INTERNALLY DISPLACED PERSONS IN SRI LANKA:

LEGAL FRAMEWORK AND KEY ISSUES

Despite a long lasting conflict and several natural disasters including the Tsunami of 2004 there is no specific national legislation that comprehensively addresses the rights of IDPs. A few individual statutes that were enacted with relevance to IDPs deal with certain specific issues affecting IDPs but fail to address the overall situation of IDPs in a more comprehensive manner. While there is a trend towards adopting IDP-specific legislation and such a move seems positive, a closer analysis of the current situation raises questions as to the positive impacts of such legislation. Existing legislation relating to IDPs deals with specific aspects but has also led to the creation of a surfeit of ‘authorities.’ The national response is plagued with a multitude of ad hoc mechanisms with no single agency to coordinate amongst these different initiatives. The number of ‘new IDPs’ has dramatically decreased over 2009-2010 which could provide the authorities with a justification in officially announcing an end to the IDP problem. However, the problem of displacement, including that of protracted IDPs, refugees, officially resettled IDPs unable to return to their properties, and ‘recent returnees’ facing challenges to sustainable return continues. Given the situation, there persists the need to devise a policy capable of addressing the IDP problem in a much comprehensive manner. However in order to do, so the Government, political parties, international actors, humanitarian agencies and civil society need to recognize the nature of the displacement problem in Sri Lanka and the gaps in how it has been addressed so far. It needs to be noted that Sri Lanka, which has witnessed waves of displacement due to both the conflict and natural disaster, has had limited success in learning the lessons of past experiences and continues to repeat past mistakes in relation to displacement, returns, resettlement and the protection of IDPs and returnees.

The following document compiled by the Centre for Policy Alternatives highlights key issues pertaining to the rights of Internally Displaced Persons (IDPs) in Sri Lanka. Given the scale and varied nature of the IDP problem, it is challenging to provide a comprehensive yet brief overview. Hence, this document will focus on some of the more significant aspects of the problem:

Section 1: IDP Categories in Sri Lanka
Section 2: Constitutional and Legal Framework for IDPs and Returnees
Section 3: Government Institutions
Section 4: Return and Resettlement of IDPs
Section 5: Most vulnerable categories of IDPs
Section 6: Land and IDP Issues
Section 7: Compensation
Section 1: IDP Categories in Sri Lanka

The concept of internally displaced persons (IDPs) has been a late development in international humanitarian law even though displacement within State boundaries has been a reality for most countries that have experienced war. Even while the concept of IDPs requiring specific assistance and protection has gained significant recognition, there continue to be problems relating to the official recognition of displaced persons as IDPs. Displacement in Sri Lanka has resulted from a variety of natural and man-made disasters, including the twenty five year old civil war, the tsunami of 26th December 2004, periodic floods and development projects. While the State has tended to recognize the need to provide specific assistance to displaced persons, the recognition of individual /specific populations IDPs has proved to be a challenge. In 2010 the bulk of Internally Displaced Persons (IDPs) are the result of the war.

As of November 09 2010 the Government of Sri Lanka has declared that there are only 17,183 IDPs remaining in the country, as compared to 280,000 at the end of the war in May 2009. This population of IDPs is referred to as ‘new IDPs’ ie those displaced between late 2008 and the end of the war from the Wanni (areas controlled by the LTTE) where they were trapped by the LTTE and subjected to a variety of human rights violations, resulting in civilian casualties which are still unaccounted for. The vast majority of IDPs were able to leave the Wanni only in the last two months of the war. The majority of these IDPs were detained in camps in the North of the country by the Government and were denied their freedom of movement.

In addition to the updated official figure of IDPs, there are other populations of displaced persons, including those who are staying with ‘host families’ (usually friends and relatives) and those who have been suspected of being LTTE cadres (Rehabilitees). There are also small numbers of IDPs who have been officially resettled (hence lose their official recognition as IDPs) but have been unable to return to their homes and sometimes even their villages, and are effectively still displaced, living in other sites, with host families or in transit centres, and have been referred to as examples of ‘transferred displacement’. They are unable to return to their own land due to military restrictions including areas being declared high security areas, presence of mines, secondary occupation and other issues. In a context where the Government has stringent criteria to classify who falls within the category of an IDP, some of those stranded are not recognized as IDPs. Almost all of these new IDPs are Tamil in ethnicity.

Furthermore, there are other populations of war-related IDPs. In its official statistics of current IDPs the Government fails to mention the ‘old IDPs’ who number approximately 180,000 persons. While the Government does recognize the fact that there are populations of displaced in addition to the ‘new IDPs’ and even provides rations to some of these other IDP populations, it does not include them into the figure of official IDPs. This has numerous ramifications including in such instances of providing official assistance and in ensuring durable solutions. This population of protracted displaced includes Muslims forcibly expelled

1 “Menik Farm Zone-4 closed -Vavuniya IDPs drop to 16, 025”, Official Website of the government of Sri Lanka, 09 November 2010.
from the Northern Province by the LTTE in 1990 (roughly numbering 100,000), Tamils from areas in Jaffna District that have being declared out of bounds for security reasons – or being situated in High Security Zones (roughly numbering 60,000), and additional IDPs from all three main ethnic communities from the North and the East (where much of the civil war was fought) and border districts. As noted in the next section, return for this old IDP population is complicated by a variety of factors some of which are negatively affected by the lack of due recognition. An additional population of displaced fled Sri Lanka during the years of war to other countries as refugees. India currently hosts some 65000 refugees of Sri Lankan origin. There does not seem to be an official initiative to provide information and encourage mass returns by the Sri Lankan Government and in its absence the main efforts of repatriation have been made by UNHCR and other humanitarian actors.

Displacement due to natural disasters is a frequent challenge in Sri Lanka. Most recently, the capital and the surrounding areas were subjected to flash floods on November 10th 2010 resulting in around 236,938 displaced. The single largest natural disaster in Sri Lankan history was the Asian Tsunami of December 26th 2004. While the majority of IDPs were able to return or were relocated and provided with permanent housing, there still exist small populations, particularly from the East Coast, who are still living in temporary shelters, six years after the disaster, largely due to the inability of the State to provide alternate land. Infrequent flooding and landslides in the South and West of the country also result in localized temporary displacement.

There are specific areas of development related displacement but apart from the Sampur HSZ/SEZ, the displacement tends to affect smaller numbers of persons such as the Kothmale Development Project, urban development of slum areas and road expansions.

Official recognition is an important issue for displaced persons as with that recognition comes protection and assistance. If a certain population is not recognised as IDPs they may not be eligible to state assistance and NGOs may not secure permission to do work with them. As noted above, in addition to the issue of being recognised as IDPs, the categorization has significant repercussions for the type of assistance provided. In general the State has a policy of providing basic assistance to IDPs but there are some variations between the assistance provided based on categorization. For instance ‘new IDPs’ are provided food assistance by the Government through the World Food Programme based on nutritional needs, while ‘old IDPs’ receive rations from the State based on a costing set in

---

3 “Two killed; 236,938 affected by floods”, Daily Mirror, 13 November 2010.
5 “A visit to upper Kothmale”, Sunday Observer, 01 March 2009; “Kotmale power project: 489 get new houses”, Daily Mirror, 08 September 2010.
the early 1990s. Thus, it is important for all actors to map out the various displaced populations and examine the assistance being provided to ensure equity, while noting that durable solutions to each population may vary.

Section 2: Constitutional and legal framework for IDPs and Returnees

While there is no single comprehensive piece of legislation capturing the main protection issues and needs of displaced persons in Sri Lanka, IDPs are afforded some protection through general provisions in the Constitution and IDP relevant and specific international humanitarian law. There have been efforts to develop IDP specific legislation but the initiatives appear to be stalled.

Fundamental Rights and Liberties of IDPs: The Sri Lankan Constitution includes a fundamental rights chapter that protects the rights of all citizens including the right to equal protection, freedom of movement, right to choose one’s residence, freedom of expression, freedom from cruel, inhuman treatment to name a few. These rights can be restricted in certain situations including in the interest of national security, public order and protection of public health or morality by invoking the Public Security Ordinance (PSO), which empowers the President to declare a State of Emergency and adopt Emergency Regulations if he/she believes they are necessary “in the interests of public security and the preservation of public order.”

In accordance with the Fundamental Rights Chapter and Emergency Regulations in Sri Lanka, all rights apart from those pertaining to the freedom of thought and conscience, including the freedom from torture are subject to restrictions based on national security. As a result Sri Lanka has witnessed the derogation of the rights framework, justified due to steps taken as a result of security. The Emergency Regulations expand the powers of arrest and preventive detention and impact all citizens of Sri Lanka including IDPs. More than one year and a half after the end of the war Sri Lanka continues to be under emergency rule.

In addition to the ability to arrest and detain, through ER the Government has been able to create various high security zones forcing individuals into displacement and restricting their

---

14 15. (1) The exercise and operation of the fundamental rights declared and recognized by Articles 13 (5) and 13 (6) shall be subject only to such restrictions as may be prescribed by law in the interests of national security. For the purposes of this paragraph “law” includes regulations made under the law for the time being relating to public security. Article 15 (1), The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978
freedom of movement. This specific aspect has been challenged in the Supreme Court in many a case including in the 2007 Sampur HSZ IDP case with mixed results. In this case, which was filed by CPA, the petitioners stated that since April 2006 many civilians in Trincomalee District had been displaced due to the continuing hostilities. As a result, many were unable to return to and resettle in their own land, much of which had been owned and occupied by the civilians and their ancestors for many generations. The petition also highlighted that with the capture and occupation by the Government security forces, the civilians of the area should be allowed to return to their lands. It also pointed out that there had been accusations of civilians being forcibly resettled during several drives of resettlement which had taken place in Trincomalee District. Though civilians were taken to certain parts in Trincomalee, people had been unable to return to Sampur area despite the land falling within the Trincomalee Special Economic Zone. The petition also highlighted the violation of the Fundamental Rights of civilians seeking to return to their properties in the said area as guaranteed under Articles 12(1), 12(2), 14(1)(g) and 14 (1) (h) of the Constitution of Sri Lanka. However, the petition was not granted leave to proceed by the Supreme Court of Sri Lanka. During the war, national security took priority over human rights making it increasingly challenging for IDPs and other civilians to exercise their fundamental rights.

Furthermore, access to justice also needs to be addressed. Even if it be presumed that the IDPs are aware of their rights, which is not always the case, accessing the Supreme Court in Colombo within the set one month period is a task that remains highly doubtful to be deemed realistic. In addition, there are serious impediments for IDPs to access basic services and obtain compensation due to lack of required documentation.

As discussed above, the rights of IDPs and the framework for the protection of the rights in Sri Lanka needs improvement. The situation of the IDPs is further compounded by the dynamic situation of returns and the problems of classification of who is actually an IDP. What needs to be reiterated is that in the absence of specific national legislation for IDPs, the Constitutional and legal framework in existence applies to all IDPs and therefore, the status and classification of whether a person is an IDP or not should not prevent the protection already available to all persons in Sri Lanka.

**International law in Sri Lanka:** Sri Lanka has ratified numerous international instruments that provide for the protection and promotion of human rights. There are also instruments that ensure the protection of IDPs, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR), Guiding Principles on Internal Displacement, and the Pinheiro Principles on Housing and Restitution for Refugees and IDPs which Sri Lanka is subject to. Though the applicability of international law in Sri Lanka was questioned by the Supreme Court in the Sinharasa Case 200616, it is accepted practice that certain basic principles contained in customary

---


16 On 16 September 2006 the Supreme Court headed by the Chief Justice ruled that the Sri Lankan Government’s accession to the Optional Protocol of the International Covenant on Civil and Political Rights was inconsistent with the Constitution of Sri Lanka.
international law apply in the Sri Lankan context regardless of ratification and accession. The right to be recognised as a person before the law, the right to participate in public affairs and the access to the services provided by the state, the right of every child to have his or her birth registered and to have a name from his or her date of birth are enunciated in the International Covenant on Civil and Political Rights Act 20 although not treated in the same manner in the national framework which has significant repercussions in terms of practical implementation.

The Geneva Conventions and the Additional Protocols provide the basis for the protection of civilians, humanitarian, medical and religious actors during conflicts and provides the framework for their continuous unhindered work in difficult situations including the establishment of peace zones and humanitarian corridors. It is generally accepted that international human rights and humanitarian law provides the broad framework for the protection of IDPs, even though there is no specific international treaty focusing on IDP rights. The absence of Article 3 in the ratification created questions among national actors as to its applicability in the Sri Lankan context, despite it being customary international law.

Further customary international legal norms recognise and provide protection for vulnerable persons and actors involved in humanitarian interventions. The Guiding Principles in Internal Displacement provides specific recognition to certain groups with special needs including children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons.

**IDP Specific Laws and Policies:** There have been a number of initiatives to develop laws and policies either specific to IDPs or with significant repercussions for them, but these processes have been stalled. The Ministry of Resettlement and the Resettlement Authority, working with the UNDP, developed a resettlement policy but a powerful actor within the Government ordered that the process be stopped in 2008. The IDP unit of the Human Rights Commission developed an IDP Bill which was presented to the Human Rights Ministry on August 08 2008 but this bill was never presented to cabinet. In addition, the Ministry of Disaster Management and Human Rights developed a Bill of Rights and a Human Rights Action Plan which was meant to set out targets and processes for addressing current human rights issues, including the IDP issue. Discussions are underway to finalise some of these documents. Overall, there are concerns that the processes to draw up this legislation have not been inclusive or participatory. Furthermore, there are also questions as to whether the Government is committed to passing and implementing these bills and policies, or whether the initiatives have a largely symbolic value to demonstrate the Government’s concern at particular moments in time when the Government was under criticism for its human rights record.

---

17 ICCPR Act op.cit. S2.
18 Ibid. S6.
19 Ibid. S5(1)(a).
20 Ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.
Protection of Internally Displaced Persons Bill 2007\textsuperscript{21}: The Government formulated the IDP Bill (mentioned above) in 2007 and had several consultations but it is unclear if this will go forward. The following sections are found in the Bill:

1. Registration of Internally Displaced Persons
2. Food Relief, Shelter, Water and Sanitation
3. Health
4. Education
5. Right to participation and Freedom of Expression
6. Freedom of movement
7. Personal Documents of Internally Displaced Persons
8. Voting rights
9. Compensation for injuries, housing and property damages
10. Special provisions for the vulnerable groups
11. Welfare and protection mechanisms

Although the Bill is a good starting point to discuss the rights of IDPs, the future of the Bill is in doubt as it was introduced just prior to the visit of the UN Special Representative on IDPs, Walter Kaelin to Sri Lanka in December 2007 and there has been no follow up since then.

Voting Rights of IDPs: The Sri Lankan Constitution recognizes the right to vote as a component of the “Sovereignty of the People” as outlined in Article 3\textsuperscript{22}, 4\textsuperscript{23} and 88\textsuperscript{24}. In addition to the above, specific provisions on voting can be found in a series of election laws governing the procedures for conducting parliamentary, presidential, provincial and local authority elections\textsuperscript{25}, and in the Registration of Electors Act 44, 1980 which governs the procedures for revising the electoral register every year.

However the IDPs face problems in practicing their right to vote due to the lack of necessary documents. All who are eligible to vote need to be registered in their respective electoral districts, which are compiled, maintained and updated annually by the Department of Elections\textsuperscript{26}. If a person is displaced from his or her home during the period when the household enumeration takes place and period of appeal/objections, that person will not be in the list for the next year. Therefore it was understood that thousands of IDPs who were displaced in 2007 were not included in the 2008 list and were ineligible to

\textsuperscript{21}Drafted in 2007, handed over to the Minister Mahinda Samarasinghe, August 2008
\textsuperscript{22}“In the Republic of Sri Lanka sovereignty is in the people and is inalienable. Sovereignty includes the powers of government, fundamental rights, and the franchise.” (Constitution of Democratic Socialist Republic of Sri Lanka, 1978)
\textsuperscript{23}“(e) The franchise shall be exercisable ….. by every citizen who has attained the age of eighteen years, and who being qualified to be an elector as hereinafter provided, has his name entered in the register of electors.” (Constitution of Democratic Socialist Republic of Sri Lanka, 1978)
\textsuperscript{24}The article recognises that every person shall be qualified to be an elector unless he has not been duly registered, is not a citizen, is under 18 years of age, of unsound mind, subject to the imposition of a civic disability, or has been convicted of an offence or illegal practice. (Constitution of Democratic Socialist Republic of Sri Lanka, 1978).
\textsuperscript{26}CPA, Elections and Minorities: Present Problems and Alternatives for the future
vote in the Presidential Elections in January 2010. During this election there were also concerns that returnees were confused as to where they had their vote: in the site of displacement or the resettlement site. In the current context there are concerns. In 2010 a voter registration was conducted across the country but with reports of low registration in the North and East both in the media and from election monitoring groups such as the Centre for Monitoring Election Violence (CMEV) and the Campaign for Free and Fair Election (CAFÉ) the election deadline was extended until November 30 2010. A census is to be conducted in 2011 which could have significant repercussions especially if IDPs and refugees have not returned and could result in particular areas losing representatives in parliament. It needs to be recognised that return is a long-term process, especially in the case of protracted displacement.

Section 3: Government Institutions

While the State has the primary responsibility in supporting the displaced, local and international NGOs, the United Nations (UN) agencies and donors play a significant role in funding and implementing assistance programs to assist IDPs.

There are many ministries within the Central Government that deal with IDPs and IDP related issues. These include, but are not limited to the Ministry of Resettlement, the Ministry of Disaster Management, the Ministry of Land and Land Development, the Ministry of Economic Development and the Ministry of Defence which is to oversee urban development in the future. Some of the members of parliament both from the area and from other areas, have been active in the displacement camps and the resettlement area at least at a symbolic level, but their ability to influence and improve policy remains unclear. There used to be a Ministry of Human Rights and Disaster Management but this was phased out following the General Elections of April 2010, as if to underline the fact that the Government wanted to indicate the end of human rights problems in Sri Lanka.

Ministry of Resettlement: The Ministry of Resettlement’s mission reads, “Expeditious and effective facilitation of the process of Resettlement and Relief, paving way for the persons displaced owing to man-made Disasters to integrate into the Main Stream of Society” while its vision states “Towards normalcy from disasters”. It also has as its objectives,

- Providing protection to the displaced people of the country by maintaining refugee camps and providing humanitarian aids and other relief.
- Re-settlement of displaced people staying in the country and those who have returned after seeking asylum in foreign countries at their native places.
- Creation of a suitable environment for the resettlement of displaced people at alternative places and provision of required facilities.
- Ensuring the provision of facilities by way of coordinating government and non-government organizations.
• Ensuring proper utilization of resources provided by aid organizations and monitoring expenses made in this regard.

• Confirming strictly the resettlement process and getting the contribution of displaced people in the country and refugees for the development process of the country.

• Ensuring productive contribution to the sustainable development by minimizing adverse effects occurred to economy, society and environment as a result of various disasters and strengthening process for the provision of disaster relief.

Although the Ministry survived the cabinet reshuffle in mid-November 2010, its role and scope of activities into the future is unclear.

Presidential Task force on Northern Development (PTF): Appointed by a presidential directive of May 7 2009, to handle the resettlement, development and security in the Northern Province, PTF is mandated to prepare strategic plans, programmes and projects to resettle and rehabilitate IDPs, and develop economic and social infrastructure of the Northern Province. There is no gazette notification establishing the PTF, hence its legality can be questioned.

The main activities the PTF is charged with include, inter-alia coordinating activities of the government in support of resettlement, rehabilitation and development and to direct and review the implementation of the said programmes. Although the mandate of the PTF was limited to one year it still continues be operational and authoritative 20 months following its creation, and there is no document publicly available informing how long the PTF is to be operational. Although PTF came in at an emergency period when the existing actors were overwhelmed with the humanitarian situation, questions are raised on the necessity of the PTF with its broad powers at this moment. District actors who are knowledgeable have been sidelined and their decision making powers centralised by the PTF. It is hoped that with the transition towards early recovery, there is greater inclusiveness and transparency in decision making and that local officials who are best informed of the local terrain and issues are given the task of providing to the affected population. However this does not seem to be the case.

Human Rights Commission: Sri Lanka has a national human rights commission (N HRC) that is meant to provide a means of redress for victims of human rights abuses. The HRC has a special IDP Unit which deals with the specific problems of this group, including in assisting with documentation, establishing an effective HR protection mechanism within the IDP project and support the existing mechanisms which are supposed to protect rights of the

27 Attempts by CPA to obtain a gazette or any other official document which sets out the powers failed.

people, empowering IDPs/Retumeees to exercise, and protect and stand for their rights while building peace and harmony.29

The HRC that was meant to serve as an independent institution became increasingly politicized during the last five years both in terms of the appointments of the commissioners but also its actions in dealing with violations. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the international body that regulates national human rights institutions - reduced Sri Lanka’s NHRC to the status of an "observer" because of government encroachment on its independence in 2009. As a result, the commission no longer has the right to vote in international meetings and is not eligible to stand for election to the international coordinating committee30.

**Urban Development Authority:** An additional Central Government institution that could play a significant role in the future with regards to displacement is the Urban Development Authority (UDA). It was established under the Urban Development Authority Act No. 41 of 1978 in order to integrate planning and implementation of economic, social and physical development of areas that fall under its purview. The UDA has considerable powers to acquire land, including private land, in areas which have been declared “Urban Development Areas”. With the new changes to Parliament that were introduced after the Parliamentary Elections in April 2010, the UDA has been brought under the Ministry of Defence31. There are no public reasons given for such a move and there questions have been raised as to the reasoning behind this move in a post-war context. Although it is too early to comment on the move, there are fears that development projects may be initiated under the UDA under the guise of “national security” or other reasons by the Ministry of Defence without adequate information, consultation and transparency. The example of the Sampur HSZ and SEZ in Trincomalee is a good example of how development can take place in secrecy with no consultation of those affected or the public at large.

**Rehabilitation of Persons, Properties and Industries Authority:** Set up under the Rehabilitation of Persons, Property and Industries Authority Act of 1987 to assist in the rehabilitation of persons, properties and industries affected by the communal violence of July 198332, the entity is vested with the power to acquire in any manner, and hold, take or give on lease or hire, mortgage, pledge and sell off any movable or immovable property. It also has the power to clear and re-develop property affected by communal violence which are vested in the state by virtue of a determination under section 22 of the statute or re-vested in the state under section 23 of the statute.33 The authority still exists and according to officials serving in the authority continues to make payments.

**The Resettlement Authority:** The Authority was set up in 2007 under the the Resettlement Authority Act, No 9 of 2007 with the objectives to firstly resettle or relocate IDPs and

31 [http://www.uda.lk](http://www.uda.lk)
32 [Rehabilitation of Persons, Property and Industries Authority Act, No 29 of 1987, Section 4 read together with S 26.](http://www.uda.lk)
33 Ibid. S 5
Refugees in a safe and dignified manner and secondly to rehabilitate and assist IDPs and Refugees by facilitating their entry into the development process. On analysis of the functions and powers of the Authority it is clear that it was intended as the central government agency coordinating resettlement, relocation and rehabilitation of IDPs. Although this would have been a mode of rectifying the major flaws of the national framework to protect IDPs, the Presidential Task Force on Northern Development seems to have usurped such functions, in turn rendering it redundant.

**Institutions for Disaster Management:** The Sri Lanka Disaster Management Act, No. 13 of 2005 envisages the establishment of the National Council for Disaster Management, the Disaster Management Centre and several technical and advisory committees that are to be responsible for the preparation, co-ordination and management of disaster related programmes nationwide. Although this was introduced soon after the tsunami of 2004, it has not played a critical role with conflict induced displacement and has been supplanted by the line ministries.

**Section 4: Return and Resettlement**

A key issue relevant to returns and resettlement is how the Government and other stakeholders define and use these terms. According to international standards, the term return is used to denote a person going back to their home and land. Resettlement on the other hand is generally used to mean being settled to a place other than one’s place of origin. The Guiding Principles of Internal Displacement differentiates the two terms. Principle 28 provides for internally displaced persons (IDPs) “to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.” In the Sri Lankan context many Government officials use the terms ‘return’ and ‘resettlement’ interchangeably without much thought to the implications of international standards. This has compounded a situation where upon returning to the district of origin, regardless of whether a person has returned to one’s own home and land, there is an assumption that return is complete. As documented by CPA, the interchangeable use of terms in the local context has proved politically convenient for the authorities to down play the status of displacement and the numbers of IDPs. The lack of clarity results in confusion as to whether those resettled have actually returned or are in effect cases of ‘transferred displacement.’ The term relocation is also used in Sri Lanka which is meant to indicate when a person or family has been moved to another area, not of their origin. Relocation has been carried out by the Government both with regards to displacement caused by natural disasters such as the tsunami and the conflict, when the Government has often declared the place of origin as off-limits. As noted in Section 1 terminology has far-reaching repercussions.

---

35 Ibid Section 14 read with S 15.
In the last four years Sri Lanka has seen a number of large scale resettlement drives, both in the East and more recently in the North of the country. While the Government has put forward its mass resettlement programme as a model initiative, the process of returns and resettlement has been critiqued for various reasons including the complete disregard for the protection provided under international and national framework. Although lessons should have been learnt from previous returns and resettlement drives, recent drives to return and/or resettle have taken place in a manner that is not compliant with certain minimum standards as per the UN Guiding Principles on Internal Displacement including informed voluntary return. In recent times with returns and resettlement in the North, there have been limited or no ‘go and see’ visits for IDPs to assess whether they are able to return to their lands. Throughout the years, most return drives have been politicized where political actors play a critical role. Recent years have also witnessed a significant role by military, even resulting in instances of violence and intimidation towards IDPs who refused to return. There have also been limited or no information upon return drives, with IDPs not being provided an opportunity to make an informed decision whether to return or remain in displacement. Further, there have been coercive methods to move IDPs including the threat of cutting assistance if IDPs decided to remain in displacement. A key concern of a number of IDPs who are being resettled is security as they fear that they could be subjected to intimidation or even violence in resettlement areas.

The official figures also ignore other forms of displacement in return areas such as those who have returned to their own land but continue to live under tents or temporary shelters as their homes are destroyed and those who continue to fear living in their homes during the night so are ‘night time displaced’. The other group that needs attention are those who have returned to their own land but continue to be dependent on assistance as they are unable to restart livelihoods for a variety of reasons. Therefore, although government figures may demonstrate that IDP figures are on the decline, in actual fact many of those who are declassified as IDPs continue to face hardship and sometimes continue to live in displacement like conditions. The ‘old IDPs’ have been marginalized in the resettlement process as they were initially unable to secure permission to return in parallel to the ‘new IDPs’ without an official explanation. There are concerns that ‘resettlement’ will be officially completed but a significant number of returnees will be unable to secure housing assistance as donors would have already moved out of the area. One particular population who could be affected are Jaffna HSZ IDPs, as the shrinking and the opening up of the HSZs has been proceeding very slowly. It needs to be noted that there are also other war-affected IDPs who are unable to return due to their areas of origin being demarcated exclusively for economic development. In Sampur, Eastern Trincomalee, a High Security Zone was established in May 2007 but now the authorities refer to the area as a Special Economic Zone (SEZs). Roughly 6,000 IDPs in Sampur will not be able to return for this reason.

It is not clear if this model of security/development land dispossession will take place in the North. While the return of Northern Muslims and some of the other old IDP populations is proceeding slowly there are stumbling blocks to their return including limited assistance to support their return, in addition to secondary occupation, lack of or limited basic services and livelihood opportunities.

There is an additional conceptual and practical problem with the term resettlement as it is often collapsed to simply mean the process of IDPs moving back to their area of origin. The time period for the process is short term, hence assistance is for transitional shelter, rations for six months, non-food relief items and in some cases livelihood assistance and water and sanitation facilities. The Government’s current approach is that following resettlement, the process that is required is development. While NGOs and donors recognize that the transition period is longer and requires significant assistance, the Government is less sensitive to the process of early recovery which is meant to bridge the processes of resettlement and long-term development which would better ensure sustainable livelihoods and basic community infrastructure. Such an approach stems from the broader political agenda of the present Government who wants to demonstrate to the domestic audience, international community and donors that Sri Lanka is speedily moving from a humanitarian situation to post conflict development context. In this fast move there is little regard for the needs and vulnerabilities of IDPs, returnees and other affected communities.

In the months following the military liberation and then end of war, a number of restrictions that impacted the lives and livelihoods of families have been relaxed, which has rapidly increased the post-war economic recovery process of families and communities. However, it is important to flag key problems faced by returnees even in cases where they have been able to reclaim their original homes. In certain cases their pasture or grazing land or fishing waters may still be off limits, either due to the presence of mines and UXOs or because the land has been declared off limits to civilians. There are other livelihood problems relating to the lack and loss of farming and fishing equipment, the loss of animals including cattle and poultry, the destruction or disrepair of irrigation canals. To access certain areas farmers need to submit identification. To access paddy and grazing land in Vattamadu in Akkaraipattu Division the military requires farmers and grazers to submit their identity cards where they enter the areas. In the latter, particular areas are still off limits.

In addition, returnees may find the facilities in the areas of return, especially those most affected by the fighting in a state of destruction and disrepair. This makes the process of rehabilitation more difficult as basic needs including education, health, access to drinking and irrigation water, access to markets and public transport may be limited which makes it more challenging for those wishing to return.

Protection is a critical concern for returnees, especially those resettling to areas captured from the LTTE, including parts of the East and the Wanni. The security fears relate to the high level of militarization and the lack of independent actors to whom civilians can approach in terms of protection. There have been reports of abuse, including sexual abuse both from
the East and the Wanni; a number of these cases have been taken up in court while others have not been independently verified. Law and order in the resettlement areas are largely in the hands of the military, and the police presence is being gradually expanded, while other local redress mechanisms such as the Human Rights Commission and the National Child Protection Authority have limited capacity. While humanitarian agencies do have access to almost all areas, the humanitarian community is constrained in terms of providing protection services by the mandates of individual agencies, the unwillingness of the Government to allow agencies to carry out protection activities, and the fear of agencies to engage in protection activities, especially given the difficulty in security permission to work in the Wanni. While local community based organizations and regional human rights groups therefore face a significant burden in taking up these issues in terms of providing support to the victim they are also apprehensive of the repercussions they will face. There is a significant protection vacuum both in terms of addressing possible ongoing and past violations in areas of resettlement.

Section 5: Special Needs Categories

While IDPs as a category can be seen as a vulnerable section of the population clearly there are population groups within this category for which special attention is required.

Orphans and other children: The conflict which persisted over the years has given rise to a number of categories of vulnerable children needing different forms of care, assistance and treatment. All the children affected by conflict need to be resettled in their places of origin along with their families or provided alternate options if they choose not to resettle, and given specific education, health and recreational services to rebuild their lives. There are various categories of children that need different responses – the unaccompanied and orphaned children, the missing children, the child surrendees and children who have been released by armed groups like the TMVP. It is the responsibility of the Government to adequately account for the numbers in each of those categories and lead a planned process of rehabilitation and reintegration that is in the best interest of these children. In addition to clarifying the numbers, the Government has to streamline its administration structures and empower its agencies at the local levels to address the massive task ahead, while ensuring that it provides NGOs and other civil society actors the space to carry out this task of rehabilitation especially in community. While there are numerous actors – both formal and informal – dealing with child protection, problems persist in coordination, information sharing and possible duplication of efforts. Looking at the Government structures, it is clear that at least on paper there are structures in place to monitor child related issues. The problems are twofold – while there is a multiplicity of actors tasked with child protection there is confusion regarding the exact roles and responsibilities of government actors, and there are issues relating to the capacity of the actors on the ground.

One of the specific categories of vulnerable children is orphans. There are competing reports on the number of war-related orphans in Sri Lanka. According to the Ministry of Defence in September 2009, 1,036 orphans were sent to orphanages in Mannar and Vavuniya, and 200 orphaned children were to be sent to approved orphanages on the order of the relevant District Judges. According to the statistics of the Northern Province Probation and Child Care Services, there are 1,309 orphans and of them, 388 are living in childcare homes while 921 are living with relatives. According to the same source, the number of children who have lost a single parent is 2,391. Within that number, 564 are living in childcare homes, while 1,827 are living with relatives or a parent.

The identification of a child as an orphan itself poses problems. Given that a comprehensive family tracing process has not taken place, it is possible that some unaccompanied children have been identified as orphans (especially young children lacking documentation and being able to provide information on parents). Sri Lanka has a strong culture of institutionalization with more than 15,000 children in institutions across Sri Lanka. It is not unusual for children's homes to house children with at least one or in some cases both parents. There are also instances where children who are 'once orphaned' (children who have lost one family member) are placed in orphanages. In general, it appears that the tendency is to put 'orphans' into both state-run and private orphanages as opposed to foster care with relatives.

The welfare of these orphans remains an issue to this date. These include issues of protection, education, health, nutrition, etc. It appears that the government has made little progress in addressing these issues. The government has taken steps to open a few childcare homes in Vavuniya and have re-united some IDP orphans with their respective families. According to the officials of Ministry for Child Development and Women's Affairs, of about 286 IDP orphans, 220 IDP orphans have been settled with families. However, much needs to be done to address the needs of these orphans. There are concerns about the standard and quality of the child care centers. Some of these child care centers are not even registered with the divisional secretariat or childcare department. In Vavuniya District, only 7 children's homes have been registered while 28 homes remain unregistered.

**Widows and Female Headed Households:** The issue of war widows is as old as the conflict itself. It is an issue which is not common only to the North and East, but to the South as well. In the South, a large number of military personnel who were either killed or are missing in action.

---

40 Ministry of Defence, “Resettlement under Uthurur Vasanthaya accelerates,” December 4 2009
41 “Orphaned children in North forgotten”, Daily Mirror, 23 July 2010
42 These institutions include Remand Homes, Certified Schools, Receiving Homes, Detention Homes, Approved School, National Training Centers, Voluntary Remand Homes and Voluntary Homes. (Save the Children in Sri Lanka, “Home Truths: Children’s Rights in Institutional Care in Sri Lanka,” A Summary, 2006, page 1)
44 The government in June 2009, opened “Siriliya child care center” in Vavuniya for orphans. At present, 230 Tamil orphans are accommodated at the center. (“Children orphaned by the war meet Sri Lanka President”, Colombopage, 01 October 2010).
45 “Conflict leaves 89,000 widows” Daily Mirror, 30 September 2010.
46 “Large number of war orphans in the north”, Daily Mirror, 04 October 2010.
action left behind wives. While there is State assistance for such individuals, there are challenges especially for wives of personnel Missing In Action (MIA) or the fiancés of personnel who remain unmarried. In the North and East there are a large number of widows of LTTE fighters and members of other militant groups and of civilians who were killed or disappeared. The recently held sessions of the Lessons Learnt and Reconciliation Commission in Batticaloa once more highlighted the plight of the wives of the missing who were abducted, arrested or went missing who continue their search for their loved ones and demand the authorities take this issue up immediately.

There is no official statistic for the number of widows as result of the war, which in itself demonstrates the serious policy challenge in dealing with the issue. The statistics of the Ministry of Child Development and Women’s Affairs shows that Sri Lanka has around 89,000 war widows – 40,000 in north and 49,000 in east. The number exceeds 20,000 in Batticaloa district alone. Of the 20,000 widows in Batticaloa, 12,000 are below the age of 40 and about 8,000 have 3 children. The Centre for Women’s Development, a Jaffna based women’s organization claims that there are 26,340 widows in Jaffna, 5,403 in Killinochchi, 4,303 in Vavuniya and 3,994 in Mannar. Statistics of widows in Mullaitivu is not available. In Jaffna district 3118 widows are under the age of 40 and 38 of them are fewer than 20. According to government officials in Wanni district one tenth of families had lost their male bread winner in some divisions in the district.

While there is a general reference to widows in the policy statements it is not been realized into policy. The Deputy Minister of Child Development and Women’s Affairs M.L.M Hizbullah has made a number of statements on the number of widows in the North and East but the Government is yet to propose a policy program for assisting them. According to Hizbullah the ministry is unable to provide assistance to these widows due to lack of funding. Widows who can produce a death certificate for their husbands are entitled to receive Rs 50,000 as compensation. The remainder who are unable to do so are only given Rs 150 rupees a month, which is not adequate to cover food for one person for a day.

The larger issue of female headed households needs to be provided adequate attention and redress provided. Some of the major concerns include conducting livelihoods and assistance programs to ensure that they can provide for their families and protection services so that they feel safe, particularly within their communities, in addition to ensuring their space and participation in community activities and decision-making.

**Suspected LTTE cadres:** A large number of individuals, at one point calculated to be 12,000 persons in May 2009, were held by the Government as suspected LTTE members. While some of these individuals were fighting cadres of the LTTE, some were individuals forcibly

---

47 [http://world.edu/content/sri-lanka-conflict-widows/](http://world.edu/content/sri-lanka-conflict-widows/)
conscripted by the LTTE in the last few weeks of fighting. Some were those who served in an administrative capacity in the LTTE and others merely suspected of having connections with the LTTE. The Government announced that these individuals would have to be rehabilitated and undergo a reintegration programme. The Government put forward an “Action Plan for the Reintegration of Ex-Combatants” in October 2009 which provided a basic framework for rehabilitation and reintegration but the plan failed to provide a legal framework for the process and was not approved by the cabinet. At the same time the Government commenced the release of individuals from the rehabilitation camps. The Government has gone ahead with an ad hoc reintegration programme which lacks a legal framework and is not comprehensive, with different training and vocational programmes for the rehabilitees in the various camps. It is believed that a certain number of those currently in “rehabilitation” will be prosecuted but it is not clear how this process will move ahead, including how the right of representation will be handled for these individuals. In addition there are concerns about their physical security, the lack of an independent actor such as the ICRC to monitor the camps, the lack of legal amnesty for those released and the limited reintegration assistance. As noted above there are a number of ‘child soldiers’ have also been provided rehabilitation under a separate programme. This had a limited legal framework and oversight mechanisms providing a certain amount of protection. By May 2010 the remaining 198 ‘child surrendees’ were released but their social and economic integration remain concerns that need to be addressed.

Section 6: Land and Housing

Access to land and property is critical at the family and community level for a number of reasons. Families who cannot access their homes are forced to undergo continuing displacement and suffering, as they are unable to return and rebuild their lives. Others who cannot access their farming or grazing land may be unable to recommence and re-build livelihoods, which could result in a variety of problems, including being unable to support families and find durable solutions. Land also has a tremendous economic and social value, so families whose access to their lands are restricted or curtailed may suffer continued economic and social hardship by being unable to take out bank loans by using land as security or use it for dowry purposes. At a community level, various restrictions on land could hamper the local economy, making it less self-sufficient and effectively disempowering communities. Obstacles to accessing land and property can also be an infringement of the rights of people.

Constitutional Framework and Powers over Land: The Constitution of Sri Lanka does not provide for an express right to land or property. However the Constitution does guarantee equality before the law, freedom of movement, choice of residence and other rights. The Directive Principles of State Policy advocates the “realization by all citizens of an adequate standard of living for themselves and their families including adequate food, clothing and housing, and the continuous improvement of living conditions.” The cumulative effect of all these provisions may suggest a right not to be arbitrarily denied the right to land, housing and property.
The Thirteenth Amendment was introduced to devolve certain powers to Provincial Councils. The following land powers are reserved for the Provincial Councils: rights over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement. However all state land remains the property of the central government, thus its alienation is done under the seal of the President on the advice of the relevant Provincial Council. This limited devolution of land powers is undermined by the structure of the 13th Amendment that preserves the predominant role of the Central Government. Firstly, the central government retains power to override decisions of the Provincial Councils. Secondly, all projects involving several Provincial Councils come within the purview of the Central Government. Thirdly, Provincial Councils are financially dependent on the Central Government.

The 13th Amendment provides for the establishment of a National Land Commission (NLC) which is responsible for formulating National Land Policy. The Thirteenth Amendment determines that where the distribution of allotments of State land occurs, it should be undertaken on the basis of national ethnic ratios. However, such allocation should not upset the demographic patterns or communal cohesiveness. When State land is distributed under various projects, priority should be given first to those displaced by the project, second, to the landless of the immediate area, and finally to the landless of the Province. However to date no NLC has ever been formed, as a result Sri Lanka has not had a mechanism to formulate a comprehensive national policy on land nor advise the government on land policies.

**Draft Land Policy:** Sri Lanka is yet to enact a national land policy. The most recent draft dates back to 2005 which due to administrative delays is yet to obtain cabinet approval. CPA has been informed by government actors working on land issues that there is an immediate need for a national land policy and though there has been a draft since 2005, very little has been done by political actors to introduce a national land policy. The primary focus of the draft National Land Policy is to lay out the overarching policy of the Government with regards to land. Some of the key points in the draft policy are:

- Identification of land resources and mapping of land
- Land distribution for activities in industrial, residential, commercial, social and religious areas:
  - Land conservation and management
  - Land development by way of granting leases
  - Land acquisition
  - Institutional arrangements
  - Legal arrangements
  - Establish entitlement to land
  - Alienation of land to landless persons on highly transparent policy of land allocation

**Land Use Policy:** The Land Use Policy was passed in 2007 with the goal of ensuring that there is a rational utilization of land for food security, a high quality life, equity and ecological sustainability. The policy states that there is a need for planning to ensure that land is used in
the most effective and productive manner for agricultural, livelihood purposes and to solve human environmental issues, especially in urban areas. According to the policy, productivity of fertile land in Sri Lanka has reduced due to improper land use and nearly 44 percent of agricultural lands have been subject to land degradation. The plethora of small agricultural holdings, which do not benefit from economies of scale, is another reason for low productivity levels.

The Land Use Policy is meant to provide a policy framework to ensure that there is proper land use which in turn provides for food security, economic development and the maintenance of the productivity of the land at a higher level. The Policy goes on to state that the State on behalf of the people will function as the “trustee” of land to enable the present and the future generations to use the land to sustainable basis. Land use will be based on the principle of zoning and the utilization of land will be based on its physical sustainability. The Policy is also to achieve other objectives including preventing the under use and improper use of lands, protect, conserve and manage all sources of water on states as well private lands, introducing a rational distribution of population and settlement in order to achieve a balanced regional development and orderly economic growth, minimize fragmentation of agricultural lands, prevent encroachment of lands, introduce effective tenurial reforms to promote the efficient use of land resources, minimize the vulnerability of land to natural and human induced hazards and environmental hazard, promote gender equity in the ownership, utilization and conservation of land and preserve historical, cultural, religious, and aesthetic values associated with lands.

**A National Involuntary Resettlement Policy (NIRP):** The policy was established by the Government to address the adverse social and economic impact of land acquisition for development purposes. The policy applies to all development-induced land acquisition, and a Resettlement Action Plan needs to be prepared where 20 or more families are affected. The procedure and protection of economic, social and cultural interests provided for in the NIRP may be a useful model to be used in future resettlement programmes.

In March 2010, a resettlement planning document was published by the Ministry of Highways and Road Development and Ministry of Local government and Provincial Councils, highlighting the procedure or resettlement.54

**Mahinda Chintana 2005 and 2010:** The Mahinda Chinthana (Presidential Manifestos) document 2005 contains a section on housing and land issues. The document states that every family should own a house and that 100,000 plots of land would be provided for the construction of houses. The document does not state whether this would be state or private land. It further goes on to add that four housing schemes (condominium property) would be implemented for public servants in Colombo and the suburbs. The document also states that 50,000 new houses would be built urgently under the “Ranaviru Gammana” concept.

---

as housing facilities for officers and soldiers in the Security Forces. There is no mention on the land ownership for such houses.

The Mahinda Chinthana document 2010 was introduced prior to the Presidential Elections held in January 2010 where the incumbent president set out his policy. The document sets out several housing projects that would be given to soldiers who are disabled or to families or soldiers who died in action, where a 10 perch land is to be given for the construction of the house. It also provides that the above category of persons who were occupying state land without legal sanction or title as of 1st January 2010, will be given title deeds to such lands. The document also provides land to public sector employees and government corporation employees who do not have houses, who will be given up to 10 perches of land. Further the document states that under the Mahinda Chintana project of giving agricultural land to 100,000 farmers, 20,195 allotments have already been given away and permits have been issued for a further 32,063 allotments, while offer documents have been issued to yet another 38,277 farmers. Finally the document states that free agricultural land will be given to 100,000 farming families in the Northern and Eastern Provinces. No reference is made as to whether the land would be state or private land, nor does it mention any selection criteria.

While the goals set out in the policy document are welcome, it is questionable whether the Government has taken any concrete steps to achieve these goals, or indeed whether some Government promises can be met. The Government needs to take immediate steps to demonstrate its commitment to housing and land issues. One step in addressing these issues is to have a land policy which is based on a rights framework and takes on board the needs of the people.

**Draft Housing Policy:** Sri Lanka does not have an overarching housing policy. Though many attempts have been made to draft such a policy, the lack of political will and the constant changes in governmental policy with every change of government has made this a near impossible task, according to Housing Ministry officials. Despite the difficulty of the task, efforts are once again under way to draft a national housing policy. An Outline for Discussion on the National Housing Policy sets out the past experiences on housing, issues related to housing development, objectives and strategies of the policy, and identifies key areas of reform. It is notable that one of the objectives of the policy is to ensure the right to housing rather than ownership of housing. Among the strategies proposed is for local governments to play a central role in the development of housing programmes through the provision of infrastructure facilities, building approvals and other needs. It must be kept in mind that the proposed policy focuses on housing development in general and does not deal with specific tsunami of conflict affected housing issues. The policy seeks to ensure access to affordable and decent housing for all families and to set up a contributors' National Housing Fund open to all individuals.

**Implications of development projects and military expansions:** Media reports of State and private land being taken over for various development and military projects, resulting in
civilians losing access to these land have intensified. While the State has the legal right to appropriate public land which has been given to individuals and private land for “public purposes” it has the responsibility to ensure adequate compensation and to ensure that those affected are provided alternate homes, livelihoods and social support to re-build their communities, while at the same time, it should be trying to minimize development induced displacement/relocation. As noted above the establishment of the Sampur HSZ/SEZ has had a profound impact in terms of access of land, and there are fears that this model may be replicated in the north. The presence of official and unofficial HSZs in the North and reports of the military planning to build new or expand existing camps have intensified fears of the loss of private lands and of increased militarisation of the North with possible demographic changes.55 There are additional concerns about the manner in which development programs such as the expansion of major roads have been carried out with shop fronts and houses being demolished in towns such as Kanthale in Trincomalee and Ottamavadi in Batticoloa. Residents in these areas acknowledge that most of the constructions on houses and shops or at least extensions to the original construction on the main street have been done illegally or that approval to construct beyond the road markers put by the Road Development Authority was secured through politicians rather than the relevant authority. The local government authority is meant to provide alternate land. However, in certain cases, the alternate land, compensation and support for relocation is not readily apparent.

Conflict and Land56: Over the course of the war, land problems were exacerbated owing to violence, displacement of entire communities, destruction and loss of documentation, occupation of land by armed actors and secondary occupation of land by displaced individuals. In the post war context, access to land remains a highly contested issue. The constitutional, legal and policy framework that governs land issues is incomprehensive, unclear and ineffectively implemented. In this regard, the failure to fully implement the 13th Amendment is a critical factor that underlies land issues in the Province. At the administrative unit level, disputes over boundaries and attempts to change boundaries have led to accusations that civilian actors are in fact seeking to secure more land for certain ethnic communities over others. At the political level land issues have been used as a political tool to create wedge issues between ethnic communities. The high level of militarization in the Province has meant that security restrictions, military occupation and the use of land by armed actors are preventing individuals from accessing land. In addition, there are ongoing issues in relation to land grabbing, encroachment, illegal land sales, and loss of legal documentation, which also prevent individuals from claiming possession to land.


56 The section on Land and Conflict is taken from Fonseka Bhavani, Raheem Mirak, Land in the Eastern Province Politics, Policy and Conflict, Centre for Policy Alternatives, Colombo, May 2010
Efforts to resolve land issues were made during the Cease Fire Agreement (CFA) and the post-tsunami period. In the post-war context, over a year following the end of the war, two national elections, and the government enjoying an overwhelming majority in Parliament, no major reforms have been introduced. There are however, unconfirmed reports of impending constitutional reform including changes to the 13th Amendment.

During the conflict, violence was used to establish control over territory by various armed actors. Entire communities were forced into displacement and lost access to their land. Massacres, individual killings, destruction of property, riots and intimidation all impacted land use and control as well as relations between communities. During the war, many areas in the East saw an ‘exchange’ in populations as particular communities fled vulnerable areas and moved to areas which were dominated by their respective community, or even fled to other Provinces. For example, the Batticaloa District, which was home to a small Sinhala population, now has barely a fraction of that community, while towns such as Ampara which had a small Tamil population are now almost wholly Sinhalese. In some cases properties were abandoned and occupied by armed actors or even other civilians, in other instances these individual plots may lay unoccupied. Some individuals sold their properties under conditions of duress. In other instances the overall context of fear and insecurity encouraged individuals who were members of minority communities (be they Tamil, Sinhala or Muslim) to sell to individuals from the community that formed the majority in that area. In a post-war context land sales, especially those lacking documentation, are being contested and original owners or their descendants are claiming that there were no land sales or that they were made under duress.

The following are key administrative, legal and access issues that contribute to disputes on the ground:

- **Issues over land documentation:** Loss of documentation and inadequate documentation are key challenges to proving land ownership.

- **Failures in effective and fair administration:** Land documentation problems are complicated by ethnically partial and or corrupt authorities. For example the Batticaloa Human Rights Commission has received complaints that original deeds to land may have been deliberately been lost or destroyed.

- **Landlessness:** There is a significant population in the East that does not have any legal title to land. Some occupy land; however, they do not have any legal title to the land. Previous owners of land are finding themselves landless because the Government has earmarked the land for other purposes.

- **War related abandonment or non-usage:** Land owners and users were forced to abandon their land due to the war. Those displaced may have ended up occupying someone else’s land in another area, creating a host of issues relating to secondary occupation. Furthermore, many who sold land during the war are now contesting the validity of the sale, claiming that at the time their land was sold under duress.

- **Encroachment:** Encroachment is the illegal occupation and use of either State or private land. Sri Lankan law grants the rights to long-term encroachers on private land; however, no policy or law has been enacted by the Government on
how land rights would be recognized in conflict affected areas. Encroachment is a significant issue in the East and is further complicated by the involvement of political actors that facilitate encroachment.

• **Land Grabbing and the involvement of powerful actors**: Land grabbing has been carried out by individuals, militant actors and the State. In particular the State has been accused of land grabbing on the grounds of military necessity, development, tourism and land settlement. While the State may follow the legal process it may still amount to land grabbing when due process is not followed and alternative information and proper compensation is not provided.

**Section 7: Compensation for losses**

In the present context in the East and North, where resettlement is still ongoing and there are drives of reconstruction and development, it is essential to look at how what has been lost can be restored and adequate compensation for loss and destruction can be possible. The lack of restitution or compensation packages have implications on the long-term development plans and political and social stability. Compensation needs to address loss and destruction, ensuring that there is conflict sensitivity, equity and transparency in how it is done. In addressing both restitution and compensation schemes, greater attention needs to be given to vulnerable groups including single headed households, widows, the physically handicapped and those injured by the conflict. Women are vulnerable to the loss of property rights either through exploitation or policies that favour males. Following the tsunami many women lost the rights to their properties as state-allocated land only allows for one signature. Children suffer the issues of inheritance. There is a need for policies and procedures focused on adult ownership and compensation without developing systems to identify orphaned children. It is important to examine government policy on return, rebuilding and reconstruction efforts. Though there was an initiative to formulate a Resettlement Policy in 2008, this was cut short by the Government without any formal reason being given.

Restitution can be defined as the restoration of what has been taken away to its rightful owner while compensation is the provision of assistance including financial assistance for the loss or destruction of land, housing and other property affected by disaster.

Restitution and compensation play a pivotal role in addressing the grievances of those who have lost land, property, houses and livelihoods and they are essential components of reconstruction, rebuilding and reconciliation efforts. The need for a comprehensive restitution and compensation processes and schemes are therefore vital in a post war context.

Although the existing Sri Lankan legal and policy framework can provide for limited respite, there is no comprehensive national restitution and compensation policy that is in force to provide a framework for determining assistance. As a result, these issues have not received the attention they deserve, and those affected and aggrieved have not been provided the assistance and support they need in a comprehensive and equitable manner. The public
debate on compensation itself is very limited. It is notable that in the mandate of the Lessons Learnt and Reconciliation Commission established by the Government of Sri Lanka the issue of compensation has been flagged. The need for uniformity in compensation has also been highlighted in public submissions to the commission.

While there are several humanitarian and development projects and programmes underway, involving Government, donors and agencies, challenges remain with achieving durable solutions for IDPs and returnees. A notable absence with such return and resettlement projects is the absence of any policy or action plans with regards to compensation.

The current populations of IDPs are for the most part those affected by the conflict largely in the North and East of the country, while there are also those who were affected by the tsunami. Although large numbers of affected have been provided assistance including some form of assistance with their housing, property and livelihoods, this assistance has been for strengthening the process of return. While there is a general uniformity in terms of the basic assistance package for returnees, there have been reports of variance between various case loads of returnees. There is a tendency to view this assistance as being compensation. With the influx of funding and agencies that arrived soon after the tsunami, those affected by the natural disaster were provided assistance and even compensation much faster than those affected by the conflict. Due to political interference, lack of political will and bureaucracy, those affected by the conflict are in some cases yet to receive compensation for their loss.

The issues of compensation and restitution are also very relevant in issues of relocation of displaced persons where IDPs are unable to return and reclaim their original properties. On the specific problem of properties occupied by the military, house owners have been provided minimal rent and been provided assurances that the property will be returned in some individual cases, whereas in others even the assurance of the property being returned is still not clear and there is a lack of clarity of compensation in case of such an outcome. This is the case in the majority of Jaffna High Security Zones. In addition, there are questions relating to the compensation and restitution for land acquisition for development purposes, such as the Sampur Special Economic Zone which is legally still a High Security Zone.

Under current Sri Lankan law there is a process of compensation for land acquisition. The Land Acquisition Act, provides for compensation to be paid, when private land is acquired for a “public purpose” providing for a framework to decided on the payment of compensation and an appeals process for those who are aggrieved by the compensation package. There are issues in its implementation including adequate and fair compensation and adequate notification for the affected.

There is also the Sri Lankan National Involuntary Resettlement Policy of 2001 which highlights that displaced persons should be fully involved in the selection of relocation sites, livelihood compensation and development options as early as possible. Apart from this it further highlights that replacement land should be an option for compensation in the case of loss of land, and that in the absence of replacement land, cash compensation should be an
option for all displaced persons. It also provides that compensation for loss of land, structures, other assets and income should be based on full replacement cost and should be paid promptly. The results are unpredictable and prolonged due to unrestrained right of appeal.

The Bar Association of Sri Lanka is a legal aid programme aimed at assisting internally displaced persons. IDPs earning less that Rs 6,000 a month are eligible for assistance.

This section has focused on compensation related to property, livelihoods and other economic aspects of IDPs and other affected persons but a critical area relating to the issue compensation is that of human life and limb. While compensation and assistance for the loss of a family member is clear policy for members of the armed forces, it is less coherent in the case of civilians. In September 2010, the chairman of Rehabilitation Authority, E.A. Samarasinghe stated that Rs 100,000 would be paid as compensation to those affected by acts of terrorist groups, up to Rs. 150,000 to public sector workers and Rs. 100,000 for a civilian whose property was damaged during the war. It has not been clarified in general how victims of acts committed by Government Forces, such as aerial and artillery bombardment or gun fire were to be compensated and instead it seems to be more on a case by case basis. Family members of such victims even found it difficult to secure death certificates (which are essential for securing state compensation, at least in policy), let alone compensation. The Ministry stated that close to 250 people would be given compensation and that there were 25000 applications for compensation that needed to be processed. It was also highlighted that applications are subjected to considerable delay in the provision of compensation.

Family members of those who were killed during the conflict are now able to apply for death certificates under the special provisions bill which was taken up in parliament on the November 9 2010. This Registration of Deaths (Temporary Provisions) Bill also enables next of kin of members of LTTE to apply for death certificates. The Public Administration and Home affairs Minister stated that special benefits would be provided for family members of missing public officials for whom payment of compensation and other benefits could not be given until they were issued with death certificates. The bill is also aimed at registering those who have gone missing due to natural calamities.

---

57 www.humanitariansrilanka.org/.../War%20affected%20IDPs%20get%20Rs.25%20million%20compensation.pdf
58 www.humanitariansrilanka.org/.../War%20affected%20IDPs%20get%20Rs.25%20million%20compensation.pdf
59 http://www.colombopage.com/archive_10C/Nov07_12891115111JR.php
60 http://sundaytimes.lk/101107/News/nws%2005.html