

Protecting the Rights of the Tsunami Victims: The Sri Lanka Experience

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Introduction

The study on 'Protecting the Post-Tsunami Displaced Persons: Critical Analysis of the Sri Lankan Experience' is an analysis of the ways in which Sri Lanka has attempted to protect the victims of the Tsunami during the relief, rehabilitation and the reconciliation phases. The study is inclusive of an analysis of the human rights instruments, mechanisms established or mandates to protect IDPs, applicability of the human rights instruments and mechanisms established in the post-tsunami context in Sri Lanka and the human rights issues faced by the IDPs. The main objective of the study is to identify policy recommendations for the government and the civil society to react in a more efficient manner in a future disaster situation. The essay begins with an overview of the post-tsunami situation in Sri Lanka followed by an analysis of the international and national human rights instruments applied and the mechanisms established or mandated to protect the rights of post-tsunami displaced persons in Sri Lanka; and finally attempts to identify human rights gaps experienced by the post-tsunami displaced persons and the reasons for these gaps.

Overview

The study is divided into four sections.

The first section presents an introduction to the post-tsunami situation in Sri Lanka. It comprises an analysis of the districts affected, number of deaths and displaced person, involvement of the government and civil society and the programmes introduced to protect the IDPs. The aim of this section is to contextualize the study.

In the second section I try to analyse the impact of the Sri Lankan human rights framework applicable to the tsunami affected IDPs. It identifies to what extent the international and national human rights instruments were applied in Sri Lanka to protect the post-tsunami displaced persons and discusses the role of the mechanisms established or mandated to protect the rights of post-Tsunami displaced persons.

The third section analyses the human rights issues faced by tsunami IDPs, for example, lack of equality in post-tsunami service provision, the buffer zone and restriction of movement, lack of participation in the decision making process on livelihood issues, delays in providing new documentation, delays in addressing complaints, unemployment, inability in providing an adequate

standard of living, non-delivery of health services, lack of shelter, problems of tsunami affected children (which include, child labour/ trafficking, lack of protection and adoption implementing and monitoring mechanisms, underage marriages), discrimination against tsunami affected women (limited access to relief, difference in treatment between tsunami affected IDPs vs. war affected IDPs. The fourth section concentrates on policy recommendations for the government and the civil society, in order to react in a more efficient manner in protecting the affected persons during a natural or manmade disaster situation. It is categorized into four parts, namely, recommendations related to civil and political rights, recommendations related to economic, social and cultural rights, recommendations related to group rights and general recommendation.

Background of the Study

The tsunami that occurred on 26 December 2004 is the world's fifth-largest quake in a century. The massive earthquake that occurred off the coast of Sumatra, Indonesia and the series of aftershocks triggered tsunami waves that radiated through the Bay of Bengal at a rate more than 500 kilometres per hour. This directly impacted the coastal areas of Indonesia, Thailand, India, Sri Lanka, Maldives, Bangladesh, Kenya, Malaysia, Mauritius, Myanmar, Reunion, Seychelles, Somalia and Tanzania.¹

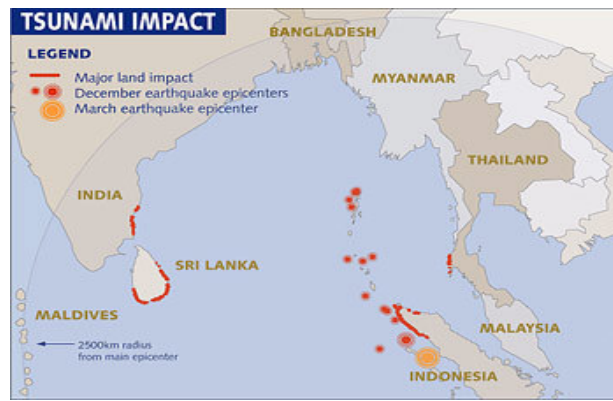
Sri Lanka is one of the two countries that were worst hit by the tsunami tidal waves that ravaged several countries in the Indian Ocean Rim. The Tsunami caused extensive damage and disruption to human life, livelihood, infrastructure, private and public property and economic and social activities in Sri Lanka. As a result of the tsunami disaster there have been 553,287 displaced persons in Sri Lanka, belonging to 5 provinces and 13 districts of the island.

Tsunami Affected Areas

Fifty seven Divisional Secretariat (DS) divisions, 751 Grama Niladhari (GN) divisions and 1142 villages were affected by the tsunami. The DS divisions affected by tsunami can be categorized as following:

Northern Province: Kayts, Maruthkeny, Point Pedro and Sandilipav were the four DS divisions affected in Jaffna District. Kandawali, Pachilaipalli and Poonakary were the three affected DS divisions in Kilinochchi. Maritimpattu DS Division in Mullaitivu District was also affected.

Eastern Province: Eachchilampatta, Kinniya, Kuchaveli, Muttur, Seruvila and Trincomalee town and Gravets were affected in Trincomalee District. Ten DS divisions in Ampara District were affected. These include, Addalachchenai, Kalmunai Muslim, Kalmunai Tamil, Karativu, Ninthavur, Pothuvil, Akkaraipattu, Alayadiwembu, Sainthamarathu and Thirukkivil. The nine DS divisions affected in Batticaloa include, Eravur Pattu, Kattankudy, Koralai Pattu, Koralai Pattu North, Manmunai North, Manmunai Pattu (Araipattai), Koralai Pattu South, Manmunai South and Eruvil.



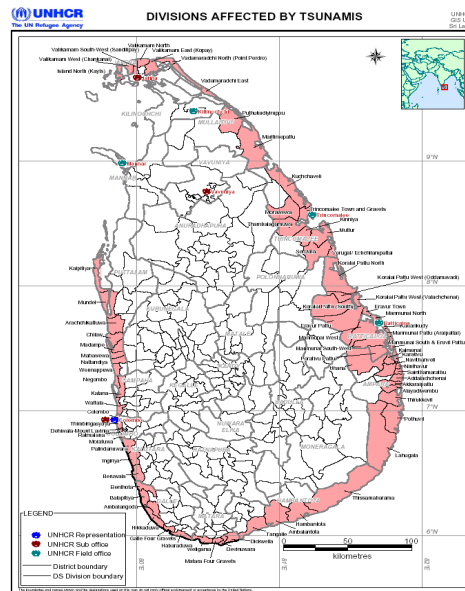
Map 1. Area impacted by Tsunami

Source: Lonely Planet – Tsunami Update <http://www.lonelyplanet.com/Tsunami/>

Southern Province: In Kalutara District, Beruwala, Kalutara and Panadura were the three DS divisions that were affected. The six DS divisions affected in Galle District include Ambalangoda, Balapitiya, Bentota, Galle Four Gravatts, Habaraduwa and Hikkaduwa. In Matara District, Devinuwara, Dickwella, Matara Four Gravettes and Weligama were four DS divisions affected. The four DS divisions affected in Hambantota District include Ambalantotoa, Hambantota, Tangalle and Tissamaharama.

Western Province: Colombo, Dehiwala, Moratuwa, Rathmalana and Thimbirigasyaya were the five DS Divisions affected in Colombo District. Negambo and Wattala DS divisions in Gampaha District were also affected.

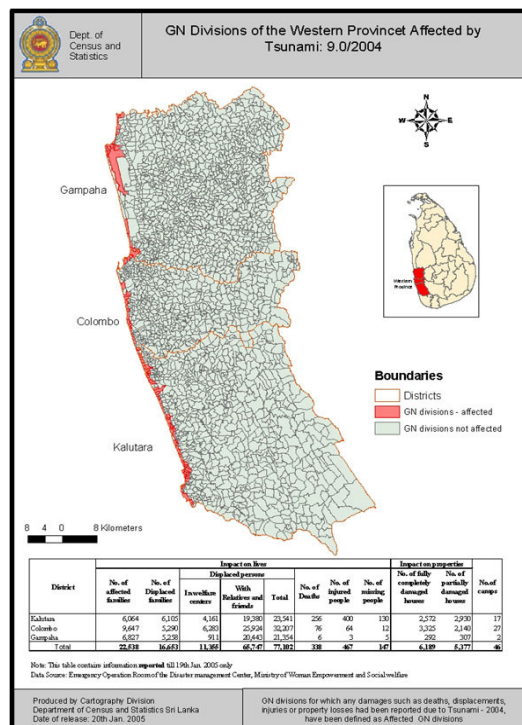
North Western Province: Vanathavilluwa DS division was affected in Puttalam District.



Map 2. Divisions affected by Tsunami

Source: GIS Unit, United Nations High Commission for Refugees, Sri Lanka.

Map 3 shows the three affected districts in the Western Province, namely, Gampaha, Colombo and Kalutara. Gampaha is among the least affected of the 13 affected districts. Six deaths were reported from the DS Divisions of Wattala and Negombo. Out of a total of 1,449 displaced, 676 were in welfare centres and 573 with relatives or friends. Only 3 were injured and 5 remained missing.² Since the Gampaha and Puttlam Districts experienced less damage than any of the other districts, they were given very little attention. Displaced people were initially looked after by those in unaffected neighbouring villages. Later they were moved into temporary shelters. Moratuwa, Ratmalana, Dehiwala, Thimbirigasyaya and Colombo were the Divisions affected in Colombo District. The tsunami claimed very few lives in Colombo as the magnitude of the wave was not as high as in other parts of the country. Kalutara District was the worst affected in the Western Province of Sri Lanka. 9427 families were affected and 35053 people were displaced. Even though the number of people displaced was 35,053 by mid February, the initial number was 37,629. Two hundred and seventy nine people lost their lives whereas 74 remained missing.



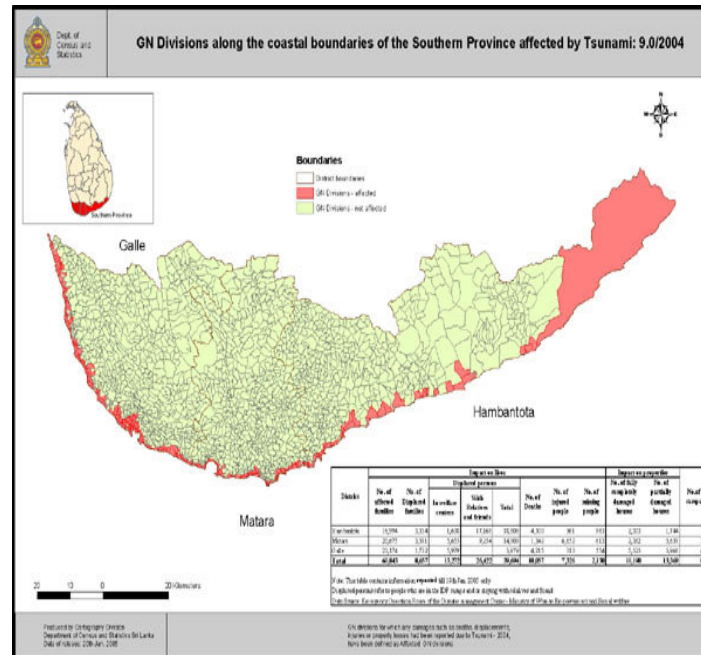
Map 3. GN Divisions in Western Province affected by Tsunami

Source: Department of Census and Statistics

http://www.statistics.gov.lk/Tsunami/map_western%20pro.htm

Map 4 shows the districts affected by the tsunami in Southern Province, namely, Galle, Matara and Hambantota. The overall impact of tsunami in the Galle District was devastating, but the disaster is mainly localized along a 1 km wide coastal strip in 6 Divisions. A total of 24,583 families were affected and 116,951 people were displaced. The most number of displaced people are from the district of Galle. In the District of Matara, the number of displaced persons was estimated to be 13,137

initially, but the figure eventually changed with time. Out of that number, 4,141 lived in welfare camps while 8,996 lived with relatives and friends. 4 Divisional Secretariat Divisions and 72 Grama Niladhari Divisions were directly affected. All four DS Divisions that lie along the coastal belt were affected by the tsunami, namely, Tangalle, Ambalantota, Hambantota and Tissamaharama. The total number of affected families is 17,017, and there are 46,998 displaced persons. Almost all sectors of infrastructure, the fisheries sector and other means of livelihood have been damaged by the tidal wave.



Map 4. GN Divisions in Southern Province affected by Tsunami

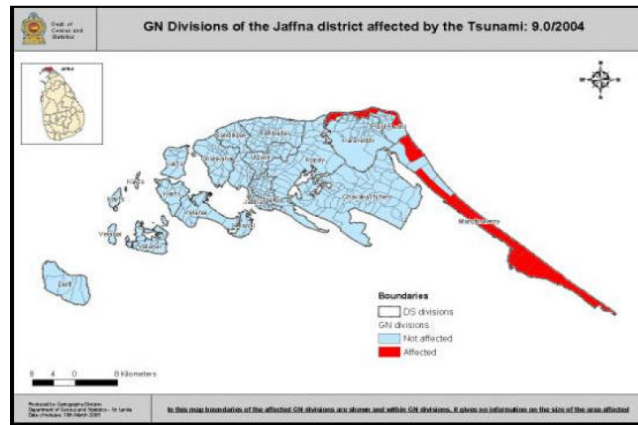
Source: Department of Census and Statistics

http://www.statistics.gov.lk/Tsunami/map_southern%20pro.htm

Due to the civil war that lasted for more than twenty years, North and Eastern Provinces were more vulnerable to the tsunami. During the conflict period, approximately 65,000 people were killed and over 800,000 people were displaced. As a result of the war, schools, businesses and health facilities were damaged. In December 2004, two and a half years since the government and LTTE had agreed on a cease fire, the North East was going through a rapid rebuilding process. The tsunami impacted on many newly built and reconstructed infrastructure.

Map 5 portrays the affected GN Divisions in Jaffna District. In the District of Jaffna, 12,902 people were affected, 41,006 were displaced and 2,640 died. In addition to Jaffna, Mulatiuv and Killinochchi were also affected in the Northern Province. In the District of Killinochchi, 2,297 families were affected by the tsunami. Of this, 1,603 people were left homeless. Most of the affected people were accommodated either by extended family members or by friends. A relatively small proportion of people settled in welfare centres. 560 people were identified as dead whereas 670 people were injured. Killinochchi is the least affected district in the North and the East of Sri Lanka. Eighteen GN Divisions were affected in one Divisional Secretariat Division in the Mullaithivu District. The amount

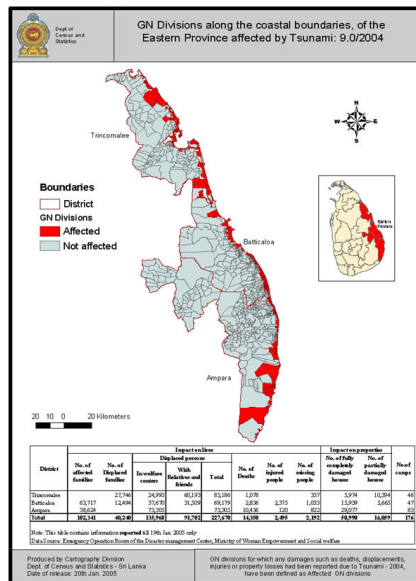
of damage caused was, however, immense. There were a total 3,000 deaths of which 1,081 were fisherman. 421 persons were still missing by mid February. 2,590 were injured. 6,745 families were affected and 22,557 were left homeless.



Map 5. GN Divisions in Jaffna District affected by Tsunami

Source: <http://www.statistics.gov.lk/Tsunami/census/afectd%20jaffna%20gn.pdf>

Map 6 shows the affected districts (Ampara, Batticaloa and Trincomalee) in the Eastern Province. In Ampara District 54,176 families were affected and 130,563 people were displaced. 10,436 lost their lives and 341 were missing. Furthermore, 6,555 persons were reported as injured. 11 Divisional Secretariat Divisions and 126 Grama Niladhari Divisions in the District were directly affected. Initially, there were 133,997 Internally Displaced Persons (IDPs) of which 57,595 were in welfare centres and 76,402 were either with relatives or friends. By late February, the number of people in welfare centres had reduced to 24,179 and the number with relatives or friends had reduced to 75,322. In Batticaloa, 63,717 families were affected and 63,717 people were displaced. 2,975 lost their lives and 346 were missing. Apart from the fatalities, 2,375 were reported as injured persons. 08 out of 14 Divisional Secretariat Divisions and 88 out of 223 Grama Niladhari Divisions were directly affected. In Trincomalee, there were 1,078 deaths and 1,328 injuries. In addition to this, 45 persons were missing. A total of 78,908 people were displaced and 30,547 families were affected by the tsunami. Nearly 3,320 families (13,778 persons) were temporary housed in 33 welfare camps. Pledges were given to build 13,126 transitional shelters and 8,549 permanent houses by local and foreign NGOs.



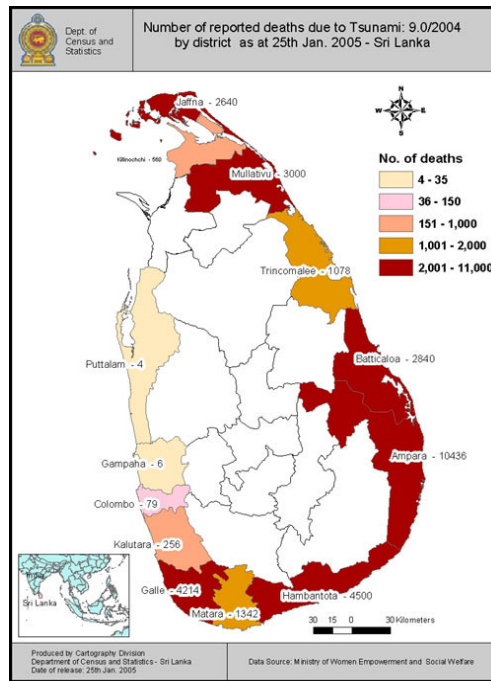
Map 6. GN Divisions in Eastern Province affected by Tsunami

Source: Department of Census and Statistics

http://www.statistics.gov.lk/Tsunami/map_eastern%20pro.htm

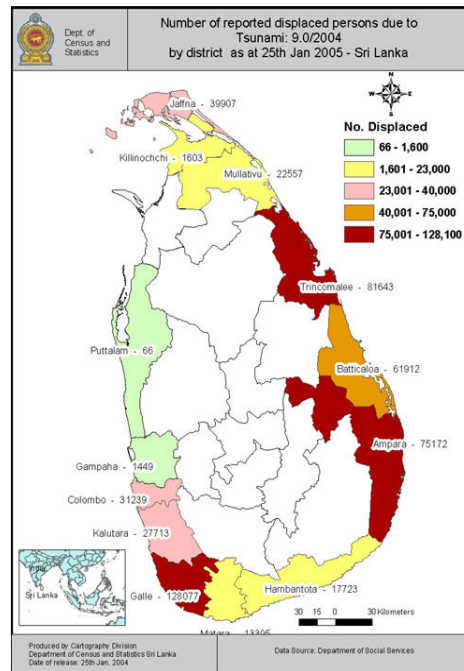
Impact of the Tsunami

The highest number of deaths was reported from Ampara, totalling up to 10,436. Second highest number of deaths was reported from Hambantota District. Mostly women and children died from the tsunami as men were away from the houses when the tsunami struck. Map 8 shows the number of Internally Displaced Persons (IDPs) in the 13 affected districts of Sri Lanka. Internally Displaced Persons (IDPs) are persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border.³ This study concentrates on Post-tsunami displaced persons in Sri Lanka. The highest number of displaced persons was reported from Galle District (128,077 persons). The number of persons displaced in the Eastern Province was also significantly high. 81,647 persons from Trincomalee, 75,172 persons from Ampara and 61,912 persons from Batticaloa were displaced. Lowest number of displacement was reported from Puttalam District (66 persons). Persons living in North East were especially hard-hit by the tsunami as they were still struggling with the impact of twenty year civil war. There were many persons who were firstly displaced by war and now by the tsunami. Persons belonging to all ethnic groups in Sri Lanka (Sinhala, Tamil, Muslim and Burger) and across classes were affected by the tsunami. The poor became more vulnerable as they had to depend on humanitarian aid to rebuild their lives.



Map 7. Deaths due to Tsunami

Source: Department of Census and Statistics http://www.statistics.gov.lk/Tsunami/map_deaths.htm



Map 8. Number of reported displaced persons

Source: Department of Census and Statistics http://www.statistics.gov.lk/Tsunami/map_dispepole.htm

The overall estimated financial need was \$ 1.5 to \$1.6 billion.⁴ The majority of resources within a short span of time were required for housing, transportation infrastructure, and livelihood restoration for fishermen, small farmers, small and micro enterprises, and others. Estimates of losses and financing needs, according to the Asian Development Bank, World Bank and Japan Bank for International Development, Preliminary Damage and Needs Assessment, are given in Table 1.

Table 1. Preliminary Estimates of Losses and Financing Needs

Sector	Losses		Financing Needs		
	Asset Loss	Output Loss****	Short Term	Medium Term	Total Needs
Housing	306-341	-	50	387-437	437-487
Roads	60	-	25	175	200
Water and Sanitation	42	-	64	53	117
Railways	15	-	40	90	130
Education	26	-	13	32	45
Health	60	-	17	67	84
Agriculture*	3	-	2	2	4
Fisheries*	97	200	69	49	118
Tourism*	250	130	130	-	130
Power	10	-	27	40-50	67-77
Environment	10	-	6	12	18
Social Welfare**	-	-	30	-	30
Excluded Items plus Contingency***	90	-	30	120	150
Total (\$ Millions, rounded)	970-1,000	330	500	1,000-1,100	1,500-1,600
Percent of GDP	4.4-4.6	1.5			7.0-7.3

* Includes estimates from livelihoods damage assessment of fishermen, small farmers and small businesses in tourism totalling \$140 million.

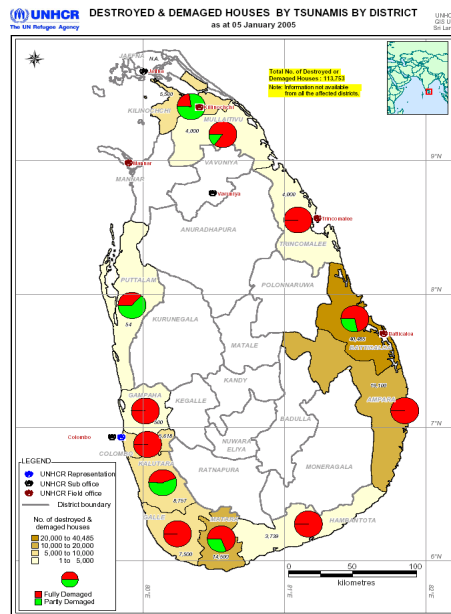
** Targeted assistance to vulnerable groups.

*** Includes items mentioned at the end of paragraph 4 and is estimated at about 10% of the total.

**** Refers to 2005 and 2006.

Source: Quoted from Preliminary Damage and Needs Assessment. 2005- Post Tsunami Recovery Programme. The data is based on the Government of Sri Lanka and Staff Estimates.

The total number of destroyed or damaged houses (Map 9) is recorded to be 113,753. The highest number of houses were destroyed or damaged in Batticaloa District (40,485). The number of houses damaged in Ampara and Matara Districts were also high. Around 19,100 houses in Ampara and 14,500 houses in Matara District were either damaged or destroyed.



Map 9. Destroyed or damaged houses by district
 Source: GIS Unit, United Nations High Commission for Refugees, Sri Lanka

Soon after the tsunami, the government declared a 100–200m zone landwards from the mean high water line as the Buffer Zone, an area in which no reconstruction was allowed with certain exceptions. However, since 14 October 2005, considering localized requirements, the buffer zone regulation became more flexible. Currently recommended set back standards are given in Table 2.

Table 2. Recommended Set-Back Standards

District	DS Division	GN Division	Metres
Colombo	Thimbirigasyaya		55m
	Dehiwala		55m
	Ratmalana		45m
	Moratuwa	Angulana South to Egodayana West	45m
Kalutara	Panadura	Sagara Pedesa to Molligoda	45m
	Kalutara	Pohoddaramulla to Kalamulla	35m 60m
	Beruwala	Maggona II to Beruwala Maradana	60m
Galle	Bentota	Angagoda to Warahena	40m
	Balapitiya	Randombe II	45m
	Ambalangoda	Ambalangoda Police Station area	45m
	Hikkaduwa	Narigama Thiranagama Patuwatha	35m
	Galle	Closenberga II Rumassala II	25m
	Habaraduwa	Unawatuna to Pihiligoda II	40m

Matara	Weligama	Kapparatota II Mirissa II	35m
	Matara	Browns Hill, Eliyakanda II	25m
	Devinuwara	Nilwella II Wawwa II	35m
	Dickwella	Waththegama North to Dodampahala Central	35m
Hambantota	Tangalle	Goyambokka II	35m/60m
	Hambantota	Pallemalala	60m
Ampara	Potuvil	Arugam Bay	50m
	Kalmunai		65m
Batticaloa	Kaththankudy		80m
Trincomalee	Muttur		50m
	Kinniya		50m
	Kuchchaveli		50m
	Trincomalee		50m
Jaffna	Maruthenkerny		50m
	Point Pedro		100m

The Survey Department, Urban Development Authority and the Department of Coast Conservation were the responsible government authorities in demarcating the buffer zone. As a result of the Buffer Zone, the government had to allocate new lands for houses which had been within the buffer zone.

Post-Tsunami Relief

Role of civil society

Government and the civil society played a crucial role in the post-tsunami relief. As soon as tsunami struck, it was the common people of the country who initiated the rescue of affected persons and provided relief aid. Temples, churches, media and non-government organizations were also involved in collecting, packing and distributing provisions for the Tsunami affected persons. State and private media played a crucial role in collecting necessary provisions, through media campaigns and organizing collection vehicles in each district. The provisions distributed to affected persons included clothes, dry rations, cooked food, medicines, tents, mats, sanitary wear, cookers, etc. However, while affected persons in easily accessible areas received immediate and overdose of relief aid, those living in remote areas received only very limited relief aid. The overwhelming response of the Sri Lankan community to help the tsunami affected persons without considering ethnic or religious differences was very commendable. This was an ice breaker for ethnic tensions and could have been a good opportunity for reconciliation if these attempts of helping each other were encouraged and systematized by the government or NGOs who were also involved. NGOs organized work camps in all the tsunami affected districts to clean up the debris. Work camp participants were volunteers from different parts of the country. Local NGOs organized the logistics for the volunteers while national level NGOs funded the process by providing equipment, transport and money for food and accommodation. Sri Lanka received foreign aid from many countries, from Sri Lankans living abroad, private donors, International NGOs and various foreign governments. Many foreign volunteers and NGOs came to Sri Lanka to support the relief process and to reconstruct houses.

Role of the Sri Lankan Government

Sri Lankan Government built and mandated mechanisms to protect the tsunami affected persons. Firstly, the authorities who were in charge of protecting the IDPs were Centre for National Operations (CNO) and Task Force for Rescue and Relief (TAFRER). Within months, these authorities were restructured and replaced by Task Force for Rebuilding the Nation (TAFREN) and Task Force on Relief (TAFOR). Later, these were called as Reconstruction and Development Agency (RADA). Ministry of Relief, Rehabilitation and Reconstruction, Ministry of Social Welfare, Ministry of Urban Development and Water Supply, Ministry of Women's Empowerment and Social Welfare, Ministry of Women's Affairs, Ministry of Ports and Aviation, Presidential Secretariat, Urban Development Authority, National Child Protection Authority, Ceylon Electricity Board, National Water Supply and Drainage Board, Resettlement and Rehabilitation Authority of the North (RRAN), Sri Lanka Central Transport Board, Ceylon Government Railways, Road Development Authority, Sri Lanka Telecom, Information and Communication Technology Agency of Sri Lanka (ICTA), Board of Investment of Sri Lanka (BOI), Bureau of Foreign Employment, Bureau of Infrastructure Investment, Department of External Resources, Department of Fiscal Policy and Economic Affairs and Department of Labour were also given mandated roles in tsunami relief, rehabilitation or reconstruction activities. At the district, divisional and Grama Niladhari levels the remaining structures of District Secretariats, Divisional Secretariats and Grama Niladharies were mandated in protecting the affected IDPs.

Role of the Sri Lankan Government in the process of relief, rehabilitation and reconstruction varied. It included, providing relief aid; paying compensation for dead persons; distributing tents; coordinating efforts of developing temporary shelter and permanent shelter; identifying and allocating new lands to build houses; reconstructing damaged schools, hospitals, roads, railways and other infrastructures; restoring livelihood, etc.

Post-Tsunami Operations Management Structure (PTOMS)

The Government of Sri Lanka and the LTTE signed the so-called PTOMS in order to create a joint mechanism to ensure the effective delivery of assistance to the tsunami-affected people in the north and the east by the government. Since there are certain areas in the north and east that the government has limited access there is no assurance that the assistance to these areas would benefit the people directly. At the same time, the LTTE criticized the government for discriminating against the Tamil people. So a joint mechanism, in collaboration with the LTTE, was set up with the objective of strengthening the government's ability to effectively deliver relief, rehabilitation and reconstruction to LTTE controlled areas. The PTOMS was a failure as a result of lack of cooperation by the parties involved and external political influences.

Protection Guaranteed For the Displaced Through Human Rights Framework

Human rights can be defined as "the moral entitlements of all human beings to dignified living, full development of personality and social justice" (Fernando 2002: 7). Human rights focus mainly on the individual. They are rights one has simply for being a human being. Human rights are equal, inalienable and universal (Donnelly 2003: 10). In cases where a collective of people's rights are suppressed or denied, group rights have been articulated to protect individual rights collectively.

The concept of human rights could be categorized into two major philosophies, namely, liberalism and socialism. Civil and political rights draw upon liberal philosophy while the social rights are based on the social philosophy. Civil rights cater to the moral or psychological nature of human beings while political rights cater to the political nature of human beings and social rights to the biological or existential nature of human beings. Human rights are most likely to be achieved when, 1. State makers emerge through institutional channels of free and fair elections; 2. Both governmental and oppositional political mobilizations take democratic and non-violent forms; and 3. International conditions are conducive, without super power rivalry and conflicts within the UN system (Fernando 2002: 40).

Human Rights Instruments that are Relevant and Applicable to Displaced Persons in Sri Lanka

Applicable human rights in Sri Lanka are derived mainly from the Chapter 3 of the 1978 Constitution of Sri Lanka and the International Obligations, which include the customary international law and rights enshrined in international covenants, treaties and other international documents that Sri Lanka has ratified. Customary International law, which are '*jus cogens*' principles of international law, are universally applicable. These laws are binding on all states, regardless of whether or not they have expressly accepted of such principles. Sri Lanka has an obligation to those international covenants, treaties and other international documents which it has ratified. As a dualist country, the scope of application of such treaties in domestic situation is limited because the domestic law of the country take primacy over its international obligations. As a result, in situations where statute is unambiguously inconsistent with international obligations, the statutory provision prevails (Fernando 2005: 25).

Relevant and Applicable National Human Rights Instruments

Sri Lanka, as a state, has the responsibility of respecting, protecting and fulfilling human rights recognized by national and international instruments. Most important sources of human rights law relevant to the context of tsunami IDPs include,

- *The Constitution of the Democratic Socialist Republic of Sri Lanka (1978)*
 - The Fundamental Rights recognized by the State is presented in Chapter III of the Constitution. Directive Principles of State Policy and Fundamental Duties are given in Chapter IV.
- *Human Rights Commission Act (1996)*⁵

Section 11 of the HRCSL Act No. 21 of 1996 spells out the powers of the HRC as,

- To investigate and inquire into violations of fundamental rights.
- To intervene in court proceedings with the permission of the court.
- To monitor the welfare of detainees through regular inspections of places of detention.
- To undertake research on human rights issues and public education programmes on human rights.
- To summon persons before the Commission to procure evidence including documentary evidence and to examine witnesses.

Section 10 of the HRCSL Act No. 21 of 1996) describes the role of the HRC as,

- To ensure that all State Procedures comply with fundamental rights guaranteed by the Constitution of Sri Lanka.
- To advise and assist the government in drawing up legislation, administrative directives and procedures in compliance with fundamental rights.
- To make recommendations to the government regarding how national laws and administrative practices can be brought in line with the international human rights obligations of Sri Lanka.
- To advise the government on acceding to international human rights treaties.
- To promote human rights awareness in the country.

Relevant and Applicable International Human Rights Instruments

- *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*
 - In a situation like tsunami, where people are more vulnerable due to the disaster situation, due to loss of livelihood or being widowed, the trends of trafficking and prostitution could increase. This international instrument protects women from being trafficked and being used for prostitution.
- *International Covenant of Civil and Political Rights (ICCPR) (1966)*

Sri Lanka has signed and ratified the ICCPR on 11 June 1980, and therefore binds the country by its terms. The rights in this Covenant are rights that have immediate effect. Some important rights identified in the ICCPR are:

- ICCPR Article 16 provides that “Everyone shall have the right to recognition everywhere as a person before the law.” This article is particularly relevant to the issue of birth and death certificates raised by several people. Identity is a crucial part of one’s ability to participate as a citizen in a democratic system.
- ICCPR Article 17 provides that the Right to Privacy is important in a context where privacy and family life become difficult to maintain through living communally in welfare centres.
- ICCPR Article 25(a) provides that every citizen shall have the right and the opportunity to take part in the conduct of public affairs either directly or through freely chosen representatives. An important factor in post-tsunami rehabilitation and reconstruction is the involvement of communities at the grass-roots level. This right is therefore relevant to the successful participation of these communities in the process of democratic governance.
- *(First) Optional Protocol to the International Covenant on Civil and Political Rights (1966)*
 - According to the Optional Protocol which was ratified on 3 October 1997, individuals who claim to be victims of violation of rights recognized in the ICCPR, can complaint to the committee, if there is no domestic remedy. As Sri Lanka is party to both, ICCPR as well as the First Optional Protocol, Sri Lankans can seek remedies from the committee, if there is no domestic mechanism available.
- *International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)*
 - ICESCR has been signed and ratified by Sri Lanka on 11 June 1980. The rights in this Covenant are not rights that have immediate effect, but are subject to progressive realization by the governments that are signatory to the Covenant. The State’s commitment to the progressive realization of rights must be “to the maximum of its

available resources”. According to General Comment No. 3 of the UN Committee on Economic Social and Cultural Rights (CESCR), these available resources include the aid given to a country by the international community.⁶ Under the ICESCR, violations will fall into two broad categories. 1. Failure to ‘progressively realize’ rights and 2. Discrimination in access to rights. Some of the important economic, social and cultural rights in the context of tsunami, that is recognized in ICESCR are:

- ICESCR Article 6: The Right to Work guarantees the opportunity to earn a living wage in a safe work environment.
 - ICESCR Article 11: The Right to Food guarantees the ability of people to feed themselves, and also obligates states to cooperate in the equitable distribution of world food supplies. This article also recognizes the Right to Adequate Housing. This right does not only consist of the right to have a roof over one’s head, nor should it be exclusively viewed as a commodity, but should be the right to live somewhere in security, peace and dignity.⁷
 - ICESCR Articles 7, 11 & 12: The Right to Health guarantees access to adequate health care, nutrition, sanitation and to clean water and air.
 - ICESCR Articles 13 & 14: The Right to Education guarantees free and compulsory primary education and equal access to secondary and higher education.
- *International Convention for the Elimination of All Forms of Racial Discrimination (ICERD) (1966)*
 - On 18 February 1982, Sri Lanka has ratified the ICERD and as a result has an obligation to protect the citizens from any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life [Article 1 (1)].
 - *Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)*
 - Sri Lanka has ratified CEDAW on 5 October 1981. In 1993, Sri Lanka has adopted the Women’s Charter, based on the CEDAW. The Women’s Charter is non-binding but is recognition of the Sri Lankan Government to uphold women’s rights. Particularly relevant articles from CEDAW are:
 - CEDAW Article 5: State parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women
 - CEDAW Article 7: State parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) to participate in the formulation of government policy and the implementation there of and to hold public office and perform all public functions at all levels of government; (c) to participate in non-

governmental organizations and associations concerned with the public and political life of the country.

- *Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)*
 - Sri Lanka has an obligation to protect its citizens from ‘torture,’ which means “severe pain or suffering, whether physical or mental, which is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” [Article 1 (1)].
- *Convention on the Rights of the Child (CRC) (1989)*
 - The CRC was ratified by Sri Lanka on 12 July 1991. This is the main international instrument that offers specific human rights protections to children. Important articles in the context of tsunami include,
 - CRC Article 19: role of the state parties in taking all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in care of parent(s), legal guardian(s) or any other person who has the care of the child.
 - CRC Article 20: a child temporarily or permanently deprived of his or her family environment, or in whose best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.
 - CRC Article 21: guidelines to follow in adoption of a child.
 - CRC Article 23: protecting mentally and physically handicapped children.
 - CRC Article 24 (1) (2) (3): providing health care.

Relevant and Applicable Non-Binding Instruments

- *Guiding Principles on Internal Displacement (1996)*

“Guiding Principles on the Treatment of the Internally Displaced”, which is also known as the Deng Principles provides a template for human rights standards regarding IDPs. Since the guiding principles are non-enforceable, it is considered as soft law. These principles are useful in developing policy and lobbying the government.⁸

In addition to the above mentioned instruments, national laws of Sri Lanka and the three new statutes passed by the Parliament to protect the tsunami affected persons by addressing aspects of post-tsunami relief, rehabilitation and reconstruction efforts are relevant in protecting human rights of the tsunami displaced persons.

Relevant and Applicable National Human Rights Instruments

- *National Laws* : Roman- Dutch law is the general law mostly used in the country. English common law is used in places where Roman-Dutch law is silent.

Tesawalamai is customary law applicable to Tamils in the province of Jaffna, and thus has a territorial limitation. “The Tesawalamai distinguishes between various kinds of property. The main kinds are mudusam or inherited property, cheedanam or dowry (property brought by the wife) and thediathetam or property which was acquired for valuable consideration by either of the spouses during the subsistence of their marriage” (Cooray 1991:149). Under Tesawalami, as described in the Matrimonial Rights and Inheritance (Jaffna) Ordinance No. 1 of 1911, a woman may only dispose of her immovable property with the consent of her husband.

Muslim law in Sri Lanka is applicable to all persons who profess the Islamic faith. Thus, all Muslims affected by the tsunami remain subject to Muslim law in Sri Lanka. The change in context for those affected by the tsunami does not change the basic laws that govern Muslim families, but throws into relief the potentially far-reaching consequences of some discriminatory provisions.

- *Married Women’s Property Ordinance (1923)* :Section 5(1) of the Married Women’s Property Ordinance 1923 confers on a woman the capacity to hold and dispose of property as if she were a *femme-sole*. Section 5(2) confers on a woman capacity to enter into contracts and of rendering herself liable in contract to the extent of her separate property. It also provides that a woman can sue and be sued without her husband being joined as a party. Contracts by a wife for necessities are governed by the Roman-Dutch law. These ordinances do not apply to those who are governed by Kandyan law, Tesawalamai, or Muslim law.
- *Land Development Ordinance (LDO) (1935)*: In cases where the tsunami victim have lived on state land under permits or grants rather than in land they own outright, terms of Land Development Ordinance apply. Obtaining a permit is a prerequisite to obtaining a grant, which is given if certain criteria are fulfilled. Land grants confer secured rights to the grantee and are registered in the District Land Registry in the same way as other title transfers. The permit or grant holder may nominate a successor. If a successor is not nominated, his spouse inherits. Thereafter inheritance is by the relatives specified in the First Schedule to the LDO, with sons given preferences over daughters, with other relatives following. The oldest of each group is given preference over the younger.
- *Children and Young Person’s Ordinance (CYPO) (1939)* : This creates a statutory framework allowing for legal custody of children by those other than their natural parents. According to the CYPO, the state can intervene in the case of two categories of children, namely, juvenile offenders and children in need of care or protection.
- *Muslim Marriage and Divorce Act (MMDA) (1951)*: Of concern for Muslim women (or girls), there is scope for child marriage under this Act. Section 23 of Part II of the MMDA states:“Notwithstanding anything in section 17 a marriage contracted by a Muslim girl who has not attained the age of twelve years shall not be registered under this Act unless the Quazi for the area in which the girl resides has, after such inquiry as he may deem necessary, authorized the registration of the marriage.”

Regulatory Framework for Tsunami Aid

- *Tsunami (Special Provisions) Act (2005)*

This Act was formulated and passed with the view to “enable special legal provisions to be made in respect of persons and property affected by the tsunami that occurred on December 26, 2004, and for matters connected therewith or incidental thereto.”⁹ The Act contains six sections dealing with Death

Certificates, Custody of Children and Young Persons, Prescription, Actions under Section 66 of the Primary Courts Procedure Act, Tenancy Rights, and Offences in Respect to Tsunami Relief Property. The relevant sections of the act are:

- **Death Certificates:** Regarding the issue of death certificates, Section 2 of the Act amends S. 108 of the Evidence Ordinance 1896 which stipulates a period of one year after which a missing person will be presumed dead unless proven to be alive by the person claiming so. Section 2 states that any person living in, visiting or travelling through a tsunami affected area on the 26 December who has been missing for 6 months, shall be presumed dead and the burden of proof lies on the person affirming that such a person is alive, to prove so.
- **Custody of Children and Young Persons:** Procedure to be followed in adopting tsunami-affected orphans are outlined in the Act. In Part II, section 14, the Act provides that foster parents should be monitored and evaluated by a special panel of experts for a period of one year before they are deemed suitable to adopt the children in their care. It is also mandatory that all custodians register their custodianship within one month of the passing of this Act. The National Child Protection Authority (NCPA) is identified as the lead agency in providing for the welfare of tsunami orphans and unaccompanied minors.
- **Prescription and Tenancy:** The Act also amends certain property laws as and when they relate to property affected by the tsunami. For example, prescriptive rights, (usually enforceable when a person has had adverse, uninterrupted possession of immovable property for a period of more than 10 years) are broadened to allow for adverse possession of property which began before the 26 December 2004 by a person affected by the tsunami to be deemed uninterrupted for a period of up to one year if the person was prevented from continuing possession as a result of the tsunami. It is also made explicit that tenancy rights are not interrupted as a result of the tsunami, and as a result, all tenants whose houses were damaged by the tsunami, would be entitled to remain in them under the same terms of contract, after reconstruction.

- *Registration of Deaths (Temporary Provisions) (2005)*

The Act makes provision for registration of deaths of persons missing as a result of, (a) any terrorist or subversive activity; (b) civil commotion; (c) natural disaster or calamity; (d) whom there are findings by a Commission of Inquiry or Special Presidential Commission of Inquiry that the person has disappeared or is missing. In the case of a person missing due to a natural disaster or calamity in an area declared by the Registrar General as a “National Disaster Area” the kin of that person may apply to the Registrar General or the District Registrar to register the death and issue a death certificate. Every such application, supported by an affidavit, should be made to the Grama Niladhari of the area. Application should be certified by the Grama Niladhari and endorsed by the Divisional Secretary. On being satisfied with the application, the Registrar General shall direct the Registrar of the area to register the death and issue a death certificate.

- *Disaster Management Act (2005)*

Overall responsibility for disaster management at the National level lies with the Ministry for Women’s Empowerment and Social Welfare, exercised through the National Disaster Management Centre (NDMC). The Disaster Management Bill (Bill No. 68) was passed as a statute on 4 May 2005. The Bill is to provide for the establishment of the National Council for Disaster Management (chaired by the President), the Natural and Human Disaster Management Centre, and the appointment of two Technical Advisory Committees (one to deal with natural disasters, and the other with human

disasters). These bodies will have mandates to formulate disaster management plans, declare a state of disaster, award compensation, and to address any other matters connected therewith or incidental thereto. The Act outlines the procedures and guidelines by which the Council, Centre and Committees should be established and should abide.

Protection Guaranteed for the Displaced Through Institutional Mechanisms

Human rights institutions (government/ international/ non-government) are the mechanisms that enforce international and national human rights instruments. Many institutions were created and/ or mandated to protect the tsunami IDPs in Sri Lanka.

Coordinating Bodies : Following the tsunami devastation, Government of Sri Lanka established several entities as part of its initial response strategy for post Tsunami recovery. The Centre for National Operations (CNO) and Task Force for Rescue and Relief (TAFER) were established immediately after the Tsunami in order to address the specific issues related to Tsunami. CNO and TAFER were replaced by Task Force for Rebuilding the Nation (TAFREN), Task Force for Relief (TAFOR) and Tsunami Housing Reconstruction Unit (THRU). TAFREN, TAFOR and THRU became the lead agencies to handle Post-tsunami RRR activities with private and public sector participation till November 2005, when these Task Forces were replaced by the Reconstruction and Development Agency (RADA).

- *Centre for National Operations (CNO)*

The mandate of CNO was to monitor and coordinate all initiatives taken by government ministries, agencies and other institutions relating to post-tsunami relief efforts. The purpose of CNO was to ensure that each effort fits into the overall objectives of the government relief programme, prevent the duplication of tasks and maximise the efficient utilisation of resources.

- *Task Force on Relief (TAFOR)*

Task Force on Relief was created by the President in order to ensure the delivery of relief. TAFOR is also particularly focusing on the provision of transitional shelter, whereas TAFREN is responsible for permanent shelter.

- *Task Force for Rebuilding the Nation (TAFREN)*

TAFREN was set up to coordinate and assist government agencies and institutions in the reconstruction and rehabilitation processes. The main responsibility of the task force is long term rehabilitation of tsunami-affected areas. TAFREN is concentrating on specific areas in the reconstruction process, such as, returning people to their homes, restoring livelihood, ensuring health and education, and developing devastated infrastructures. TAFREN put together several committees to clarify and raise certain policy issues. These Committees were:

- Buffer Zone Committee (already appointed and functioning)
- Environmental Committee
- Committee on Gender
- Committee on the Elderly and Disabled
- Committee on Children
- Reconstruction and Development Agency (RADA)

During early 2005 Sri Lankan Government focussed on an initial response strategy of providing immediate relief, restoration of essential services and rehabilitation activities through many agencies, which functioned as coordinators and facilitators between the affected people, the donor community, and the Government. Beyond 2006, the Sri Lankan government has decided to focus on

sustainable reconstruction and development activities throughout the island in an equitable manner in tsunami affected, conflict-affected and other underserved areas in Sri Lanka.

In keeping with the objective of driving government's reconstruction and development efforts in all districts affected by natural and manmade disasters, Reconstruction and Development Agency (RADA) was established on 28 November 2005. As such, the RADA's mandate is to accelerate reconstruction and development activities in all parts of the country, functionally replacing almost all the tsunami specific entities, as well as a significant part of the former RRR Ministry.

The RADA would initially be an agency, but will become an Authority with statutory powers after the RADA Act of 2006 is accepted in Parliament. Currently the RADA reports directly to the President via the Presidential Secretariat.

In the meantime, to ensure that ongoing activities continue seamlessly, RADA operates through the existing organizational infrastructure of task forces, agencies and ministry projects. Action has already been taken by RADA to focus and resolve the most urgent needs of the affected communities in the north and east as well as the south due to the tsunami and the conflict. RADA is addressing existing procedural delays impeding swift project initiation. Such issues are being identified and rectified on a case by case basis.

Ultimately, RADA will function as the single government focal point (One-Stop-Shop concept) responsible for all reconstruction and development activities relating to all natural and man-made Disasters throughout the nation.

Monitoring Bodies

- *Disaster Relief Monitoring Unit (DRMU)*

Main mandated monitoring mechanism is the Disaster Relief Monitoring Unit (DRMU) of the Human Rights Commission which was established in January 2005. The Disaster Relief Monitoring project focuses on assisting the IDP Project of HRC to monitor government services as well as civil society activities in successfully reintegrating tsunami victims especially in terms of relief, benefits, land titles and to support livelihood from the perspective of human rights. It ensures just and equitable distribution of resources in affected areas, involvement of various stakeholders in the process of rebuilding the country as well as developing initiatives towards sustainable peace and reconciliation of the country.

- *The Terms of Reference for the Disaster Relief Monitoring Unit are*
 - To assist the IDP Project to monitor government services to tsunami victims especially in terms of relief, benefits, land titles and support to livelihood from the perspective of human rights.
 - To make policy prescriptions to government on a regular basis on human rights protection in the relief and reconstruction process.
 - To work out a code of conduct for state officials with regard to relief and reconstruction.
 - To work with the IDP project towards ensuring basic needs and social and economic rights of tsunami victims (sanitation, food, water, housing, health and education). Special attention will be given to the needs of women and children.
 - To liaise with the government task forces and officials on a regular basis with regard to human rights protection in the relief and rehabilitation programme and to lobby for a more inclusive process involving all groups in decision making.

- To consult and liaise with NGOs with regard to human rights issues in the relief and reconstruction process.
- To consult and liaise with local level government officials about human rights especially at the district level.
- To work with the Inquires & Investigation Division in monitoring human rights violations, and rule of law violations experienced by tsunami victims.

- *Field Visits*

In order to attain the mandate of our unit, the field staff of the unit have been travelling to all tsunami affected districts, in regular basis consulting affected people, Grama Niladharis, Divisional Secretaries, District Secretaries, NGOs, leading people in the civil society including religious dignitaries and making policy prescriptions to government on human rights protection in the relief and reconstruction process based on the ground situation. During consultations DRMU staff has concentrated on how effectively basic needs and social and economic rights of the tsunami victims (sanitation, food, water, housing, health and education) have been addressed through the prevailing government and NGO mechanisms. Throughout the consultations they have been given special attention to the needs of women and children.

The field visits have helped them to develop networks with governmental officials, NGOs and the civil society working at different level of society. Networking has enabled them to gain direct access to rich and diverse sources of information on shortcomings of tsunami relief distribution and reconstruction process.

- *Consultation at all GN Division Levels*

Currently DRMU in partnership with Colombo University Community Extension Centre and UNDP is in the process of organizing comprehensive consultations with the affected persons, Government and NGO officials in all affected GN Divisions. Objectives of this consultation process include, gaining the views and the inputs of the affected persons in the process of decision-making. Consultation will focus mainly on gaining the opinion of affected persons on their opinion in resettlement and permanent housing as well as livelihood activities they are engaged in or hoping to get involved.

- *Radio Programmes*

DRMU is conducting weekly Radio Programmes in Sinhala and Tamil to create awareness on the rights of the affected persons, the relevant policies and the role of DRMU and other government and non-government organizations in post-tsunami activities.

- *Poster Campaigns*

DRMU is working on poster campaigns with CHA to create awareness on policies and rights of all affected persons.

- *Public Consultations*

DRMU, in partnership with INFORM organized a 2 day public consultation for tsunami affected persons, NGOs/ INGOs and government officials in Southern Province at the Galle District Secretariat to discuss on post-tsunami issues of the province.

- *Consultations at District Level*

DRMU as a part of the UNICEF project organized consultations at all affected districts with the District Secretary, Divisional Secretaries and non-government organizations working in the district in order to discuss the issues related to implementing the government policies and problems faced in the district.

- *Questionnaires to District and Divisional Secretaries*

Periodically DRMU has distributed questionnaires to District and Divisional Secretaries, requesting data on tsunami affected people in the divisions and districts, and on programmes conducted by NGOs, INGOs and government. Data gathered through the government officers has been used as a base in monitoring relief activities which were conducted.

- *Code of Conduct for Civil Servants*

It was thought that a Code of Conduct for state officials with regard to relief and reconstruction activities is a necessity for a just and equitable distribution of resources. As a result, DRMU has developed a Code of Conduct applicable for state officials basing it on Guiding Principles on Internal Displacement. The Code of Conduct deals with three key factors: 1. good governance; 2. government role; 3. civil society/local community role in decision-making. Good governance norms that are discussed in the Code of Conduct include non-discrimination, equality, transparency and information sharing. The Central Government should play the leading role in setting standards, policies and principles and the hierarchical levels of provincial and local administration should play a key role. The Code of Conduct has highlighted the importance of active involvement of civil society. Accordingly it portrays the necessity of consulting local communities on relief and reconstruction activities. Code of Conduct states that “all interventions need to respond to clearly identified and articulated needs of local communities, respecting local religion, culture, structures and customs. This is especially important with respect to the policies related to shelter and relocation, which should not proceed without such full consultation.” Main objective in emphasizing the civil society/ local community’s role in post-tsunami relief and reconstruction activities in the Code of Conduct of Civil Servants is to develop civil society involvement in the process. Such involvement could be developed only through creating awareness, developing capacity and through sharing power. Further the Code of Conduct has made provisions to empower local communities to make their own decisions during recovery; gain full participation of local communities in reconstruction activities and to allocate resources only after identifying local priorities.

Government Ministries, Departments and Authorities

Government ministries such as, Ministry of Relief, Rehabilitation and Reconstruction, Ministry of Social Welfare, Ministry of Urban Development and Water Supply, Ministry of Women’s Empowerment and Social Welfare and Ministry of Ports and Aviation; and government departments and authorities, namely, Presidential Secretariat, Urban Development Authority, National Child Protection Authority, Ceylon Electricity Board, National Water Supply and Drainage Board, Resettlement and Rehabilitation Authority of the North (RRAN), SL Central Transport Board, Ceylon Government Railways, Road Development Authority, SL Telecom, Information and Communication Technology Agency of Sri Lanka (ICTA), Board of Investment of Sri Lanka (BOI), Bureau of Foreign Employment, Bureau of Infrastructure Investment, Department of External Resources, Department of Fiscal Policy and Economic Affairs and Department of Labour played an important role in formulating government policies in related fields and implementing through the regional government bodies.

Regional Government Bodies

Regional government bodies including District Secretary/government agents, Divisional Secretary, Grama Niladharis, Additional GA Tsunami Unit, Sectoral Committees, Damage Assessment Team

(DAT) and Grievance Committee played a vital role in post-tsunami RRR work by implementing relevant government policies.

- *District Secretariats/ Divisional Secretariats/ Grama Niladharis:* Post-tsunami RRR work at the district, divisional and village level was coordinated by the District Secretariats, Divisional Secretariats and Grama Niladharis respectively. In addition to their mandated role and responsibilities, these institutions were mandated to handle the additional burden of coordinating the INGO/NGO post-tsunami work and implement government programmes, i.e. identifying tsunami victims, distribution of aid, distribution of compensation, identifying land, etc.
- *Additional GA Tsunami Unit:* An Additional District Secretary has been appointed at each District Secretariat Office within the tsunami affected areas in the Southern Province. The sole responsibility of this Additional District Secretary is to coordinate activities and issues related to tsunami.
- *Sectoral Committees:* Sectoral Committees have been formed at each district secretariat division within the tsunami affected areas within the Southern Province. The sectors considered (Housing, Health, Education, Livelihood, Information Technology) are chaired by a Chairperson appointed for each sector. Each Sectoral Committee has representatives from the Government, the NGO sector and the INGO sector relevant to specific subject areas.
- *DAT:* DAT consisting of four members has been formed in each tsunami affected district to check and evaluate damages caused by the tsunami. The team's responsibility is to go to each and every tsunami affected house and assess individual requirements.
- *Grievance Committee:* Grievance committees are formed at the District level, Divisional Secretariat level and at the Grama Niladhari level. They are responsible of handling, addressing and reporting the individual concerns and unfair treatment experienced by individuals and communities. Unfair treatment by the DAT assessment too will be addressed by the grievance committee.

Case Study: Post – Tsunami Relief, Resettlement and Rehabilitation work with children

United Nations Organizations worked on protecting the rights of the tsunami victims in various fields.¹⁰ United Nations Children's Fund (UNICEF) has been selected as a case study to portray the role of UNO in post-tsunami RRR work with children. UNICEF Sri Lanka has developed a three year project to address tsunami issues. The project brings together immediate emergency response together with priority actions during the period from 2005– 2007. The projected budget was US \$ 136 million.

Health and Nutrition : One of the first priorities for UNICEF Sri Lanka was to support health and nutrition services at the grassroots level in nine affected districts. The main aim of the project was to ensure the availability of basic preventive and curative health services at the district level by providing essential drugs and supplies; conducting education and awareness-raising activities about communicable diseases; providing equipment to strengthen cold chains; promoting appropriate infant and young child feeding practices including breast feeding; rehabilitating the regional medical supply divisions in all nine affected divisions; and building capacity at the national and grassroots level.

Water and Sanitation : UNICEF Sri Lanka incorporated eight key result areas related to water and sanitation in the Action Plan. These included, provision of essential water and sanitation services to displaced population in 124 camps; improvement of sanitation and hygiene practices for at least 40 per cent of the displaced population; provision of basic water and sanitation services for 50,000 families returning to their home areas; rehabilitation of damaged water systems and sanitation facilities to serve 200,000 people; monitoring and surveillance of water quality; improvement of water supply and sanitation facilities in 1,200 schools and 300 health centres; promotion of hygiene awareness to benefit estimated population of 200,000; and establishment of an integrated monitoring and evaluation plan for tracking Millennium Development Goals related to water and sanitation in affected Districts linked to a national monitoring system. The organization with many partner organizations have been involved in constructing temporary and permanent toilets in transitional camps, schools, health centres and households/ communities. They have installed many water points; constructed water tanks, bathing facilities and water bladders; distributing water through water browsers and cleaned wells. UNICEF has also supported the development and production of hygiene promotion materials for use in camps, communities and schools.

Education: Education recovery programme concentrated on providing quality education within environments that are inclusive, child friendly and conducive to effective teaching and learning. The first phase of the plan focused on returning all affected children to learning, by providing essential school supplies, text books and teacher guides to all tsunami affected schools. Long term plan of UNICEF was assisting government efforts to rebuild 25 schools according to ‘child-friendly’ principles; helping affected communities in constructing semi-permanent learning shelters; and supporting Ministry of Education in mainstreaming psychosocial recovery through schools.

Child Protection and Psycho-Social Support : The key areas of Child Protection and Psycho-social programme focused on including and providing support to separated and unaccompanied children and to single headed households; addressing the psycho-social impact of the tsunami for children, women and men; preventing abuse, exploitation and neglect; focusing particularly on displacement sites in the emergency phase; promoting comprehensive juvenile justice mechanism to protect children in contact with the law; and impart mine risk education and survivor assistance.

Keeping Families Together: UNICEF Sri Lanka is trying to keep the families together by registering separated children, introducing foster parent concept and providing assistance to foster parents to look after the children.

International and Local NGOs

Many new international and local NGOs were formed for rehabilitation of tsunami victims. Some of the eminent organizations that worked on the issue were OXFAM, Save the Children, CARE International, German Technological Cooperation (GTZ), World Vision, and Consortium for Humanitarian Agencies (CHA), Centre for Policy Analysis (CPA), Centre for Women’s Research (CENWOR) and Practical Action. I have conducted another case study of an international organization (Save the Children in Sri Lanka- SCiSL) to portray the international organization’s focus on displaced children and national non-government organization (Consortium of Humanitarian Agencies-CHA), which is the main national coordinating body, on post-tsunami RRR work.

Case Study 2: Save the Children in Sri Lanka (SCiSL)

Save the Children in Sri Lanka fights for children's rights. For the past 30 years Save the Children has been committed to create real and lasting improvements in the lives of all Sri Lankan children.

Mission of the organization is to strive for increased respect for and realization of child rights in Sri Lanka for children's survival, development, protection and participation; for the purpose of improved recognition of children's right as citizens with regard to more equitable access to quality education services and greater protection from violence and abuse. Focused areas of the organization include, social harmony and peace, children affected by armed conflict and disaster and education.

Save the Children: Tsunami Response¹¹: Save the Children is implementing a five year programme on tsunami relief and recovery, to protect and educate children to provide shelter and restore livelihoods of families and increase overall resilience to disaster for vulnerable communities in Sri Lanka. In its first year, Save the Children registered over 7,000 children separated from their parents and helped reunite many of these children with family members. In addition, Save the Children assisted in helping thousands of children to return to school and played a leading role in helping to protect children from potential exploitation and abuse by creating scores of safe places in which children can play and engage in supervised activities. Save the Children also is helping thousands of children to recover from the psychological effects of the tsunami through school-based programmes that enable children to work through their fears in a positive and well-structured series of activities. From the second year onwards, objectives of the tsunami projects are to provide assistance to surviving children and their families in key areas including education, child protection, health care, creation of new jobs and livelihoods, and the construction of new homes, health clinics, schools and child centres.

Case Study 3: Consortium of Humanitarian Agencies (CHA)

CHA was established in April 1997 to serve as a membership and have since become a national service provider in the non-profit sector. It is a representative of the resources and work of the humanitarian sector in Sri Lanka. CHA membership supports and intervenes in the sector across all parts of the country. The organization is served by a staff of 153 including professionals with managerial and representational authority, headed by an Executive Director. The field offices are located in 12 districts in the north, south and east. In addition post-tsunami information management centres are located in all tsunami affected districts.

The role of the organization

- Identity of a national service provider;
- Advocate for peace, human rights and development with specific focus on diversity, fundamental rights and freedom;
- Knowledge and skills particularly in areas of information gathering, processing and dissemination;
- Quality and accountability of work in management, implementation and provision of services;
- Links with national and international organizations and resources;
- Proactive coordination, facilitation, and assistance in post-tsunami interventions;

CHA Tsunami Response efforts were categorized under three phases.¹²

Phase I: Immediate Relief Assistance

CHA and its staff contributed an initial commitment of Rs 1.3 million to be used for immediate relief by the morning of 27 December 2004. Lorries of provisions were packed until the wee hours of the morning and dispatched to camps, schools and homes identified by our network of district officers. Funds were also transferred to the district officers to enable purchase of required items within the district. From the beginning, CHA's assistance has been a personalized one. CHA's staff had met all recipients personally, was aware of their problems and discussed the assistance they would be providing while also closely monitoring the assistance provided. Prior to processing, all relief requests were verified by the district officers and staff at the head office with procurement implemented in line with requirements, to ensure good quality and best prices. Distribution and packing was done by in-house staff, volunteers and district staff. The vehicles were always accompanied by head office staff with distribution monitored closely. In the case of collaborating with other organizations, these too had our personal interventions and monitoring, in order to keep the total process transparent and accountable.

Phase II: Tsunami Relief Programme

- *Assistance to Children*

CHA collaborated with other organizations that were interested in assisting the tsunami affected children in the efforts of providing school uniforms, school bags, stationery, shoes and other educational necessities to enable the affected children to get back to school so they would experience a sense of normalcy once more. CHA also provided bicycles for A/Level students who had been forced to relocate to schools not within walking distance. The district officers identified students who needed tuition fees and textbooks. CHA assisted schools in rebuilding libraries and replacing furniture and equipment. To those children who were suddenly orphaned and were left bewildered and lost, CHA funded their education for the year.

- *Livelihood Assistance*

CHA's priorities in providing livelihood assistance were to assist a single family or groups of families with special focus on women headed households, using a benchmark assistance range from Rs. 10,000– Rs. 350,000. CHA collaborated with Shell Live Wire in doing sixty workshops catering to forty families per workshop. The training focused on assistance in developing small business plans, introduction to the Federation of Chambers of Commerce and Industry and assistance to obtain loans from banks. Where machinery or equipment had been destroyed, field visits were conducted for verification of operations prior to the disaster and the extent after, before assistance was granted to ensure accuracy and authenticity. Payment was made direct to the supplier after a request was made by the District Officer. The funds are debited to the district accounts with the DO being responsible for disbursement, implementation/monitoring and providing all supporting documents. Livelihood assistance included bicycles, sewing machines, fishing nets, boats, three wheelers, monetary assistance, computers, tables, training programmes for business development, poultry farming assistance, carpentry tools, wood working machines and lathe machines.

Phase III: Permanent Housing

Having a ground feel of temporary shelters and the mounting problems that surrounded the situations including coordination, database information, the situation of host families, decommissioning of transitional shelter sites and disaster risk, the CHA relief team with the approval of the management made a conscious decision not to be involved in temporary shelters. This decision was also influenced by the fact that thousands of families remained in similar temporary conditions after being displaced due to the north and east conflict. CHA got involved in developing permanent housing with the primary aim being to build better than what the victims lost. 79 houses were built in districts of Colombo, Galle, Kalutara, Matara, Hambantota, Kilinochchi, Jaffna, Batticaloa, Ampara, Mannar and Trincomalee. These 79 houses which were backed by CHA were designed or purchased by the beneficiary. CHA had not influenced them in their decision but imparted every support required to build or buy the house. The Divisional Secretaries and GAs were continuously kept abreast of these efforts. A buying option was given to those within the buffer zone or to those who were not entitled to a house due to living in rented premises or with relatives.

Analysis of Human Rights Issues of the Displaced In the Aftermath of Tsunami

Lack of Equality in Post-Tsunami Service Provision: Every human being in any circumstances has the right to be treated equally. In the post-tsunami period there were issues related to equal deployment of resources and distribution of welfare among regions, ethnic groups, and sectors. As a result, individuals as well as communities felt left behind and cheated. Frequently voiced grievances refer to inequitable distribution of financial and material assistance owing to political, communal and gender discrimination.

- Land titles were given to the head of the household, frequently a man. Women had little chances of acquiring or owning land.
- Fishing boats and fishing gear were distributed inequitably. In some areas fishermen received 2–3 boats and non-fishermen also received boats and fishing gear while in other areas fishermen did not receive any fishing equipment.
- Self-employed widows did not receive assistance for income generation activities, as widows were not identified as a vulnerable group of people who need assistance in economic activities.
- War-affected IDPs did not receive the same benefits as the tsunami affected IDPs.
- Regulatory policy related to the tourism sector appeared to favour the better off and the commercial sector.
- Machinery was given without essential instrumentation.
- Neglect to assist other small and medium enterprises, i.e. agriculture, handlooms, etc.

Conflict Related to Differences in Religious and Ethnic Composition: In the process of relocating tsunami IDPs, there were conflicts related to differences in religious and ethnic composition of the IDPs and of the localities they were relocated to. For example about 20 Sinhalese, Buddhist IDP families were relocated near the Pullmude town, which is a pre-dominantly Muslim town. These 20 families were fishing families who lived close to the coast in Pullmude before the tsunami. Muslims

protested against building permanent shelter for Sinhalese families in Pullmude. They conducted demonstrations and rallies against the resettlement project. Although Divisional Secretary, District Secretary of Trincomalee and the Disaster Relief Monitoring Unit of the Human Rights Commission got involved and conducted meetings with both parties, Muslims were adamantly against the resettlement plan. As a result, the government had to consider relocating the IDP families in a different location considering security of the IDPs. The issues of unethical conversions were another concern related to the freedom of thought, conscience and religion. There were rumours and suspicions regarding foreign funded groups operating in tsunami affected areas having a religious mandate. Yet, evidence on conversions was minimal. According to De Chickera, “it is possible that local groups have capitalized the re-emergence of the issue of unethical conversions in Sri Lankan politics to create unease even when conversion has clearly not been the objective of such aid groups” (De Chickera 2005: 22).

The Buffer Zone Issue and Restriction of Movement: The Buffer Zone was created to restrict the freedom to movement and residence. It is an area in which, with certain exceptions, no reconstruction was to be allowed. Persons who were living in the buffer zone were not allowed to re-build the tsunami damaged houses. As a result of the buffer zone, the government had to distribute land and houses to the persons who were living in the buffer zone before the tsunami.

Issues Related To the Restriction of Movement and Residence in the Buffer Zone

- As the government did not possess the required amount of land, it needed to acquire land from private owners. The process was time consuming and it delayed the progress of offering land for permanent shelter.
- Resettlement has an impact for the livelihood of the affected communities. Most of the affected communities were fishermen or persons engaged in fishing related industries. Most of the new resettlement villages were located in remote settings, some areas were 5 to 10 km away from the buffer zone. As a result, travelling to and fro the sea and engaging in their livelihood activities become costly and time consuming.

Constraints in Dissemination of Information: People should have the Right to Information regarding government policies, how they are implemented and how they could benefit from the policies. In order to protect the Right to Information, TAFREN and the Disaster Relief Monitoring Unit of the Human Rights Commission disseminated information pamphlets widely, held consultation programmes in each village, and conducted radio and poster campaigns.

- Government regulations changed frequently. It was difficult to up-date and inform all the affected tsunami victims regarding the new policies.
- Grama Niladharis interpreted the government policies in different ways. As a result tsunami victims were treated differently by different Grama Niladharis.
- Illiterate and poor people’s avenues of receiving information were limited.

Lack of Participation in the Decision Making Process on Livelihood Issues: People have a right to participate in the decision making process that impact their lives. An exemplary multi-sector participatory decision making process was conducted on post-tsunami RRR activities. The consultation process was conducted by the Disaster Relief Monitoring Unit of the Human Rights Commission with the collaboration of the Colombo University Community Extension Centre and five

other Universities. The project was funded by the UNDP. Consultations were conducted in every tsunami affected village and plans were developed.

- The consultation was conducted 8 months after the tsunami. By that time, the government has already taken crucial decisions regarding land identification, resettlement, Buffer Zone, livelihood, etc.
- In some locations fishing boats were distributed in excess of need.
- In few locations houses were built incorporating architectural features that are traditionally considered to bring bad luck to the occupants.
- There was confusion regarding demarcation of buffer zone.
- Absence of any communication on the status regarding permanent housing.
- Poorly supervised construction of transitional and permanent housing.
- Inappropriate location of houses—some on marshy lands.
- In planning resettlement caste and creed related preferences were ignored leading to many negative consequences.

Tsunami victims in various parts of the island organized public protests, demonstrations against various perceived injustice they underwent.¹³ Examples for perceived injustice include, not receiving aid (rations), not receiving the allocated quota of rations, delays in distributing rations, not receiving temporary/ permanent shelter on the dates agreed by the government, shelter received not being up to the standards defined in government policies, against the buffer zone law, against the place of resettlement, etc. In some areas the police took action to curtail public demonstration in order to safeguard public safety and public order. Media publicity was given for most demonstrations and relevant government authorities took necessary action to address the grievances of the tsunami victims.

Delays in Providing New Documentation : The right to recognition as a person before the law is protected in article 16 of the ICCPR and Principle 20 of the GPID. A person can be recognized before the law only if he/she has obtained the necessary documentation (passports, identity cards, driving license, land deeds, educational certificates, etc) to prove his / her identity. It is the duty of government authorities to issue all necessary papers to IDPs who have lost their documents due to displacement. Lack of documentation can lead to denial of other public services such as compensation, property restitution, education and health care. As the tsunami destroyed documents of many victims, the provision of new documents was one of the important post-tsunami tasks. Many NGOs worked with relevant government authorities in facilitating this process. Although many tsunami IDPs got access to documents from mobile camps, the victims who lived in areas that were not easily accessible found it difficult to get the documents.

Delays in Addressing Complaints: Article 12 (1) of the Sri Lankan Constitution, Article 26 of the ICCPR and Section 16 of the Maastricht Guidelines protects the access to justice by recognizing all people as equals before the law and the need for equal protection by the law. Access to justice of the tsunami victims were protected by (1) introducing complaints mechanisms at Divisional Secretariats, District Secretariats, TAFREN, Disaster Relief Monitoring Unit of the Human Rights Commission; (2) judicial review of the administrative decisions (i.e. buffer zone policy); and (3) non-government

organizations providing services on legal aid for the victims. There were delays in addressing complaints submitted to Divisional Secretariats, District Secretariats, TAFREN, Disaster Relief Monitoring Unit of the Human Rights Commission based on limited facilities and limited staff available. Yet, these authorities worked extended hours and tried to accommodate and solve all complaints received.

Obstacles in Practicing Cultural Rituals: Freedom to use ones own language was protected by having all the tsunami related circulars in both Sinhala and Tamil, by having leaflets and pamphlets on the rights of tsunami IDPs which were printed by the TAFREN and Disaster Relief Monitoring Unit of the Human Rights Commission in both languages and by having Tamil or Tamil speaking public servants in Tamil speaking areas, particularly in the north and the east. There were few occasions where the District Secretary and Divisional Secretaries working in the north and east were Sinhalese and were not able to communicate in Tamil. In such cases they found it difficult to proceed with the work and hear the complaints of the tsunami victims without intermediate help. Freedom to practice cultural rituals was also hindered due to displacement of tsunami victims. For instance Muslim widows had to mourn for a period of time in solitude. During this period they are not allowed to see any man. The IDP Muslim widows had to practice such rituals in their tents or temporary shelters. They were not in a position to come forward and claim dead compensation, relief aid or housing aid until they completed the mourning ritual. Another cultural ritual practiced by the Buddhists, Christians and Hindus, when a family member passes away is almsgiving to priest/ beggars to commemorate the death and pass merit to the dead person. Most tsunami IDPs were not in a position to practice this ritual as they have lost all their possessions due to tsunami and were living in difficult conditions.

Unemployment: The tsunami caused disruption to the occupation of many of those who are residing in the coastal belt. The boats and fishing gear of the fishermen were destroyed. The farmers lost their agricultural crops and animals. Hoteliers and persons working in the tourism industry lost their jobs as many hotels in the coastal belt were destroyed. Tradesmen and shopkeepers also lost their businesses. An estimated 275,000 people were unemployed after the tsunami. Many of these unemployed persons were the sole income earners for their families. Most affected sectors of livelihood include fishing, tourism and agriculture. The government estimates that approximately US\$ 237 million will be required to restore the livelihoods of the unemployed due to tsunami.¹⁴ The freedom to engage in lawful occupation is a fundamental right guaranteed by Article 14 (1) (g) of the Constitution, Article 6 of the ICESCR and Principle 22 of the GPID. It is the government's responsibility to create an environment where the persons who lost their occupation due to tsunami could engage in lawful occupation. The government would have to ensure that the government policies will not cause further loss of occupation for tsunami victims. Although the Constitution does not explicitly recognize the right to livelihood, the right to engage in a lawful occupation, which is protected by the Sri Lankan Constitution, could be interpreted in a broader sense to include right to livelihood.

Fisheries: The fisheries sector, which once provided nearly 2.5 per cent of Sri Lanka's national income, is one of the most severely affected divisions of the country's economy. More than 75 per cent of the fishing fleet has been damaged and of the nearly 172,000 fishermen in Sri Lanka, 100,000 persons in the industry have been affected. In addition to this, 10 of the 12 harbours in the country have been devastated.¹⁵ The estimated cost for rehabilitation and reconstruction of the fisheries sector is US \$ 200 million to date US \$ 125 million pledges have been received.¹⁶ According to the TAFREN

Newsletter 16,479 boats have been destroyed by tsunami and 13, 073 have been replaced (TAFREN Newsletter 2005: 12).

Table 3. Progress in the Fishing Industry

Estimated cost for rehabilitation and Reconstruction	US \$ 200 million
Pledges received	US \$ 125 million
Number of boats destroyed	15,300
Number of boats pledged	12,900

Source: <http://www.tafren.gov.lk/news.php?cat=7>

- The Buffer zone policy and resettlement policies affected the occupation of fishermen who were tsunami IDPs. Most fishermen lived in the area that was declared as the Buffer Zone. As the new policy did not allow re-settlement in the area declared as the Buffer zone, the government identified new land to resettle the tsunami victims. In some cases the identified land was 3–5 km away from the coast. Fishermen who were resettled in such distant places found it difficult to travel to and from the sea with the fishing gear.
- As a result of lack of coordination between NGOs, civil society organizations and government, some persons have received up to 5 boats and some persons who were fishermen and who owned boats have not received a single boat.¹⁷
- Only the persons who possessed an identity of a fisherman was entitled to the starting-up grant and for the boats distributed by the Ministry of Fisheries. Persons who were involved in fishing but did not possess an identity were not eligible.
- Some Grama Niladharis did not recognize persons involved in fishing related livelihood activities as suitable candidates for the livelihood grant and as a result, people who engaged in such activities and lost their livelihood because of tsunami did not receive the livelihood grant because they were not recognized as victims.

Tourism: Tourism is one of the industries most severely affected by the tsunami. Of the 242 hotels and resorts found on the south and east coasts of Sri Lanka, 84 incurred some level of damage.¹⁸ The Ministry of Tourism and the Tourist Board of Sri Lanka have made plans to restore 15 coastal resort towns. These organizations have made several requests to the Sri Lankan Government, including duty concessions for various hoteliers and tour operators, in order to more expediently rehabilitate this industry. Many efforts have been made island-wide to boost tourism. Some examples include: a new national park (Horowpatana), the reopening of the Galle port to serve as a yacht marina, and a project with Italy called “Io vado a Sri Lanka” initiated by John Keels group.¹⁹ Much of this was made possible as a result of a “Tourism Market Recovery Programme” with a budget of US\$ 5.3 million. Such projects have been largely successful and the tourism industry has rehabilitated itself to a great extent. Tourism did lag in the months of January and February 2005.²⁰ However, the months of March, April, and May experienced an influx of a total 133,557 arrivals, which are more than 30,000 more visitors than in the same months in 2004. This has accounted for an average positive of 13.02 per cent change from the rate of tourism during these same five months in 2004.²¹ Although there was a strong plan to rehabilitate the tourism industry there was no proper plan for small vendors who depended on tourist industry.

Agriculture: As a result of the tsunami, there is extensive crop damage in Sri Lanka totalling 5,511 hectares of land. This figure includes the destruction of paddy, OFC, vegetable and fruit crops. The most severely affected districts are Trincomalee and Ampara with totals of 2,210 and 1,605 hectares of damaged land respectively.²²

Table 4. Crop Damage Due to the Tsunami

District	Damage (Hectares)
Galle	193
Matara	153
Kalutura	12
Hambantota	300
Jaffna	350
Mullativu	257
Ampara	1,605
Trincomalee	2,210
Batticaloa	431
Grand Total	5,511

As on 11 February 2005 an estimated US\$1,864,112 was needed to restore public services for the agriculture, livestock, lands, and irrigation systems of Sri Lanka.²³ The Japan and Bangkok International Commission (JAIBC) has pledged to repair the irrigation systems of Sri Lanka²⁴ (an estimated US\$625,000).²⁵

- In some cases the cultivated land affected by the tsunami was not recognized for the livelihood grant as houses there were not affected and the land is still available.
- The impact of water intrusion into agricultural products by the tsunami was not clearly identified.

Government Programmes to Restore Livelihood

- *Temporary Cash Transfers:* In order to provide for persons who have lost their livelihoods the government has created provisions for temporary cash transfers. According to the provision 234,000 identified beneficiaries are suppose to receive Rs. 5000 per month.²⁶ At the moment, they are in the process of paying the fourth instalment.
- *Tsunami Stamps:* 881,000 tsunami affected persons received Rs. 175 worth of dry rations and Rs. 200 worth of cash per week, for their everyday needs.²⁷ Beneficiaries of the tsunami stamps complained of not receiving the money and dry rations regularly, of not receiving proper quantities of rations and receiving flour more than the need for consumption.
- *The Rapid Income Recovery Framework:* The Rapid Income Recovery Framework, which is a targeting and coordination framework is supposed to be established by the government, enabling it, development agencies and donors to provide and channel livelihoods support in an equitable and effective manner. The programme tries to ensure consistency, quality and efficiency, resulting in better impact at a lower cost and identify gaps in the delivery of assistance programmes and where appropriate match these gaps to suitable donor funding and support.
- *Small and Medium Scale Enterprises :* To restore small and medium scale enterprises, the government has introduced loan schemes:

- A US\$ 50 million fund has been set up to provide Susahana loans through banks and financial institutions. The loans can be obtained for micro, small and medium enterprises. Presently US\$ 19.4 million has been disbursed to 4,154 recipients.
- A US\$ 7 million loan scheme is available for micro industries through the National Development Trust Fund (NDTF). Loans can be accessed through partner organizations such as NGOs, which are registered with the NDTF. US\$ 1.36 million has been disbursed to 37 partner organizations, of which US\$ 0.7 million has been provided to 2070 borrowers.
- A loan of US\$ 28 million will be made available through donor assistance for small and medium industries.
- A US\$ 20 million loan scheme will be created for micro enterprises with funds provided by a donor nation

Inability in Providing an Adequate Standard of Living: Tsunami victims who lost all their belongings due to the disaster were completely dependant on the state to provide them with the basic necessities. The efforts of the government, the civil society and the international community in providing adequate standard of living are commendable. As soon as the tsunami struck, people from all parts of the island collected and distributed bus loads of food, clothing and drinking water to the tsunami victims. Media also played an important role in collecting and distributing basic necessities. All major media channels organized aid campaigns. In many camps there were piles of clothing which were not taken by the IDPs. Most clothes sent as foreign aid could not be used in the Sri Lankan climate or were not suitable for the Sri Lankan culture. Some of the donated clothes by the local community was hacked and was not in a condition to be used by another person. There was a shortage of undergarments. Government paid a sum of Rs.5000 for each tsunami affected household to purchase kitchen utensils. Additionally many well wishers and civil society organizations also provided kitchen utensils, mats, mattresses, pillows, beds and chairs. Government provided livelihood allowance of Rs. 5000 for persons who lost their livelihood, relief grant of Rs.200 in cash and Rs.175 worth of dry rations weekly for each tsunami victim. Such a grant was not provided by the government for other IDPs, ie. IDPs due to war, landslides or floods. In cases where this grant was distributed properly, it was adequate for a basic standard of living. In the Eastern province, IDPs received the relief aid only once a month or once in three weeks due to the inefficiency in distribution. In the Southern province also there were complaints regarding improper distribution of relief aid due to shortage of stock and/ or the aid distributed being sub-standard quality. Civil society organizations and international donors pledged the government to provide tents, temporary shelter, and permanent shelter and relief items. IDPs had to live in tents until temporary shelter was built. Task Force for Relief announced completion of temporary shelter by 31 May 2005. Government provided water for the IDPs. Water was given once or twice a day by bouncers. Toilets were built by NGOs. An observation made by the DRMU team was that even though toilets were built, IDPs particularly in the North and East did not utilize them as they were not used to going to the toilets even before the tsunami. This caused hygiene issues. Permanent shelter was provided to the tsunami victims under owner driven housing programme and donor driven housing programme.

Non-Delivery of Health Services: Seventy two hospitals were damaged in south and east of the country, along with 363 other facilities such as mental and childcare clinics, and central dispensaries. Cost to reconstruct the health sector is identified as US \$100 million. The initial delivery of

emergency health supplies to most districts post-tsunami was reported by district medical officers to be sufficient. There was no epidemic disaster as prompt action was taken by the health sector.²⁸ Ministry of Health developed a Mental Health Action Plan, highlighting the following immediate, mid-term, and long-term interventions

- Normalization of life
- Preparation and delivery of capacity building:
- Referral system
- Provision of specialist care
- Monitoring and evaluation

In terms of government health service delivery to IDPs, there were discrepancies between districts and the quality of government services provided. Psychological health care was not provided sufficiently. Psychological vulnerability of the affected persons was not accounted in many government policies. Adequate professional counselling and trauma response programmes were not available. Persons without proper training in counselling were trying to do counselling in the initial phase. Even though such action is conducted with good faith, there is a high risk of negative implications. Foreign aid workers were trying to introduce play therapy for children but parents viewed these activities negatively and thought it was a hindrance for studies.

Damaged Schools: Number of schools damaged due to tsunami was 182. 4 universities, 3 technical institutes and 13 vocational institutes were also affected by the disaster. 102 schools and 9 vocational institutes have been identified for relocation as they are situated close to the sea.²⁹ 287 unaffected schools were mobilized in the immediate aftermath of the tsunami to house the thousands of displaced people who had lost their homes. Pre-schools were introduced in many camps by civil society organizations. Books, school equipments and uniforms were also distributed widely. In cases where schools were damaged or destroyed, students belonging to such schools were hosted by the schools in the neighbourhood.

- As a result of utilizing schools as IDP centres, it was difficult or impossible to continue with the normal functions of the school. Going to school is a way of getting back to the normal life style. As the functioning of schools was delayed, getting back to normal life style also got delayed.
- Students in the coastal area suffered from loss of books and educational equipment. Although action was taken to distribute books and educational equipment, there were discrepancies in the distribution.
- Students sitting for government exams, (G.C.E. Advanced Level, G.C.E. Ordinary Level and Year 5 scholarship exam) were affected adversely. In spite of losing books, educational equipments, shelter, valuable property and in some cases family members, non-functioning of schools and not receiving proper tuition, these students were expected to sit for the government exams.
- In cases where IDP camps were far away from the previous shelter, students found it difficult to commute to school. In some cases transportation was not available from the IDP camps to the location of the school.

Lack of Shelter

Transitional Shelter: According to the Task Force for Relief, transitional accommodation is provided only to those who had homes within the buffer zone and the number stands at 46,500 as of 31 May 2005. People whose houses were completely damaged due to tsunami and were living outside the buffer zone were not accounted for transitional shelter in government statistics. As a result such persons had to depend on their relations, civil society organizations or foreign donors for assistance in finding temporary shelter.

Donor Driven Housing Programme for Damaged Houses within the Buffer Zone: As no reconstruction of partially or fully damaged houses are allowed within the Buffer Zone, the government provided house built by a donor in state allocated land for all houses within the buffer zone. This housing programme is called the Donor driven housing programme. The households are not required to demonstrate ownership to land. The new houses were built according to the guidelines issued by the UDA and have a minimum floor area of 500 sq.ft. The houses are also provided with electricity, running water, sanitation and drainage facilities. The proposed houses in urban and rural settlements were to have facilities such as road systems, recreation, etc.

Issues related to the Donor driven housing programme include,

- Donors not being able to complete the number of houses they have pledged on due date.
- Building sub-standard houses, not having a strong mechanism to monitor housing standards.
- Political interferences in distributing houses.
- In addition to the donor driven housing programme houses were built by the civil society without coordinating with the relevant government officials. As a result, in some cases IDP received 2 houses: one from the Government and another from private donor.
- In the process of resettlement, ethnicity, caste and other social concerns were not taken into account.
- In cases where there was more than one owner for a house that was traditionally inherited, land title was given to one person without considering the other owners.

Owner Driven Housing Programme for Houses outside the Buffer Zone: All affected households outside the Buffer Zone that are able to demonstrate ownership of land are entitled to a grant by the state to rebuild their houses. This programme is called the Owner driven housing programme.

According to this programme, a completely damaged house, that is house with a repairing cost of more than 40 per cent of replacement cost, would receive a grant of Rs. 250,000, disbursed in 4 stages. A partially damaged house, that is house with a repairing cost of less than 40 per cent of replacement cost of house, would receive a grant of Rs. 100,000 disbursed in 2 stages.

Households that were within the Buffer Zone could also utilize the 'Owner Driven Housing Grant' to build on alternate land owned by them outside the Buffer Zone, but it should be within the same Divisional Secretariat Division. Families that choose this option would forfeit the right to receive a house built on land allocated by the State. In addition, households that have successfully utilized the above grant, were eligible to apply for a concessionary loan of Rs.500,000. The loans would be distributed through Bank of Ceylon and People's Bank.

Issues Related To the Owner Driven Housing Programme

- Only persons with legal ownership to land were entitled for this assistance while in the Donor driven housing programme there is no need to demonstrate legal ownership for the land or the house to receive a new house.
- Many persons who were given compensation under the Owner driven housing programme complained that the benefits received under the Donor driven housing programme were much greater as such persons receive a land, house and all infrastructure facilities.

Problems of Tsunami Affected Children: A child is defined as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier” (CRC: Article 1). As of January 2005, approximately 18,000 children had been affected by the tsunami. Of those children, 4,098 have been divested of guardianship in some manifestation.³⁰ The specifics of these children are given in Table 5.

Table 5. Problems of Tsunami Affected Children

Children who have lost one parent	3,202
Children whom have lost both parents	858
Children whom are unaccompanied	38

The main international instrument that affirms the rights of the child is the UN Convention on the Rights of the Child (CRC). Sri Lanka has ratified the CRC in 1991 and two optional protocols to the Convention. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts was ratified in 2000 and The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography was ratified in 2002. Sri Lanka is also party to International Labour Organization (ILO) Conventions such as, ILO Worst Forms of Child Labour Convention (No. 182), ILO Minimum Age for Employment Convention (No. 138), ILO Forced Labour Convention (No 29) that protects children against child labour and exploitation. There are many national legal instruments to protect the rights of the child. The Children and Young Persons Ordinance of 1939, Adoption Ordinance of 1944 and The Tsunami (Special Provisions) Act, 2005 deals with right to care, protecting and adoption of orphaned children. In cases of inheritance rights of the tsunami affected children, Sri Lanka general law on Property and Succession and Personal/ Customary laws such as, Tesawalami law, Muslim law and Kandyan law are applicable. There is a strong institutional framework to protect the children in Sri Lanka. This institutional framework includes, the National Child Protection Authority; Department of Probation and Childcare Services; Child Care Institutions (Child Care Institution includes, State Institutions, State Approved Institutions and Private Institutions). State institutions are Remand Homes, Certified Schools, State Receiving Homes and Detention Homes. State approved institutions are, Voluntary Children’s Homes and the National Training and Counselling Centre; Women and Children’s Desks (Police); Children’s Secretariat; and The Children’s Charter and the Committee. These institutions played a key role in protecting the children affected by the tsunami. Human Rights issues faced by children include, issues related to Child Labour; Child Trafficking; Care, Protection and Adoption; Inheritance Rights; Education; Health; Psycho-social support; and Underage marriages.

Child Labour/ Trafficking : In the aftermath of the tsunami, children, particularly the orphaned children and those belonging to poor families were vulnerable for trafficking for domestic work within

and outside Sri Lanka, for child pornography and child recruitment by the LTTE. No proper statistics exist regarding the number of children trafficked in the aftermath of the tsunami. As a precautionary method, major attempt was taken by the government to place the orphan children with their extended families and home communities.

Lack of Protection and Adoption Implementing and Monitoring Mechanisms: Tsunami Special Provisions Act (No.16, June 17, 2005) introduced a new foster care mechanism. According to this mechanism, the National Child Protection Authority (NCPA) was the guardian of every child placed under foster care by a parent and of every child who was left an orphan, whether or not such child was in the custody of any person. Registration of the custody was made to the Commissioner of Probation and Child Care Services.³¹ Weaknesses of the Foster Care method included, lack of capacity of the NCPA, lack of human and material resources in child protection committees in Provincial and District level, duplication of efforts and lack of effective coordination between child protection mechanisms, and in some cases local authorities not being aware of these provisions.

Underage Marriages : There has been an increase in underage marriages in tsunami-affected areas. Reasons for underage marriages included the increase contact between the sexes, as communities are living in close proximity due to displacement; family members ensuring that young girls were married soon after the tsunami in order to ensure their access to relief, and to decrease the burden on their relatives. Although marriage under the Section 363 of the Penal Code (Amendment) Act 1995 provides that sexual intercourse below the age of sixteen is considered statutory rape whether consensual or not, Muslim girls are not protected under this law as they are governed by the customary law.³²

Discrimination against Tsunami Affected Women: Women are considered a vulnerable group in our society due to its patriarchal structure. During disaster situations, where they become IDPs, they become extremely vulnerable as they are minorities within minorities. IDP women's access to resources is very limited. They face issues related to security and difficulties in establishing livelihood. There has been both international and national recognition of the special needs of women through instruments such as The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), The Sri Lankan Women's Charter, and the right to equal treatment in Chapter III of the Sri Lankan Constitution. Principle 4 of the Deng Principles on IDPs also calls for the special needs of women and children to be taken into account in a context where women are internally displaced.³³

Discrimination in Access to Relief: Government introduced many relief aid programmes for tsunami victims. Distributing dry rations to the victim's families was a commendable effort as it ensured access to food for the whole family. There was however concerns regarding gender discrimination in the process of distributing other relief aids. Most of the relief aid was given to the head of the household who was usually a male. Sometimes the money given as relief aid for the family was used for consuming alcohol. Muslim widows also had problems regarding access to relief aid. As part of their cultural practice (*Ida*), they are supposed to be isolated for a period of four months and ten days for mourning. Some Muslim widows were not able to register in order to obtain the relief aid. But in most cases government allowed family members to register Muslim widows and receive aid on behalf of them.

Limited Participation of Women in Decision-Making: Women's participation in decision making was very low. From national level to grassroots level post-tsunami RRR work in government ministries, authorities, departments, District Secretariats, Divisional Secretariats, Grama Niladhari level and in 'Damage Assessment Teams,' 'Grievance Committees,' and 'Camp Committees' number of men were much more than the number of women. Whenever government representatives, Human Rights Commission Officer, NGO representative went to interview IDPs in the camp it is usually men who come to address the officials and represent the camp. Women's opinion is not usually heard of in decision making. If policies and action that is taken are to be needs-based, the involvement of women in decision-making is essential. Often, women are the decision-makers when it comes to domestic matters. They should therefore be consulted as to what their family's nutritional needs are, and should be allowed to put inputs into decisions that will affect their quality of life. Women living in welfare centres must be consulted in order that the best possible solution to relocation and resettlement is found. Decisions regarding relocation must also take into account women's livelihoods, and their physical security which is also linked to their knowledge of the area in which they live.³⁴

Problems with Land and Property: There are several issues with regards to women and land ownership. For example, many women are not aware that they are owners of property, and many think that only men can be landowners. In Muslim areas, land is often given to women as part of their marriage. However, after the tsunami, women found it difficult to reclaim these lands as documentation was never properly arranged and laws are not gender sensitive.³⁵ Land titles are usually given to the head of the household who is usually a male. Joint land titles are not considered most of the time. Dowry (or property) system where the property is passed through the matrilineal line as a type of collateral for marriage is a cultural practice, particularly in the north and east. Many women lost their dowry property due to tsunami. In compensating for the lost property, in most cases government officials gave preference in giving the title of the land and housing to the male head of the household. As a result, most women who were in possession of dowry lost the dowry and were not compensated for.

Sexual and Reproductive Health: The attention paid on sexual reproductive health and sanitation in camps was not adequate. Although there were some programmes organized by the civil society on reproductive health and HIV/AIDS, the programmes were not organized in every camp and those programmes were not sufficient to address issues related to reproductive health. Due to close contact and unexpected sexual intimacy between men and women at the camp level, there was an urgent need for contraception which was not addressed by the relevant authorities.

Difference in Treatment between Tsunami Affected IDPs vs. War Affected IDPs: The different reasons for displacement and the different conditions of the war affected and tsunami-affected displaced persons have lead to different treatment for the post-war displaced persons and post-tsunami displaced persons. Post-war displacement occurred during the past 20 years due to the war between the Sri Lankan Government forces and the LTTE. According to current statistics there are 352,582 persons displaced due to war (91,427 families) who are concentrated predominantly in the Northern and Eastern provinces (Table: 6).

Table 6: Internally Displaced Population (as at 30 November 2004)

	Families	Persons
IDPs in Welfare Centres	20,538	78,307
IDPs Outside Welfare Centres	70,889	274,275
Total	91,427	352,582

Source: Department of Census and Statistics: Statistical Summary as at 30 November 2004, Displaced and internally displaced repatriation and returnees to and within Sri Lanka.

Issues of war affected IDPs were marginalized and were forgotten, as they are considered political IDPs.

Table 7. Differences between War-Affected Idps and Tsunami Affected Idps

War-Affected IDPs	Tsunami-Affected IDPs
Persons became IDPs everyday during the war	Persons became IDPs within a matter of hours
IDPs are living within the District/ out of the District and out of the Country	IDPs are living within the District and probably within the Divisional Secretariat division
Living with unknown people	Living with same villagers
When resettling people, issues to consider include landmines and high security zones	When resettling people, issues to consider include 100 m or 200m buffer zones
Difficulty of gaining access to war -displaced persons	As the tsunami lasted for only 20 minutes gaining access to tsunami IDPs was not a major issue
War displacement was caused by human factors	Tsunami displacement was caused by nature
Highlighting war displaced persons' issues was considered unpatriotic. Even media did not want to report on war displaced persons	Issues of tsunami affected persons could be highlighted in the media without resistance and every one was urged to address their concerns

Following are some of the partisan treatments faced by war affected IDPs.

- *Discrimination in Relief Aid*
 - War affected IDPs got only dry rations while tsunami affected IDPs received a livelihood allowance as well as aid from civil society organizations and foreign sources. Relief aid package given for tsunami IDPs was much more than the relief aid package given for war affected IDPs.
 - It was easier for tsunami IDPs to gain access to dry rations and other compensation as they were mostly living in easily accessible areas while the War IDPs were mostly living in war affected and un-clearer areas, which are not easily accessible.
- *Discrimination in Housing and Compensation Policy*
 - There are different criteria for housing and compensation for war-affected IDPs and tsunami-affected IDPs. Treatment of the former was based on different set of circulars and administrative laws than the latter. The distinctions between the circulars applicable for different types of IDPs created discrimination.
 - Tsunami affected IDPs were paid compensation based on donor driven housing programme and owner driven housing programme.
 - Many ministries, authorities and task forces were working on war IDPs without the proper integration of the different activities being carried out. As a result, there is inequity in the administrative action carried out by these authorities. For example, a person displaced and resettled by the Ministry of Relief, Rehabilitation and Reconciliation

(RRR) is given a sum of Rs. 62,000, while the Ministry of Infrastructure Development will give an IDP only a sum of Rs.34,000 for resettlement.

- *Environmental Unsustainability* : IDP camps were set up to accommodate the displaced persons with their direct safety as the most important concern. The impact of the camps on local ecosystems was consequently of less immediate importance. However the depletion of resources and deterioration of areas in which camps were located became a critical problem in the long term. The high demand for wood in order to build shelters and cook food, for example, left local populations with enormous ecological problems after the completion of humanitarian operations. Environmental impact in areas where war IDPs were set up were considerably more as some of them have been living in IDP camps close to 20 years.
- *Non-Protection Against Forcible Return*: According to a study conducted in Puttlam IDP Camps on the willingness of IDPs to be resettled by the Government Agent (GA) of Puttalam and the Ministry of RRR, only 3 per cent of the war IDPs are willing to be resettled. However, tsunami IDPs are willing to resettle and think about their future. There are many reasons as to why war-affected IDPs fear to be resettled, including fear of displacement in the future, fear of landmines, difficulty in accessing basic needs, etc. It will take at least 30 years to clear landmines.
- *Lack of Participation in Decision Making*: Participation in decision making by both war affected and tsunami affected IDPs were limited. The government decided where tsunami IDPs were to be relocated without proper consultation. Decisions by the government affect people's culture and socio-economic status and also deny people the right to choose the place of their residence. With regard to the war IDPs, the Election Commissioner did not want to interpret the place of residence of IDPs as their ordinary residence. Those IDPs living with friends and with relations or permanent shelter were registered to vote. But people who were living in IDP camps could not be registered. 267,000 people in uncleared areas, who were eligible to vote, were also not allowed to cross the border to vote.

Policy Recommendations for the Government and the Civil Society to Protect Displaced Persons More Effectively and Efficiently³⁶

Protecting Civil and Political Rights of the Displaced

- *Consulting the Displaced Community*: Government, INGOs and NGOs working in recovery, rehabilitation and reconstruction activities should regularly consult with the IDPs and host communities and their ideas should be considered in the process of rehabilitation and resettlement. It is particularly important to get the affected persons involved in monitoring progress and benefits.
- *Guaranteeing Access to Information*: People should have the right of access to information that has a bearing on their interests in rebuilding. Lists of all beneficiaries should be displayed prominently at designated public places— District Secretariat, Divisional Secretariat, GN Office, post office. They should also have right to clarifications and legitimate protest.
- *Conducting Needs Assessments*: People need to be informed about the approach and considerations adopted in assessing livelihood needs, or the criteria adopted to assess housing needs. It is important to use an inclusive approach in conducting needs assessments.

- *Being Accountable in RRR work and providing Good Governance:* Create a common understanding of relief and recovery policies; decentralize disaster management and recovery work by setting up task forces on disaster management at district and divisional levels for effective implementation of the Disaster Management Act and accept that the ownership of funds received for rebuilding is with the victims of the tsunami, and ensure that they have a voice in the deployment of those funds.
- *Being Transparent in all RRR Work and Not Tolerating Corruption:* Take legislative measures to increase and ensure financial and functional transparency in the reconstruction process. Existing legislation is insufficient to protect the people's right to information. It is necessary to strengthen all institutions that have mandates to oppose corruption. Legislation should be enacted to provide for disclosure of information by the administrative agencies of government in the interest of the public; formulate and institutionalise codes of conduct for both state and private sector organizations to enable them to engender best practices and provide for local level mechanisms to monitor rehabilitation and reconstruction work; institutionalize community specific and context specific participatory planning and implementation processes and mechanisms for reconstruction and development, etc.
- *Treating all IDPs Equitably:* All activities, policies and laws must adhere to the principles of non-discrimination as recognized by international law (CEDAW, the ICCPR, ICESCR, and the Deng Principles), and national constitutional provisions (Article 12 of the Sri Lankan Constitution). Equitable treatment should be assured for all types of IDPs, whether they are affected by natural or man-made disasters as well as establishment of a mechanism to ensure equitable distribution of assistance to the north and the east. Universal compensation scheme should be developed and applied to protect the affected persons during a natural or man made disaster situation. Ensure gender equality.
- *Adopting Effective Counter Trafficking Measures:* Adequate measures should be taken to prevent human trafficking in disaster affected areas. It is essential to create awareness among migrant workers about labour laws and workplace rights in their own and foreign countries and among school children on Child and Women Trafficking; conducting awareness on trafficking and available legislative measures through media; organizing government sponsored legal aid and counselling programmes for victims of trafficking; establishing information centres to counter trafficking; conducting research on local, regional, and national trafficking trends and demographics; supporting common counter-trafficking initiatives between stakeholders in sending and receiving countries; developing skills of law enforcement officers to counter trafficking; developing standardized reporting forms for use in police stations on crimes related to trafficking; developing more efficient measures to protect children from recruitment by child soldiers.

Protecting Economic, Social and Cultural Rights of the Displaced

- *Providing Emergency Aid :* Beneficiary lists should be posted in public places in order to have transparency. Wherever necessary there must be review of the beneficiary lists in order to have an inclusive list. Opening joint accounts for beneficiaries should be considered. Should this not be possible, it is recommended that the GN or DS issue letters that will allow same banking privileges to those women who need access to their husband's accounts. Relief should be distributed to the appropriate persons in order to avoid the use of both cash relief,

- and proceeds from the sale of relief goods, for the purchase of alcohol. The delivery of relief to affected communities should be monitored to ensure that relief is delivered to true beneficiaries. Adequate relief package should be given to all affected persons until they are in a position to provide for themselves.
- *Adopting Non-Discriminatory Policies related to Relocation and Land Distribution:* In cases where land titles are issued, joint land titles should be issued rather than issuing land title to the head of the household. The Land Development Ordinance No. 19 of 1935 must be amended to provide for gender equality.
 - *Rebuilding Houses:* Government agencies and NGOs should ensure the right to housing of affected populations. Government should ensure temporary shelter at the earliest to all displaced persons during a humanitarian crisis and must also expedite options to permanently resettle the displaced persons. This can be done by granting compensation to rebuild the damaged houses, identifying and allocating land for permanent shelters to be built, identifying donors for rebuilding houses. The “house for a house” policy must be implemented in all districts. This is particularly important in the north and east, where families may have owned more than one house for the purposes of dowry. When introducing different compensation schemes for housing (i.e. owner driven housing scheme and donor driven housing scheme), relevant government authorities should consider non-discrimination and equitable treatment for all IDPs.
 - *Re-establishing Livelihoods:* Adequate attention should be given to all sectors affected. Compensation schemes, loans and grants could be introduced to restore livelihoods. New livelihood projects could be introduced without trying to promote only traditional coastal livelihood. Gender equity should be considered when developing and introducing livelihood projects. Livelihood programmes should be introduced for families headed by women and widows.
 - *Sending Affected Children Back to School at The Earliest:* In cases where schools are used as refugee camps, the schools should be cleared at the earliest, in order not to hinder the regular education system of the affected children. If the schools are affected by natural or man-made disaster, necessary prompt action should be taken to reconstruct the schools as soon as possible. Until the affected school is reconstructed alternate education facilities should be provided for children. The government must ensure boys and girls equal enjoyment of the right to education. In the event that girls are more likely to drop out of school for cultural and economic reasons, positive measures may be taken to guarantee the right to education for girls, in accordance with Article 10 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).
 - *Protecting the Health of Affected Communities:* The government must ensure that health services are provided without discrimination to all camps and transitional shelter sites. Women should be consulted regarding on the relief they receive in order that nutritional needs can be met. Promoting awareness regarding sexual health and HIV/AIDS is essential in circumstances where large groups of people are living in close proximity to one another. Access to reproductive health services must be improved. Mental health programmes and psychosocial counselling services must be prioritized.

Protecting Group Rights of the Vulnerable Displaced Communities

- *Recognizing and Strengthening the Role of Vulnerable Groups:* It is important to recognize vulnerable groups (i.e. minority communities, women, youth, older persons, children, disabled persons, etc.) and strengthen the role of the vulnerable groups through emergency response programmes.
- *Ensuring Well-being of Orphan Children:* It is necessary to develop strong mechanisms to effectively address issues related to orphans. Orphan children's conditions should be monitored by a government till they complete the age of 18. They should be allowed to stay with their extended family rather than in institutions.
- *Finding Employment Opportunities for Youth:* Training or employment programmes should be introduced for the youth who are idling in welfare camps and in transitional shelters, in order to utilize these human resources in a fruitful manner.
- *Guaranteeing Older Persons Access to Relief and Government Services:* Inclusion of older persons in rehabilitation programmes and support of vulnerable older people who want to work to establish their livelihoods is necessary. Establishment of mechanisms to support older people access their entitlements as well as creation of opportunities for older people to participate in decision making must be implemented.
- *Protecting the Right to Equal Access for Relief, Property and Land for Women:* The participation of women at all levels (from grassroots to government), in the processes of relief, rehabilitation and reconstruction should be ensured. Social and cultural factors play a large part in limiting women's participation. It is therefore necessary to engage in awareness-raising campaigns in order to promote the value of women's participation in decision-making at all levels. A protection mechanism must be established that allows for the proper reporting and follow up of cases of domestic violence. Reports of domestic violence must be properly logged at police desks and hospitals in order that a representative database can be compiled. A database would allow for an accurate representation of the problem of domestic violence in Sri Lanka, and would allow for the causes and consequences of domestic violence in local contexts to be investigated. The local women's groups that are active at the grassroots level should be mobilized to monitor and report violations of women's rights and gender based violence. As these organizations are made up of local actors who often have established relationships with the communities they work with, they are well-placed to know the needs of women in terms of health, education, livelihood, and protection from gender-based violence. These women's groups are also in a position that allows for longer-term relationships of trust to be formed between their representatives and local women. Issues like domestic violence, incest, and other instances of abuse occurring in the private sphere are therefore more likely to be reported to them. In a context where these realities are much hidden, a strong basis of trust is important. Effective gender monitoring cannot take place unless women are made aware of how disempowering denial of basic rights and neglect of their specific concerns can be. Local women's groups can also work within communities to empower women to recognize and deal with issues together. As it stands, women often accept discrimination as a natural part of life, and unless they are themselves mobilized to change this, no amount of monitoring from the 'outside' will yield results. Monitoring that occurs at the district level must be reported to a more centralized body (for example, the National Committee on Women, or a structured NGO like Women in Need - WIN) that can then take steps towards policy change. Legislation

has to be revised to enable appropriate action to correct specific disabilities in respect of inheritance of property by women. This is to permit joint ownership of government land and housing granted to persons. IDP women must be targeted in an information campaign to increase their awareness of their property rights and entitlements.

- *Equal Treatment for War and Tsunami affected IDPs:* The government circulars, policies and administrative laws applicable for both types of IDPs (war affected and tsunami affected) should be equal. A mechanism should be established in order to ensure that the rights of war-affected IDPs as well as the rights of tsunami affected IDPs are respected when relocating or resettling. The resettlement process for both types of IDPs should be supported by the Government of Sri Lanka and the international community with substantial contributions from local grassroots organizations if it is to be a success. Local minorities should be protected in post-war and post-tsunami IDP resettlement. Humanitarian assistance should be granted in an equitable basis. Portion of land identified and the structure and quality of the houses built for both types of IDPs should be similar. IDPs should not be forcibly relocated. The decisions that influence the life of IDPs, such as the place of resettlement, should be taken after consulting the IDPs. Resettlement programmes should consider protecting multiculturalism.

General Recommendations to Ensure the Protection of Rights of the Displaced

- *Strengthening the Capacity of Public Authorities to Handle Disaster Situation more Efficiently*
It is recommended to introduce incentive payments for public servants working in disaster affected localities, as in such situations they have to address an additional work load and to work over time. Necessary resources should be provided for the responsible government authorities to carry out their duties properly. Resources include vehicles, computers, human resources, telephones, fax machines, stationary, etc. The mechanisms established for recovery and reconstruction should have female representation as well as representation from all three ethnic communities (Muslim, Sinhala, and Tamil). There should be a committee/ desk/ task force or authority responsible for each vulnerable group (i.e., women, elderly, children, youth, minorities, disabled, etc)
- *Coordination and Efficiency*
Effective coordination should be established among the government, the UN, INGOs, NGOs, and CBOs and there should not be overlapping of responsibilities between the authorities. Clear policy advisories to all actors (government, UNO, INGOs, NGOs) should be provided. There should be information sharing about needs and sectoral activities. There should be only one point of coordination at every level (national, district, divisional and village).
- *Collecting Disaggregated Data by Age And Gender*
Government should ensure that census records include disaggregated data on gender and age, including people over 60. This information can be used to develop disaster preparedness plans that take account of children, youth, women and older people and allow analysis of how such disasters affect all age groups. Relief agencies and NGOs should be asked to include children, women, disabled persons, youth and older persons in their registration processes and needs assessments. This information can make rehabilitation programmes more inclusive by targeting vulnerable groups.

- *Government and Civil Society being Prepared for Future Vulnerabilities*
Establishment of systems including awareness creation to ensure community and strong monitoring and follow up mechanisms at the national and district levels to ensure proper implementation of development plans is necessary. Local governments should take the initiative to prepare a holistic plan for community development for rebuilding that includes infrastructure and other community needs. Planning and construction guidelines should be followed, which are already available for monitoring the quality of the rebuilding process. All plans and programmes should be consistent with national disaster management plans.
It is vital to strengthen multi-hazard early warning system at the national and local levels to reduce vulnerability of communities to disasters. State sector agencies and NGOs should take the lead in empowering affected communities by sharing information with them. INGOs and NGOs should organize or liaise among themselves and evolve an efficient mechanism to consult with communities being assisted by them.

Conclusion

Sri Lanka is a country prone to natural and man-made disasters, such as land-slides, floods, droughts, civil wars, etc. In any kind of disaster, there could be displacements. Displacements have a severe social, economic, physical and psychological impact on the persons affected, as they lose the place of residence, shelter, access to usual means of food, water and sanitation, possibilities in participating in livelihood activities, education and health. It is the role of the government and civil society to protect persons affected by displacement by ensuring their rights have been protected and fulfilled as the displaced persons are in a very vulnerable situation. In this study I have hypothesized that government and the civil society could have implemented better programmes to protect tsunami displaced persons in its aftermath, if existing human rights laws and policies on civil and political rights, economic, social and cultural rights and group rights had been applied. In order to prove this hypothesis, I have analysed whether the lack of appropriate laws or the failure to implement laws have impacted in effectively protecting the affected persons during a natural or man made disaster situation. As part of the analysis, I have presented an overview of the post-tsunami situation in Sri Lanka; analysed the available international and national human rights instruments applied and the mechanisms established or mandated to protect the rights of post-tsunami displaced persons in Sri Lanka; and identified human rights gaps experienced by the post-tsunami displaced persons and the reasons. Finally, I have also identified policy recommendations for the government and civil society to react in a more efficient manner in a future disaster situation. The study has also thrown up the gaps in human rights instruments and shortcomings of human rights mechanisms that have caused inefficiencies in protecting displaced persons. While most of the international instruments I have discussed were signed and ratified, these laws need to be adopted in the national legislation in order for it to be obligatory as our country is a dualist country.³⁷ Another finding related to laws and legislations is, there are no specific laws at international or national level to protect displaced persons, although the provisions in other laws and legislations could be applied to protect the displaced community. The only international document specific to internally displaced persons is the United Nations Guiding Principles of Internal Displacement. Although the Human Rights Commission and other principle actors of post-tsunami RRR work used this document as a guiding document, it is not a binding document and the government is not obliged to abide by the articles of this guiding principles. Based on the Guiding Principles, the Human Rights Commission of Sri Lanka developed a draft bill on

Internal Displacement but till date the bill is still in draft format. Passing a bill in parliament is a long process. This process includes public consultations to incorporate public views and advocating the bill with relevant authorities. This process requires commitment as well as resources. The limited human and financial resources available at the Human Rights Commission have delayed the process of enacting IDP bill. Some of the human rights application deficits that I have analysed were caused because of lack of appropriate laws, while others are caused because of the failure to implement laws. For instance, lack of equality in post-tsunami service provision, the buffer zone and restriction of movement, discrimination against tsunami affected women in access to relief and difference in treatment between tsunami affected IDPs vs. war affected IDPs were caused because of lack of appropriate laws. On the other hand, constraints in dissemination of information, lack of participation in the decision making process that impact their livelihoods, delays in providing new documentation, delays in addressing complaints, unemployment, inability in providing an adequate standard of living, delays in delivery of health services, damaged schools, lack of shelter, problems faced by tsunami affected children (which include, child labour/ trafficking, protection and adoption, underage marriages), discrimination in participation of women in decision making and land and property, were caused because of the failure to implement laws.

The recommendation concentrates on policy recommendations for the government and the civil society, in order to react in a more efficient manner in protecting the affected persons during a natural or manmade disaster situation. The policy recommendations are based on the post-tsunami lessons learnt. The recommendations concentrate on effective implementation of international and national human rights instruments and mechanisms to protect the rights of displaced persons. The recommendations also look into legal and institutional measures that could be adopted to establish and strengthen mechanisms to protect the rights of displaced communities.

Policy recommendations in protecting civil and political rights include consulting the affected community in decision making, providing access to information related to laws and regulations that affect the displaced community and beneficiary lists, conducting needs assessments of the affected community in order to make effective policy decisions, authorities and community workers working on relief, rehabilitation and reconstruction adopting good governance methods in performing their duties, and protecting equitable treatment among all IDPs. In order to protect economic, social and cultural rights it is necessary to provide emergency aid for all displaced persons. After initially ensuring emergency aid, which includes water, food, clothing and shelter, it is necessary to take adequate measures in rehabilitation and resettlement. This process include re-establishing livelihood, ensuring access to education, protecting the health of the affected community, identifying land for persons who have lost the land due to disaster, and ensuring the right to housing. In protecting group rights it is necessary to recognize and strengthen the role of vulnerable groups. Different categories of vulnerable groups, i.e. orphan children, youth, older persons, women, war affected IDPs and minority ethnic or religious groups, have different concerns and needs. By generalizing all displaced community as a homogeneous community the rights of the marginalized and vulnerable community can easily be overlooked or neglected (this is another part where you could elaborate in more detail, highlighting eventually also in some more detail the challenge to apply universal laws to diverse groups in very complex situations and context). In the recommendations, conditions are being considered that could make different categories of people vulnerable and recommendations have been given on ways of overcoming vulnerabilities.

Sooner the government and civil society develop strategies to protect the vulnerable displaced community, faster could they become independent and self-reliant citizens. In order to increase the development indexes of the country, it is important to develop the human capital and to have a healthy, self-reliant community rather than a vulnerable and dependent community. We can strongly influence the development indexes in a positive manner and cultivate a strong human capital by adopting proper measures for disaster management and protecting the displaced persons. When considering strategies of protecting displaced community we should consider striking a good balance between raising awareness on existing laws, and establishing guidance and supervision mechanism to help applying laws for the betterment of affected populations. Finally, we should recognize and address structural problems that hinder application of law which can only be overcome by larger policy and governance reforms. It is necessary to conduct further research in governance reform to improve framework conditions for human rights applications.

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Notes

2 Asian Development Bank, World Bank and Japan Bank for International Development. Preliminary Damage and Needs Assessment. 2005- Post Tsunami Recovery Programme.

3 Statistics are from the DRMU website. www.drmu.gov.lk

4 Introduction – Scope and Purpose of the Guiding Principles on Internal Displacement.

5 Asian Development Bank, World Bank and Japan Bank for International Development. Preliminary Damage and Needs Assessment. 2005- Post Tsunami Recovery Programme.

6 Human Rights Commission was established under Act No. 21 of 1996.

7 “The Committee notes that the phrase ‘to the maximum of its available resources’ was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance.” UN CESCR General Comment No. 3.

8 UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4.

9 The Principles can be found at: <http://www.unhcr.ch/html/menu2/7/b/principles.htm>.

10 Preamble to Tsunami (Special Provisions) Act [2005].

11 List of international organizations that were active in post-tsunami work include, Food and Agriculture Organisation (FAO), International Labour Organisation (ILO), International Organisation for Migration (IOM), Office for the Coordination of Humanitarian Affairs (OCHA), United Nations Country Team (UNCT), United Nations Disaster and Assessment Coordination (UNDAC), United Nations Development Programme (UNDP), United Nations Disaster Preparedness and Management Group (UNDPMG), United Nations Environmental Programme (UNEP), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Population Fund (UNFPA), UN Centre for Human Settlements (UN-HABITAT), United Nations High Commission for Refugees (UNHCR), World Bank (WB), World Food Programme (WFP), World Health

Organization (WHO), United Nations Children's Fund (UNICEF), United Nations Development Fund for Women (UNIFEM).

12 Based on <http://www.savethechildren.org/newsroom/2005/save-the-children-issues.html>

13 Based on CHA website: http://www.humanitarian-srilanka.org/CPRP/tsunami_response.php

14 Organizing demonstrations, public rallies, and protests are means of peaceful assembly by people to get involved in decision making process. Article 14 (1) (B) of the Constitution and Article 21 of the ICCPR protects the right to peaceful assembly. The state can restrict the enjoyment of this right based on national security, public safety, public order and morals and the protection of rights and freedom of others. The right to peaceful assembly enhances an atmosphere conducive for free and open sharing of opinions of the public.

15 TAFREN Website - <http://www.tafren.gov.lk/bnews.php?cat=9>

16 Department of Fisheries and Aquatic Resources: see <http://www.fisheries.dept.gov.lk>

17 See - <http://www.tafren.gov.lk/news.php?cat=7>

18 Based on the findings of Disaster Relief Monitoring Unit field visits.

19 <http://www.tafren.gov.lk/news.php?cat=4>

20 See - <http://www.srilankatourism.org>

21 There were 74,382 tourist arrivals during these months instead of the 93,534 arrivals during the same months in 2004.

22 See - <http://www.sltbstatistics.org>

23 As reported on the 11 January 2005 by the Ministry of Agriculture, Livestock, Lands and Irrigation.

24 Ibid.

25 As stated by Mr. Senanayake of the Ministry of Agriculture, Livestock, Lands and Irrigation during meeting on the 14 July 2005.

26 Reported on the 11 February 2005 by the Ministry of Agriculture, Livestock, Lands and Irrigation.

27 See - <http://www.tafren.gov.lk/bnews.php?cat=9>

28 See - <http://www.tafren.gov.lk/bnews.php?cat=9>

29 Disaster Relief Monitoring Unit Field work findings

30 See <http://www.tafren.gov.lk/news.php?cat=3>

31 "Policy Framework and Guidelines for the Protection and Care of Children Affected by the Tsunami Disaster" Children's Desk: Centre for National Operations, 28 January 2005.

32 Steps followed in this process were, firstly, an application to be a foster parent was made at the Magistrate's Court within whose jurisdiction the applicant resides. A copy of the application was forwarded to the NCPA. Secondly, evaluation was carried out by a specially constituted Foster Care Evaluation Panel which functioned at the Provincial level. The assessment of the suitability of the applications was based on the home study report. Consequent to the evaluation, the panel forwarded the recommendations to the Chairman of the NCPA who then forwarded the same to the Magistrate Court, which then issued the Foster Care Order after verifying the consent of the young person or of the child where the child is over ten years of age. A monitoring officer was appointed by the NCPA, with the right to enter to the premises which the child is resident at anytime. A revocation of the Foster Care Order could be issued by the Magistrate Court if parents are not carrying out their obligations in the best interest of the child.

33 Under the Muslim Marriage and Divorce Act (MMDA) 1951, there is scope for child marriage. Section 23 of Part II of the MMDA states: "Notwithstanding anything in section 17 a marriage contracted by a Muslim girl who has not attained the age of twelve years shall not be registered under this Act unless the Quazi for the area in which the girl resides has, after such inquiry as he may deem necessary, authorized the registration of the marriage."

34 Principle 4, Deng Principles: Guiding Principles on Internal Displacement.

35 Based on DRMU Women's Report (2005)

36 From meeting with Mrs. Somanasekera of the Ministry of Women's Affairs on 13 July 2005.

37 The recommendations were developed based on my field experience; knowledge gathered in participating at grassroots level, district level, national level and international level workshops, conferences and working groups; and the understanding obtained regarding the shortcomings of instruments and mechanisms adopted to protect post-tsunami displaced when analysing the information gathered for my MHR thesis.

38 Dualist countries emphasize the difference between national and international law, and require the translation of the latter into the former. Without this translation, international law does not exist as law. International law has to be national law as well, or it is no law at all. If a state accepts a treaty but does not adapt its national law in order to conform to the treaty or does not create a national law explicitly incorporating the treaty, then it violates international law.

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Abbreviations

BOI	Board of Investment of Sri Lanka
CAT	Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment
CBO	Community Based Organisations
CCF	Christian Children's Fund
	Convention for the Elimination of All Forms of Discrimination against Women
CENWOR	Centre for Women's Research
CHA	Consortium for Humanitarian Agencies

CNO	Centre for National Operations
CPA	Centre for Policy Analysis
CRC	Convention on the Rights of the Child
CYPO	Children and Young Person's Ordinance
DAT	Damage Assessment Team
DDHS	Divisional Director of Health Services
DRMU	Disaster Relief Monitoring Unit
DS/GA	Divisional Secretary/Government Agent
FAO	Food and Agriculture Organization
GN/GS	Grama Niladhari/Sevaka
GPID	Guiding Principles on Internal Displacement
HRC	Human Rights Commission
HRCSL	Human Rights Commission of Sri Lanka
ICCPR	International Covenant of Civil and Political Rights
	International Convention for the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTA	Information and Communication Technology Agency of Sri Lanka
IDP	Internally Displaced Persons
ILO	International Labour Organization
IOM	International Organization for Migration
INGO	International Non-Government Organization
JVP	Janatha Vimukthi Peramuna
LDO	Land Development Ordinance
LTTE	Liberation Tigers of Tamil Eelam
MMDA	Muslim Marriage and Divorce Act
Ministry of RRR	Ministry of Relief, Restoration and Reconstruction
NCPA	National Child Protection Authority
NDMC	National Disaster Management Centre
NGO	Non-Governmental Organization
NPC	National Peace Council
NVPF	Non-Violent Peace Force
OCHA	Office for the Coordination of Humanitarian Affairs
PHI	Public Health Inspectors
PTOMS	Post-Tsunami Operations Management Structure
RRR	Relief, Rehabilitation and Reconstruction
RRAN	Resettlement and Rehabilitation Authority of the North
SC	Save the Children
SCF	Save the Children Fund
TAFOR	Task Force on Relief
TAFREN	Task Force for Rebuilding the Nation
TAFRER	Task Force for Rescue and Relief
TAP	Tsunami Accommodation Programme
THRU	Tsunami Housing Reconstruction Unit
TRO	Tamil Rehabilitation Organization
UN	United Nations
UNCT	United Nations Country Team
UNDAC	United Nations Disaster and Assessment Coordination
UNDP	United Nations Development Programme

UNDPMG	United Nations Disaster Preparedness and Management Group
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UN-HABITAT	UN Centre for Human Settlements
UNHCHR	United Nations High Commission for Human Rights
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNP	United National Party
VRC	Village Rehabilitation Committee
WB	World Bank
WFP	World Food Programme
WHO	World Health Organization