Tamil Eelam police also attempts to resolve property disputes, failing which cases are filed in Tamil Eelam Courts. The lawyer's fee is reportedly Rs 150 per appearance.

If the occupiers have made improvements to the property, such as clearing forest or farming, the claimant will be expected to pay the occupiers some compensation.¹²⁴

Without further research on the link between the judiciary and the executive in LTTE controlled areas, it is unknown whether or what type of redress will be afforded to owners by Tamil Eelam Courts in cases where land has been taken over by the LTTE. In one instance in Killinochchi, the LTTE took over approximately 70 acres of coconut land from a private individual and is refusing to return it. The owner has been left with no choice but to file action in the District Court which is under the LTTE administration.

According to lawyers in Kilinochchi Courts, with regard to the application of prescription, the practice in LTTE-controlled areas appears to be that, if for a period of 20 years from the time of leaving a property, the owner has made no inquiries about, or visits to, the property in question, the person occupying should be able to claim prescription. Prescription will be applied in the case of economic migrants, however, prescription may not be applicable for displaced persons and refugees or when the occupant is paying rent to the LTTE.

8 LAWS APPLICABLE TO LAND AND PROPERTY

This legal review aims to highlight some of the principles of law applicable to land and property. In particular, the review aims to identify principles that can be drawn on when resolving land and property issues as well as those whose application could prove problematic in finding a just solution to land and property issues resulting from the protracted conflict.

The Sri Lankan legal system is a mix of many systems of law. The Roman Dutch Law is the Common Law of the land. Principles of English law have been introduced to modify the Common Law, and English Law also applies when the Common Law is silent. The personal laws of Tesawalamai, Muslim law, and Kandyan law govern marital relationships and inheritance of persons subject to these laws.

Private property is governed by the Common Law, as modified by statute, while state property is governed by statute only. The first section of this legal review will summarise ownership, tenancy and other principles relating to private property. The second section will outline the laws that govern state property, including the Thirteenth Amendment's devolution of power over certain land and property issues to the Provinces and various statutes regarding state acquisition and disposal of land.

8.1 Private Property

This section examines laws relating to ownership, tenancy, and various other principles relevant to private property in the context of displacement.

Ownership

In law, property is defined broadly as everything either subject to or capable of ownership, including movables and immovables and tangibles and intangibles. The Roman Dutch law provides the foundation for the concept of ownership in the law. The concept of ownership in law implies the right to possess, enjoy and dispose freely of the property. One can acquire or reacquire ownership through a transfer of property, through accession, by prescribing to the said property, through possessory action, or by inheriting the said property.

a. Transfer of Property

Legal transfer of property involves the formalities associated with acquisition of ownership and transfer of land, which are codified in the following acts and ordinances.

Registration of Documents Ordinance¹²⁵

Once a deed of transfer has been executed, the deed should be registered with the Land Registry in which the land subject to transfer is situated. Registration of title deeds is governed by the Registration of Documents Ordinance of 1927, which states that where more than one document exists regarding a particular piece of property, the document that has been registered at the relevant land registry gets priority and will be accepted over other competing claims (Section 7). This is true with regard to leases, mortgages and all forms of transfers. Though failure to register will not make a deed invalid, subsequent transfers made in relation to the same property that are registered will take precedence. Thus, the person holding a deed that is registered will be considered the holder of a valid title deed until the contrary is proved.

Notaries Ordinance¹²⁶

The Notaries Ordinance, as amended, deals with transfer of private land. This Ordinance requires that three copies be made of the deed; these copies are to be filed with the notary attesting the deed, the Registrar of Lands and the party involved in the transaction (Section 31).

Prevention of Frauds Ordinance¹²⁷

The Prevention of Frauds Ordinance stipulates that transfers of immovable property should conform to certain requirements (Section 2). This section states that a sale transfer assignment, mortgage or agreement to sell, transfer or mortgage of land or other immovables is valid in law only if such transaction is in writing, signed by the person making it and attested by a notary public and two witnesses.

Sale of Goods Ordinance¹²⁸

The Sale of Goods Ordinance applies to transactions involving movable property. A contract for sale of goods is one whereby a seller transfers or agrees to transfer property in goods to a buyer for a money consideration called the price (Section 2). It does not apply to goods that will be produced in the future unless the contract is in writing or consideration has been passed.

b. Accession

Under the accession method of acquiring ownership, what is fixed to property belongs to the owner of the property. For example, if A builds on B's land, the building belongs to B. Whatever is built on land accedes and becomes part of the land. Further, things naturally grown on land are deemed to be annexed to land. However, cultivated commercial crops that have not been harvested do not accede.

c. Prescription

Ownership in property that belongs to another can be acquired by long continued possession of property. This Roman Dutch Law principle is codified in statute and applies to prescription of immovable property. With regards to State property, there are conflicting positions in the relevant case law. One view states that one cannot prescribe against the State while the other states that one can prescribe against the State upon proving possession of property for a third of a century.

Section 3 of the Prescription Ordinance states that a person is deemed the owner of property if s/he can prove that for the previous ten years s/he has been in uninterrupted possession of it. Where prescriptive title is proved by a possessor, the party holding title will have to forfeit his/her right to the property. Even if a person has been in undisturbed and uninterrupted possession of property and considers himself to have acquired ownership, he cannot get a declaration of ownership nor register such title. The only way the prescriptive owner can get a declaration of title by a court is if possession is challenged by another party, such as the holder of the title deed. In this situation, the prescriptive owner must prove 10 years of undisturbed and uninterrupted possession of the immovable property, and that such possession was adverse to the claim of the person holding paper title. The possessor cannot have acknowledged (by paying rent to someone, giving the produce from land, etc.) that any person other than himself has title to the property. Thus, a person who comes into possession with consent or at the request of the owner will not be considered eligible for prescriptive ownership unless the person makes known that he holds the property adverse to the owner's rights. For example, acts that would be considered adverse to the rights of the owner would include the non-payment of rent/dues.

According to Section 13, if prescriptive title is to be claimed against minors (those below 18 years), people of unsound mind, or those who are absent beyond seas, possession of a period of 30 years (not 10, years as is the case under normal circumstances) must be proved. Even though the general principle is that one cannot prescribe against the State, a lapse of one-third of a century could give prescriptive title adverse to the State. The burden of proving prescriptive title falls on the person who institutes the action.

Owner's Right of Action

Res Vindicatio (vindicatory action) is an action available in Common Law whereby an owner of property can eject persons found on land without the owner's permission.

On application of this principle, even persons who come onto land innocently, believing that such land is theirs or some other's, can be ejected. One can ask the court for a declaration of title in favour of the plaintiff to the land in question. A plaintiff can also claim damages for loss or destruction caused by defendants, for trespass and for the cost of removal of structures that were erected without the owner's permission.

Where a non-owner effects improvements to property, it is inequitable for owners to acquire ownership without reimbursing for improvements. A person effecting improvements has the right to make a claim for necessary improvements.¹²⁹ A person possessing property in the belief that it is his own can remove ornamental improvements or be compensated for them. But a person who effects improvements with the knowledge that he is not the owner cannot make a claim. A Bona Fide possessor can make a claim for useful improvements (improvements made to land which are useful and add commercial value to the property). A non-owner effecting improvements can sue for compensation or retain possession till he is compensated.

Prescription, proof of superior title, and the fact that land belonged to a third party are defenses to an action Res Vindicatio.

d. Possession

Possession is one of the aspects of ownership. However, the possessor and owner or person holding legal title to a given property need not be the same person. Both persons have rights in law.

A person who is dispossessed can file a possessory action within one year and one day of being dispossessed to be restored in possession. A plaintiff who has been ousted is not required to prove any title. All that must be proved is that the plaintiff was in exclusive possession of the property at the time he was ousted, that he was ousted and that the ouster was unlawful.

Primary Courts Procedure Act

According to section 69, a person who is not the owner but has been in possession of a property for 2 months before filing an application to court claiming possession or who has been dispossessed of a property is entitled to possession of such property if such application is filed within 2 months.

Where a decision of the Primary Court is not in favour of the owner in such an application, the owner can file an action in a District Court to get the title declared in his favour.

e. Inheritance

One can dispose of the entirety of one's estate (movables and immovables) as one wishes by executing a legally valid will. For a will to be legally valid, it must conform to criteria set out in the Wills Ordinance.¹³⁰ Accordingly, a will must be in writing, signed by the person making it and attested by two witnesses and a notary, none of whom should benefit from the will. In the absence of a notary, the will can be attested by five witnesses, all of whom must be present at the same time.

The Wills Ordinance applies to all persons and supersedes the application of personal laws where a will has been made. Persons making a will should be legally recognized as having capacity to do so and should be acting on their own free will and with full knowledge.

If a person dies without leaving a will, inheritance is governed by general law, Muslim law, or the Tesawalamai law, depending on the law to which that individual is subject.

Intestacy – General Law

If a person governed by general law dies without leaving a will, that person's property, both movable and immovable, will devolve on the spouse and children. Thus, one half of the person's property will pass on to the spouse and one half will be divided equally among all the children. Illegitimate children, however, will be entitled only to the mother's property. In the event both spouses are dead, the property will be devolved on all the children equally.

If there is no spouse and no children, the parents of the deceased inherit the entire estate.

Intestacy – Muslim Law

The Muslim law of inheritance applies where a person governed by Muslim law dies without leaving a will. To be governed by Muslim law, the parties must have contracted a valid marriage according to Muslim law. A valid marriage in Muslim law is one between two Muslims or where one party to the marriage is Muslim and the other is Christian. Where the non-Muslim party to the marriage is not Christian, Muslim law would govern the marriage only if the non-Muslim person converts to the Islamic faith.

According to the Muslim law of inheritance, the mother, father, spouse and children are all entitled to inherit from the deceased. However, the shares allotted to the heirs differ. Shares allotted will also depend on the sect to which one belongs. Under Muslim Law, illegitimate children do not inherit from either the father or mother.

Intestacy and Other Principles – Law of Tesawalamai

In the absence of a will, the Tesawalamai law regulates inheritance rights for Tamil inhabitants of the Northern Province. To qualify as a Tamil inhabitant, one has to prove that, at the time of marriage, one intended to establish one's permanent home in the Northern Province. On marriage and during the subsistence of the marriage, the personal law applicable to the husband governs women. As such, women not governed by Tesawalamai are subject to it throughout the duration of the marriage. However, a man not governed by the law of Tesawalamai who marries a woman who is governed by it will not be subject to this law.

The Tesawalamai law also applies to all land situated within the Northern Province. The territory of the Northern Province as envisaged in this law is almost equivalent to the bounds of the current Northern Province, which includes Jaffna and Mannar. The law of Tesawalamai also applies to land outside the Northern Province belonging to persons subject to Tesawalamai. The Tesawalamai law distinguishes between different kinds of property, such as: property acquired by spouses during the marriage and profits arising out of such property (Thediathettam); dowry property (Chidenam); inherited property from maternal side (Mudusam); and inherited property from the paternal side.

Where there is no will, a spouse is entitled to one half of the deceased spouse's share of acquired property with the remainder divided equally among all the children. In the absence of children, the property is divided among the parents; in the absence of parents, it will be divided among the siblings.

Tesawalamai contains different principles on intestacy and rights of spouses and children to each other's property depending on the category in which property is classed. For instance, the mother is entitled to properties that devolved from her side of the family while the father is entitled to property that devolved from his side of the family. Children are entitled to equal shares of the remaining classes of property. In the event that there are no children, other classes of property will be divided among parents; in the absence of parents, among the siblings. Illegitimate children can only inherit from the mother.

Other principles from the Law of Tesawalamai that are relevant to land and property include:

- ◆ The law of pre-emption applies to all property situated within the Northern Province and to property outside the Northern Province belonging to persons subject to Tesawalamai. Accordingly, one must offer to sell all property to co-owners and heirs at the stated price before offering it to others.
- ◆ A woman cannot manage affairs relating to immovable property except with her husband's written consent. If her husband unreasonably withholds consent, is in prison or is missing, the woman can apply to a court for permission to manage the immovable property.
- ◆ Tesawalamai applies to Otta mortgages and Tesawalamai servitudes.
- ◆ Tesawalamai applies to certain types of contracts such as cattle and animal hiring, land purchases and sale.

Tenancy

A person can enter a tenancy by taking possession of a house or flat in return for payment of rent. The rights and obligations of the property owner and tenant vary according to whether the tenancy is governed by the Rent Act¹³¹ or exempted from its application.

Properties exempted from the application of the Act include properties constructed after 1980, properties occupied by the owner until 1980 and rented after that date, and properties rented to foreigners (Section 2 of the Rent Act). Such properties can be rented out on terms and conditions as agreed to by the parties. If the tenancy is for a fixed term, it cannot be terminated before the conclusion of the stated period except by mutual agreement or due to a breach of agreement by one party. If the tenancy is not for a fixed term, the tenancy can be brought to an end by giving one-month notice to the other party.

Under certain circumstances, persons can succeed to a tenancy. For instance, when a tenancy is for a fixed period and the tenant dies prior to the expiry of that period, the tenancy continues for the benefit of the heirs of the deceased until the end of the period. However, if the agreement is a monthly tenancy, the tenancy continues until the end of the month.

Rent for properties governed by the Rent Act cannot exceed the rent authorised by the Rent Board. A property owner or tenant who wishes to vary rent must apply to the Rent Board. A tenant can carry out repairs in the event that the property owner fails to carry them out. In this case, the tenant is entitled to be reimbursed for expenses incurred.

Ejectment of tenants is also governed by the Rent Act. The rules vary according to whether the rent is more or less than Rs 100. In the case of properties where the rent is more than Rs 100, the grounds for ejectment are as follows: the tenant has failed to pay over one month's rent; the property owner needs the house as a residence or for trade or business purposes; and the property owner has deposited 5 years' rent with the Commissioner of National Housing as payment to the tenant. The property owner is also entitled to eject the tenant when the premises have been sublet without the consent of the landlord or where the tenant fails to occupy the premises for more than 6 months where such premises are for residential purposes. A residential premises used for a business purpose amounts to non-occupation as a residence and entitles the property owner to eject the tenant.

In the case of properties rented prior to 1972, the surviving spouse and children, as well as brothers and sisters who were dependents of the deceased tenant and who were members of the deceased's household 3 months prior to the tenant's death, are entitled to succeed to the tenancy.

If the tenancy is in relation to business premises, the surviving spouse, children, business partner, heir and executor are entitled to succeed to such property where the said persons continue to carry on the business of the deceased tenant.

If there is more than one claimant to the tenancy, such claimants must apply to the Rent Board for a determination. A notice to quit sent by a property owner to a tenant before his/her death will not bind any of his successors.

In the event that the property owner dies, the tenant must recognise the new property owner. If the tenant fails to do so s/he will forfeit the protection afforded by law to a tenant and could be ejected as a trespasser.

Other Principles Pertaining to Private Property

A number of other principles pertaining to private property are relevant to the land and property issues potentially facing IDPs.

Demarcation of Boundaries

The demarcation of boundaries is governed by both Roman Dutch Law and statute law. According to the Roman Dutch Law, it is each owner's duty to ascertain boundaries. The scope and procedures, however, are set out in statutory and case law. The Boundaries Ordinance¹³² lays out procedures for the protection of one's own boundaries. Accordingly, the owners should produce the title deeds to the GA. If the title deed is absent, the GA can cause a survey to be conducted, paid for by the claimant, and grant a certificate saying that the state has no claim to it. Sections 11 and 12 set out that disputes arising should be settled through arbitration. Further, the statute makes it an offence to interfere with a demarcated boundary. An action for violation can be filed according to the provisions of the Civil Procedure Code. Prior to the definition of boundaries, the plaintiff has the right to obtain an injunction to restrain an occupier from using it.

Money Transactions

The Money-Lending Ordinance¹³³ provides for the better regulation of money lending transactions. This Ordinance gives a court power to re-open money transactions where a

transaction is considered unconscionable and grant relief to the debtor (Section 2). The court will investigate the money transaction where payment to be made by the debtor is excessive and unfair, the transaction was induced by undue influence, or the security taken by the lender was fictitious. Transactions of banks and licensed pawnbrokers are exempted from the application of this Ordinance.

Claims for Damages

On application of the Law of Delict, a claim for damages for a breach of a duty imposed by law can be made by a person to whom such duty was owed. Breach of duty in case of property or wrongs against property include trespass and interference with contracts, trade business or employment. For an action for damages, the duty should be one owed to the plaintiff by the defendant. If the breach of the said duty is proved to the satisfaction of court, the defendant will be liable for damages caused to plaintiff.

To make a claim for damages on the grounds of trespass, the claimant has to prove that the trespass caused damage to property or that it is a false claim of right in circumstances where it amounts to an injury.

Damages are measured according to patrimonial loss and are quantified with the assistance of specialists such as valuers.

8.2 State Property

All state land and property is governed by statutory law, as modified by subsidiary regulations and internal regulations of the Ministries Gazette notification. The following types of land are considered to be state land: land to which the state is entitled, land which may be alienated by the state, and land vested in the Land Reform Commission and certain other defined corporate bodies. This section outlines how the Thirteenth Amendment's devolution of power affected land, property, and rehabilitation issues, and some important statutes regarding state land and property.

Thirteenth Amendment

The Thirteenth Amendment to the Constitution was introduced in 1987 in an attempt to devolve and delegate certain powers of the government to the Provincial Councils. The Amendment sets out the subjects that fall under the government and the Provincial Councils' powers in three lists: the Provincial Council List, the Reserved List and the Concurrent List. Those matters in the Provincial Council List, Reserved List and Concurrent List fall under the purview of the Provincial Councils, the government, and both the Provincial Councils and the government, respectively.

Even though the Provincial Councils have powers to make a final decision on matters falling under the Provincial Councils list, the central government has overriding powers on all devolved subjects. Therefore, even though land, rehabilitation, reconstruction and other related matters fall under the purview of the Provincial Councils, in effect it is the central government which makes the final decision on all matters. Furthermore, even where Provincial Councils have decision making powers, in practice, the central government exercises de facto control due to the financial dependency of the Provincial Councils on central government.

Some of the subjects dealt with under the Thirteenth Amendment are land, rehabilitation, reconstruction and other related matters.

Land (List I & Appendix II of the 13th Amendment)

Rights in or over land, land tenure, transfer and alienation, land use, land settlement and land improvement fall under the purview of the Provincial Council in which the land is situated. However, state land continues to vest in the Republic and may be disposed of following proper procedures whereby the disposition is under the seal of the President of the country. Hence, even when a Provincial Council wants to alienate or dispose of state land, such can only be done under the seal of the President. Further, land development projects and irrigation projects are the responsibility of the government and therefore the administration and management of such projects are the duty of the government.

According to the provisions of the Amendment, where the distribution of allotments of land is required, it will be completed on the basis of national ethnic ratios. Distribution of allotments of land are to be made as far as possible so as not to significantly disturb demographic patterns of the Province and in accordance with the principles of ensuing community cohesiveness in settlements. Further, when land is distributed under various projects, priority will be given first to those displaced by the project, then to the landless of the district in which the project is implemented, and finally to the landless of the province.

The Appendix of the Provincial Council List establish a Land Commission. This body, which also includes members of the Provincial Council, is responsible for the formulation of the National Land Policy with regard to the use of state land. Powers of the body are exercised by the Provincial Council of the individual province. However, no Land Commission has yet been set up.

Property

Both the government and the Provincial Councils have powers of acquisition and requisition of property.

Social Services and Rehabilitation

Reorganisation of civil life, including the provision of relief, rehabilitation and resettlement of displaced persons, is the responsibility of the government and the Provincial Councils. Both the government and the Provincial Councils also must take care of the restoration, reconstruction and rehabilitation of towns, villages, public institutions and property, industries, business places, religious places and other property that has been destroyed or damaged. Granting of compensation or relief to persons or institutions who have sustained loss or damage is also the responsibility of the government and the Provincial Councils.

Statutory Law

The following is an overview of various statutes that govern issues of state acquisition and disposal of land and property. Although all of these statutes have been enacted and are on the books, some are not widely implemented and therefore only briefly described.

Land Acquisition Act¹³⁴

The Land Acquisition Act is used by the state to acquire land for a public purpose, including agriculture (Section 2). The procedure for acquisition is stated in the Land Acquisition Act even when land is acquired under other statutes.

Land Reform Law¹³⁵

This law, which provides for the establishment of the Land Reform Commission (Section 2), puts a ceiling on the extent of agricultural land that private individuals can hold (Section 3). The excess land vests in the LRC and is held on a statutory lease (Section 5). This land is used by the state to increase productivity and employment. Owners are provided with compensation for the land that is used by the state (Section 28).

Requisitioning of Land Act¹³⁶

Under this Act a competent authority, as defined in the Act, can, with the approval of the President, take possession of any land for certain specified purposes (Section 2). Such specified purposes include maintenance of essential supplies and services to communities, use or occupation by the armed forces or any visiting forces, and other purposes (Section 2). The police are authorised to use force as may be reasonably necessary to secure such land (Section 2). Compensation, as set out in the Act, will be paid for the land so taken (Section 5).

Land Resumption Ordinance¹³⁷

This Ordinance provides for the state to take back land that has been alienated by the state and subsequently abandoned by the owners for 8 years or more (Section 2). However, the state can take back such land only after having exercised due diligence to find the owner (Section 2). A notice to the effect that a particular piece of land will be taken over also must be posted in a conspicuous place on the land (Section 2).

Land Grants (Special Provisions) Act¹³⁸

This statute provides that land already vested in the LRC is to be vested in the state, thus enabling such lands to be transferred (free of charge) to the landless (Section 2,3). The Land Commissioner implements these provisions. Under this Act, the President may, by an instrument of disposition, grant land to any citizen of Sri Lanka who does not own any land and who has the capacity to develop such land (Section 3). This land will be transferred only after being surveyed, and the instrument of disposition must be registered with the GA (Section 8). The transfer is subject to certain conditions (Section 5). The grantee may nominate a successor on his death ((Section 9).

Land Development Ordinance¹³⁹

The Land Development Ordinance appoints the Land Commission and provides for the implementation of its provisions through the Land Commissioner (Section 3). This Ordinance provides for the systematic development and alienation of state land and provides for the issuing of Permits and Grants of land to deserving persons. Ownership of land so granted can be reverted back to the state (Section 85).

The procedure of granting land begins with a person first obtaining a permit to occupy state land. In order to obtain a permit any person may apply to the Divisional Secretary. Even though the original LDO states that a certain amount of money must be paid in order to obtain a permit, subsequent internal circulars have removed with this clause.

A Permit can be converted to a Grant after the permit holder fulfils the following criteria, as stated in the Permit:

1. Develops the land occupied to the satisfaction of the GA;

2. Within the time specified in the Permit, erects upon the land a house, toilet and fence and maintains them in a satisfactory manner;
3. If the land is for cultivation, clears and cultivates the land as set out in the schedule of the permit;
4. Resides upon the land, for at least 3 years if it is farmland and at least 1 year if it is for housing;
5. Adopts measures for soil conservation of the land;
6. Is a citizen of Sri Lanka.

Certain conditions are also attached to the Permit. The Permit holder may only erect upon the land structures specified in the Permit; anything else can be constructed only after obtaining prior permission from the GA. The Permit can be cancelled if the Permit holder has not developed the land or for breach of stipulated conditions. Where a Permit is cancelled, the Permit holder cannot make a claim for compensation for the deprivation of property.

Once the Permit has been converted to a Grant, the grantee cannot divide the plot further and cannot transfer the land without prior permission of the GA. Land Grants must be registered at the Land Registry in the same manner as any other title transfer. Land that has been granted can only be taken back by the state under the Land Acquisition Act.

Under provisions of the Land Development Ordinance, no person can acquire prescriptive title to land because he has been on that land by virtue of Permits (Section 161). Any person who encroaches on state land without the permission of GA is guilty of an offence. Any person who encroaches on land which has been alienated under the LDO on a Permit shall also be guilty of an offence (Section 168).

Proposed Lands Ownership Act of 2002

The government hopes to introduce the “Land Ownership Bill” to Parliament, which will become the “Lands Ownership Act” if enacted by Parliament. The Act will apply to the Divisional Secretaries Divisions and Grama Niladhari Divisions as specified by the Minister under Gazette Notifications. The Act will be applied to all Grants and transfers of land under the Land Development Ordinance and the Land Grant (Special Provisions) Act. Under the proposed Act, the existing restriction to sell land transferred by a Grant will be removed, enabling a legal grantee to transfer land free of encumbrances. Further, the proposed Act would establish a Land Alienation Board to facilitate the transfer of land.

State Lands (Recovery of Possession) Act¹⁴⁰

The State Lands (Recovery of Possession) Act provides for the recovery of possession of state lands from unauthorised possessors or occupiers and matters connected therewith. A competent authority, as defined in the Act, has the powers to serve notice on any unauthorised possessor or occupier of state land to vacate (Section 3). Where such possessor or occupier cannot show cause as to why s/he should not be ejected, such person is ejected from the land (Section 11). This Act further states that the provisions of the Act shall have effect notwithstanding anything contained in any other written law (Section 17).

State Lands Ordinance¹⁴¹

The State Lands Ordinance provides for Grants, leases, and other dispositions of state lands, as well as management and control of such lands (Section 2). The President has the

power, on behalf of the country, to make absolute or provisional Grants of State land, sell, lease or dispose of State land in any other fit manner (Section 2). Under the provisions of the ordinance, Permits for occupation of State land can also be issued. The Ordinance further provides the President, on behalf of the state, the power to accept the surrender of any land (Section 3). Where land is vested on local authorities by the state, the local authorities have the powers of granting land or leases.

Agrarian Services Act¹⁴²

The Agrarian Services Act provides for security of tenure to tenant cultivators¹⁴³ of paddy lands (Section 2,5). The Act also provides procedures for the eviction of the tenant cultivator (Section 6).

State Lands Encroachments Ordinance¹⁴⁴

This ordinance, which is not widely used, provides for the prevention of encroachments upon state land. The District Court is authorised and required to make an order directing a party to vacate land where such person without permission of the government has entered upon or taken possession of state land.

9 INSTITUTIONAL FRAMEWORK: LAND & RESETTLEMENT

Ministry of Lands

A number of Departments come under the Ministry of Lands and are briefly described below.

Department of Land Settlement¹⁴⁵

The role of the Department is to determine through investigations whether a particular plot of land is private or state owned. If state owned, the information is passed onto the Land Commissioner (see below). If private owned, the information is passed onto the Minister of Lands who publishes the details in the Government Gazette. This Gazette notification can be used as proof of ownership.

The Department does not currently work in the North-East.

Land Titling and Related Services Project¹⁴⁶

The Project aims at converting the registration of property from deeds to titles as deeds registered at the Land Registries do not constitute proof of ownership and therefore threaten security of tenure of private owners. The project further aims at granting freehold titles to persons currently using State lands, thus removing restrictions on the sale of such lands.

This World Bank funded pilot project is taking place in three areas, Balangoda, Divulapitiya and Udalapalatha, and should be completed by 2004. Since 1999, 9,895 title certificates have been issued.

Survey Department¹⁴⁷

The Survey Department is commissioned by the Government to undertake land surveys when the authorities wish to grant land or acquire land. There is no island-wide land survey; instead, surveys are carried out in certain areas at the request of Government Departments. The Survey Department also has regional offices, many of which have been damaged in the North East due to the conflict.

Land Use Policy and Planning Division

The Land Use Policy and Planning Division has been creating a Land Bank Database for the past 3 or 4 years. It does not however cover the North East.

Land Reform Commission¹⁴⁸

The Land Reform Commission (LRC) was set up in 1972 with the mandate to acquire privately held land in excess of 50 acres. The land thus vested with the Commission was to be alienated through leases to individuals and companies or for village expansion. The LRC has 17 District offices country-wide.

Land Commissioner¹⁴⁹

Until 1989, the Land Commissioner was the custodian of all State land. Following the enactment of the Thirteenth Amendment to the Constitution, many of the powers of the Land Commissioner were devolved to Provincial Land Commissioners. The Land Commissioner is responsible for obtaining Presidential agreement to alienate State land under the Land Development Ordinance, the State Land Ordinance and the Land Grants (Special Provisions) Act. The Land Commissioner and the Provincial Land Commissioners are represented at Divisional Secretariats by Land Officers.

Relevant Ministries

The three main Ministries with a direct bearing on assistance to IDPs are the Ministry of Rehabilitation, Resettlement and Refugees (MRRR), the Ministry of Eastern Development and the Ministry for Assisting Vanni Rehabilitation. The Ministry of Rehabilitation, Resettlement and Refugees is responsible for IDPs island-wide. However, the Ministry has channelled much of its rehabilitation, return and relocation programmes onto the Northern Province through RRAN. The Ministry of Eastern Development, is mandated only for return, relocation and rehabilitation in the Eastern Province. It delivers its services through REPPIA. It does however also assume responsibility for Northern Muslim IDPs currently residing in Puttalam, Anuradhapura and Kurunegala. The lack of collaboration between the two above mentioned Ministries may have negative consequences for Northern Muslim IDPs who will require assistance from both Ministries. The Ministry Assisting Vanni Rehabilitation is also engaged in assisting Northern Muslim IDPs as well as facilitating rehabilitation of the Northern Province. Its distinct role and scope of action remain unclear. In addition, a RRR Secretariat has been established at the Prime Minister's Office focusing on policy design.

Sub Committee on Immediate Humanitarian and Rehabilitation Needs in the North and East¹⁵⁰

Following the second session of the first round of Peace Talks held at Rose Garden in Thailand between 31 October and 3 November 2002, the LTTE and the Government agreed to establish a Sub Committee on Immediate Humanitarian and Rehabilitation Needs in the North and East.

The role of the Sub Committee on Immediate Humanitarian and Rehabilitation Needs is to:

- ◆ Identify humanitarian and rehabilitation needs
- ◆ Prioritise implementation of activities to meet these needs

- ◆ Decide on the allocation of the financial resources for such activities
- ◆ Determine implementing agencies for each of the activities

The Sub Committee would include involve all ethnic communities and would be composed of 4 representatives of the Government and of the LTTE. Mr. S.P. Thamilchelvan and Mr. Bernard Goonatilleke lead SIHRN.

Sub Committee on De-escalation and Normalization

The Sub Committee on De-escalation and Normalization was formed following the second session of the first round of the Peace Talks to address the issue of high security zones and other areas made inaccessible to the public, with the aim of ensuring the resettlement, the return of private property and the resumption of economic activities in these areas. Following the fourth session of the first round peace talks, the SDN was deactivated, leaving the issue in limbo. The parties agreed, however, on an Action Plan for the Accelerated Resettlement of the Jaffna District, which will look into the vacating of areas in the vicinity of High Security Zones. Disputes over occupation by the Armed Forces is presently resolved at District Level.

Eastern Province Committees

Following the fifth session of the first round of peace talks in Berlin, the parties agreed to establish three committees in the Batticaloa, Trincomalee and Ampara Districts to address the issue of the occupation of Muslim agricultural land and to facilitate the return of such lands to their legal owners.¹⁵¹

10 DEVELOPMENT AND LAND USE

This short term study does not examine thoroughly the development policy of the Government of Sri Lanka. Development and land use policies, however, are also crucial factors when studying sustainable resettlement of displaced persons and stand in need of further research.

There is a concern that the current development and land use policy pursued by the Government may hinder the sustainable resettlement of displaced communities, in particular small land holders. We summarise below the main lines of this policy as expounded in the Poverty Reduction Strategy and National Land Use Policy and highlight the potential contradictions between such policies and the durable welfare of returnees.

As part of the Poverty Reduction Strategy drafted by the Government of Sri Lanka (GOSL) and the World Bank, the GOSL committed itself to free trade including, *inter alia*, tax incentives for businesses, labour market reform and privatisation.

“The role of Government in Sri Lanka is changing from being a leading provider of goods and services to being a facilitator of private sector economic activity.” “*Structural change*,” the report adds “or the gradual shift from an economy based on low-productivity subsistence-orientated agriculture to higher-productivity services and industrialization is the primary means by which economic development contributes to poverty reduction.”

To achieve this aim, the Government undertakes to encourage:

- ◆ rural-to-urban migration in areas of low agricultural potential
- ◆ stable and market based trade and price policy
- ◆ more private land ownership through divestiture of surplus state-owned lands and acceleration of freehold titling procedures
- ◆ off-farm employment and rural electrification
- ◆ the Board of Investment to foster agribusiness investment

Future public investments will be aimed at a selection of *strategic infrastructure* initiatives coupled with, wherever possible, private sector participation including the provision of health and education services.

In line with the Poverty Reduction Strategy, the National Land Use Policy of Sri Lanka drafted by the Land Use Policy Planning Division of the Ministry of Land, also aims at encouraging land privatisation.

The draft policy thus states that “[T]he state will move away from a proprietary to a managerial/facilitator role thereby granting outright ownership of land to the people. This will lead to the development of a healthy land market, minimise the role of the bureaucracy and help to increase accessibility to institutional credit”¹⁵²

The following measures are to be taken to encourage private sector investment and participation in land development:

- ◆ long term lease of land in economic units with adequate and environmental safeguards;¹⁵³
- ◆ all marginal and uncultivated lands will be improved and converted to appropriate land uses;¹⁵⁴
- ◆ land vested with state authorities which are unutilised or under-utilised will be made available for development;¹⁵⁵
- ◆ land already alienated to the people under the Land Development Ordinance and Land Grants Special Provisions Law will be granted freehold status by removing the restrictions.¹⁵⁶

The commitment to private market-led economy and industrialisation has wide-ranging consequences for the rebuilding of the North East and the resettlement of displaced persons. In particular, the Poverty Reduction Strategy appears to be aiming at discouraging small land holders from engaging in subsistence agriculture.

According to MONLAR, “among the supportive policies [of the government towards small farmers before 1977] were resettlement of landless peasants under irrigated agricultural settlements in the dry zone, revival of ancient irrigation reservoirs and systems in the dry zone areas, provision of agricultural extension services, Government intervention in supportive marketing of paddy and other agricultural products, production and distribution of good quality certified seeds, fertilizer subsidies, liberal agricultural credit systems, droughts and flood relief, import restrictions on locally produced agricultural commodities, etc.”

A number of legal and policy changes have been, or are in the process of being, introduced which confirm the Government’s aim to reverse prior State intervention in protecting small farmers and to encourage privatisation. These seriously undermine the needs of returnees for State assistance in restarting livelihood. Reforms and amendments of concern include:

- ◆ The Land Development Ordinance is to be amended so as to give beneficiaries the right to sell their land. This is seen by many as a policy which will compel farmers, who are often highly indebted, to sell their land and exit agriculture. Land titling is further thought to be a means to shift the rural population into urban areas, thus freeing land for private investors.
- ◆ Share cropping
A paddy law which used to protect the rights of farmers tilling the land of others was amended by the Agrarian Law, which compels either the landowner or the tenant to buy the land being tilled by the tenant, failing which a Land Bank will buy the land of those farmers who cannot pay.
- ◆ Irrigation policy
In 1996, the World Bank introduced the concept of water property rights. This system requires farmers to pay for water use or gives them tradable water entitlements. The aim appears to be to encourage them to either sell their rights or shift from paddy farming which requires much water to export crops.
- ◆ The Paddy Marketing Board, which marketed rice on behalf of farmers at subsidised rates has ceased to exist. Paddy farmers currently sell their crops as soon as possible, often at disadvantageous prices in order to repay debts incurred due to high production costs. This affects approximately one million paddy farmers.
- ◆ A Seeds Act is being formulated which aims at privatising the sector.

The Government's commitment to ensuring the sustainable return of IDPs to their land and property is contradicted by its policy to encourage rural to urban migration and privatisation. It is doubtful whether private sector participation in rehabilitation of infrastructure, or prioritising reconstruction so as to encourage private investment, will be to the benefit of small land holders. Similarly, durable solutions for landless IDPs in the form of state land grants is endangered by development policies which attempt at urbanising the Sri Lankan workforce.

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ACRONYMS

CFA	Cease Fire Agreement
FDL	Forward Defence Line
FHH	Female Headed Household
GA	Government Agent
GOSL	Government of Sri Lanka
GS Division	Grama Sevaka Division
HSZ	High Security Zone
IDP	Internally Displaced Person
LDO	Land Development Ordinance
LTTE	Liberation Tigers of Tamil Eelam
MRRR	Ministry of Rehabilitation, Resettlement and Refugees
NFRI	Non Food Relief Items
PLOTE	People's Liberation Organisation of Tamil Eelam
RRAN	Rehabilitation and Reconstruction Authority of the North
SLA	Sri Lankan Army
TRO	Tamil Rehabilitation Organisation
UAS	Unified Assistance Scheme
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UXOs	Unexploded Ordnance

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- ¹¹⁰ Interview with Land Registrar, Land Registry, District Secretariat, Trincomalee, 4 December 2002
- ¹¹¹ Interview with Mr Sivapalam, Legal Aid Foundation, Trincomalee, 4 December 2002
- ¹¹² Interview with Ms Rasaratnam, Additional District Registrar, Registrar of Land, District Secretariat, Vavuniya, 30 October 2002
- ¹¹³ Interview with Mr Michael Marriott, Co-ordinator, & Mr Rasanayagam, Field & Research Officer, CORDAID, Mannar, 1 November 2002
- ¹¹⁴ Interviews with Mr Sinham, SEED, Mr Devadasa, FORUT, Mr S.T. Murti, TRO, Mr Uthayan, COMTEC, Ms Sugirtha, NGO Consortium, Sister Rita, CANARA, NGO Consortium, Vavuniya, 30 October 2002
- ¹¹⁵ Interview with Ms Rasaratnam, Additional District Registrar, Registrar of Land, District Secretariat, Vavuniya, 30 October 2002
- ¹¹⁶ Interview with Mr Mohinideen, Project Director, Rehabilitation, District Secretariat, Puttalam, 29 October 2002
- ¹¹⁷ Interview with Mr Kamarudeen, Co-ordinator, Legal Aid Foundation, 28 October 2002, Puttalam
- ¹¹⁸ Interview with Mr Kamarudeen, Co-ordinator, Legal Aid Foundation, 28 October 2002, Puttalam
- ¹¹⁹ Interview with Mr Kamarudeen, Co-ordinator, Legal Aid Foundation, 28 October 2002, Puttalam
- ¹²⁰ Interview with Mr Kamarudeen, Co-ordinator, Legal Aid Foundation, 28 October 2002, Puttalam
- ¹²¹ Interview with Mediation Boards Commission, 16 December 2002.
- ¹²² Interview with Legal Aid Commission, 16 December 2002
- ¹²³ Interviews with Mr Sinham, SEED, Mr Devadasa, FORUT, Mr S.T. Murti, TRO, Mr Uthayan, COMTEC, Ms Sugirtha, NGO Consortium, Sister Rita, CANARA, NGO Consortium, Vavuniya, 30 October 2002

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- ¹²⁴ Interview with P.Balakumar, lawyer, Tamil Eelam District Court, Kilinochchi, 4 November 2002
- ¹²⁵ Registration of Documents Ordinance No 23 of 1927.
- ¹²⁶ Notaries Ordinance No 1 of 1907
- ¹²⁷ Prevention of Frauds Ordinance No 7 of 1840.
- ¹²⁸ Sale of Goods Ordinance No 11 of 1896.
- ¹²⁹ Necessary improvements means those that are necessary to keep the land in good condition and repairs to building and general maintenance of the land. Judicial interpretation of necessary improvements could vary from time to time.
- ¹³⁰ Wills Ordinance No 21 of 1844.
- ¹³¹ Rent Act No 7 of 1972.
- ¹³² Boundaries Ordinance No 1 of 1844.
- ¹³³ Money-Lending Ordinance No 2 of 1917.
- ¹³⁴ Land Acquisition Act No 9 of 1950.
- ¹³⁵ Land Reform Law No 1 of 1972.
- ¹³⁶ Requisitioning of Land Act No 33 of 1950.
- ¹³⁷ Land Resumption Ordinance No 4 of 1887.
- ¹³⁸ Land Grants (Special Provisions) Act No 43 of 1979.
- ¹³⁹ Land Development Ordinance No 19 of 1935.
- ¹⁴⁰ State Lands (Recovery of Possession) Act No 7 of 1979.
- ¹⁴¹ State Lands Ordinance No 8 of 1947.
- ¹⁴² Agrarian Services Act No 58 of 1979.
- ¹⁴³ Section 2 (1): Where any person is the cultivator of paddy land let to him under any oral or written agreement he is the tenant cultivator of that land.
- ¹⁴⁴ State Lands Encroachments Ordinance No 12 of 1840.
- ¹⁴⁵ Interview with Mr Withange, Commissioner, Department of Land Settlement, 17 October 2002
- ¹⁴⁶ Interview with Mr Buddhesena, Land Titling and Related Services Project, 10 October 2002
- ¹⁴⁷ Interview with AP Ariyaratna, Additional Surveyor General, 16 October 2002
- ¹⁴⁸ Interview with Chairman, Land Reform Commission, Colombo, 22 October 2002
- ¹⁴⁹ Interview with Mr Pathirana, Land Commissioner, Colombo, October 2002
- ¹⁵⁰ 'Significant steps to restore normalcy, improve security and address political matters,' 3 November 2002, Statement of the Royal Norwegian Government, www.peaceinsrilanka.org
- ¹⁵¹ 'Committees to facilitate the return of occupied Muslim Agricultural Land,' Press Release, SCOPP, 20 February 2003
- ¹⁵² II National Land Use Policy of Sri Lanka, Land Use Policy Planning Division, Ministry of Land
- ¹⁵³ II.7 National Land Use Policy of Sri Lanka, Land Use Policy Planning Division, Ministry of Land
- ¹⁵⁴ I.5 National Land Use Policy of Sri Lanka, Land Use Policy Planning Division, Ministry of Land
- ¹⁵⁵ II.12 National Land Use Policy of Sri Lanka, Land Use Policy Planning Division, Ministry of Land
- ¹⁵⁶ II.2 National Land Use Policy of Sri Lanka, Land Use Policy Planning Division, Ministry of Land

ANNEX I: LIST OF INTERVIEWEES

NGOs, INGOs, Civil Society & UN Agencies

- ◆ Sarath Fernando, Secretary, MONLAR, Colombo, 10 October 2002
- ◆ Alex van Roy, Chief Technical Assistant, Camilla Madsen, Technical Adviser for Mine Risk Education, UN Mine Action Group, Colombo, 11 October 2002
- ◆ Michael Lindenbauer, Senior Protection Officer, & Mr Brendan Peace, Associate Protection Officer, UNHCR, Colombo, 15 October 2002
- ◆ Ms Camena Guneratne, Senior Lecturer, Department of Legal Studies, Open University, Colombo, 16 October 2002
- ◆ Mr James Breen, Emergency Co-ordinator, FAO, Colombo, 21 October 2002
- ◆ Mr N. Shanmugaratnam, Professor of Development Studies, Agricultural University of Norway, Colombo, 26 October 2002
- ◆ Mr M.M. Nizar, Programme Officer, & Ms Emanuel Jaya, Field Officer, RDF, Puttalam, 28 October 2002
- ◆ Mr Kuwaiz, Program Officer, & Mr Abdul Kalam, Program Consultant, Community Trust Fund, Puttalam, 28 October 2002
- ◆ Moulavi B.A.S. Sufyan, Secretary, Northern Muslims' Organization, Puttalam, 28 October 2002
- ◆ Mr Jim Worrell, UNHCR, Vavuniya, 30 October 2002
- ◆ Mr Sinham, SEED, Mr Devadasa, FORUT, Mr S.T. Murti, TRO, Mr Uthayan, COMTEC, Ms Sugirtha, NGO Consortium, Sister Rita, CANARA, NGO Consortium, Vavuniya, 30 October 2002
- ◆ Mr Abdul Kogani, UNHCR, Mannar, 1 November 2002
- ◆ Mr Michael Marriott, Co-ordinator, & Mr Rasanayagam, Field & Research Officer, CORDAID, Mannar, 1 November 2002
- ◆ Mr Kahin Ismail, Protection Officer, UNHCR, Mallavi, 3 November 2002
- ◆ Mr Luke Atkinson, Senior Operational Advisor, Norwegian People's Aid, & MAG, Kilinochchi, 4 November 2002
- ◆ Mr Lawrence Tilakar, TRO, Kilinochchi, 4 November 2002
- ◆ Ms Morgan Morris, Mr Bala, Mr Agorn Dragaj, Mr Rafael, UNHCR, Jaffna, 8 November 2002
- ◆ Mr Basheer Mohamed, President, & Mr Mubdeen, Displaced North Muslim Organisation, Jaffna, 8 November 2002
- ◆ Mr Kamalada, President, NGO Consortium, Batticaloa, 2 December 2002
- ◆ Mr David Del Conte, UNHCR, Batticaloa, 3 December 2002
- ◆ Father Miller, Batticaloa, 3 December 2002
- ◆ Ms Rochelle Brown, UNHCR, Trincomalee, 4 December 2002

Officials

- ◆ AP Ariyaratna, Additional Surveyor General, Survey Department, Ministry of Lands, Colombo, 16 October 2002
- ◆ Mr Withanage, Commissioner, Department of Land Settlement, Ministry of Lands, Colombo, 17 October 2002
- ◆ Mr Buddhesena, Land Titling and Related Services Project, Ministry of Lands, Colombo, 10 October 2002
- ◆ Chairman, Land Reform Commission, Colombo, 22 October 2002
- ◆ Mr Pathirana, Land Commissioner, Colombo, October 2002
- ◆ Mr Abul Majid Kamarudeen, Co-ordinator, Legal Aid Foundation, Puttalam, 28 October 2002
- ◆ Mr Jayalath Dissanayake, Government Agent, & Mr Mohinideen, Project Director, Rehabilitation, District Secretariat, Puttalam, 29 October 2002
- ◆ Ms Rasaratnam, Additional District Registrar, Registrar of Land, District Secretariat, Vavuniya, 30 October 2002
- ◆ Ms Ketheswaran, Project Director, Rehabilitation, District Secretariat, Vavuniya, 30 October 2002
- ◆ Mr Balendran, Land Officer, Vavuniya Divisional Secretariat, Vavuniya, 30 October 2002
- ◆ Mr A. Francis, Land Officer, Mannar Divisional Secretariat, Mannar, 1 November 2002
- ◆ Mr Pathinathan, Project Director, Rehabilitation, District Secretariat, Mannar, 1 November 2002
- ◆ Mr Edward, Co-ordinator, RRAN, District Secretariat, Mannar, 1 November 2002
- ◆ Mr Vishwalingam, Government Agent, District Secretariat, Mannar, 1 November 2002
- ◆ Mr Rajanayagam, Government Agent, District Secretariat, Kilinochchi, 4 November 2002
- ◆ Ms Selvarajah, Land Registrar, District Secretariat, Kilinochchi, 4 November 2002
- ◆ Grama Niladhari, GS Divisions 401 & 403, Point Pedro, Jaffna District, 7 November 2002
- ◆ Mr Sathasiv Jyer, Registrar of Lands, District Secretariat, Jaffna, 7 November 2002
- ◆ Project Director, Rehabilitation, Assistant Project Director (Relief), Assistant Project Director (Resettlement), District Secretariat, Jaffna, 7 November 2002
- ◆ Human Rights Commission, Jaffna, 8 November 2002
- ◆ Mr Howsalyan, LTTE Political Wing Leader, Batticaloa-Ampara District Secretariat, Kokodichcholai, 2 December 2002

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- ◆ Mr V. Shanmugam, Additional Government Agent, Batticaloa District Secretariat, 2 December 2002
 - ◆ Mr Dayabaran, Project Director, Ministry of Eastern Development and Muslim Religious Affairs, Sub-Office, Batticaloa District Secretariat, 2 December 2002
 - ◆ Mr M. S. Basheer, Ministry of Eastern Development and Muslim Religious Affairs, Sub-Office, Batticaloa District Secretariat, 2 December 2002
 - ◆ Land Registrar, Land Registry, District Secretariat, Batticaloa, 2 December 2002
 - ◆ IDP Project Officer, Human Rights Commission, Batticaloa, 3 December 2002
 - ◆ Land Registrar, Land Registry, District Secretariat, Trincomalee, 4 December 2002
 - ◆ Land Officer, Divisional Secretariat, Trincomalee, 4 December 2002
 - ◆ Mr Puvendran, Project Director, Ministry of Eastern Development and Muslim Religious Affairs, Sub-Office, Trincomalee District Secretariat, 4 December 2002
 - ◆ Mr Sivapalam, Legal Aid Foundation, Trincomalee, 4 December 2002
 - ◆ IDP Project Officer, Human Rights Commission, Trincomalee, 4 December 2002
 - ◆ Mr Jayaratnam, Secretary, Ministry of Rehabilitation, Resettlement and Refugees, December 2002

Displaced persons, relocated persons and returnees

- ◆ Alankada Relocation village, Puttalam District, 29 October 2002
- ◆ Vepankulam Relocation village, Puttalam District, 29 October 2002
- ◆ Saltern 1 Welfare Centre, Puttalam District, 29 October 2002
- ◆ Saltern 2 Welfare Centre, Puttalam District, 29 October 2002
- ◆ Unit 3, Poonthodam Welfare Centre, Vavuniya District, 30 October 2002
- ◆ Nellukulam Welfare Centre, Vavuniya District, 31 October 2002
- ◆ IDPs in Ganeshapuram, Mannar District, 31 October
- ◆ Pesalai Welfare Centre, Mannar District, 1 November 2002
- ◆ Thotaveli relocation village, Mannar District, 1 November 2002
- ◆ 100 Housing Scheme, Mannar District, 1 November 2002
- ◆ Muslim returnees on the Murunkan & Silavaturai road, Mannar District, 2 November 2002
- ◆ Madhu Church ORC, Mannar District, 2 November 2002
- ◆ T-Madhu Welfare Centre, Mannar District, 3 November 2002
- ◆ IDPs in Kalliyadi, Mannar District, 3 November 2002
- ◆ Vellankulam relocation village, Mannar District, 3 November 2002
- ◆ IDPs in Mallavi Town, Mullaitivu District, 3 November 2002
- ◆ IDPs in Mankulam Town, Mullaitivu District, 4 November 2002
- ◆ IDPs in Kilinochchi Town, Kilinochchi District, 5 November 2002
- ◆ Returnees in Palai, Kilinochchi District, 5 November 2002
- ◆ Returnees in Paranthan, Kilinochchi District, 5 November 2002
- ◆ Muslim returnees, Moor Street, Jaffna, 7 November 2002
- ◆ Returnees in Kopay, Jaffna District, 7 November 2002
- ◆ Returnees, Rajakiramam, Karavedi, Point Pedro, Jaffna District, 7 November 2002
- ◆ Returnees on the beach side, Point Pedro, Jaffna District, 7 November 2002
- ◆ IDPs in Siyambalagaswewa, Anuradhapura District, 10 November 2002
- ◆ 20 Housing Scheme, Panawewa, Anuradhapura District, 10 November 2002
- ◆ Construction workers, Olikulam resettlement scheme, Batticaloa District, 2 December 2002
- ◆ IDPs in Kokodichchola, Batticaloa District, 2 December 2002
- ◆ IDPs in Mylanthanai, Valachanai, Batticaloa District, 3 December 2002
- ◆ IDPs in Vadamunai, Valachanai, Batticaloa District, 3 December 2002
- ◆ IDPs in Ootruchenai, Valachanai, Batticaloa District, 3 December 2002
- ◆ Muslim returnees in Nochchikuday, Batticaloa District, 2 December 2002
- ◆ Sinhalese IDPs in Alioluwa, Trincomalee District, 3 December 2002
- ◆ IDPs in Alles Garden Welfare Centre, Trincomalee, 3 December 2002
- ◆ Sinhalese IDPs in Love Lane Welfare Centre, Trincomalee, 4 December 2002
- ◆ Tamil returnees in Thiriyai, Trincomalee District, 5 December 2002
- ◆ Muslim returnees in Pudavaikattu, Trincomalee District, 5 December 2002
- ◆ Sinhalese IDPs in Mihindupura Welfare Centre, Trincomalee District, 5 December 2002
- ◆ Tamil returnees and Sinhala IDPs in Morawewa, Trincomalee District, 5 December 2002
- ◆ Tamil IDPs in Nilaveli Welfare Centre, Trincomalee District, 5 December 2002
- ◆ Muslim returnees in Kuchchaveli, Trincomalee District, 5 December 2002

ANNEX II: SUMMARY OF RECOMMENDATIONS FROM THE KILINOCHCHI AND COLOMBO PROPERTY RIGHTS WORKSHOPS, UNCHR/HRC & CPA

Following the completion of draft reports, CPA co-organised with UNHCR two workshops in Kilinochchi, on 29 January 2003, and Colombo, on 10 & 11 February 2003, with a view to obtaining critical feedback and to consolidate draft recommendations. Participants included North East and Colombo based civil servants, members of the LTTE and Government judiciary, I/NGOs, UN Agencies, Donors and other civil society representatives.

The proceedings of the workshops are available on the CPA website (www.cpalanka.org). The following are recommendations from the Studies by CPA and UNHCR / HRC, and from the workshops conducted 29 January and 10-11 February 2003:

ASSISTANCE AND UAS:

- Food assistance should be extended beyond the present limit of 6 months, to be studied by SIHRN [Kilinochchi Working Group 1].
- GoSL subsidies on essential items to restart farming and fishing industries [CPA].
- Businesses increase investments in affected areas [CPA].
- GoSL and NGOs provide low interest loans and credit funding to restart livelihoods [CPA].
- GoSL and NGOs provide skills training to restart livelihoods, especially to female heads of households [CPA].
- Restructuring of the LTTE tax schemes [CPA].
- LTTE make public its tax scheme [CPA].
- LTTE prosecute instances of extortion [CPA].
- Increase UAS to Rs. 200,000 / family, to be given in a lump sum [CPA].
- Provide UAS to IDP families who return in phases vs. all together [CPA].
- Distribution of aid to be done in an open and transparent manner [Colombo Working Group 1; Colombo Working Group 4; Colombo Working Group 5; CPA].
- Inform women of financial options available to them [Colombo Working Group 1].
- Establish forward-looking strategies to prevent future displacements [Colombo Working Group 4].
- [I]NGOs survey their programmes to maximise benefits and reduce adverse effects [Colombo Working Group 4].
- Base assistance budgets on IDPs current places of resident vs. homelands [Colombo Working Group 4].
- IDPs be given training in job skills [Colombo Working Group 3].
- Recommend increasing UAS from Rs. 100,000 to Rs. 150,000 / family [Mr. M. Sarvananathan].
- To combat leakage or misuse of funds, recommend distribution of UAS to women in the family [Mr. M. Sarvananathan].
- Increase UAS from Rs. 65,000 to Rs. 100,000, composed of Rs. 25,000 for livelihood and Rs. 75,000 for housing [Colombo Working Group 5].
- Prioritise distribution of UAS to returnees based on need/vulnerable groups [Colombo Working Group 5; CPA].
- Establish a 5-year welfare system for returnees to induce them to resume normal lives vs. returning to Welfare Centres [Comment directed to Colombo Working Group 5].
- GoSL and LTTE agree on financial procedures to fund LTTE projects while avoiding double taxation in the North and East [CPA].
- Urge donors to fund generously the resettlement package, now only sufficient to give an average of Rs. 13,000 / family [CPA].
- Food assessment should be discontinued only following an assessment of the needs of the family and their self-sufficiency [CPA].

DAMAGE TO PROPERTY

- Subsidising building materials for reconstruction [Kilinochchi Working Group 2].
- Return property to pre-conflict conditions [Kilinochchi Working Group 2].
- Establish a labour bank to provide an adequate construction labour pool for reconstruction [Kilinochchi Working Group].
- GoSL subsidise the costs of reconstruction materials and provide low interest loans [CPA].
- LTTE stop taxing building materials [CPA].
- GoSL restore damaged infrastructure [CPA].
- Re-evaluation of reconstruction priorities, placing reconstruction of homes ahead of reconstruction of temples [Mr. M. Sarvananathan].
- Levy a new tax to provide funds for redevelopment and reconstruction of the North and East [Colombo Working Group 5].
- Establish soft loan schemes to help repair war damage [Colombo Working Group 5].
- Priorities be given to reconstruction of schools, hospitals and transport, with incentives given to attract qualified professionals to staff public service institutions [CPA].
- Substantially increase in the amount of GoSL compensation from the proposed amounts of Rs. 50,000-Rs. 100,000, made available as either cash, materials or soft loans [UNHCR / HRC].
- Implementation by the GoSL of a housing scheme and construction of necessary common, community facilities for the reconstruction of destroyed villages [UNHCR / HRC].
- Adoption of a system to accommodate secondary evidence for identification of ownership of property for purposes of granting compensation, material assistance and/or loans [UNHCR / HRC].
- Regular monitoring of utilisation of materials given and compensation paid to reconstruct and repair damaged properties [UNHCR / HRC].
- Implementation of housing schemes in the North and East [UNHCR / HRC].

DISCRIMINATION / BIAS / SPECIAL CONCERNS OF ETHNIC OR VULNERABLE GROUPS

- GoSL offices at the District level must be made aware of the importance of equal treatment to all persons and ethnic groups [Kilinochchi Working Group 3].
- Minority rights must be guaranteed [Kilinochchi Working Group 3].
- Establish a GoSL office in Puttalam to address the needs of Muslim IDPs [Kilinochchi Comments].
- Amend the Land Development Ordinance to allow for joint ownership [vs. ownership by the male head of household] and inheritance therefrom [CPA].
- Provide further assistance to women, including child care, health and reproductive health clinics, financial assistance to women and instituting special efforts to educate women of services available to them [CPA].
- Tracing of parents/relative of orphaned, lost or abandoned children and ascertaining their rights of inheritance [CPA].
- Stakeholders should look to equal rights for women [Ms. Sunila Abeysekera].
- Create a specific legal category for IDPs [Ms. Sunila Abeysekera].
- Look beyond women heads of households; must look to women as persons, farmers, fisherwomen, property owners in their own rights [Ms. Sunila Abeysekera].
- Inheritance by women needs to be addressed [Ms. Sunila Abeysekera].
- Enact gender-neutral civil laws [Ms. Sunila Abeysekera].
- Create legal and policy infrastructure to support women's rights [Ms. Sunila Abeysekera].
- Provide constitutional protection of regional minorities' rights [Dr. D. Rajasingham].
- Adopt a rights-based approach to resettlement, taking into account the needs of women IDPs [Colombo Working Group 1].
- Provide information to women on receiving aid from GoSL and other agencies [Colombo Working Group 1; CPA].

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- Amend laws to allow joint ownership of land [Colombo Working Group 1].
 - Amend laws to allow inheritance to eldest child, regardless of gender [Colombo Working Group 1].
 - Implement flexible, rights-based changes in reform actions with the aim of establishing a more pluralistic society [Colombo Working Group 1].
 - Streamlining the reporting procedures for victims of crime, especially female victims of crime and sexual violence crimes [Colombo Working Group 1].
 - Gender discriminatory provisions of the Land Development Ordinance be abolished [CPA].
 - All relevant actors design assistance programmes to meet the special needs of women, including skills training [CPA].
 - Financial assistance for resettlement be increase and made more flexible, allowing women to hire labour where necessary to clear land and rebuild houses [CPA].
 - Introduction of credit schemes to women and increased accessibility of low interest loans to women or designed to meet the needs of women [CAP].
 - Provide a financial package, identify careers and monitor the welfare of orphans or abandoned children [CPA].
 - Allow for all children to inherit shares of the parents land and not just the eldest son [UNHCR / HRC].
 - Investigation and documentation should be done regarding the relationship of properties to orphaned children [UNHCR / HRC].

DISPUTE RESOLUTION MECHANISMS

- Property rights disputes should be referred to the Courts [Kilinochchi Working Group 1].
- Courts in the North and East should be strengthened in order to handle the anticipated increase in cases by appointment of more judges [Kilinochchi Working Group 1].
- Adequate compensation remedies must be established [Kilinochchi Working Group 2]
- Amend laws to lessen the burden of proof on receiving compensation and lessen the evidentiary requirements for that compensation [Kilinochchi Working Group 2].
- Laws should be amended to follow present procedures followed in the Court, i.e., informal agreements not to plead the Prescription Ordinance [Kilinochchi Working Group 2].
- Establish a Special Land Committee, composed of 2 lawyers and 2 laymen from the local community to resolve property rights issues [Kilinochchi Working Group 3].
- The Special Land Committee or other tribunal must be instructed that it must investigate and render decisions within an absolute time frame, without allowing for extensions or continuances [Kilinochchi Working Group 3].
- Enact legislation setting forth a deadline for the filing of written claims of ownership of property, as was done in the former Yugoslavia [N. Wright, UNHCR, Colombo, Opening Remarks].
- Establish ethnic reconciliation mechanisms at the community level [CPA].
- Establish alternative dispute mechanisms in a 3-pronged approach by: Strengthening existing informal mechanisms used at the village level; extend mediation boards to conflict areas; and establish quasi-judicial Temporary Land and Property Council as the court of first instance, with right of appeal to the provincial High Court. The Temporary Land and Property Council, established by Parliamentary Act and run through SIHRN, shall be to address property rights issues and composed of persons from all 3 major ethnic groups and international members [CPA].
- The Chief Justice and the Judicial Commission must give circulars to the District and High Court judges in the North and East stating that IDP cases should be given priority. Further, Courts must return to the pre-conflict scheme of 2 judges per jurisdiction [The Hon. District Court Judge, Jaffna; Colombo Working Group 6].
- Possibly establishing an Court of Equity with reduced procedural rules [The Hon. Sriskandarajah].
- Reconciliation needs to be placed on the agenda. Need processes for communities to rebuild themselves to work across ethnic differences [Ms. Sunila Abeysekera].

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- Establish multi-ethnic reconciliation programmes that address common problems [Colombo Working Group 4].
 - Use [I]NGOs, CBOs and communities to resolve issues through multi-ethnic community leaders trained in human rights and mediation skills [Colombo Working Group 2].
 - Disseminate information on land distribution already completed and to be done in the future [Colombo Working Group 2].
 - Study existing, village-level dispute mechanisms for possible implementation at a larger scale pending creation of a more formalised, structured, Dispute Resolution mechanism [Mr. D. Anand].
 - Involve the LTTE in any actions to resolve land issues [The Hon. S. Wijeratne].
 - Establish multi-ethnic Mediation Boards in the North and East [The Hon. S. Wijeratne].
 - Establish Arbitration Boards with deadlines of 6 months within which to resolve a case. Have Arbitration Awards registered with the High Court without right of appeal. Empower the Arbitration Board to give title to land [The Hon. S. Wijeratne].
 - Map areas for Alternative Dispute Resolution (ADR) [Colombo Working Group 6].
 - Build capacity of persons on the law and mechanisms of ADR [Colombo Working Group 6].
 - Collect and record complaints, to be monitored by a third party [Colombo Working Group 6].
 - Implement existing Arbitration Boards and Mediation Boards in the North and East [Colombo Working Group 6].
 - Include the LTTE in establishing ADR mechanisms [Colombo Working Group 6].
 - Request the appointment of a judge to Mullaitivu to deal with the LTTE [Comment, Colombo Working Group 6].
 - Donor community, GoSL and LTTE promote informal mediation by strengthening existing initiatives and encouraging creation of further initiatives by providing financial support and training [CPA].
 - Mediation Boards be extended to the North and East and that their powers be extended to avail the Board of the assistance of other relevant bodies that could assist in dispute resolution, such as GAs, Land Registries, Registrars of Persons, Registrars of Births and Deaths, etc. [CPA].
 - The quasi judicial Temporary Land & Property Council be established with the mandate to:
 1. Settle land & property disputes arising out of the conflict, enforceable by the police, ensuring that sustainable solutions are found for those evicted, such as temporary accommodation;
 2. Make recommendations for the allocation of State land to the landless in keeping with Constitutional guarantees of freedom of movement and other human rights principles;
 3. Issue procedures for replacing lost documents - Birth, Marriage, Death Certificates and property documents - binding on the local administration.
 4. Review all contracts/leases which could not reach their full term due to displacement and devise just settlements for affected persons (compensation, alternative buildings and land, etc.); and
 5. Review illegal land alienation and devise just settlements for affected persons (compensation, alternative land, etc.).

Disputants would approach this Council as the Court of first instance and have a right of appeal to the Provincial High Courts only in the event that such Council's decision is *ultra vires* (beyond the scope of the Council's mandate). To ensure impartiality, the Council should be comprised of qualified representatives of all three ethnic groups and members of the international community with expertise on land and property issues. The Sub Committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN) should take the initiative for establishing such a Council [CPA].

- Establishment of an alternative dispute mechanism for the conflict-affected areas comprised of not less than 2 legally-qualified members, preferably retired judicial officers, appointed by the Judicial Services Commission for a specific period. Officers (preferably a degree holder or an equally qualified person) would be appointed to record claims and issue a report to the body. Qualified persons will be recommended for this purpose to do away with the added expense and delay involved in representation on behalf of parties.

In these proceedings, the parties would not be permitted to be represented unless the party is a minor, ill, old or unable to attend without reasonable delay or expenses. Complaints to the body

would be made by a party in person who claims the right, title or interest orally or in writing. In addition, the body itself would be empowered to initiate inquiries to determine disputes.

The alternate dispute resolution body would have the authority to resolve all property disputes irrespective of the value of the claim as well as the authority to issue interim orders for relief, and to recommend alternative accommodation, land or compensation. The body's final determination would be entered with the relevant District Court as a decree of court. A party dissatisfied by the decision of this body, would have the right to challenge the order by way of a writ in the Provincial High Court.

In complex cases involving intricate problems of the law, the body would issue a certificate to the parties to institute proceedings in the District court. A reference of the dispute by this body would be made compulsory to institute proceedings in the District Court (An in-depth study of the powers and the jurisdiction of "Courts of Equity" in other jurisdictions would be helpful.).

The above-described alternative dispute resolution mechanism may not be sufficient to deal with property disputes of a particularly sensitive political nature, ex: One of the parties to the dispute is an armed or a political group, the dispute is between a civilian and the security forces or, the dispute is between persons of different ethnic or religious communities. In these circumstances, and against the background of deep mistrust between the different communities and the difficulty of enforcing settlement, it would be desirable for the dispute to be determined by a committee with international membership perceived by the parties to have neutral standing [UNHCR / HRC].

- Providing allotments of alternate land and compensation for improvements to earlier occupied land to evicted secondary occupants or permit holders who may not continue to occupy the land [UNHCR / HRC].
- Establishing administrative remedies providing the same land or alternative land to the successor of the permit holder who would otherwise not have the right to possession [UNHCR / HRC].

DOCUMENTATION:

- The offices of the Registrar and Kachcheri should be strengthened with increased staff [Kilinochchi Working Group 1].
- The 1995 Special Provision Act should be re-enacted through the offices of the Ministry of Home Affairs [Kilinochchi Working Group 1].
- If an occupier of State land cannot establish title through the District Secretariat or Kaccheri, from use of neighbours' title documents showing his title on the meets and bounds description, or from tenant list, then a team should be appointed to investigate and make findings regarding ownership of land [Kilinochchi Working Group 2].
- If the occupier of private land cannot establish title from the Land Registry, the State should accept an affidavit as proof of ownership for purposes of compensation, provided that a list of claimants be published so as to give notice to the population [Kilinochchi Working Group].
- Establish procedures for re-issuance of lost documents [CPA].
- Grant permits to occupiers of State land who have lost their documentation [CPA].
- Use of affidavits to prove private land ownership, said affidavits to be published at the District Secretariat, the High Commission and the GoSL Website to combat fraudulent claims [CPA].
- Map the land claim process [Colombo Working Group 6].
- Develop standardised, formal formats for use in replacing/issuing documentation [Colombo Working Group 6].
- Design awareness programmes, booklets, seminars, etc., on document issues for use by IDPs but to be distributed island-wide [Colombo Working Group 6].
- Authorities issue without delay all documentation necessary for returnees to return to Sri Lanka [CPA].
- Owners of private property, where no copies of the deed exists, be allowed to submit an affidavit to the District Land Registry claiming ownership, supported by testimonies by competent witnesses (neighbours, Grama Sevakas, etc.) [CPA].

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- Permit or grant holders who have lost their documents and where no copies exists, be allowed to submit an affidavit to the District Secretariat claiming ownership, supported by testimonies by competent witnesses (neighbours, Grama Sevakas, etc.) [CPA].
 - Affidavits establishing title to property should be made public and accessible to allow for competing claimants to come forward. All affidavits should be accessible in District Secretariats and, in view of the large number of refugees and migrants, in High Commissions and on the Government Website. Competing claims should be made to the Land Registries and District Secretariats, who should refer such claims to the Temporary Land & Property Council. The Council should be open to receive competing claims for a period of two years from the reaching of a final political settlement [CPA].
 - In the event the Land Registry Folios are not available to reconstruct title, instruct the Registrar-General to re-construct the folio under the terms of the Land Registers (Reconstructed Folios) Ordinance [CPA].
 - Amendment to the Birth and Death ordinance, allowing the issuance of death certificates in cases where the person's whereabouts are unknown or by re-enacting the Registration of Deaths (Temporary Provisions) Act, No. 2, of 1995 [CPA].

FREEDOM OF MOVEMENT / RELOCATION / INTEGRATION:

- IDPs be allowed to resettle where they chose and prohibitions to this choice found in Appendix 11 to the XIII Amendment to the Constitution should not apply to IDPs [CPA].
- Full respect for freedom of movement and voluntary return of IDPs, to be implemented at the local level [CPA].
- LTTE establish impartial mechanisms to receive and monitor returnees [CPA].
- Establish relocation mechanisms and payment of rent/compensation mechanisms for persons who cannot return to their homes due to military occupation [CPA].
- UNHCR change its policies and Mandate so that persons who do not desire to return home are not asked/forced to return to their homes; returnees should have freedom of movement and the right to chose where they will resettle [Colombo Working Group 3].

HIGH SECURITY ZONES [HSZs]:

- HSZs violate rights to property, impede the return of IDPs and should be removed [Kilinochchi Working Group 3].
- Grant maximum allowable access to IDPs of military zones [CPA].
- Not make grants of access to military zones contingent on proof of ownership [CPA].
- Armed forces to vacate whenever possible properties used as checkpoints or posts [CPA].
- Alternative accommodations should be provided to returnees who are unable to live in their former homes due to Armed Forces occupation or GoSL should consider offering relocation alternatives to affected IDPs [CPA].
- Have Armed Forces provide adequate rent/compensation to all IDPs due to inability to access property or land [CPA].

HOUSING AND ACCOMMODATION:

- SIHRN should study the proposal by the World Bank to provide Rs. 200,000 by loan and donation for housing [Kilinochchi Working Group 1]

LAND BANKS:

- A survey of State lands should be conducted to establish a land bank for landless IDPs [Kilinochchi Working Group 2, Colombo Working Group 4, CPA].
- Establish a land bank with the State publishing availability of State land for resettlement [CPA].

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- Only after surveying available State land and establishing a land bank should a land distribution policy be devised and implemented [Colombo Working Group 3].
 - Extent and location of available lands should be made public and beneficiaries and host communities should be fully involved in the distribution process [CPA].

LAND MINES AND UXO:

- The TRO should be allowed to expand its de-mining activities outside of LTTE controlled areas [Kilinochchi Working Group 1].
- The TRO should be provided increased funding from donor organisations to allow for expanding its de-mining activities [Kilinochchi Working Group 1].
- International community provide de-mining training to international standards to the LTTE in the East and the GoSL forces [CPA].
- Better co-ordination of de-mining activities among stakeholders [CPA].
- Provide mine-risk education to returnees prior to their return to their homelands, seminars to be held in schools, Welfare Centres, Relocation Camps, mass media or other public fora [CPA].
- Increase donations from the donor community to increase the pace of de-mining [CPA].
- Provide rehabilitation to victims of land mines [Colombo Working Group 1].
- Implementation of an insurance scheme to provide protection to occupiers of mined land for compensation for injuries from land mines and UXOs [UNHCR / HRC].

LAND ENCUMBERED BY NOTES AND MORTGAGES

- Where, due to displacement, interest on the note on the land exceeds the capital of the land, suspend the Money Lending Ordinance, the Recovery of Loans by Banks (Special Provisions) Act and the Debt Recovery (Special Provision) Act.

LANDLESS IDPS

- Establish a transit housing scheme for landless secondary occupants [Kilinochchi Working Group].
- Divisional Secretariat should conduct a survey as to the present situation regarding landless IDPs before large-scale returns occur [Kilinochchi Working Group 2].
- Landless IDPs should be given documentation for occupation of State lands [Kilinochchi Working Group 3].
- Construction of family shelters for use by returnees who cannot immediately return to their homes [CPA].
- Landless IDPs be relocated to State lands [Colombo Working Group 4].
- Recommend advocacy on behalf of IDPs with GoSL authorities regarding IDPs plight [Colombo Working Group 3].
- Address unique situation of landless up country Tamils [Colombo Working Group 3].
- Abolish the current, restrictive, GoSL policy and allow landless IDPs to settle at the location of their choice [CPA].

MISSING PERSONS / RELATIVES:

- As the status of a relative may affect property rights, the State has a duty to ascertain the status of the missing relative [Kilinochchi Working Group 3].
- An Act similar to the defunct Registration of Deaths (Temporary Provisions) Act 2 of 1995 be enacted to enable the displaced to obtain death certificates for missing persons [CPA].

MOVEABLE PROPERTY:

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- State should take action for the return of lost moveable property, particularly Sri Lankan fishing boats used to smuggle persons into India [Kilinochchi Working Group 3].

OCCUPATION OF REAL PROPERTY:

- Lands and property should be returned to the owners when requested [Kilinochchi Working Group 1].
- Secondary occupants must relinquish possession of property to the owners [Kilinochchi Working Group 1].
- LTTE should return occupied property to the owner as soon as possible and not conditioned on proof of ownership [CPA].
- LTTE should provide adequate compensation to owners of properties occupied by the LTTE that cannot be returned to the owner [CPA].
- Priority to be given to constructing community buildings to provide shelter to returnees who property is occupied and to evict secondary occupiers of the property [CPA].

PRESCRIPTION ORDINANCE

- Amend Sect. 13 so that the 10-year prescription period does not run against IDPs displaced by the conflict [Kilinochchi Working Group 3].
- Application of Section 3 of the Prescription Ordinance be suspended in the North and East for the duration of the conflict, said suspension commencing 1980 [CPA].
- Operation of Sect. 3 of the Prescription Ordinance be made inapplicable to the North and East or the exceptions listed in Sect. 13 be expanded to include the conflict [UNHCR / HRC].

SECOND GENERATION IDPS

- The rights of secondary generation IDPs [those who were either born or grew up in displacement] must be addressed [Kilinochchi Comments].

SOCIAL IMPACT CONSIDERATIONS

- Priority should be through the GAs' offices and to address the socio-economic impact and co-ordinate information through District groups, data bases, etc. [UNDP].
- Address changes in society that occurred during the conflict when discussing how to return Sri Lanka to the pre-conflict status quo [Dr. D. Rajasingham].
- De-ethnicise and de-politicise local institutions [Dr. D. Rajasingham].
- Include studies on poverty and redistribution of wealth in property rights studies [Dr. D. Rajasingham].
- Include studies on persecution in the South in 1983 and persecution of Hill Country Tamils in any property rights study [Dr. D. Rajasingham].
- Remove politics from redistribution of land (i.e., no gerrymandering) [Colombo Working Group 4].
- Community leaders be made to understand the impact of their statements and actions [Colombo Working Group 4].
- Presidential Commission on violence of 1983 should be made public and its contents used as a framework for the Peace Process [Colombo Working Group 4].
- De-ethnicise land distribution and compensation [Colombo Working Group 2].
- Civil society initiate and the donor community fund reconciliation programmes at the community level [CPA].



ANNEX III: DEFENDING THE RIGHTS OF INTERNALLY DISPLACED PERSONS

1 RESEARCH AND ADVOCACY

2 MONITORING

3 LITIGATION

1 RESEARCH AND ADVOCACY

1.1 REPORT ON HUMAN RIGHTS VIOLATIONS OF IDPs AND GOVERNMENT POLICIES

August 2001

As part of a collaborative study for the Human Rights Commission of Sri Lanka (HRC), the Centre for Policy Alternatives (CPA) drafted a report on the human rights violations of, and policies pertaining to, internally displaced persons (IDPs) in Sri Lanka. Our partners, the Consortium for Humanitarian Agencies (CHA) and the Law and Society Trust (LST), focused on other issues. The project was funded by the Asia Foundation.

CPA's report consists of:

- (i) an identification of the entire range of human rights violations that IDPs are subject to, relative severity and intensity of these violations and the policy framework pertaining to IDPs;
- (ii) a set of recommendations for the Human Rights Commission advocating reforms in law, policy and practice which would minimise the vulnerability of IDPs to such violations.

The information, classified by reference to the UN Guiding Principles on Internal Displacement, was gathered from secondary data, interviews with relevant government officials and NGOs, and field trips to Anuradhapura, Trincomalee and Vavuniya.

The report along with those of partner organisations was submitted to the HRC on the 14th of August 2001. The document was further updated in October 2001 and is available on CPA's website.

1.2 CPA SEMINAR ON HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS: THE SRI LANKAN CHALLENGE

January 2002

The Centre for Policy Alternatives organised a seminar on the 12 January 2002 at the Sri Lanka Foundation Institute (SLFI) to discuss the challenges faced by Internally Displaced Persons (IDPs) in Sri Lanka.

The half-day seminar aimed at presenting the findings of CPA's report on Human Rights Violations of IDPs and at highlighting issues of particular concern to CPA, namely the experiences of the northern

Muslims and the UN & the protection of IDPs. The event was attended by Government officials, INGO and NGO representatives.

Mr. M. Faiz of the Rural Development Foundation presented the experiences of Northern Muslims who were forcibly expelled from the North in 1990 and have been, since then, living in precarious conditions in Puttalam, Anuradhapura and Kurunegala. Ms. Renuka Senanayake, Senior Researcher, CPA, presented the findings of CPA's report on Human Rights Violations of the IDPs and Government Policies and proposed a set of recommendations to the Sri Lankan Government. The presentations were followed by a panel discussion on the United Nations and the Protection of the IDPs. Among the panellists were Mr Michael Lindenbaur, Senior Protection Officer, UNHCR, Mr N. Kandasamy, Director, CHRD, and Kethesh Loganathan, Peace and Conflict Unit, CPA. The plenary discussion focused mostly upon the mandate and shortcomings of the UNHCR with regard to IDP protection in Sri Lanka.

1.3 INTERNATIONAL CONFERENCE ON REFUGEES, MIGRANTS AND IDPS

March 2002

Between 26 and 29 March 2002, Ms Renuka Senanayake, Senior Researcher, CPA Legal Unit attended a Conference on Refugees, Migrants and IDPs organised by IPCS in New Delhi, India. Ms Senanayake delivered a paper on 'Managing IDPs in Sri Lanka.'

1.4 EDITING AND OVERVIEW TO UNHCR SITUATION ANALYSIS

June 2002

In June 2002, CPA completed the editing of, and the drafting of an overview to, the UNHCR Situation Analysis on Conflict Induced Displacement in Sri Lanka. The latter covered the year 2001 and, in view of the recent political changes and prospects for peace talks, was in need of updating. The overview drafted by CPA highlights the challenges faced by all relevant actors in this transitional period with regards to providing assistance and protection to IDPs and returnees.

1.5 TRAINING OF HUMAN RIGHTS COMMISSION STAFF

July 2002

On 8 July 2002, CPA participated in a training programme for new Human Rights Commission staff recruited to work solely on IDP issues. CPA introduced the HRC regional and Colombo staff to Government policies and institutional responsibility for IDPs.

2 MONITORING

CPA has monitored the human rights situation of IDPs as well as relevant legal and policy developments since May 2001. The CPA Media Unit maintains files on all news items relating to issues of displacement. In addition, CPA maintains regular contact with institutions, NGOs and Agencies involved in the welfare of IDPs, such as the regional offices of the Human Rights Commission, the Puttalam based Community Trust Fund, the Consortium of Humanitarian Agencies and the UNHCR. CPA has also endeavoured to obtain all new documents produced by INGOS, NGOs, UN Agencies or Government Ministries and Departments, of relevance to IDPs.

As a result of monitoring, CPA has appealed to relevant authorities on a number of occasions of violations of IDPs' rights and liaised with the media in relation thereof. In particular, CPA has expressed concern at the locations chosen by UNHCR and Government authorities to relocate IDPs in a crash programme in August 2001, as those villages were close to the Forward Defence Line. CPA further appealed to the WFP and Government Authorities in January 2002, following reports that displaced persons had not received dry food rations for more than three months.

3 LITIGATION

3.1 FUNDAMENTAL RIGHTS PETITION ON BEHALF OF PUTTALAM MUSLIM IDPS

January & July 2000

Following research work and a field trip to the Puttalam District in early 2000, CPA decided to file two petitions on behalf of Muslim IDPs who were evicted from Jaffna and Mannar in 1990.

CPA filed a Fundamental Rights Petition in the Supreme Court on 11 May 2000 concerning IDPs who had turned 18 after the 1990 eviction from the North. The focal point of the said Petition was that the petitioners had not been included in the voters list. CPA asked the Court to declare that an imminent infringement of the fundamental rights of the petitioners under the Constitution was forthcoming and to direct the first Respondent to cause the names of all the Petitioners to be entered in the electoral register for the Puttalam District.

However, the Supreme Court did not grant the Petitioners leave to proceed. The reason given for such refusal was that the Registration of Electors Laws provided adequate provisions for the public to scrutinise the revised Electoral Registers and object to any irregularities in the Register.

Following the negative response of the Supreme Court, CPA sponsored a Petition to the Human Rights Commission of Sri Lanka on behalf of IDPs in July 2000. The petition addressed a cluster of issues, including the Right to Vote, Employment, Land ownership, Education, Health and a myriad of other issues which affect Internally Displaced Persons. The HRC has yet to take action.

3.2 FUNDAMENTAL RIGHTS PETITION CHALLENGING THE PASS SYSTEM IN OPERATION IN VAVUNIYA

January - September 2002

On 16 January 2002, CPA filed a petition on behalf of a displaced person against the pass system then in place in Vavuniya and more stringently applied to IDPs.

The Petitioner was displaced from Killinochchi along with his family in 1990. Following displacement, he found shelter in a displaced persons camp in Vavuniya. In his Petition he challenges the "pass system" administered by the Officer in charge of the Sithambarapuram Welfare Centre Police Post in Vavuniya and the Secretary to the Ministry of Defence.

The Centre for Policy Alternatives (CPA) sponsored the application of the above petitioner before the Supreme Court alleging that the said "pass system" restricts the freedom of movement of the Petitioner and that such action is unlawful. Not only has the purported "pass system" no legal base, it furthermore violates several basic fundamental rights of the Petitioner and his family. The petitioner pleaded that his fundamental rights guaranteed by Article 14(1)(h), 11, 12(1), 12(2) are infringed by the imposition of restriction on his movements. The various restrictions placed on the freedom of movement on the Petitioner and his family amount to degrading treatment prohibited by Article 11 of the Constitution and Article 12 (1) of the Constitution as he has been deprived of the equal status and equal protection of the law.

The restriction of the Petitioner's movement out of the camp and outside Vavuniya has further meant that he and his family have been unable to find employment to sustain themselves and have had to rely on dry food rations issued by the Government. The petitioner further seeks compensation.

A preliminary inquiry was held to ascertain the current status of the Pass System following the Cease-Fire of 24 December 2002. The Attorney-General's Department following consultation with the Defence Secretary reported to Court that the Pass System would be removed as of the 5th of March. However Mr. M. A. Sumanthiran appearing for the petitioner urged the Court to declare the Pass System illegal, as it had no basis in Law. Leave to proceed was granted and the case argued.

On 5 September 2002, the Court held that the travel pass system had violated the Petitioner's fundamental rights, under Article 14 (1) (h) of the Constitution by executive action, as restrictions on freedom of movement could only be imposed by law in accordance with Article 15 (7) of the Constitution. The Court however refused to grant relief to the Petitioner under Article 11 (cruel, inhuman and degrading treatment) and 12 (1) and 12 (2) (equality).



Clearing land after demining, south of Palai © Tim Dickinson

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