

Conflict, War & Displacement

Accounts of Chhattisgarh & Batticaloa

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Contents

Conflict-Induced Displacement in Chhattisgarh

Subash Mohapatra

4

The 'Right to Return'

Chathuri Jayasooriya

36

Conflict-Induced Displacement in Chhattisgarh

*Analysis and Situation Report on The Displacement Camps in Dantewada**

Subash Mohapatra

*In the summer he was called to a meeting by Salwa Judum and told he would be beaten if he did not give up the names of Maoists in his village, he was not very interested in Maoism...he gave up the names. Two days later he was summoned to a meeting with the Maoists where he was beaten. In the Autumn Salwa Judum returned with police and told the villagers to leave or they would be violently forced to leave. Salwa Judum burnt the village. Now all the villagers from Kotrapal live in a relief camp.*¹- Account of Baman member of Kotrapal Village

1.0 Background

In response to an increasing number of people flowing into and residing in displacement camps in Chhattisgarh state, the Forum for Fact-finding Documentation and Advocacy sent two fact-finding teams to Dantewada to assess the current situation and conditions of the camps. Their findings, reported here, represent a realistic although politically obfuscated view regarding life in the camps and those who are caught in the crossfire of a complex and too often neglected conflict in Eastern Central India.

According to a 2006 report of the Dantewada Police station, 76% (126) of all conflict related deaths in the district were innocent civilians. In addition, 62% of all reported injuries were also civilians (site report). Civilian deaths of this magnitude raise serious questions about the justification and methods of warfare by all parties regarding the conflict but also explain the movement of large portions of the civilian population. As of January 2007, over half of the 1354 villages in Dantewada district are now empty. A total of 57,528 villagers have been compelled to leave their homes and are living as Internally Displaced Persons (IDPs) within 23 relief camps throughout the southern tip of Chhattisgarh. An additional 45,000 to 60,000 villagers have abandoned their villages and migrated to nearby states. These displaced people are ordinary villagers who have been coerced both by fear of Naxalites and by the violent force of the government's 'Salwa Judum' activists. In many cases, their homes were burned and their villages destroyed and subsequently pillaged. Often they left in a panic leaving behind their livestock, food stores and devastatingly their elderly family members. As one year comes to a dead end, and their fields lay fallow for yet another season a haunting question looms in the air, what does the future hold for these people? Will they ever be able to return to their livelihoods without losing their lives?

* Thanks are due to The Forum for Fact-finding Documentation and Advocacy, Raipur

¹ In "Villages Across India, Maoist Guerrillas widen 'peoples war'" by Somini Sengupta, *The New York Times*, April 13, 2006

2.0 Cause of Displacement

To precisely demonstrate the cause of displacement in Chhattisgarh would require a discourse of extraordinary length. Additionally this effort would be hindered by a lack of access to accurate information from all parties involved. Instead, by way of introduction, this discussion will briefly touch on the motives and characteristics of the players involved in the conflict in an attempt to somewhat explain the complex predicament of the displaced.

2.1 Chhattisgarh State

Chhattisgarh, the tenth largest state by area, was created out of the fifteen southern districts of Madhya Pradesh on the 1st of November 2000. Prior to statehood, the area had developed a distinct socio-cultural regional identity based on the large and culturally robust population of tribes therein. This was accompanied by a sense of relative deprivation that had developed in the region. The new state of Chhattisgarh promised to bring back adequate attention and prosperity to a culturally wealthy but developmentally poor people. The new government had to negotiate with some existing problems that the state suffered and continues to suffer i.e., Naxalism.

'Naxalism' also known as Maoism and aptly named after a 1967 peasant uprising in Naxalbari village in West Bengal, has spread like a creeping vine through the rural, marginalized and tribal populations of east and central India for the past 40 years. The Naxalite ideology has easily found fertile soil in the underserved, vulnerable and often exploited Adivasi (tribal) people of the area. This has resulted in a widening swath of communist sentiment known as the "red corridor" running down the eastern edge of India encompassing at least 170 districts in 15 states and more than a quarter of India's land mass. In a 2006 speech, the Indian Prime Minister, Manmohan Singh, described Naxalites as "the single biggest internal security challenge ever faced by our country". Yet the Government has publicly recognized its own fault in the conflict by not providing adequate development to the rural poor.

Although a low-intensity conflict has been brewing for nearly four decades, recent years have seen a marked increase in the number of deaths and the intensity of the conflict particularly in the state of Chhattisgarh. According to estimates by the Asian Center for Human rights during the months of January to March 2007, 144 people have been killed in the conflict. Of those killed, 101 people or 70% of deaths occurred in Chhattisgarh, particularly in the southern most district, Dantewada².

Under India's constitution security is matter for the state rather than the central government as a result policies regarding the Naxalite problem are as diverse as the states that are affected by it. All too often policies have been inconsistent, haphazard and often ineffective and nowhere has this become more obvious than in the state of Chhattisgarh. Although the state suffers from a southern region that is considered "highly affected" by Naxalism, their neighbors to the southeast, Andhra Pradesh have a much larger geographical area that is considered "highly affected". Yet Andhra Pradesh has experienced less than a quarter of the number of deaths as

² *Naxal Conflict Monitor: Evaluate anti-Naxal policies of Chhattisgarh government*, A quarterly newsletter of the Asia Center for Human Rights, April 11, 2007, available at <http://www.achrweb.org/ncm/NCM-VOL-02-01.pdf>

Chhattisgarh.³ Clearly there is some factor that exists in Chhattisgarh's policies regarding Naxalism that is exacerbating the situation.

2.2 Adivasi: Caught in The Crossfire

The Adivasis are tribal people primarily belonging to the Maria, Muria, Dhurwa, Halba, Bhatra and Gond tribe who represent nearly 80% of the total population of Dantewada district, the southern most district in Chhattisgarh. The Adivasis have lived peacefully in the 'forests' for thousands of years. They subsist primarily on agriculture and the collection of non-timber forest products including *tendu* leaves, *Mahua* flowers and *char* seeds. The simplicity of the Adivasi lifestyle and the abundance of their forest resources have been responsible for exploitation at the hands of the people to whom they appear vulnerable. As such they have been subject to a long history of marginalization and have repeatedly been the victims of unfulfilled political promises. The framers of the Indian Constitution recognized this vulnerability and created a special schedule (schedule V) to promote and protect their rights. The entire Dantewada district is under Schedule V of the Indian Constitution, which empowers and indeed binds the government to ensure good governance and enact special laws or amend existing ones in order to safeguard the interests of the Adivasis.

Despite efforts to advance the cause of the Adivasi, the harsh reality is that laws protecting their livelihoods are rarely enforced. Indeed, the government has enacted discriminatory forest, mining, water and energy policies, which greatly limit their access to the resources that sustain their traditional way of life. The Adivasis are exploited by corrupt officials. The government has miserably failed in providing as basic a facility as electricity. Even before the current eruption of violence the state government appallingly neglected the Adivasis.

According to a 2001 census, about three quarters of Dantewada's 1,220 villages are almost wholly tribal, 1,161 had no medical facilities, 214 had no primary school, and the literacy rate was 29% for men and 14% for women. Notwithstanding the negative consequences of neglecting all of these basic services, the government should be particularly wary of the consequences of inadequate education, which is known to leave people vulnerable to any number of radical ideologies that hint at promoting their social welfare.

2.3 Naxalites: Power Flows from The Barrel of a Gun

As a communist movement, the overall aim of Naxalism is to create a classless, stateless society that negates the ownership of private property and is based on common ownership of the means of production. The primary difference between the Naxalites, whose political wing is known as The Communist Party of India-Maoist and others of the over seventy communist parties in India, is their uncompromising desire for revolution rather than government reform and their allegiance to violence and armed struggle as the sole means to achieve their ends. As they see it, the primary path to revolution is through Guerrilla warfare as laid out by Mao in his seminal work "*On Guerrilla Warfare*". This employs a three-phase model including;

- Phase one: Guerrillas gain the support of the population through the distribution of propaganda and attacks on government machineries.

³ *Id*

- Phase two: Escalating attacks are made on the government's military and vital institutions.
- Phase three: Conventional fighting is used to seize cities, overthrow the government, and take control of the country.

The most important factor in the success or failure of guerrilla warfare is rapport with the civilian population. A friendly population can provide shelter, provisions, finance, intelligence and recruits. As a result their strategy to influence the local population includes not only persuasion with a cause of liberation, by identifying operations as a "liberation struggle", but also a calculated policy of coercion through intimidation. In general, civilian casualties are a common theme in guerrilla warfare and are even used as a tactic to demoralize and weaken civilian morale to decrease support for the opposition. The Naxalites argue that they have brought law and order to the area by banishing corrupt officials, forcibly redistributing land and increasing access to resources and fair profit from those resources. They have built ponds in villages that lack irrigation facilities and built orchards in villages that have been burned by "Salwa Judum". In this context, it is understandable how some Adivasis might gravitate towards Naxalism as a means to protect their livelihoods.

Over time however, some Adivasis begin to deplore their methods especially village leaders who are threatened if they choose to exercise their right to lead and landowners who have their land or livestock forcibly re-distributed. The Naxalites have replaced the traditional structure of authority by creating "Sangham's" or committees to call meetings and make decisions for the people and carry out village level activities. But people begin to resent the control levied on them by these foreign "Sangham's". Many complain of being forced to attend Sangham meetings and not being able to speak while decisions regarding them are made. The people are also subjected to Naxalite law and a quasi-judicial "people's court" that often hands down extreme punishment. Adivasis protest at having to provide food or being forced to cultivate land on behalf of guerrilla troops. There are even pervasive reports of Naxalites forcing each family to provide a male or female member to join their ranks, often including underage children.⁴ The Naxalites are not shy about their use of child soldiers, though they claim to never include children under 16 in combat.

Naxalite leaders are usually well educated, often teachers by occupation, but are never Adivasis. Nor are any of the leaders of the Naxalites from Chhattisgarh but rather they are usually from Andhra Pradesh or Maharashtra. They finance their operations by levying taxes (around 12%) on traders and contractors and by procuring resources by choice or coercion from local villagers⁵. Until recently their operations in Chhattisgarh have been similar to that in other Naxal affected states. Yet a recent expansion of the movement in Chhattisgarh seems to indicate that the Naxalites strength lies in the weakness of the state.

There has been a marked increase in violence that has coincided directly with the creation of Salwa Judum or as the government labels it "peace movement". Indeed the lawless vigilante-like behavior of Salwa Judum and other government security forces has only served to increase recruitment of Adivasis into Naxal forces. There has been an increase in armed Naxalites perhaps

⁴ *War In the Heart of India: An Enquiry into the Ground Situation in Dantewara, Chhattisgarh*, Independent Citizens Initiative, July 20, 2006.

⁵ *Inside India's Hidden War*, By Randeep Ramesh, Special Reports, Guardian Unlimited, May 9, 2006, accessed at <http://www.guardian.co.uk/india/story/0,,1770612,00.html>

as large as ten fold from 500 prior to Salwa Judum to over 5000 presently.⁶ The typical recruits tend to be young, often illiterate Adivasis who indeed have never read Mao nor are aware of the finer points of the ideology they adopt. They are recruited with promises of protection of their present livelihoods and basic rights, and heavy-handed enforcement of equality and social justice.

2.4 Salwa Judum: People's Movement, Grave Mistake or State Sponsored Terror?

“Salwa Judum” is often translated from the Gondi language as ‘peace mission’ or ‘purification hunt’. It has been argued that “Salwa Judum” was a spontaneous people’s movement, where weary villagers rose up and organized themselves to fight the Naxalites. Yet this begs the question that if indeed it is a people’s movement and people are being similarly oppressed by Naxalites all across rural India, then why has there not been similar spontaneously generated movements in other Naxalite affected states? Others argue that “Salwa Judum” was the construct of the local government, in particular Mr. Mahendra Karma, in an clumsy effort to “deal with” the Naxalite problem, but also to distract public attention from political indiscretions and to give opportunity for Multi-National Corporations (MNC) to make claim to the land the Adivasi’s are displaced from. Though the exact motives remain unclear there is ample evidence that the government of Chhattisgarh is funding the Salwa Judum and making it into a state funded civil militia or paramilitary. However, inadequate training, lack of uniforms and arms and countless reports of attacks on civilians in conjunction with serious violations of rule of law threaten to bring Salwa Judum into the realm of a government sanctioned civil militancy, where the government is arming civilians to fight their war. Recently a former Director General of Police, Dr. K S Subramanian, was quoted as saying,

*While official sources maintain that the campaign, led by a local legislator, is hugely successful with the tribal people joining it in large numbers, local enquiries revealed a different picture. In the name of Salwa Judum, the tribal people are being forced to join a far from spontaneous mobilisation [sic]... Hundreds have been killed on both sides. A large area of land remains uncultivated; tribal people who are meant to work on the land have deserted the villages and are living under open skies and are starving. A vast amount of corruption has crept in as a result of this misconceived campaign with the ruling party spending huge amounts on it.*⁷

The central Indian government has recently taken notice of the Chhattisgarh’s anti-Naxal activities in a press statement from the fifteenth meeting of the task force on Naxalism, which stated that, “*The Naxal violence in all the states except in Chhattisgarh, is under control. The increase in Naxal violence in Chhattisgarh was due to greater offensives by Naxal outfits to derail Salva Judum.*”⁸ In addition the Supreme Court of India has issued a notice to the state of

⁶ FFDA Interview with Mahendra Karma, Leader of Salwa Judum, Annexure II; *Turning a Blind Eye: Child Soldiers at War in the Maoist Conflict of India*, by Statci Martin, Forum for Fact Finding Documentation and Advocacy, November 2006, p 96

⁷ *Chhattisgarh: Populist Follies, Confounded State*, by Saji Cherian, Research Associate Institute for Conflict Management, South Asia Intelligence Review: Weekly Assessments and Briefings; Vol 4. No. 33, February 27, 2006, accessed at http://www.satp.org/satporgrp/sair/archives/4_33.htm#assessment2

⁸ Fifteenth Meeting of Task Force on Naxalism Feb 13, 2007

Chhattisgarh requiring an impartial enquiry into the atrocities committed by the Salwa Judum since its inception in June of 2005.⁹

Primarily non-tribal tradesmen, contractors and businessmen, who find business impeded by problems with the Naxalites lead “Salwa Judum” apart from a few local Adivasis. However, the primary Salwa Judum cadres are the Special Police Officers or SPOs. As of January 2007, there were 4048 SPOs appointed by the government of Chhattisgarh¹⁰. Of the 4048 SPO’s, 229 were women. The SPOs were created through a provision in the Police act of 1861, which allows citizens to be appointed as SPOs for emergency purposes. Youth are the primary targets for recruitment (although some SPOs are also considered to be surrendered Naxalites). The government outlined this in their 14-point policy to combat Naxalism, which articulated the goal to “wean away the potential youth from the path to militancy or naxalism”. It has been well documented that many SPOs are under the age of 18 and are legally still children.¹¹ They are trained for upto three months, usually do not wear uniforms and are armed for their own protection (although when there is a shortage of weapons the SPOs are the first to go into the field unarmed). SPOs are paid a meagre 1500 rupees per month for their service. Those who have significant education forgo becoming SPOs and are instead recruited into the regular police force and are earning around 5000-6000 rupees per month. SPOs man checkpoints along the road and the entrances and exits of all camps and are known in the past for their unpredictable behavior in allowing access to roads and camps. Police outposts are frequently the targets of attacks and SPOs are the softest targets amongst government forces. On March 15, 2007 a police outpost was attacked by Naxalites killing 55 members of security personnel, among those killed 71% (39) were SPOs. The bleak reality of combat alongside with a lack of proper education and training has left far too many SPOs with a ‘kill or be killed’ mentality. SPOs operate alongside CRPF and local police acting as guides and trackers while patrolling the forests in search of Naxalites and in search of villages that are still populated and might be considered Naxalite strongholds. Groups of SPOs and government troops arrive at villages and based on tips from SPOs. They tend to accuse some villagers of being “Sangham” members or Naxalite sympathizers. They are known to beat and interrogate those they suspect of being sympathizers and to terrorize the remaining population through daily searches and raids. Finally, they insist that everyone should evacuate the village and go to the safety of a camp. Last but not the least they burn the homes and buildings so that the villagers cannot return. The SPOs are trained to operate using a ‘shoot first ask questions later’ approach and are suspected of having killed many innocent civilians only to later label them as Naxalites to justify the kill.

With tactics such as these, it is clear that “Salwa Judum” is being used as the strong arm in the government’s awkward attempts at counterinsurgency operations. Just as Mao advised his rebels to “move through the people as a fish moves through water”, counterinsurgency operations use tactics labeled as “drain the water” which involves moving the civilian population (“water”) to expose the rebels (“fish”). Rapid relocation of the civilian population deprives the insurgents of the cover, support and resources of the local population. Using insufficiently trained, non-

⁹ *Constitution of ‘Salwa Judum’ Challenged*, The Hindu: National; May 20, 2007; accessed at <http://www.hindu.com/2007/05/20/stories/2007052013221300.htm>

¹⁰ Public Interest Litigation Petition, Supreme Court at New Delhi, Petitioner: Nandini Sundar, Respondent: State of Chhattisgarh, June 2007

¹¹ *Turning a Blind Eye: Child Soldiers at War in the Maoist Conflict in India*, by Staci Martin, Forum for Fact Finding Documentations and Advocacy, November 2006

professional Salwa Judum cadre for a sophisticated counterinsurgency operation has already proven reckless, irresponsible and deadly. It has resulted in a total breakdown in the rule of law and has given license to impressionable young men to terrorize and kill without cause or justification. To the uncritical young SPO there is no distinction between combatants and civilians, they operate on a principle that 'if you are not with us you are against us', and any uncooperative civilian is then said to be a Naxalite and dealt with appropriately.

2.5 Multi National Corporations: Opportunists or Architects of Conflict

Over seventy percent of India's population makes their living out of the land. Yet this land hosts some of the richest untapped mineral resources in the world as well as some of the greatest opportunities for foreign investment and economic growth, both factors that are essential in India's effort to compete in a global market. Throughout history, popular discontent with land-related institutions has been among the most common factors in provoking revolutionary movements and other social turmoil. The situation in Chhattisgarh is no different.

Above the ground, Chhattisgarh is home to some of the most vulnerable people in India whose lives are dependent entirely on the land while below the ground, Chhattisgarh hosts some of the country's richest mineral reserves. It should be no surprise then, that Multi-National Corporations (MNCs) interested in investing in and exploiting these precious resources are included as parties to the present conflict.

The Naxalites have fought for decades against what they see as the irresponsible plunder of the land and resources and the exploitation of the people who have been the stewards of that land for thousands of years. Naxalites and their supporters are furious when the government invests large sums and cuts countless aged and even sacred trees to make way for four lane highways to serve MNCs and their industrial transport needs when village after village still lacks electricity. In this crusade, the Naxalites have attacked mines, blown up electricity pylons, destroyed roads and bridges, burned cars used by contractors, and even set up "people's courts" to punish and in some cases execute people found to be capitalist collaborators.

The government sees industrialization as necessary to create jobs and provide raw materials for economic growth. Often promoted is the hedonistic and utilitarian argument that this sort of exploitation allows for the greatest good for the greatest number of people in India. Indeed, India is experiencing an industrial and economic boom sparked by the government's embrace of multinational corporate investment and free trade agreements. Some predict this economic upswing will bring the Nation out of its current third-world status. Yet there are already clear signs that the influx of new wealth will be disproportionately distributed and will create a nation polarized by both great wealth and devastating poverty. And amongst those in the throes of poverty will be the Adivasi people who were carelessly displaced for the unrestrained resource extraction that is necessary to finance this economic boom. Not only must the government curb Naxalite anti-development efforts in order to prevent voiding MOUs already signed but also some argue that the displacement of thousands of Adivasis is also part of the incentive package offered by the government to entice more MNCs into the area. Whenever a MNC needs to lay claim to the land they must go through a long and arduous process. The most complicated part of the process is that of displacing those who are on the land. This effort is made even more complicated if they are Adivasi people on Schedule V land. In this case, a Gram Sabahs (all village meeting) must be held and the people must agree to the terms of displacement. There have been reports of

forced Gram Sabahs where the people are locked into buildings with armed men and forced to sign the agreements removing them from their land. Recently such accusations were voiced when a group of villages in Dantewada were forcibly displaced for an MNC. Following the agreement, the villagers protested claiming the agreement was falsely made under duress. This pattern of development-induced displacement to facilitate the rise of MNC is a common feature. Unfortunately, though the Adivasis have had tenure on the land for thousands of years, most still do not hold legal title to the land. Some argue that displacing the Adivasis of Chhattisgarh has cleared the way for MNC's to smoothly take over possession of the land. In 2005, the Chhattisgarh government signed deals worth 130 billion rupees¹² with industrial companies for steel mills and power stations, including MOUs signed with Essar in Dantewada and TATA in Lohandiguda. The day following signature of the MOUs Salwa Judum began its operations. Is it a coincidence? It is difficult to say what level of involvement the MNCs have in the present conflict, but it is not difficult to see how they could be benefiting from it. Regardless of whether or not it was really the government's strategy, the idea of handing the land over to the MNCs post displacement will no doubt be very attractive to the state government.

3.0 Camp Situation Report

FFDA undertook two field visits to the relief camps of Dantewada and relocated villages of Andhra Pradesh. A 1-member team visited Dantewada and Andhra Pradesh from February 23 to March 2, 2007. Additionally a 2-member team visited the Dantewada relief camps and one remote police station on from May 16 to 19, 2007.

Relief Camps Visited

1. Dornapal
2. Erabore
3. Injrem
4. Konta
5. Pollampalli
6. Mariguda

Relocated Villages Visited

1. Bhadrachalam, Andhra Pradesh
2. Cherla, Andhra Pradesh
3. Warangle, Andhra Pradesh
4. Eturnagaram, Andhra Pradesh

Other Visits

1. Chintagupha Police Station

¹² *Inside India's Hidden War*, By Randeep Ramesh, Special Reports, Guardian Unlimited, May 9, 2006, accessed at <http://www.guardian.co.uk/india/story/0,,1770612,00.html>

3.1 Overview

There are presently a total of 23 displacement camps, which according to the government host at least 57,528 people representing 19,766 families.

Table-I

	Name of Camp	Number of the People
1	Bijapur	5408
2	Cherpai	756
3	Gangalur	1856
4	Arapalh	272
5	Basaguda	1544
6	Usur	251
7	Bangapal	415
8	Kasoli	741
9	Bhairamgsh	3006
10	Farsegarh	429
11	Matmada	1291
12	Nelsaar	839
13	Gangla	1381
14	Kuturu	1298
15	Mirtur	770
16	Bedre	696
17	Dornapal	16851 *
18	Errabore	4361
19	Injrem	3156
20	Konta	5107
21	Jagargunda	3500
22	Pollampalli	2000
23	Mariagudem	1500
	Total	57528

* We were told by several sources that due to movement into Pollampalli camp there were now only 13500 people remaining in Dornapal.

3.2 Shelter

According to the government, all camps are provided funds for adequate shelter. Camp administrators decide how the funds will be spent which results in visible differences in building shelter and providing material from camp to camp. The most obvious example of this was the great contrast between the corrugated metal roofs of Dornapal camp compared to the clean enduring look of the tiled roofs of Injrem camp. Though Dornapal appeared to have adequate shelter, houses were built in close proximity and there was evidence of severe overcrowding, conditions were similar at Errabore. Mariagudem camp, which has been open for about 6 months and hosts around 1500 people, on the whole lacked adequate shelter. Many people were noted to

be living in stick frames from which they hung their goods but without walls or roofs. Some in Mariagudem camp had taken it upon themselves to build more substantial shelters but there was a visible lack of resources to provide adequate shelter for all. In Pollampalli camp, most of the shelters were made of sticks and mud and roofed with thatched palm fronds. It is difficult to imagine how these shelters will withstand the upcoming monsoon.

3.3 Food and Clean Water

According to a District Collector memo, food is being provided to Dornapal, Errabore, Konta, Injrem, Geedam-Kasoli, Mirtur, Cherpai, Gangalur, Awapalli, Usur, Pharsegarh and Bedre camps. The remaining camps receive free rations for old and disabled persons only. The remaining residents in these camps are assisted by employment centers that have been opened near the camps. The rice for the camps is being procured through the fair price shops. There is no information available on the nutritional value of the food provided by the government.¹³

It is very important to ensure that the entire food intended for the camps is making it to the beneficiaries and that the food is high in nutritional value. As people are forced to migrate, livelihoods and food crops are destroyed, food supplies are interrupted, and diarrhoeal diseases break out, micro-nutrient deficiencies easily develop or worsen if they already existed. Because malnutrition increases so dramatically and kills most rapidly in relief camp situations, one cannot take the distended belly of even one child too lightly. Our teams observed many bloated and distended bellies in both Mariagudem and Pollampalli camp, which indicates that there is some history of a lack of proper nutrition for children. In Mariagudem camp two teachers have been appointed to distribute rice once per week. We arrived as food was being distributed and it appeared to be adequately organized. However it was difficult for us to know if they are also receiving adequate supplies of nutritious foods such as vegetables and foods high in protein. Those interviewed at Mariagudem camp stated that they had adequate food and were eating three times per day, though there was some indication that things were much worse several months previous but that they were better organized now. At the time of this report there were no administrative officials who could answer our questions regarding Pollampalli camp.

Keeping in mind that interviews in this camp took place under the armed and watchful eye of the Superintendent of Police, all interviewed stated that they had adequate food. In Pollampalli camp, Madke was interviewed in the presence of a police official, Superintendent of police, who constantly intervened during the course of the interview. He often answered the questions posed to Madke. Under these circumstances, Madke was repeatedly questioned but her responses were clearly influenced by the ones that the SOP had voiced earlier.

Madke was a middle-aged woman. She was a resident of Korapod village, which is 8km away from Polampalli before she was forced to leave her village. She was forced to leave the village around four months back due to fear of naxalites. Currently she collects tendu leaves, mahoa flower, char seed and works on pond water resources. When she was asked whether or not she had a better life in Korapod she said life in Polampalli(village of encampment) was better because she feels safe and less scared. While Madke expressed her concerns under the close

¹³ Jan Jagaram Abhiyam (Salwa Judum)—District South Bastar, Dantwada, Brief Memorandum, 2007 as annexure to Public Interest Litigation Petition, Supreme Court at New Delhi, Petitioner: Nandini Sundar, Respondent: State of Chhattisgarh, June 2007

watch of a police official , some others some approached us later, in the absence of the security forces to express their frustration at there being only a single water pump in Pollampalli camp. The government has constructed a total of 190 pumps throughout the 23 camps but there is no information available regarding their distribution.

In another camp in Mariagudem, Gujo Podia, 40 years old. She has been living in this camp with her family of one daughter, four sons and her husband. Her husband was a farmer. After they moved to the camp he has been doing nothing. Gujo Podia used to collect forest produce but now she cannot collect anything except for Mahoa. She is happy that she gets three meals a day and does not have to worry about food.

She also reported that the first time they came from Gollapalli(place of origin) around 50percent of the villagers came along and they fell sick. Currently MSF comes to the camp to distribute medicines and conditions are comparatively better. Rest of the villagers went off to a Naxalite camp in Andhra Pradesh called “Nalabili”. There the Naxalites provide food and medicine similar to this camp. Gujo Podia left her village because Salwa Judum visited their village and told them to come to this camp.

When she was asked whether or not she had her own place to stay she showed her place and said while she built one on her own while many others do not have their own place to stay. Most of the camp dwellers she reported work under the employment scheme, mostly road work at times children join their parents. When the interviewer expressed their concern over children doing roadwork she said they do it during summer season when there is no school.

What is evident from these two accounts of two women in two different camps is the way the families were forced to side with Salwa Judums or Naxalites. Living in camps is not out of their own choice. It is through forced eviction from villages. The villagers’ lives are at the mercy of these two groups. The daily activities of the villagers are dictated by them.

3.4 Medical Services

The government asserts that there is one medic and paramedic at each camp.¹⁴ It is also the case that MSF visits the camps providing medical services but it is unknown which camps they visit and at what frequency. Our teams noted evidence of malnutrition in children. Some in Mariagudem camp reported that recently the health conditions had been poor and many in the camp were very ill but that MSF had started coming to give medicines and since then things had become much better. Due to the overcrowding in Dornapal and Errabore, special precautions should be taken during the Monsoon season to improve sanitation and prevent disease. In addition it is imperative that in-camp medical facilities are available rather than periodic medical service delivery.

3.5 Income Generation/Livelihood Programs

According to a government memo, vocational training is provided for those camp residents who wish to participate. This training includes stitching, carpentry, bamboo work and hand carving. So far, 635 camp residents have been given training in stitching, 200 in hand carving, 400 in bamboo work 50 in bell metal work and 600 in spinning. Additional employment is being

¹⁴ *Id*

requested from the Lok Nirman Department, Irrigation department and forest department from their respective accounts.¹⁵ Yet there are still many who reside in camps that lack access to employment. In Dornapal, we were told that people who originate from local villages are now able to leave the camp during the day to go to their villages to participate in agriculture and return at night. Several people interviewed in the camp confirmed this. In addition, many were seen going to work on the roads/ponds. We were told in many camps that some road and pond work is available but that work is sporadic and not available to all. Our teams interviews always reflected an underlying tone of frustration that although some work is available, it is a far cry from farming and traditional agricultural activities, which the people would much rather be doing. It also is important to note that this lack of employment encourages the youth to join Salwa Judum as a means of income.

3.6 Education

Since several government schools have been converted into camps for Salwa Judum and security forces the education of children in the district has been nearly at a standstill. Some reports indicate that in 2006, all the children of Dantewada district were routinely promoted to the next class without any teaching.

In a government survey it was determined that there are 6938 school-aged (6-14) children in the camps. The government claims that these children have been admitted to schools in the camps. But it is unclear what structures they use as classrooms. The government has yet to provide textbooks and other necessary school supplies.¹⁶ As it was summer season when our teams visited the camps the children were not attending school and it was therefore difficult to assess the coverage of education in the camps. Our team did observe at least one UNICEF tent in each camp visited that is purported to be used as a classroom during school season.

3.7 Electricity

Some of the camps appear to have at least basic electricity although some were set up with haste by security forces as in Pollampalli. According to the District Collectors memo, a generator will be purchased for each camp, along with 25 tube lights and wire sets. Additionally, the following camps have been electrified through generators: Errabore, Injrem, Mirtur, Cherpal, Gangalur, Basaguda, Bedre and Pharsegarh.¹⁷

What is most interesting is that 13 of the 14 sites that are designated for permanent housing (see section 3.x) have already been electrified, long before the generators were supplied for camps with temporary housing. In addition, the electricity board has sanctioned a free one-bulb connection and streetlights for these permanent housing sites. This effort has been paid for by the Bastar Development Authority, no doubt a lure to entice camp in-mates to make their displacement permanent.¹⁸

¹⁵ *Id*

¹⁶ *Id*

¹⁷ *Id*

¹⁸ *Id*

3.8 Security

Security remains the most critical issue at the Dantewada displacement camps. The conflict is so polarized in nature that the Adivasis, who are caught in the middle are forced to take sides. Even those who lack political conviction towards one side or another involuntarily select a side based on where they choose to live. In most cases an Adivasi who chooses to remain in their forest village, especially when that village is in a Naxalite stronghold area is considered by security forces to be a Naxalite. If an Adivasi chooses or is compelled to move to a displacement camp then the Naxalites consider them a part of Salwa Judum. This concept is reinforced when the locals refer to the camps as “Salwa Judum camps” rather than relief camps, demonstrating a public belief that the sole purpose of living in the camps is to fight against the Naxalites. Although it can be argued that the security forces are there to protect people in the camps, their very presence especially that of Salwa Judum blurs the boundaries between civilians and combatants and attracts further attacks by Naxalites, greatly endangering innocent civilians in the camps. This danger increases significantly in camps that are solely administered by security forces. Both Mariagudem and Pollampalli camps are administered solely by security forces. Mariagudem camp has reportedly been attacked by Naxalites as many as five times in the six months since it opened. The rationale of allowing security forces to be the sole administrators of a relief camp is horribly ill-conceived and leads civilians one more careless step towards becoming the targets of attack. In some cases security forces can assist people in returning at least in part, to their previous livelihoods. In Dornapal security forces escort people back to their villages (primarily villages geographically close to the camp) for the day to check on the elderly and to begin farming again. In addition, most of the current residents at Pollampalli camp were originally encamped at Dornapal but moved to Pollampalli once it was secured in order to be closer to their villages of origin and to relieve some of the population pressure on Dornapal camp.

Most disturbing are the pervasive reports of abuses against people in the camps by the government security forces themselves. There are simply too many reports of abuse by security forces from too many different NGO’s and human rights organizations to ignore.¹⁹²⁰²¹ These reports go unchecked and unpunished by officials. Impunity breeds further abuses (security not being punished for acting outside of the law) cultivating further lawlessness and martial law.

Although the living conditions of security forces is outside the scope of this report our team happened to visit Chintagupha Police station and would like to bring some issues to light. Chintagupha Police Station is a remote police station, which until recently was not accessible by road. The facility is manned by Chhattisgarh Police and Special Police Officers and lacks medical facilities and basic services. In addition the station is required to pay higher than average prices for the limited food that they are able to purchase (ex: 40 rupees per KG for potatoes compared to the normal price of 15-20 per KG). Furthermore we were told that SPOs were not even receiving their wages and were instead being told they would get money when they go home to their camps. It is troubling to find dozens of young men and in many cases boys, who were recently encamped at relief camps and upon finding a lack of employment have joined the Special Police

¹⁹ Death, Displacement and Deprivation A War in Dantewara: A report, Human Rights Forum, December 2006, pg 41

²⁰ Naxal Conflict in 2006, Asia Center for Human Rights, January 10, 2006, pgs 15-17

²¹ Where the State Makes War on its Own People: A report on the violation of peoples rights during the Salwa Judum Campaign in Dantewara Chhattisgarh, April 2006, pgs 25-26

and now live not only in more difficult but more dangerous circumstances (SPOs have been known to represent 52% of deaths amongst security forces).

In an interview with Markum Lecha and Beema Nupoor, SPOs at Chintagupha Ploice Station certain interesting things were revealed specially the tenure of training and process of recruitment. Both are 21 and 16 years respectively. Previous to Chintagupha Police station they were stationed at Dornapol. Both of them joined as Special Protection Officers around seven to eight months when the interview was being conducted. They were trained for a period of three months. They roam around armed. Both of them were inducted when their families moved to Dornapol camp. They joined as SPOs because they had no other avenue of employment and the fear of Naxalite violence haunted them. When they were asked why did their families move to the camp; they said if they return to their villages “they would be cut into pieces. The families should stay in camps until Naxalites are finished”. After sharing these informations with the interviewers Beema Nupoor left. Markhum Lecha continued the conversation with the interviewer.

It is still unknown as to why the young men joined the conflict. Although some would argue that they are motivated by the Salwa Judum movement, our interviews indicated that these youth were simply looking for “something to do” and that having experienced the reality of combat many (especially the youngest) long for a vacation or a chance to return to their families. The decision to join the SPO’s ensures a financial guarantee of 1500 rupees per month but most importantly a change from civilian to combatant status thus altering the protections provided to these boys. It also results, as in the case at Chintagupha in a much lower standard of living than at the camps, and a much higher chance of mortality. This is a failure on government’s part for not providing adequate employment for youth in camps. What will happen to these tribal youth when the conflict is over? Having forgone the opportunity for education, forgotten how to tend their fallow fields and become roughened by the violence. According to the police act of 1861, which created them, they will return to their former civilian status. Indeed when we asked a group of SPO’s who were casually buying candies at a shop, gun slung on backs they responded, “when this is over we want to go back to our fields to do agriculture... that is all we want”.

3.9 Status of Women

One of the most common complaints heard by our fact-finding teams by women in the camps was that they were unable to resume all forest produce (FP) activities. When asked what they do in lieu of their traditional economic activities some responded that they are participating in road/pond construction but that it is irregular and there is not enough work for everyone to participate, others participate in limited FP collection. There have been countless reports of rapes and abuses against women by security forces, but it is very difficult to confirm under the current conditions of elevated security.²² Women in the camps live under the constant scrutiny of the camp security forces and they are even more vulnerable when they leave the camp to collect forest produce or to work on road or pond activities. When a woman wanted to report a rape by security forces, there is no safe mechanism for her to do this. Rape by security forces has been reported to independent organizations but there remains the ethical dilemma regarding

²² See footnotes 19-21

prosecution due to a lack of appropriate security for the victim who usually remains in the camp and vulnerable to threats from the perpetrator.

3.10 Status of Men

We heard complaints that the men lack adequate and consistent employment. Several wives told us that their husbands who were farmers were depressed and restless due to the lack of employment.

3.11 Status of Youth and Children

The children seem to appreciate an increase in the number of playmates they have in the highly populated camps. Also many were seen with their eyes glued to television sets, a new experience for them. As mentioned previously some children in the newer more poorly organized camps showed physical signs of malnutrition. Many people told us that the children often participate in pond and road construction when it is available. As mentioned previously there is a lack of employment for the youth, so they are inclined to join the SPOs. Many of the youth in the camp were already enrolled as SPOs. And there were already reports of behavioral problems with the SPOs (see Box 3).

3.12 Status of Elderly

The elderly in the camps have no work and complain of how their lives have changed in the camps. They say in the camps they have lost the family and social support structure that they had in the villages. They complain that they have nothing to do as they are unable to participate in road and pond construction and they have no role in the camp. Amazingly there we were told of many cases of elderly persons being left behind to fend for themselves in their villages. In an interview with Punam Dueva, aged 63, he revealed that when he was a village leader of Dubatota he taken away by the Naxalites. The naxalites slapped him and told him not to be a village leader. He was aware of the existence and functioning of “Salwa Judum”. He resorted to taking refuge in the Dornapal camp. The whole village followed him to Dornapal. He reported that people do back to the villages with the SPOs during the daytime and come back to the camps during evening. He cannot go because he is the village leader and his life is under danger. Some elders still reside in the village. When he was asked how different is his life in the camps, he said that they are slowly losing the tribal way of life, i.e., the sense of village and family life because of residing in camps. He said that while he is too old to engage with any activities that the young people in the camps are involved i.e., pond and road construction. As far as returning to the village is concerned he feels that it is dangerous. While nobody has asked them not to back it is a dangerous option because of the Naxalite violence. When he was asked whether or not there would be an end to this violence he said “God only knows”.

3.13 Camp Morale

Perhaps the most important and oft neglected condition in any relief camp is that of the morale. Overall there is a general sense of frustration and hopelessness. The people seem to understand

that they are caught between two political ideologies and everyday is a tightrope walk to keep out of harms way. They yearn to go back to their villages and to resume their agricultural activities, and they tell us stories of those who have. But we were never able to meet anyone who had returned to their villages and wondered if perhaps these stories are being told simply to give them something to hold onto. When asked how this will end or what they think can be done to end it they shrugged and said “God only knows”.

3.14 Displaced Outside of Camps

Statement made by Villagers who were evacuated from their villages and relocated across State borders “The police came to our village and beat us and took some people and we can’t find them either in Salwa Judum camps or the village so we became scared and thought we should leave this place”

“A group of police officers, SPO and SJ came to our village and in front of us they killed people and the SJ people shouted “Long live Naxalites” trying to make us believe they were Naxalites... We could not go to the police, because the police were there when it happened and if we complain to then we will get an even more severe punishment from the Salwa Judum so we thought it is better to leave this place”

Although the exact numbers are uncertain, between 45,000 and 60,000 people have migrated from villages in Chhattisgarh to villages in Orissa, Maharashtra, and Andhra Pradesh. Our fact finding team identified groups of people from many villages in Dantewada who rather than relocating themselves in relief camps, migrated to villages in Andhra Pradesh, leaving behind their livestock, rice patty, food stores and the elderly and the invalids who were unable to travel. The few who returned at a later date to check on the welfare of the elderly found that their food stores and other possessions had been pillaged.

Non-Camp Displacement	
Villages in Chhattisgarh migrated from	Villages Migrated to
Basaguda, Marodkot	Andhra Pradesh: Koyur, Khambam District
Pusabhamka, Konjer, Gangampad, Pollampalli, Silkapili, Pujarikamker, Nelakanker, Kamlapuram, Nenpat, Galgam, Namgunjparte, Bimaram, Kalepad, Chinaram, Rampuram	Andhra Pradesh: Bhadrachalam, Cherla, Warangle, Eturnagaram

Statement of group of 7 villagers from Murdanda who relocated to Mukannapalli of Khambam District AP “In the night a group of jungle people came (Naxalites). They asked us to feed them, we feared them so we did as they said. The next morning a group of Salwa Judum and Police came and asked why we were afraid of the jungle people (Naxalites) we said we fear because they asked for things so we gave them, if we don’t give them they then will make trouble for us, they asked for food, we fed them. They asked why we fed them, and we told them that if we hadn’t we would be in trouble. Salwa Judum people beat some of us and told us not to support the Naxalites. Salwa Judum stayed for around 5 hrs and left in the evening, the next morning, we left because we feared both. Around 60 of us came to this village in August of 2006.”

3.15 Forced Displacement/Evictions

Under the guise of safety the government via their Salwa Judum and other troops are forcibly removing thousands of people from their homes and livelihoods. Tactics of fear and violence are used and villages are often decimated to prevent return. Often a method of deception is employed, telling villagers they will only be away for a few days and then they will be able to return. Although security is clearly an issue and the government is right to take responsibility for improving the security of villagers, there is no reason to believe that the people are much safer on the roadside where they are more easily targeted by Naxalites compared to their villages. Again, removing the people from their rural villages is clearly in the government's best interests as a counterinsurgency tactic rather than in the villager's best interests. Our teams learned of villages that remain fully populated sprinkled throughout areas of evacuated villages. It is difficult to understand why some villages are evacuated and others are not and if there is a plan to continue to these evacuations. As forced displacement almost always accompanies serious human rights abuses, national and international eyes will no doubt be trained on Chhattisgarh to see if they can adequately justify their actions, resolve past errors and prevent further abuses in the future. As Vekomoia, head of village near Gollapalli at Mariagudem Camp revealed that initially they were lured to move from village to camp for a day or two. The people had promised that would return after a day or two so they had left their livestock and rice stores. They were expecting that they would stay close to their villages. Instead they were tricked and taken to Marigudem camp where they still continue to live.

3.16 Right to Return

When asked about the government's ability to sustain the services provided at the camps Mr. Mahendra Karma said that the camps are only for short-term "immediate response" purposes. He estimated that they would be necessary for three to five years.²³ As the camps have already been in place for two years it will be interesting to see how the government plans to handle the final one to three years. It was reported to us by representatives of the government that many are being allowed to either return to their villages completely or to return to villages during the day and the camps in the evening. Our teams were unable to confirm any movement other than to nearby villages during the day and movement to other camps closer to their villages such as Pollampalli. Since only a handful of abandoned villages lie within walking distance of the camps there are relatively few people that are actually being repatriated. In addition, the Salwa Judum burned many villages at the time of the villagers' exodus and there are no reports of reconstruction efforts. There are disturbing indications that the camps will in fact, be made permanent. The Chief Minister Raman Singh recently stated that many of the people are happy living in the camps and wish to remain.²⁴ This is contrary to everything we heard in the camps. Though when interviewed in the presence of armed security forces, the in-mates will state they are happy in the camps, all indicated a preference and desire to return to their villages and agriculture. Yet it seems the government's plan will move forward. In a January 2007 report of the District

²³ *Turning a Blind Eye: Child Soldiers at War in the Maoist Conflict in India*, by Staci Martin, Forum for Fact Finding Documentations and Advocacy, November 2006, Pg 27

²⁴ Dainik Bhaskar, June 8, 2007, Newspaper article

Collector, Essar Steel Regional Development Plan in conjunction with Bastar Development Society is providing funds to build 6369 permanent housing structures for those who wish to stay in the camps. Many of these houses have already been electrified, long before the forest villages or the most recent camps. These permanent housing structures include a free one-bulb connection and streetlights. There is clearly a strong motive to rapidly provide housing to prevent people from returning to their villages and land.

3.17 Fake Encounters

While our team was Dantewada, we came across two people who were killed by security forces who not only had no weapons but also looked to be simple villagers. Our team witnessed that they were wounded as though shot from behind and other witnesses said they were trying to run away in fear. Security forces argued they were Naxalites and that is why they were running. This is an all too common scenario that is ripe for further disaster. It represents a serious break down in the rule of law and the laws of war, where civilians are too easily mistaken for combatants and killed. Usually these killings are covered up and almost always the victims are later named as combatants. These sorts of incidents create more fear and terror within the camps. This also makes it increasingly difficult to ascertain the actual status of camp in-mates, as they prefer to appease security forces by giving answers that remove them from suspicion.

4.0 Implications

Of all the states dealing with Naxalism, only Chhattisgarh has employed policies that have resulted in the massive displacement of its rural population. It is clear that the state government is responsible for forcibly displacing large numbers of people. Now all eyes will be trained on Chhattisgarh to see how they fulfill their responsibilities to provide protection, assistance, reintegration and development following the displacement that has already occurred. Although they have made great efforts in providing basic assistance to the displaced we would like to highlight the issues below which require attention.

4.1 Relevant National and International Laws

On January 26, 1950, the Indian constitution, the longest written constitution of any independent nation in the world, came into effect. Indian Constitution: probably no other nation's constitution "has provided so much impetus towards changing and rebuilding society for the common good". It is unfortunate that such a promising document is falling short in reaching its potential and failing the Adivasi people of Chhattisgarh. Despite the fact that India experienced the largest displacement of people in human history as a result of the conflict surrounding the nation's birth in 1947, India still has no policy regarding internally displaced people (IDP). In fact the Indian government systematically and wrongly refers to IDP's as "migrants".²⁵ This lack of a coherent policy is evident in the handling of displaced people in Chhattisgarh. The state government's handling of the situation in Chhattisgarh has been in breach of multiple national legal instruments

²⁵ India: Conflicts have displaced at least 650,000 persons; Global IDP project, October 27, 2003, accessed on <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/f3e75445f4cb7b4dc1256dcc00437a...>

as well as international laws and guidelines. The United Nations via the Office of the United Nations High Commissioner for Human Rights has established thirty guiding principles regarding Internal Displacement.²⁶ All of these principles are based on refugee instruments and International and Humanitarian Law which India is party to.

4.1.1 Forced Eviction

The forced eviction and displacement of tens of thousands of Adivasis in Chhattisgarh at the hands of the Salwa Judum, uprooting their livelihoods and destroying their villages is a gross violation of their fundamental rights as stated in the Indian Constitution under Articles 14, 19 (1) (d), (e), (g) and Article 21. In addition, nearly all the people displaced in Chhattisgarh are Adivasi or indigenous people that have been forcibly uprooted from their land, their sole form of livelihood. As India is a state party to the International Covenant on Economic, Social and Cultural Rights, it is under an obligation to desist from undertaking forced evictions and to protect the population from the threat of forced evictions. In addition the present situation is in violation of the UN IDP guiding principle 9 that affirms that:

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

Our teams also heard reports of displaced persons being forced even tricked into moving to and remaining in camps that they did not want to remain in due to the distance from their villages. This represents an infringement of IDP guiding principle 14 which states that:

1) Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence; and 2) In particular, internally displaced persons have the right to move freely in and out of camps or other settlements

4.1.2 Right to Security

Since displacement camps are not only the home of but are also administered by Salwa Judum troops or Special Police Officers, innocent civilians in the camps continue to be the target of attacks and hostilities. Indeed some have argued that the camps are being used as a politico-military shield. To this day, displacement camps continue to suffer from attacks by Naxalites. Presently the conflict in Chhattisgarh is considered a non-international or internal armed conflict. As a result both state armed forces and opposition-armed groups must abide by Article 3 common to the 1949 Geneva Conventions and customary international humanitarian law. This law prohibits attacks against civilians and civilian objects. Indian security forces including Salwa Judum and associated Special Police Officers are also bound by international human rights law such as in the International Covenant on Civil and Political Rights, which India ratified in 1979. As a result India is duty bound under international law to investigate and prosecute serious violations of human rights laws by security forces. In addition these atrocities are also in breach of UN Guiding principles on IDPs 10, which states that:

²⁶ UN Guiding Principles on Internal Displacement can be found on

http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html

Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

(a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

(c) Their use to shield military objectives from attack or to shield, favour or impede military operations;

(d) Attacks against their camps or settlements

4.1.3 Abuses within the Camps

There are pervasive reports to various teams who have visited the displacement camps regarding violence against women including rape, gang-rape, beatings and mutilations. These have gone unreported since the police do not file First Information Reports nor do the victims feel safe reporting the abuses since the abusers are often security forces. No alternative form of reporting or protection has been provided for women in the camps. The deliberate neglect by the police in registering official reports is in violation of Section 154 of the Criminal Procedure Code, 1973. Impunity occurs when the state consistently fails in its responsibility. This results either from a lack of capability or political will or laws that shield state abusers from being held accountable to human rights violations. This cultivates an atmosphere in which violators believe that they can get away with the most serious crimes. As stated by the UN General Assembly in its March 2006 resolution on the right of victims of human rights abuses, states must “investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law.” These circumstances are also in violation of IDP guideline principle 11, which states that:

Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against: (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault

4.1.4 Child Soldiers Recruited from Camps

As our teams discovered many of the Special Police Officers are under the age of 18 and were recruited from the camps reportedly due to lack of employment. Many of these children and youth would likely not join Salwa Judum if they hadn't been interned in camps. The appointment of minors by the Government as SPOs, is a brazen violation of Article 39 (e) and (f) of the Indian Constitution and violates the statutory embargo of employing child labour in hazardous activities under the Child Labour (Prohibition and Regulation) Act, 1986. In addition this is a serious offense against international conventions such as the Optional Protocol to the Rights of the Child on children in conflict, which India ratified on 30 November 2005 and is legally bound to uphold. This protocol prohibits the direct use of any child under the age of 18 in armed conflict and prohibits all use of under-18's by non-state armed groups. Additionally, this violates IDP guideline principle 13 which states that:

1) In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities and, 2) Internally displaced persons shall be protected against

discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

4.1.5 Right to Shelter

Our teams found inadequate basic housing in Mariagudem and Pollampalli camps. In addition, there was evidence and reports of inadequate health and nutrition, and inadequate supply of potable water in Pollampalli camp. These circumstances are unacceptable and are in defiance of principle 18 of the UN IDP guidelines which states that:

*1) All internally displaced persons have the right to an adequate standard of living; and
2) At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation.*

4.1.6 Right to Property and Possessions

Not only has it been written in multiple independent reports but in fact our teams heard reports from people who were asked to leave their homes to join displacement camps after being told to leave their livestock and possessions behind since they would “return in a few days”. Both Naxalite and Salwa Judum forces subsequently pillaged people’s possessions, including livestock and food stores. In addition Salwa Judum has repeatedly been accused of burning houses in order to force people to move to the camps. It would seem there has been no attempt by the Chhattisgarh government to safeguard the possessions and properties of the displaced. This conflicts with IDP guiding principle 21, which states:

1) No one shall be arbitrarily deprived of property and possessions; and 2) The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts: (a) Pillage; (b) Direct or indiscriminate attacks or other acts of violence; (c) Being used to shield military operations or objectives; (d) Being made the object of reprisal; and (e) Being destroyed or appropriated as a form of collective punishment; and 3) Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

4.1.7 Right to Education

The conversion of government schools into camps for security forces (which were subsequently destroyed by Naxalites), the resulting lack of educational facilities for children in affected villages is a gross violation to the fundamental right to education under Part III of the Indian Constitution. Additionally this diverges greatly from the UN IDP guidelines, principle 23 which states:

1) Every human being has the right to education; and 2) To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion; and 3) Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes; and 4) Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

4.1.8 Right to Return

Our teams did not speak to a single person who wanted to remain in the camps nor have we seen any adequate reports indicating that people would prefer to stay in the camps rather than return to their villages and resume their agricultural activities. Despite this the government seems to be extending significant effort and resources to making the camps permanent rather than replacing property and reconstructing villages where the people would like to return. This not only looks suspicious considering the number of MOUs the state government has signed regarding land which many of these Adivasi would like to return to but it also violates UN IDP principles 28 and 29 which state that:

1) Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence... Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons; and 2) Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration. As well as Principle 29: 2) Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.

5.0 Recommendation

5.1 Recommendations for State and National Level policy makers

- 1) Immediately stop all removal of villagers from their villages to relief camps
- 2) Immediately stop recruitment into Salwa Judum (SPOs)
- 3) Establish a central (or state) commission to oversee policy and matters of IDPs
- 4) Re-establish rule of law by holding security forces accountable to follow the laws of war and prosecuting those who do not comply
- 5) Establish a safe independent agency for IDPs to safely report abuses to
- 6) Begin plans for right to return, land rights etc... rebuild houses, schools, villages
- 7) Provide repayment for loss of property/possessions
- 8) Provide basic development including electricity, medical centers, schools etc.. to affected villages

- 9) Introduce pro-people and pro-tribal measures to contain activities of extremists these measures should include recognition of entitlement to land, minerals, forest produce, water, etc. These measures should foster a sense of citizenship and equality in citizenship that will regain the trust of the Adivasi populations in good governance

A Continuing Tragedy

Rather than learning from Chhattisgarh's mistake, the state government of Maharashtra has launched a program in January 2007 to support formation of Village Defense Committees (VDC) to counter Naxalites. Each village is being offered 2 lakh rupees for the formation of a VDC and proposals from 28 villages have already been approved. Will Maharashtra be the next host for thousands of refugees from within its own boundaries?²⁷

²⁷ *Village groups to tackle attacks*, The Indian Express, January 8, 2007

Table-2

Chhattisgarh At a Glance-2002

SOCIO - ECONOMIC INDICATORS OF CHHATTISGARH STATE

ITEMS	UNIT	DETAILS
1	2	3
Geographical Area	In '000 Sq. Km.	135
Percentage of Forest area to Geographical area	Per cent	45
POPULATION CHARACTERISTICS 2001		
Decennial Growth Rate	Per cent	(+) 18.06
Density	Per Sq. Kms.	154
Sex ratio	Females per '000 males	990
Percentage of Rural Population to total Population	Per cent	79.92
Percentage of Urban Population to total Population	Per cent	20.08
Percentage of Male Population to total Population	Per cent	50.48
Percentage of Female Population to total Population	Per cent	49.52
Percentage of Scheduled Castes Population to total Population	Per cent (1991)	12.20
Percentage of Scheduled Tribe Population to total Population	Per cent (1991)	32.40
Literacy Rate 2001		
Total	Per cent	65.12
Males	Per cent	77.86
Females	Per cent	52.28
Rural Literacy Rate		
Total	Per cent	60.93
Males	Per cent	74.58
Females	Per cent	47.41
Urban Literacy Rate		
Total	Per cent	81.08
Males	Per cent	89.87

CHHATTISGARH AT A GLANCE 2002

ITEM	UNIT	DETAILS
1	2	3
<i>I. GENERAL INFORMATION</i>		
<i>(i) GEOGRAPHICAL SITUATION</i>		
Latitude		17°46' N to 24°5'N
Longitude		80°15' E to 84°20' E
Geographical Area	In `000 Sq. Km.	135
Forest Area	In `000 Sq. Km.	59
<i>(ii) RAINFALL (1999-2000)</i>		
Rainfall	In Mms.	1292.1
No. of Rainy Days		61
<i>(iii) ADMINISTRATIVE SET-UP (2001)</i>		
Revenue Divisions	No.	3
Revenue Districts	No.	16
Tahsils	No.	96
Development Block	No.	146
Tribal dev. Blocks	No.	85
Town	No.	97
Total Villages	No.	20308
Inhabited Villages	No.	19692
Majra/Tola	No.	54818
<i>(Other than inhabited villages)</i>		
Electrified villages	No.	18076

ITEM	UNIT	DETAILS
1	2	3
District Panchayats	No.	16
Janpad Panchayats	No.	146
Gram Panchayat	No.	9139
Municipal Corporation	No.	6
Municipalities	No.	20
Nagar Panchayat	No.	49
Census Town	No.	22
Police Station (Thana)	No.	263
Police Chaukies	No.	79
Dev. Authorities	No.	2
Vidhan Sabha Constituencies	No.	90
Loksabha Contituencies	No.	11
RajyaSabha Constituencies	No.	5
2. POPULATION (2001 P)		
(i) Total, Rural, Urban, Male & Female Population		
Total	In Thousand	20796
Male	In Thousand	10452
Female	In Thousand	10344
Rural	In Thousand	16621
Male	In Thousand	8291
Female	In Thousand	8330
Urban	In Thousand	4175
Male	In Thousand	2161
Female	In Thousand	2014

ITEM	UNIT	DETAILS
1	2	3
(ii) Scheduled Castes Population (1991)		
Total	In Thousand	2148
Male	In Thousand	1081
Female	In Thousand	1067
Rural	In Thousand	1784
Male	In Thousand	894
Female	In Thousand	890
Urban	In Thousand	364
Male	In Thousand	186
Female	In Thousand	178
(iii) Scheduled Tribes Population (1991)		
Total	In Thousand	5717
Male	In Thousand	2846
Female	In Thousand	2871
Rural	In Thousand	5488
Male	In Thousand	2727
Female	In Thousand	2761
Urban	In Thousand	229
Male	In Thousand	119
Female	In Thousand	110
(iv) Working Population (Main Worker's) 1991		
Total	In Thousand	7417
Male	In Thousand	4745
Female	In Thousand	2672

ITEM	UNIT	DETAILS
1	2	3
Rural	In Thousand	6500
Male	In Thousand	3990
Female	In Thousand	2510
Urban	In Thousand	917
Male	In Thousand	755
Female	In Thousand	162
(v) Industrial Categories of Workers(1991)		
Main workers	In Thousand	7417
(I) Cultivators	In Thousand	4230
(II) Agricultural Labourers	In Thousand	1710
(III) Household Industry, Manufacturing Processing, Servicing and Repairs (Va)	In Thousand	108
(IV) Other Workers (III, IV, V(b) & VI to IX)	In Thousand	1369
Marginal Workers	In Thousand	982
Total Workers	In Thousand	8399
(vi) Literate Population 2001 (D)		
Total	In Thousand	11283
Male	In Thousand	6771
Female	In Thousand	4512
Rural		
Total	In Thousand	8361
Male	In Thousand	5093
Female	In Thousand	3268

ITEM	UNIT	DETAILS
1	2	3
Urban		
Total	In Thousand	2922
Male	In Thousand	1678
Female	In Thousand	1244
(vii) Literacy Rate 2001 (D)		
Total	Percentage	65.12
Male	Percentage	77.86
Female	Percentage	52.28
Rural Literacy Rate		
Total	Percentage	60.93
Male	Percentage	74.58
Female	Percentage	47.41
Urban Literacy Rate		
Total	Percentage	81.08
Male	Percentage	89.87
Female	Percentage	71.63
(viii) POPULATION CHARACTERISTICS (2001)		
Decennial Growth Rate	Per cent	(+) 18.06
Density	Per Sq. Kms.	154
Sex ratio	Females per '000 males	990
Percentage of Rural Population to total Population	Per cent	79.92
Percentage of Urban Population to total Population	Per cent	20.08
Percentage of Male Population to total Population	Per cent	50.48
Percentage of Female Population to total Population	Per cent	49.52

ITEM	UNIT	DETAILS
1	2	3
Percentage of Scheduled Castes Population to total Population	Per cent 1991	12.20
Percentage of Scheduled Tribe Population to total Population	Per cent 1991	32.40
(ix) Birth, Death & Infant Mortality Rates 1999		
Birth Rate		
Total	Per '000 of Population	26.9
Rural	Per '000 of Population	29.3
Urban	Per '000 of Population	23.6
Death Rate		
Total	Per '000 of Population	9.6
Rural	Per '000 of Population	11.3
Urban	Per '000 of Population	7.0
Infant mortality Rate,		
Total	Per '000 of live birth	78
Rural	Per '000 of live birth	95
Urban	Per '000 of live birth	47
3. AGRICULTURE 2000-01		
(i) Land Utilization (As village paper)		
1. Total Geographical Area	'000 hect.	13787
2. Area under forest	'000 hect.	6303
3. Land not available for cultivation	'000 hect.	1013

Directorate of Economics & Statistics, Chhattisgarh

6

Source: http://chhattisgarhnri.org/chhattisgarh_facts.htm

Annexure-2



Annexure-3

J P Rao Reports

Salwa Judum, Saturday, July 28, 2007

Nandini Sunder, myself and a couple of others from CPJC went and met Prof. Shanta Sinha chairperson of National Commission for Child Rights and apprised her on the violation of child rights due to Salwa Judum in Dantewara district of Bastar. We requested her to send a fact-finding team to Bastar. She has agreed to send a high profile fact-finding team to Bastar and AP to look in to the condition of children in the Camps with in Bastar and IDP families in AP

Incompetence of The Police, Friday, August 31, 2007

On 30th August the Maoists fired on the helicopter in which the Director General of Police and other senior police officers were travelling in Dantewara district. The helicopter was about to land at Chintaguppa police station. The poi let of the helicopter turned back and the officers were safely landed in the state capital. The DGP and other senior police officers were attempting to visit the site at which 12 policemen were killed on 29th. At the time of firing at the helicopter there around 500 police personal in the vicinity of the landing site. This incident shows the gross incompetence of the police in Chhattisgarh. I feel all our efforts through CPJC to stop this madness in Bastar may be futile.

Maoists and CG Police, Sunday, September 02, 2007

The Maoists who killed 12 police jawans on 29th using "waited ambush" method near Jegurugonda police station in south Bastar encircled it last night (1st September) around 11.00 pm and fired on it from all directions. The police returned the fire. There were only 50 policemen in the station while Maoists were around 150. The firing continued through out the night. However, no casualties were reported yet on either side. Yesterday the DGP of Chhattisgarh had to return back as the helicopter in which he was travelling was fired upon by the Maoists near Chintaguppa police station while it was attempting to land. This shows the sheer incompetence of CG police to face armed squads of the Maoists and tackle the Maoist violence. The Governments of AP and CG have agreed for a joint patrolling all along the border by Gray hounds of AP and CG police. An agreement on this was reached between the senior police officers of AP and CG recently in Raipur. The SP of Khammam was a special invitee to this meeting as Khammam has 170 Km border with Dantewara. The patrolling parties may also use SPOs to identify the IDPs who have crossed over the border and may attempt to send them to the camps setup by Salwa Judum

Tribals Deserting Salwa Judum Base Camps, Friday, October 05, 2007

The tribals living in the base camps of Salwa Judum are fleeing the camps due to the harassment and ill treatment by the Salwa Judum activists states a report sent from Chintur in Khammam district bordering Konta of Dantewara and published in Andhra Jyothi on 1st October 2007. Those who are in the base camps are being treated like slaves. Out of 33,000 persons housed in Errabore base camp at its beginning now there are only 6,000. Similar is the case with the other base camps in Konta tahasil. In Dornapal base camp out of 45,000 persons there are only 10,000, Vinjaram base camp out of 17,000 there are only 2,000 and Konta base camp out of 12,000 there are only 2,000 at present. The report further states that out of 45 base camps set up around Bijapur, Dantewara and Bhoopalapatnam there are people only in 7 camps. The question that arises is where have these tribals have gone – have they gone back to their villages or migrated to Andhra Pradesh or hiding in the jungles of Dantewara.. The earlier wave of migrant tribals (IDPs) who had migrated to Khammam, Warangal, Karimnagar, Adilabad and west Godavari districts in AP are leading a precarious life as the forest department of AP is trying to force them back into Chhattisgarh by repeatedly torching their houses. The tribal welfare department of Andhra Pradesh is not extending any help like issuing PDS cards, employment etc. to these IDPs on the ground that they do not belong to AP. Most of the families are malnourished as they neither have land to cultivate or have regular wage employment. Joint combing operations are being carried out by AP and CG police all along the border to prevent migration of tribals from Chhattisgarh. It is the responsibility of Sri Mahendra Karma and Sri Raman Singh to tell where have the people of Dantewara in general and the people who were forced to move into the base camps have disappeared. Mean while in the All India DGPs conference held 3rd October in New Delhi The central Government has decided to send Central police forces to weed out Maoists from Dantewara and Bijapur districts of Chhattisgarh, Malkangiri and Rayagada districts in Orissa, Chhatra and Pmola districts in Jharkhand and Ouragabad and Gaya districts of Bihar. The strategy is to comb every inch in these districts to control /weed out the Maoist.

The ‘Right to Return’

Commentary on the Return of the IDPs in Batticaloa, Sri Lanka

Chathuri Jayasooriya

1. Executive Summary

Twenty five years of protracted war has indeed left Sri Lanka and its people a fatigued and impoverished Nation, yet the debilitating effects of war are best known to the thousands of men, women and children who were forced to flee their homes in search of safety, only to be rendered further vulnerable in the oppressive and precarious environment in which displaced populations are compelled to survive. Dislocated and caged in an unknown territory, struggling in absolute destitution in the appalling confines of congested ‘shelters’, returning home is the sole aspiration nurtured by every displaced person.

Internally Displaced Persons (IDP) are defined as ‘persons or groups 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, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internally recognized state border’¹. Unlike refugees who have left their country of origin and crossed international frontier and are therefore protected by the international refugee law, the IDPs and their specific rights are not legally protected by binding laws.

Hence, it is the responsibility of a competent Government to find durable solutions for ending the plight of the displaced, which entails exerting maximum political will and authority to facilitate the return or resettlement² of internally displaced persons in accordance with their rights enshrined in the Guiding Principles on Internal Displacement (GP). Yet the recent waves of return carried out by the Government of Sri Lanka in the East region not only violated many of the rights an IDP is entitled to preceding, during and following return but also gave evidence to the total lack of planning and preparedness by the Government in initiating the process, forewarning the severe repercussions it would have on the returned communities, and thus questioning its durability.

This paper attempts to frame the predominant and multi-faceted issues given rise to by the Government’s failure in fulfilling its national responsibility towards finding a durable solution to displacement, on the premise of the ideals presented in the Guiding Principles on Internal Displacement. The Guiding Principles on Internal Displacement, consisting of 30 principles to provide protection and assistance to the IDPs through all phases of displacement including return, resettlement and reintegration, have been taken as the basis for the analysis because a). of the special emphasis placed upon the protection of the IDPs; b) though they are not legally binding,

¹ See *Addressing Internal Displacement: A Framework for National Responsibility*, 2005, pp. 29.

² Three types of durable solutions to internal displacement exist: return to the place of origin, local integration in the areas in which IDPs initially take refuge or settlement in another part of the country, the latter two being termed “resettlement” by the Guiding Principles on Internal Displacement. See *When Displacement Ends: A Framework for Durable Solutions*, 2005, pp. 8.

the principles are based on the binding laws found in international humanitarian law and human rights law³, and have fast acquired international standing, moral authority and acceptance, and c). it provides guidance to the United Nations and international and national actors in working with internally displaced persons.

Based on the information on the issues surrounding the return process, this paper will examine the dynamics of the inter-relations among the Government, the People and the Third Party Perspective, critiquing the rise of illiberal democracy, the fallacy of the 'Power of the People', and the politics of third party intervention in humanitarian assistance.

The ensuing section will proceed to appraise the gaps in the articulation of the Rights Based Approach and the traps in its application within the context of displacement, with emphasis upon the need for meaningful participation by the IDPs, the gendering of the Approach and the recognition of the 'Trauma Factor', the individual and the individual experience.

Lastly, an attempt will be made to assess the potential of the new mechanisms – the Resettlement Authority and the Consultative Committee on Humanitarian Assistance – established to redress the issue of internal displacement and provide the internally displaced with the necessary protection and assistance, in finding durable solutions to ending displacement and for the effective practicalization and localization of universal humanitarian standards on internal displacement.

In concluding, it will be pointed out that the 'right to return' encompasses a complex array of rights, issues and socio-political dynamics, the consideration of which is essential for its protection, while reminding ourselves of our own personal responsibility and moral obligation towards the discharge of the national responsibility in protecting the rights of the citizens.

2. Context Analysis

Mass scale displacement of civilians became the habitual ordeal of the inhabitants of the war torn regions of the North and East since full-fledged war between the Government and the LTTE commenced in 1983. A massive number of people have been displaced by the year 2002, when the Cease Fire Agreement (CFA) was signed between the warring parties. According to the United Nations High Commission for Refugees (UNHCR) estimates, as of June 2005, 385, 384 IDPs had returned to their places of origin, the majority of them returning in 2002 and 2003⁴. Yet 347, 475 persons remained displaced, 70, 380 of them living in welfare centres and 277, 000 staying with friends and family. According to various sources, approximately 65, 000 IDPs have been unable to return as a result of the High Security Zones (HSZ)⁵. As of 31st May 2006, UNHCR placed the total number of conflict IDPs who were unable to return following the 2002 Ceasefire at 312, 712⁶. Though the CFA gave the promise of a cessation of hostilities, the brief lull in warfare proved to have been but an ellipsis, as the latent tensions gave way to an upsurge of violence in 2006. The areas worst affected were Batticaloa, Jaffna, Mannar, Trincomalee and

³ See Walter Kälin, *Guiding Principles on Internal Displacement, Annotations*, highlighting in detail the legal basis for each of the Principles.

⁴ See <http://www.internal-displacement.org/idmc/website/countries.nsf/> Many of those who have returned home during 2006 have been re-displaced and therefore, and also due to limited access to conflict areas, accurate estimates on return are not possible.

⁵ Ibid.

⁶ Ibid. Also see <http://www.internal-displacement.org/8025708F004CE90B/>

Vauniya, forcing another 301, 879 to be newly displaced (as of April 2007)⁷. As estimates state, 78% of the displaced population comprises of Tamils, 13% Muslims and 8% Sinhalese. Children, appallingly, constitute over one third of all conflict IDPs⁸.

Batticaloa, the only Tamil majority district in the Eastern Province of Sri Lanka, covers around 229 square kilometers in the eastern part of the country, bordering Trincomalee district (Verugal division) in the North, Amparai district in the South, and Polonnaruwa district in the West. Over the years, it has been the site of multiple displacements, housing a large number of IDPs on the run for decades, displaced and re-displaced on multiple accounts, as subjects of the wrath of man as the wrath of Nature. An intensified military excursion into the area in 2006, particularly in Vaharai, Thoppigala and Vaunathivu, in an attempt to wrestle control of it from the LTTE, has rendered Batticaloa a region of IDPs. At the end of March 2007, Batticaloa district housed approximately 150, 000 IDPs both from within the district and from eastern Trincomalee⁹. Consequently, it is estimated that approximately one third (35%) of the district's population of 422, 674 have been displaced¹⁰. By the 10th of April 2007, the figure had dropped to 147, 073 as a result of a Government driven return programme in Vaharai which was launched on the 6th of March 2007. While reportedly 100% of the displaced from Vaharai have been returned, renewed fighting in Vaunathivu has resulted in new waves of displacement¹¹. Subsequently, the second mass return programme was launched by the Government to return thousands of displaced civilians in areas of West Batticaloa, newly gained from the Tiger rebels. The programme was carried out in three phases. During Phase One, 28,026 IDPs (8,781 families) were returned to Porathivu Pattu (Vellaveli Divisional Secretariat) between the 14th and 25th of May, 2007. During Phase Two, 21,297 IDPs (6,344 families) were returned to Manmunai Pattu South West (Pattipalai Divisional Secretariat) during the 01st and 06th of June, 2007. In Phase Three of return, which was implemented between the 15th and 30th of June, 2007, 24,792 IDPs (7,212 families) were returned to Manmunai West (Vavunathivu Divisional Secretariat). A total of 89, 726 IDPs in Batticaloa were returned at the conclusion of the programme¹².

**This paper focuses only on the returns which took place to Vaharai in East Batticaloa and Vellaveli in West Batticaloa. The critiques and conclusions are based upon the data and information which were available as at 30th of June 2007 and does not take into consideration the developments, negative or positive, that have taken place subsequently within the context of internal displacement in Sri Lanka.*

3. The National Response

Protecting and assisting IDPs is a responsibility that rests first and foremost with their Governments. Thus, it is the prime responsibility and duty of a Government committed to serve

⁷ Ibid. A total of approximately 500, 000 people are currently displaced due to conflict although the overlap between the recently displaced and pre-2002 conflict IDPs is unknown, and many displaced may not be accounted for in the official figures due to issues of access.

⁸ Ibid.

⁹ See Fact Finding Visit to Batticaloa, CPA, pp. 1.

¹⁰ Ibid.

¹¹ Ibid.

¹² See Annex, Tables 1-4 for return statistics.

its people, to find durable solutions to end the plight of the displaced and enable their socio-economic integration.

Section V of the UN Guiding Principles on Internal Displacement specifically addresses return, resettlement and reintegration and emphasizes upon the rights and entitlements of the internally displaced persons that need to be protected by national governing authorities in the process.

GP 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residences, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special effort should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

GP 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

GP 30

1. All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

In addition, **Principle 15 (d)** of Section III protects IDPs against forcible return or resettlement in any place where their life, safety, liberty and/or health would be at risk.

The response of the present Sri Lankan Government to the IDP crisis which was prompted by the resumption of military engagements in 2006, in essence, has been a 'crash' return movement in Batticaloa which returned 90, 000 IDPs to their places of origin within five months, the majority within two months. Yet this instantaneous corrective measure, planned and executed in haste and a haphazard manner, without adequate planning or preparedness, raises serious questions with regards to the observance of and respect for international norms and principles. It is the purpose of this Section to review the design, process, implementation and policy implications of the return campaign launched by the Government in Batticaloa, specifically in Vaharai and Vellaveli, in light of the Guiding Principles stated above, highlighting the concerns of the returnees and the violations of their rights. It has been alleged that the extensive return initiative executed by the Government in Batticaloa has been calculated to secure

the good opinion of the international community by projecting an environment of normalization in the areas previously controlled by the LTTE, and thereby to deviate the attention from human security issues in the North and the East and the plight of the affected communities¹³. Some reports have also speculated that the Government is persisting with its hurried return plans due to a possible Provincial Council election in the East¹⁴. It could also be inferred as the Government's strategy to counter the issue of depleting resources in the IDP camps. It has also been insinuated that the Government has used the returnees as human shields, to prevent the LTTE from making any attempts to recapture the land seized from them. Regardless of the intentions of the Government, in their undue urgency to reduce displacement, it is evident that a number of critical factors including 'voluntary return', security assurances and infrastructural conditions in return locations have been disregarded.

Voluntary and Informed Return in Question

There have been numerous allegations of forced return by the Government, specially with respect to the return movement in Vaharai, yet the trend has been replicated in the returns to Vellaveli, Trincomalee and Muttur as well. For instance, it was reported that State actors forced IDPs into buses and moved them from Batticaloa to the transit site in Killivetti and to Vaharai. There were also reports of families being separated in the process of being forced into buses, with mothers being separated from their children who were attending temporary schools near the camps¹⁵. These were substantiated by subsequent statements issued by the UNHCR and the Minister of Resettlement and Disaster Relief Services, who acknowledged that "around 10% of the people who were reportedly moved to a halfway resettlement camp in Settikulam had to be sent there against their will" but that "it was only one day"¹⁶, stating that the Government will ensure voluntary and informed return in its successive return initiatives. Yet in spite of its assurances, the Government demonstrated a determination in persisting with returning IDPs against their will, as the Vellaveli return movement evidenced. According to agencies working on the ground, elements of coercion have been visible at the commencement of return (on the 14th of May 2007), specially in the manner in which transport from displacement camps was carried out. The Special Task Force (STF) personnel have shown considerable aggression when calling out family names and reportedly have even pointed a gun at the crowd. Further, the bus has been accompanied not only by STF personnel on board but also others on motor bikes. Even though some of the displaced had wanted to resist being returned, the presence and the aggressive behaviour of the STF had naturally intimidated them into submission, setting a precedent to the following days where no instances of resistance or coercion were reported.

Though the humanitarian community demonstrated unanimous remonstrations, the media and the public against forcible return in Vaharai, the perception of and the response towards the second wave of returns executed in Vellaveli in West Batticaloa was rather discordant. While some humanitarian agencies openly questioned the voluntary nature of the return process, prominent international agencies such as the UNHCR pronounced it to be "voluntary and in line

¹³ See *Trincomalee Fact Finding Mission*, CPA, April 2007, pp. 8.

¹⁴ See Chris Kamalendran, "So Near Yet So Far", *Sunday Times*, 17 June 2007

¹⁵ See *Fact Finding Visit to Batticaloa*, CPA, April 2007, pp. 6.

¹⁶ See Uditha Jayasinghe, "IDPs Moved Against Their Will?", *Daily Mirror*, 20 March 2007.

with international protection standards”¹⁷. Moreover, the information leaflet which was widely distributed in Sinhala, Tamil and English by the Inter Agency Standing Committee (IASC)¹⁸ in response to the forced return in Vaharai, informing the IDPs of their rights and entitlements, was not disseminated or re-issued during the Vellaveli phase.

The entire process of return has been heavily militarized, with the STF being the primary actor responsible for the administration and implementation of the programme, including the distribution of return schedules, transportation, security checks, registration of returnees and the distribution of relief assistance packages. Civil administrators have played a peripheral role, whereas humanitarian agencies have clearly been excluded from the initial stages of the return process. Even though militarization has ensured efficiency in implementation, it has also made the entire process frightening to the displaced, rendering them even more vulnerable and compelling them to return against better judgment.

Forced return takes place not only through armed force but also through the denial or the threat of denial of food or other forms of assistance to the displaced. Many of the IDPs in Batticaloa had given their consent to be returned, being under the impression that they would discontinue to receive rations or would no longer be provided with protection from any security threats if they chose to remain in the welfare centres. The IASC has also verified that the Batticaloa IDPs at a number of sites were on several instances pressured to return to Trincomalee and Vakarai under the threat of withdrawal of assistance (including withdrawal of Family Cards, removal of tents, cessation of dry rations, etc) and statements indicating that the DSs and GNs could no longer be responsible for the security of the IDPs who refused to return, i.e. in terms of interceding with the armed forces or police in case of arrest or detention and physical intimidation by armed security forces involved in the return movements¹⁹. On other occasions they have been coaxed with promises of rations and assistance packages upon return.

Creating an unfavourable environment in the temporary shelters or not making a substantial, authentic effort to improve the deteriorating living conditions in them, thereby allowing the conditions to deteriorate further, is another effective, yet more subtle form of ‘engineering’ the consent to return. On many accounts the IDPs have stated that they would prefer to return rather than to suffer the dire conditions in the ‘welfare centres’, where congestion is a critical issue, and disproportionate sanitary facilities and lack of proper drainage have resulted in unhygienic conditions and the spread of contagious diseases. The flooding caused by constant and heavy rains, rendering the life in the tent settlements unbearable, often worsens these conditions. The food rations being distributed are inadequate and irregular, threatening malnutrition. Yet the most alarming is the gross abuses committed against IDPs, which includes mass arrests under emergency regulations, child recruitment, abductions, involuntary disappearances, sexual abuse, political killings and torture²⁰. Thus, as one newspaper article

¹⁷ See UNHCR press statement “Sri Lanka: Return Starts of Displaced People in West Batticaloa”, 15 May 2007

¹⁸ IASC comprises of FAO, OCHA, UNDP, UNFPA, UNHCR, UNICEF, WFP, WHO, IOM, World Bank, OHCHR, Consortium of Humanitarian Agencies, Foundation for Co-Existence, Sarvodaya, Sewa Lanka, OXFAM, NRC, CARE, World Vision, ACF, ZOA, Solidar, Save the Children, Merlin.

¹⁹ See Easwaran Ratnam, “Humanitarian Agencies Allege IDPs Forced to Return”, *Daily Mirror*, 24 March 2007.

²⁰ See “Human Catastrophe in the East”, *Daily Mirror*. 31 March 2007.

stated, “the conditions in the camps are such that they feel that they can get a better life in their home villages”²¹

Yet the Government, in its habitual defense, denied all charges of exerting force upon the IDPs, insisting that “the Government was ensuring that the rights of the displaced people were met by returning them to their original lands”²². Asserting that the UN agencies were speaking out of line, a Government spokesperson has stated, “It is their right to be resettled in their original places. The Government is fulfilling that right. If someone interprets it as forceful resettlement, well then that is disappointing. This whole journey is not a bed of roses. It is a tough job to deal with 100-150, 000 people”²³.

However, in spite of the fact that the return to Vellavelli has been publicly presented as a voluntary process, and despite the Government’s reiteration to the same, a general expectation that all the IDPs would return was evident in the fact that no options have been presented to the IDPs who wished not to return. Most harnessed a desire to return, yet were apprehensive chiefly due to security concerns. For instance, the IDPs were aware that of the military operations continuing in West Batticaloa, and feared being used as human shields by the LTTE as well as the trauma of living amidst constant shelling. They were also concerned of retaliation by the LTTE as it has been the STF that has requested them to return. Other concerns included the infiltration of the return sites by para-military groups, i.e. the Karuna faction and LTTE, forcible child conscription and extortion of money by these groups and the poor and insecure conditions in the Killivetti transit centre where they feared they would be sent. Many IDPs have expressed immense relief to be away from sites of ceaseless shelling and preference for the safety of welfare centres or remaining in Batticaloa. Though in theory the IDP has the right to local integration in the areas in which s/he initially take refuge or settlement in another part of the country instead of returning, these alternatives were not made accessible in practice. Moreover, the right not to return has been granted only to a few ‘special cases’ such as children who have been transferred to schools outside Vellaveli and people in need of hospitalization, rendering it a conditional right restricted to a specific segment of IDPs rather than a collective entitlement of the displaced.

Lack of communication has been the primary cause of the wariness of the IDPs to return. Many of the fears and apprehensions of the IDPs could have been allayed had they been provided with adequate information of the return process and available options, allowing them to make ‘informed decisions’ as the Guiding Principles advocate. However, there has been neither a comprehensive awareness raising process with respect to the return process nor any avenues for reporting grievances during either Vaharai or West Batticaloa returns. The Government has not made any attempt to carry out an information campaign, apart from distributing the schedules for return, in spite of constant urging by the UN and other humanitarian agencies for the Government to fulfill its obligations in informing its citizens and abiding by its commitment to uphold transparency and accountability. Even the IASC leaflet, though informative, has not given due consideration to the practicalities in a displaced context, and therefore has failed to reach its objective or to be of maximum use for the displaced. For though it contains contact details to report problems, there are obvious difficulties in accessing a phone in an emergency to make

²¹ See Amantha Perera, “Second Mass Resettlement Scheme Underway in the East”, *The Sunday Leader*, 20 May 2007.

²² See Easwaran Ratnam, “UNHCR Pulls Out of Resettlement Process in the East”, *Daily Mirror*, 22 March 2007.

²³ Ibid.

reports, and already intimidated by both military and para-military presence, and overwhelmed by concerns, apprehensions, uncertainties and the sheer struggle to subsist, the displaced may not have been in a position to fully appreciate or utilize information presented in a leaflet, specially in the absence of a familiar referral of authority such as the Grama Sevaka (GS)²⁴. There has been a lack of information regarding the IDPs' entitlements upon return, i.e. the composition of the assistance package, when they would receive it and where. As the emergency assessment conducted by UNOPS in Vaharai revealed, some of the returnees who have been registered since their return have not known who registered them and those who have received assistance on the day of return have not been certain as to who provided the assistance²⁵. There have also been a lack of 'go and see' visits, which has heightened the anxieties and suspicions among the displaced communities, as they has no clear perception of the situation to be expected in return sites. Rumours of damages to their houses and destruction or theft of household goods and livestock have also raised concerns of its implications on their livelihoods following return.

In addition, as a part of the administrative procedure, the IDPs were registered prior to being returned, during which a family photograph was taken of each family, on the basis of which the IDPs' right to remain in Vellaveli would be accepted by the security forces. This, though inadvertently, has caused further insecurity, as the IDPs feared that members of their family, who were unable to be present in the photograph due to separation caused by a number of reasons, would have difficulty in entering Vellaveli at a later date or be restricted in movement to and from Batticaloa.

Lack of Consultation with the Displaced and of their Participation in the Return Process

Assessment reports have made it evident that the IDPs have not been consulted nor provided the space for participation in the discussions and decision-making processes regarding their return, thus violating a fundamental Guiding Principle on Internal Displacement. The lack of 'go and see' visits implies that no assessment has been made by the IDPs with regard to the conduciveness of the return sites and the measures that need to be taken in order to facilitate return. Consulting the IDPs on addressing their needs have not been considered important in ensuring the effectiveness of the return process or in finding durable solutions to end displacement. Thus, once again, the IDP has been rendered the conventionally passive recipient of assistance and programmes rather than proactive partners in decision-making, policy formulation and development.

The participation of women has been identified as critical in the planning and management of return. As the 'Framework for National Responsibility' elaborates,

As primary care-providers for their families, displaced women have the best sense of what is needed to ensure their own and their families' welfare and security. Consultation with women and girls also enables them to raise particular protection and concerns they may face, such as sexual violence and exploitation as well as reproductive health issues, which likely will go overlooked if only men speak for the group.... In the distribution of humanitarian assistance, special efforts should be made to ensure the full participation of women in the planning and

²⁴ Government appointed head of the village.

²⁵ See Additional Observation Notes of the *Assessment of Returnee Families to Vaharai DS Division*, UNOPS, UNICEF, OCHA, June 2007.

distribution of these supplies. This is critical to mitigating the risk of sexual extortion and exploitation that women can face in obtaining food rations for themselves and their families²⁶.

Nevertheless, not only have women been excluded from meaningful participation in the management of return but the circumstances following return has found them the subjects of an exacerbated plight, as solitary bearers of the residual impact of displacement and war.

Minimum data and information is available of the vulnerable segments of the IDP population such as the women heads of household, children, elders and the disabled, who have rarely made an appearance even in the assessment reports.

Lack of Preparedness and Conduciveness in Return Sites

As was mentioned earlier, the Guiding Principles on Internal Displacement points out that it is the prime responsibility of a competent Government to establish conditions and provide the means for the displaced to return in safety and dignity to their places of habitual residence. Under no circumstances are they to be compelled to settle in an area where their lives, health or liberty would be placed in jeopardy. Yet the recent mass movement of return in Vaharai and Vellaveli seems to have completely dismissed such precautions and obligations.

The fact that the Government is yet to present a return/resettlement plan even though the entire return process in West Batticaloa has reached an end, is prime evidence of the lack of preparedness on the part of the Government and has posed serious threats the safety of the returnees, as was warned by the IASC²⁷. Attesting to it, a high ranking officer in the Ministry of Resettlement and Disaster Relief Services (M/R&DRS) claimed that the Government is not 'aware' of the legal issues encountered by the IDPs/returnees or of the legal assistance already being provided by some of the humanitarian agencies²⁸. The officer proceeded to state that the Government at this juncture, is not concerned of the long-term needs of the IDPs/returnees but is focusing on 'returning and feeding' them, indicating that the Government is not only prepared but is also indifferent to the needs of the displaced. This once again substantiates the allegations that the Government's objective is a 'quick fix' strategy advancing a political agenda rather than finding durable solutions to end displacement.

Security and Safety Hazards

Although the military has given assurance of a safe and conducive environment, there have been a number of incidents where STF officers and civilians have been killed and injured in claymore attacks in areas where return has taken place²⁹.

In addition, the existence of mines and unexploded ordinances in areas where the IDPs have been returned raises questions regarding the safety and suitability of the areas for return. It has been alleged that mine clearance certificates have been issued for areas where mine clearing operations are still continuing. Not even Vaharai, where the return process began in March, has been completely cleared of mines. Reportedly, two fisherman have been injured in a mine blast in

²⁶ See *Addressing Internal Displacement: A Framework for National Responsibility*, April 2005, pp. 21.

²⁷ See Amantha Perera, "Second Mass Resettlement Scheme Underway in the East", *The Sunday Leader*, 20 May 2007.

²⁸ Personal Interview with a Government Official.

²⁹ See Chris kamalendran, "So Near Yet So Far", *Sunday Times*. 17 June. 2007.

Vaharai, on (date)³⁰. Moreover, Mine Risk Education (MRE) has not been received by all. In Vaharai, only 48% of the families have received MRE over the preceding 3 months, according to an assessment conducted by UNOPS between 26th May and 8th June 2007 in Vaharai.

Furthermore, some of the return sites are located at close proximity to military establishments, where heavy shelling is taking place in the raging battle between the warring parties, giving rise to speculations that returnees are being used as human shields in order to prevent the LTTE from recapturing the lands seized by the army in the recent battles.

The military presence and cautions demanded by the volatility in return locations newly regained from the LTTE has made the environs impregnated with an aura of anxiety and uncertainty, curtailing the liberties of the returnees and intensifying their insecurities. Civil-military liaison and confidence building, though desirable in such contexts, has rarely been attempted at. As the CHA Fact Finding Mission to Vellaveli has experienced,

The people when spoke to expressed caution with regard to the heavy military presence. The STF on the other hand too is in an area which until recently was controlled by the LTTE. They too tend to take a very cautious approach when dealing with the population. We witnessed a STF officer feeding two small children who were hovering around him whilst having lunch. At the same time a patrol was closely watching the settlement of a family next door to a former LTTE office³¹.

The threat of nature in the form of elephant and snake attacks are another hazard faced by the returnees. Driven out of their forest habitations by the sound of shelling and the mortars, the snakes and elephants have invaded the villages in search of refugee, and have released their wrath and confusion upon the abandoned households of the villagers and the newly returned IDPs. According to reports, a considerable number of returnees have been hospitalized for snake bites.

Food Insecurity

It is a universally acknowledged imperative for food security to be given priority in any circumstance of overwhelming needs, hunger being the most basic need of a human being. Yet the distribution of rations has on the one hand been inadequate and on the other hand irregular and thoroughly disorganized. Reportedly, the first distribution to the Vaharai returnees has taken place on the 11th and 12th of April, yet the May distribution has been delayed till the 25th³². Furthermore, the returnees in Panichankerni have not received rations since being returned³³. Though ‘in principle’ the Government has agreed to provide rations for six months following return, there has been no preparation to provide rations for the returnees to Vellaveli beyond two weeks³⁴. 35% of the parents interviewed during the UNOPS assessment have identified the lack of food as the greatest risk facing their children while 73% of the interviewees have responded that the quantity of food consumed by them is less than prior to displacement. According to the assessment, lack of food has been one of the two main reasons for those who have stated that the

³⁰ Ibid.

³¹ See *Porathivupaththu (Vellaveli) Resettlement Fact Finding Mission*, CHA, May 2007, pp. 4.

³² See Additional Observation Notes of the *Assessment of Returnee Families to Vaharai DS Division*, UNOPS, UNICEF, OCHA, June 2007.

³³ See *Fact Finding Visit to Batticaloa*, CPA, May 2007, pp. 7.

³⁴ This was revealed during the meeting of the CCHA Sub Committee on Resettlement and Welfare which was held on the 5th of June 2007.

situation in displacement was better than in Vaharai³⁵. The returnees are provided with food items and dry rations such as rice, flour, dhal, sugar and oil through the Multi Purpose Cooperative Societies (MPCS), provisioned chiefly by the World Food Programme (WFP) and the Ministry of Nation Building and & Estate Infrastructure Development (M/NB&EID). However, only one MPCS is in operation to serve the people in Vellaveli, and there is a dearth of outlets to facilitate personnel in the remote interiors of the return sites. To quote the lamentation of one returnee,

We have been here since March and so far we have received food only twice. The food we get is not regular and I try to supplement the lean spells by buying food from the shops with the money I earn doing masonry work at the IDP camp. But there isn't much food or other necessities available in the shops here and I have to go to Valachchenai if I am to buy supplies³⁶.

Shelter, Property and Compensation

Extensive damages have been reported through assessments, partially by conflict and to a greater extent by wild elephants. A large number of houses in villages including Thandhamalai, Ayithiyamalai, Unnichchi and Pavatkodichenai had been destroyed by elephants fleeing the heavy shelling³⁷. Many houses which have been destroyed by the tsunami and were being rebuilt have been once again destroyed by the subsequent war. According to the assessment conducted by the National Housing Development Authority (NHDA), 4138 houses in Vaharai have been damaged or destroyed³⁸. Thus, many returnees have been compelled to return to host families or have been displaced once again to nearby schools, whereas many others live in tents or cajan huts in their compounds, awaiting compensation. As the UNOPS assessment report verifies, 47% of families in Vaharai are in shelters without solid foundation such as tents, huts and lean-to³⁹.

In addition, the security forces continue to use houses as military bases belonging to the returnees.

Furthermore, reports of personal possessions being lost have been rife with allegations of looting being levelled against the Government forces. Many returnees have complained that their houses, including the doors and the windows, had been looted in their absence along with other items such as motorbikes and livelihood equipments. As the CPA Fact Finding Mission reports, older members of some of the families had stayed behind despite the firing in order to safeguard their residences and belongings, yet had been compelled to leave by the security forces, which the IDPs/returnees claim was a strategy used by the security forces in order to loot. In one camp in Arayampathy, a report has been received of the arrest of a young male IDP by the STF on suspicion of him being a LTTE cadre, when he had returned to his village in Kokkadichcholai in order to ensure the safety of his belongings. On other instances, IDPs who have attempted to cross the ferry at Kokkadichcholai had been prevented by the forces⁴⁰. Even public buildings such as hospitals and schools have not been spared. However, the Government has denied these allegations and the forces, who present it as an LTTE attempt to discredit the Government forces by urging the people to provide false statements. Such instances as the above speak volubly of the

³⁵ *Assessment of Returnee Families to Vaharai DS Division*, June 2007, slide 12.

³⁶ See Sarasi Wijeratne, "Vaharai Limping Back to Normalcy", *The Sunday Leader*, 3 June 2007.

³⁷ See Chris Kamalendran, "So Near Yet So Far", *Sunday Time*, 17 June 2007.

³⁸ *Fact Finding Mission to Vaharai*, CHA, May 2007, pp. 2.

³⁹ *Assessment of Returnee Families to Vaharai DS Division*, June 2007, slide 19.

⁴⁰ See *Fact Finding Visit to Batticaloa*, CPA, May 2007, pp. 8.

direct violation of Guiding Principle 21.3, which states “property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use”.

As Guiding Principle 29.2 states, the Government is responsible for the provision of compensation or reparation for the damaged or destroyed property of the returnees. Though at the inception the Government has pledged to grant a compensation of SLR 25,000 to the returnees, no compensation has been received by the returnees to date⁴¹.

Water/ Sanitation

A lack of water tanks has been reported in Panichchenkerny whereas the majority of the wells in Vellaveli are in need of cleaning⁴². According to the UNOPS assessment, 66% of families in Vaharai do not have access to toilet facilities.

Infrastructure

Only five Grama Niladari (GN) divisions between Panichchankerni and Vaharai have been supplied with electricity whereas seven more GN divisions between Vaharai to Kathiraveli are still in need of electrification⁴³. In addition, low-tension wiring is also required to provide electricity to houses. Communication systems have also been severely restricted, which has compromised humanitarian intervention as well as the security of the people.

Public Services

Though access to public services, when available, has not posed any significant difficulties, there appears to be certain inadequacies in the provision and the quality of the services. There are reportedly no Grama Sevakas (GS) currently working from Vaharai, which has restricted the capacity of the civil administration in the area. Similarly, there is no full time police station in Vellaveli, and neither are there any female police officers, Women’s Desks or Children’s Desks either in Vaharai or Vellaveli.

Only four out of thirty three schools in Vellaveli have re-opened. It has been reported that certain offices in the schools have been forced open and equipment stolen. Furniture and other educational material have also not been provided for a qualitative education for children. The lack of timely transportation to schools is an additional issue. For instance, the bus leaves Kalavanchikuddy at 0800 hrs whereas school starts at 0730 hrs. Youth in the area has also become a forgotten entity, with no consideration given to catch up education and vocational training, which are essential to provide direction.

⁴¹ Information provided by the CHA District Office in Batticaloa.

⁴² See *Porathivupaththu (Vellaveli) Resettlement Fact Finding Mission*, CHA, May 2007, pp. 2.

⁴³ Amantha Perera, “Second Mass Resettlement Scheme Underway in the East”, *The Sunday Leader*, 20 May 2007.

Livelihood Restoration

The returnees to Vaharai, the majority of whom are fisher folk, have been able to resume their livelihood as they have been permitted to fish at sea and in the lagoon during the daytime and since recently at night. However, farming has been severely affected and the residents of Kandalay, Vaharai have received no support to resume farming since their return. Farmers have expressed the loss of agricultural equipment and hand tractors which they had obtained on lease payment schemes⁴⁴. According to the UNOPS findings, 45% of landowners cannot access their agricultural lands. This has been corroborated by the Batticaloa's Additional District Secretary who has stated that although people are being returned, they are finding it difficult to resume their livelihoods as most of the cultivation has been destroyed and cattle and goats have been killed while some of the farming areas are still to be cleared of landmines⁴⁵. Furthermore, the Government has no substantial plan in place to assist the farmers to prepare for the harvesting season in October, which warns of another crisis situation as it would result in the extended dependency of the returnees specially on food assistance.

Hence, many of the returnees are still without any means of livelihood and have even resorted to selling their jewelry, belongings and at times the rations in order to purchase essentials or to travel in the bus⁴⁶. As the CPA Fact Finding Mission to Vaharai has observed, a key area of income generation is the sale of iron objects scavenged from damaged and destroyed homes.

Contrary to the predictions of economic analysts according to whom return/resettlement was the best option for the restoration and development of the eastern economy, the ground situation has proven that economic prosperity is but a farcical ambition for people who have been returned to vacant homes with nothing more than the deceptive relief of 'returning home'.

Discrimination

Though there have been no reports of returnees being discriminated against as a result of their having been displaced as described in Guiding Principle 29.1, there have been several occasions where discrimination has taken place within the return community. For instance, though IDPs from Vaharai were provided with dry rations on arrival in Vaharai, families who were returned to Panchenkerny, in the borders of Vaharai were not provided with any assistance by either the authorities or humanitarian actors. This raises questions as to why certain groups were provided with assistance on return, while others were forgotten and left behind to fend for themselves⁴⁷. Also, as mentioned previously, the right not to return has been restricted to a few who could present 'justifiable' reasons for their reluctance.

The issuing of the special ID cards for the returnees could also be interpreted as a form of discrimination – though it has supposedly been done with the intension of ensuring safety and freedom of movement for the returnees and to prevent the LTTE and the para-military infiltration to the return locations – as it affixes them permanently with the identity of an IDP, constricting

⁴⁴ See *Fact Finding Mission to Vaharai*, CHA, May 2007, pp. 6.

⁴⁵ Chris Kamalendran, "So Near Yet So Far." *Sunday Time*, 17 June 2007.

⁴⁶ *Ibid.* 31, pp. 8.

⁴⁷ See *Fact Finding Visit to Batticaloa*, CPA, April 2007, pp. 7.

them in a socio-political demarcation that overshadows their individual identities and differentiates them from other citizens of the country.

Upon return, the displaced would continue to claim the entitlements specific to IDPs in addition to all other rights as other citizens of the country, as end of displacement does not take place immediately upon return, and so long as the specific needs and vulnerabilities resulting from their displacement persist, the returnees would continue to require special attention and support. Thus, positive discrimination is encouraged, specially in relation to vulnerable segments of the displaced population. As Guiding Principal 4.2 advocates, ‘certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs’. This was emphasized by Amin Awad, UNHCR representative in Colombo, when he cautioned that ‘attention needs to be given to categories of people with special needs’⁴⁸. Nevertheless, minimum consideration has been given to those with special needs, and as is the practice, assistance is being provided in general rather than targeting essential families or in accordance with the different or special needs.

Lack of Humanitarian Access

Throughout the return process, lack of humanitarian access to return locations has been a critical issue, particularly in West Batticaloa. Though it is vital that humanitarian agencies gain access to return communities in order to conduct needs assessments and implement rehabilitation programmes, the Government has demonstrated a clear reluctance to involve humanitarian actors in the return process, before, during or afterwards, hampering the agencies’ attempt to fulfill their responsibilities in assisting and protecting the returnees. Many I/NGOs including UN agencies such as Food and Agriculture organization (FAO) are still awaiting permanent or continuous access to return communities in order to commence their work. In addition, the agencies are unable to conduct Mine Risk Education (MRE) session for returnees in West Batticaloa including Vellavli, though the need for MRE awareness is high⁴⁹.

No ‘go and see’ visits have been allowed for humanitarian actors to decide on the conduciveness of the return sites, and they have even been prevented from visiting the IDP camp sites prior to return, to monitor the process and ensure the voluntariness of the IDPs to return. Shortly following the implementation of the return process, the UNHCR called for better coordination and communication between the Government officials and relief agencies, urging the Government “to provide clearance for a UN Advance Team as soon as possible, as it is a priority that agencies have access to areas of return before returns take place”⁵⁰. Though the UN Advance Assessment Team (UNHCR/UNOCHA/UNICEF) has been promised access to Vellaveli on the 16th of May, they have gained access only on the 19th⁵¹, 5 days *after* the return movement was launched. Further, permission has not been granted for I/NGOs to accompany the

⁴⁸ See Amantha Perera, “Second Mass Resettlement Underway in the East”, *The Sunday Leader*, 20 May 2007.

⁴⁹ See *IASC Situation Report # 79*, 14-21 June 2007, Batticaloa District: Sector Response, Protection.

⁵⁰ UNHCR spokesperson Jennifer Pagonis at the press briefing, on 29 May 2007, at the Palais des Nations in Geneva, Qtd. in “Sri Lanka: 30,000 Displaced Return Home in East”, 30 May 2007.

⁵¹ See Batticaloa Field Mission, CPA, May 2007, pp. 5.

returnees on their journey back home. Thus, the humanitarian community has been completely incapacitated in performing their monitoring role as well.

Though a few agencies such as the World Food Programme (WFP) and UNHCR have been able to visit the return locations on a regular basis, they are forced to go through a grueling process of obtaining security clearance from local security officials prior to their visits, and have not as yet been able to commence sustained work in the return areas.

In addition, all mobile communications in Batticaloa has been suspended since 6th of March 2007⁵², further compromising the security of operations and staff and hampering the ability of agencies to respond in a timely and effective manner.

The complications regarding access have been created mainly due to the lack of communication and coordination between the Ministries in capital Colombo and the local Government officials in Batticaloa. Agencies obtain clearance from Colombo are usually stopped at the check points and are cautioned against/ prevented from visiting the return sites, citing security concerns such as the presence of landmines and unexploded devices. This however raises the question as to how safe the return locations are for the returnees if they are deemed unsafe for agency officials.

Though Guiding Principles 25.2 and 25.3, along with Guiding Principle 30 underscore the national responsibility to ensue unimpeded access for humanitarian organizations in order for them to assist the IDPs in their return and reintegration, particularly when the authorities concerned are unable to provide the required humanitarian assistance, the Government of Sri Lanka has failed once again to keep in line with universal humanitarian standards.

Positive Aspects

Nevertheless, the return processes to Vaharai and Vellaveli have not been devoid of a humanitarian character. For instance, a permanent supply of electricity and a contingent of medical staff are an improvement for the people of Vaharai who did not have either before the war resumed in August in 2006. The main road to Vaharai has been repaired, and there are eleven buses plying back and forth between Valaichchenai and Kadiraveli along the A15 highway on a daily basis, in place of the two buses that had been used by the people of Vaharai previously. Area has been cleared of mines except for Panichenkerni area where de-mining is in progress, and areas cleared of mines have been demarcated. There is no restriction in fishing, both day and night in the sea and lagoon.

Seven of twelve schools in Vaharai have re-opened with 3700 students and 104 teachers; four Multi Purpose Cooperative Societies (MPCS) outlets are functioning through which the dry rations are being distributed; postal services have been restored and are fully operational while four Police Stations have been established.

During the returns to Vellaveli, the IDPs have been treated with sensitivity at the registration site, where they were provided with drinking water and lunch packets, Tamil music has been played over the loud speaker and women were searched by female officers; an additional queue has been made for the people who missed their assigned day; the elderly and the sick have been allowed to delay return; the registration process has been carried out with efficiency; the STF has been seen giving instructions to civilians as to how to react in the event of

⁵² See *IASC Batticaloa Situation Report*, 23 March 2007.

wild elephants approaching during night; and instructions regarding security and their future has also been given together with the two-week rations.

Nevertheless, when considering the inadequacies in the national response towards internal displacement, reflected in the proceedings of the return process and the accompanying human rights violations of the IDPs/ returnees, it cannot be overlooked that the Government of Sri Lanka has failed in the discharge of its national responsibility towards the assistance and protection of the IDPs.

4. The Government, the People and the Third Party Perspective

Protecting and assisting the internally displaced persons is a responsibility that lies first and foremost with their Governments. This is established and emphasized throughout the Guiding Principles on Internal displacement yet more specifically in Principle 3 (1) which states that “national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdictions”. This is further substantiated by Principle 28 (1) which reiterates the Government’s duty and responsibility in ensuring the full gratification of the IDP’s right to return.

As the international human rights and humanitarian laws dictate, and as is enshrined in the Sri Lankan Constitution, the Government of Sri Lanka, is bound to ensure that the IDPs/Returnees are able to fully claim their rights and that their wellbeing is assured.

As the preamble to the Constitution of the Democratic Socialist Republic of Sri Lanka proclaims, the representatives of Sri Lanka have resolved to “*ratif[y] the immutable republican principles of REPRESENTATIVE DEMOCRACY, and assur[e] to all peoples FREEDOM, EQUALITY, JUSTICE, FUNDAMENTAL HUMAN RIGHTS and the INDEPENDENCE OF THE JUDICIARY as the intangible heritage that guarantees the dignity and well being of succeeding generations of the People of SRI LANKA [.....] WE, THE FREELY ELECTED REPRESENTATIVES OF THE PEOPLES OF SRI LANKA, in pursuance of such Mandate, humbly acknowledg[e] our obligations to our People [...]*”⁵³

Yet the Government’s responsibility for and the response towards forcible displacement and the proceedings of the return process in the East, justifies skepticism of the Government’s endeavor to abide by the “supreme law of the Democratic Socialist Republic of Sri Lanka”⁵⁴ and is reflective of the failure of the Government in its relationship with the people.

Fifteen Directive Principles in the Constitution nobly set forth the ideals which the Government of Sri Lanka should strive to approximate. For instance, the state is obliged to establish in Sri Lanka a democratic socialist society, the objectives of which include the full realization of the fundamental rights and freedoms of all people and the realization by all citizens of adequate standard of living for themselves and their families⁵⁵. It is envisaged that the Government would exert their powers to the greatest extent possible in rendering these ideals the actuality for its People. Yet regrettably, the non-justiciability of these Principles, as stated in Article 29, seems to be the prime premise upon which the Government prefers to act.

⁵³ See *The Constitution of the Democratic Socialist Republic of Sri Lanka (1978)*, Preamble, pp.1.

⁵⁴ *Ibid.*

⁵⁵ *Ibid*, Chapter VI: Directive Principles of State Policy and Fundamental Duties; Principle 2 (a), (c); pg. 16

Democracy denotes, first and foremost, the rule of the People. Representative Democracy, as the Sri Lankan Government claims to be committed to, refers to a form of Government founded on the principles of popular sovereignty by the People's representatives⁵⁶, elected by the people to act in their interest. It is a method by which a community's objectives and aspirations are believed to be established and advanced. As Cohen states, "democrats may therefore be advocates of any goal or plan they believe appropriate – so long as they are prepared to accept as legislative what the people choose, and to protect the procedural rights of all in choosing"⁵⁷, establishing that in a democratic State, the ultimate power to rule the country should lie with the People.

The Constitution of Sri Lanka, in its articulation of the sovereignty of its 'People', affirms in Articles 3 and 4, in elaborate and definite terms, the 'Power of the People':

Article 3

In the Republic of Sri Lanka **sovereignty is in the People** and is inalienable. Sovereignty includes the powers of Government, fundamental rights and franchise.

Article 4

The **Sovereignty of the People** shall be exercised and enjoyed in the following manner:

- a). The **legislative power of the People** shall be exercised by Parliament, consisting of elected representatives **of the People** and **by the People** at a Referendum;
- b). The **executive power of the People**, including the defense of Sri Lanka, shall be exercised by the President of the Republic elected **by the People**;
- c). The **judicial power of the People** shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the **judicial power of the People** may be exercised directly by Parliament according to law.
(Emphasis added)

Yet the 'Sovereignty' and the 'Autonomy' of the people in principle have metamorphosed into the 'Reign' and 'Autocracy' of the Government in practice, as the conduct of the Sri Lankan Government has repeatedly demonstrated. The democratically elected Government is vested in the power that is transferred by its people, upon which it has entered the 'social contract', sealed by a pledge of safeguarding the dignity and safety of its entire people. 'Sovereignty of the People' may assure political correctness, yet the contractual transferring of power from the People to the representatives of the State thereafter has become the forfeit of the people rather than their salvation, and 'Democracy' the sole propriety of the Government, thereby rendering the 'Sovereignty of the People' a political unreality. Though logic would suggest that the fulfillment of the obligations of 'representation' would necessitate a democratically elected Government to be aware of and therefore to observe the needs and concerns of its People and act upon their aspirations, for which consultation of the people is an obvious imperative, the voices of the People have often been either suppressed or dismissed and their plights ignored, as was illustrated in the previous Section. Participation of the individual in the governance and in the

⁵⁶ See <http://en.wikipedia.org/wiki/Democracy>

⁵⁷ See Thomas A. Shipka, 2004, pp. 474-475

formation of laws and policies of the country is said to be the essence of democratic Government. As Cohen points out, 'democracy is genuine when every citizen has the equal right to participate in that steering of the whole. Yet the critical question is easy to ask but not so easy to answer: Do the members of the community have, in practice, the protected right to participate in making directive decisions for the whole?'⁵⁸ For, democracy does not necessarily entail liberalism, as there is no necessity that individual liberties are respected in a representative democracy⁵⁹. While the representatives are elected by the people, to represent and advance their interests, they retain the freedom to exercise their own judgment as how best to do so and to advance their own agendas, creating ample space for the Government to encroach upon the powers and rights of the people, resulting in 'strong executives, weak legislatures and judiciaries and few civil and economic liberties'. As the critics of democracy contends,

In every State a few powerful people make the laws and enforce them; the rest accept them and obey. The self-Government of the masses is a dangerous myth. At most the masses may hope to influence the law-makers; they cannot hope to govern⁶⁰.

This state of governance as prevails in Sri Lanka is highly characteristic of what Cohen terms as 'paper democracy', where "the trappings of democracy are paraded and lauded, while the real will of the people is ignored"⁶¹. As mentioned, the IDPs have been completely excluded from playing a critical role in the design and execution of their return, where all the decisions regarding the dates, procedures and modus operandi has been taken within the echelons of the political and security hierarchies. The IDP, in the process, has been rendered the 'beggars of the state', intimidated and ordered about, forced into displacement and thereafter to return, at the will and whim of the Government. This 'tops-down' decision making process customary in institutionalized post colonial bureaucracies is but a reflection of the structurally hierarchical relationship between the Government and the People, the consequent abuse of power by 'legitimated authorities' and the hegemonic power relations with its accruing imbalances. These are insinuations of an unmistakable rise in the exercise of illiberal democracy where a representative democracy that encompasses the protection of minorities, the rule of law, separation of powers, and protection liberties of speech, assembly, religion, and property⁶², as well as other constitutional liberties of the individual is either non-existent⁶³, or not enforced, and the lack of accountability of the representatives of the People remains to be the most pervasive.

Cohen identifies apathy as another primary cause of the failure of representative democracy and its degradation into paper democracy:

Self-Government demands the energy of the selves concerned. The breadth and depth of interest will fluctuate with different issues and times, of course, but where the citizens do not bother to use the machinery of politics, the democracy rots from within. If the people are not interested enough to do what is necessary to govern themselves, there are always those who, with

⁵⁸ Ibid, pp. 472.

⁵⁹ See http://en.wikipedia.org/wiki/Representative_democracy

⁶⁰ Ibid. 58, pp. 471.

⁶¹ Ibid, pp. 473.

⁶² See <http://en.wikipedia.org/wiki/Democracy>

⁶³ For instance, the Sri Lankan Constitution does not contain the 'right to life' as a fundamental right of the individual.

contempt and self-satisfaction, will gladly govern in their place. Either the people will direct themselves, or others will do the directing for them⁶⁴.

People should choose, or desire to participate. Yet to choose or to desire, on the one hand they should be empowered with accurate information and comprehensive knowledge, of their rights, entitlements and options available, and the manner in which to access or utilize the 'machinery of politics'. On the other hand, it remains that the context of displacement/return saturated with poverty, trauma, insecurity and deprivation is hardly conducive for political participation or for the desire thereto. It is even argued by Khalid Koser, Deputy-Director, Brookings-Bern Project on Internal Displacement that direct participation of IDPs in 'track-one' decision making processes is not possible, effective and at times undesirable.

Firstly, the exclusive and high-level structure of most 'track-one' processes. Secondly, displaced populations often have specific disadvantages – they may lack resources, education, political skills, and influence. Thirdly, IDPs specifically have additional disadvantages – they are often scattered and may be more vulnerable to reprisals from their Government where they do mobilize. Equally, there may be times when the participation of IDPs in formal peace negotiations is not desirable, as it can entail risks for the displaced. Alternatively, displaced populations can be associated with, or fuel through their presence, 'spoiling' tactics that can hinder, delay, or undermine peace processes⁶⁵.

However, a degree of direct democracy, entailing direct participation of the IDPs/returnees in forming laws and policies that directly impact their lives through 'track-two' and 'track-three' processes can be valuable, and feasible if the norms of federalism are accommodated, as it socializes and educates them while allowing their needs and aspirations to be better advanced. Nevertheless, their participation needs to be backed by the forces of advocacy in order for their strivings to compete with the superciliousness of powerful elites and have a significant impact at the national policy level.

The nature of the relationship between the Government and the People is decisive in the protection of the rights of the individual and of communities, especially in a pluralistic society such as Sri Lanka, and testifies to the extent of 'representation' of the People. The strength and sustainability of this relationship is dependent on the dialogue between the two parties and the Government's commitment to nurture a just and equitable dialogue with the People. However, in a backdrop where impunity reigns and the violation of fundamental rights of the People, and arbitrary discharge of decisions by the authorities is fast becoming the norm, the State monologue speaks of a fast deteriorating relationship between the Government and the People. In any event, a dialogue cannot be said to exist in a context where responsible Government officers claim not be aware of the pressing needs of the IDPs/returnees, and where the greater majority of the IDPs/returnees are not aware of or are unable to access existing national grievance mechanisms. Moreover, the Government's evident indifference and insensitivity towards the suffering of the People, coupled with bureaucratic lethargy, have resulted in the absolute loss of People's faith in the 'organs of the Government'. A prime illustration would be the meager ration rates that the IDPs are provided, which have not been revised since 2002 even though the cost of living has

⁶⁴ See Thomas A. Shipka, pp. 474.

⁶⁵ Khalid Koser, "Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace Building." 2007.

increased by multiple folds during the past decade⁶⁶. Discriminating in its treatment of different communities or even individuals, either by intent or by negligence, specially in resource distributions as has taken place in the provision of rations to returnees to Panichankerni, located in the outskirts of Vaharai, would only sever an already fractured relationship and would eventually fuel the resentments, frictions and tensions that propagate the seeds of conflict, crisis and displacement. As Kishali Jayawardane asserts, “the modern Sri Lankan state therefore possesses a schizophrenic personality as far as the protection of human rights is concerned. It unleashes violence and executes an internal war while superficially affirming its commitment to democratic processes”⁶⁷.

The tools of governance, such as national legal and administrative bodies and mechanisms, are established with the objective of fulfilling the national responsibility towards its People by serving their needs and redressing their grievances and thereby facilitating the aforementioned dialogue or relationship. The Constitution of Sri Lanka provides that:

The fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of Government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided⁶⁸.

Yet these Government institutions, mostly defunct, and entrenched in corruption and inefficiency, have become the weapons that further victimize the crisis-affected absconding their function as the tools of redress.

For instance, in spite of having six Ministers for Nation Building, the Government is still struggling to develop a resettlement plan. Further, the relevant line Ministries have failed to conduct timely needs assessments of the IDPs or to ensure their protection, and as mentioned previously, even the hierarchies have demonstrated an inexcusable level of ignorance of and indifference towards the sufferings of the internally displaced. The lack of information at the Ministries and the irresponsible attitude of ‘responsible authorities’ are indicators of the extent to which the ‘national responsibility’ towards the internally displaced has been or will be recognized and discharged.

Civil administration, which is a vital component in the facilitation and regulation of the State-civilian relations, has not only been militarized, but has also been functionally neglected. A regular complaint that has been made by the IDPs/returnees was that the Grama Sevaka (GS) had not been present during the return process and had failed in their duty and responsibility to assist them. As the CPA Fact Finding Mission to Porathivu Pattu asserts, “their Grama Sevaka has not been with them in this process of displacement and they were not sure whether the GS would turn up once they had returned”⁶⁹. Indeed, according to the report of the CPA Fact Finding Mission to Vaharai, there are no GSs currently working from Vaharai, thereby limiting the capacity of the civil administration⁷⁰. It was further stated that though “individuals from Divisional Secretariat Office (DS) has driven up to Thettathivu camp during the transport process, there has been no

⁶⁶ According to the existing ration rates, which have not been calculated in consideration with the daily calorie requirements of an individual, an individual IDP receives a ration rate of SLR 336 per month.

⁶⁷ See Kishali Pinto-Jayawardana, “Subverted Justice and the Breakdown of the Rule of Law in Sri Lanka.”, 2007, pp. 11.

⁶⁸ See *The Constitution of the Democratic Socialist Republic of Sri Lanka (1978)*, Chapter 1, Article 4 (d).

⁶⁹ See *Batticaloa Field Mission*, CPA, May 2007, pp. 2.

⁷⁰ See Fact Finding Visit to Batticaloa, CPA, April 2007, pp. 7.

attempt by them to engage with the People”⁷¹. The IDPs have also been extremely critical and distrustful of the local GN, whom they claimed has not distributed the relief items that were provided by relief agencies, and instead of being involved in the process only sought to ensure that the returnees would leave behind a portion of the relief packages that they have received from various I/NGOs.

In the case of national institutions, the National Human Rights Commission (NHRC) of Sri Lanka, established in 1997 under the Human Rights Commission of Sri Lanka Act No. 21, is considered to be the focal point in protecting the human rights of the IDPs. Its responsibilities include research, monitoring, receiving and investigating complaints, provision of advice, making recommendations and findings, and reporting and advocating on issues relating to IDPs.

However, the NHRC, which has an office in Batticaloa as well as a special IDP Protection Unit at the Colombo Head Office, has been notable by its absence in the return process, in spite of its protection mandate. The Commission has not monitored the return process and has in fact still been debating a possible visit to Vaharai, months after the return had taken place⁷². As inquiries revealed, the NHRC relies heavily on the data and information provided by agencies such as the UNHCR. The ‘lack of resources’ is the staple reason cited for the inefficiencies in fulfilling its responsibilities.

The ‘Third Party Perspective’ and its intervention become of paramount importance in a context of this nature, where the political will for addressing the issues of displacement and return is inadequate, in reminding the Government of its obligations towards the People and facilitating them in the discharge of their national responsibilities.

The ‘Third Party’, in this context signifies the humanitarian community comprising of international and national non Governmental organizations (I/NGOs), which plays a seminal role in the dynamics of state relations. The Third Party has gained much recognition in Sri Lanka following the Tsunami crisis in 2004, and since then has established itself as a prominent actor and an indispensable consultant in affairs of humanitarian concern.

The Third Party Perspective is considered and required to be balanced and ‘objective’, biased only for the benefit and wellbeing of the human community. And thereby the Third Party claims to a considerable Advocacy capacity as well. It plays a crucial role as the regulatory voice between the Government and the People when the State monologue drowns or threatens to drown the voices of the People, and by virtue of its principles of impartiality and objectivity, as the mediators between State and non-state actors in finding durable solutions for conflicts and ending human suffering.

The Guiding Principles on Internal Displacement advocates the national Governments to seek the corporation of international and regional organizations to address the problem of internal displacement when national capacity is insufficient, recognizing it to be a part of national responsibility. Principle 25 and 30 reinforce this responsibility, by urging the Government to facilitate humanitarian assistance by granting the humanitarian agencies with unimpeded access to displaced persons to assist in their return, resettlement and reintegration.

The Sri Lankan Government has never faltered in requesting the humanitarian agencies for assistance. However, the Government constantly expects I/NGOs to substitute national efforts for assisting and protecting the IDPs/returnees, overlooking the directive of I/NGOs to strengthen

⁷¹ Ibid. 69, pp. 5.

⁷² Ibid, pp. 10.

national plans rather than to implement them. For instance, during a recent meeting of the CCHA sub committee on Resettlement, the Ministry of Resettlement has requested the I/NGOs to undertake the provision of funds to pay the compensation for the returnees as well as the construction of houses for them, and has been reminded by the present I/NGO representatives that initial assistance need to be delivered by the Government, which then can be complemented by the I/NGOs⁷³.

Though the Government clamours for funds and material assistance from INGOs, it exhibits a great deal of wariness of INGO interventions in protection issues and national policy formulation, presumably perceiving it to be a threat to state sovereignty (although Principle 25 (2) requests the Government not to regard such interventions as ‘unfriendly act or an interference in a State’s internal affairs’). To quote Roberta Cohen, Nonresident Senior Fellow & Co-Director of the Brookings-Bern Project on Internal Displacement,

There have been reports of NGOs operating particularly in relation to the Tsunami where they were incompetent... The Government is justified in looking into who is coming into the country and their bonafides. There is justification for expecting them to be principled. But at the same time a Government can go too far and restrict their action in preventing them from going to places where they are really needed. Sometimes that effort at regulation can be a pretext for restricting NGOs from doing their job effectively...⁷⁴

Neither local nor international NGOs have been consulted on or informed of the Vellaveli return process prior to its initiation. In fact, Batticaloa based NGOs have found out about the dates of return from the displaced⁷⁵. Furthermore, the Government paid no heed to the cautions extended by the IASC that “the lack of proper planning might put returnees in a situation where safety and dignity are not ensured in the villages of return”⁷⁶, to the remonstrations against forced return or to the constant urges to carry out an information campaign for the IDPs/returnees and to present the Government’s return plan, in order for the humanitarian community to assist national efforts in an efficient and coordinated manner. As was exemplified in Section 3, humanitarian agencies, both local and international, have been restricted in their access to return sites and have not been allowed to accompany the returnees on their journey back home, posing considerable restrictions on the monitoring capacities and the protection and assistance responsibilities of the agencies to which they have the right under international law.

The situation has been exacerbated by the rising incidence of violence against humanitarian workers who have been made the objects of constant threats, attacks, abductions and even murder, further confining the rapidly shrinking humanitarian space. The Government has exerted very little effort and authority to curtail these unwholesome developments, and abide by the standards set forth in Principle 26, which proclaims that “persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the objects of attack or other acts of violence”.

The lack of coordination between the Government and the humanitarian agencies is a strong, unchallenged limitation that has resulted in inefficient and inadequate humanitarian response. To elaborate, during a recent meeting of the CCHA Sub Committee on Resettlement it

⁷³ Meeting of the CCHA Sub Committee on Resettlement and Welfare, 5 June 2007.

⁷⁴ See Shakuntala Perera, “Internal Displacement in Sri Lanka”, *Daily Mirror*, 16 November 2006.

⁷⁵ See *Batticaloa Field Mission*, CPA, May 2005, pp. 5.

⁷⁶ See Amantha Perera, “Second Mass Resettlement Scheme Underway in the East”, *The Sunday Leader*, 20 May 2007.

was revealed that the World Food Programme was still awaiting a formal request from the Government in order to supply the provisions for food rations for the returnees, which the representatives of the Ministry appeared to be completely unaware of⁷⁷. Functioning in isolated spheres, they do not fulfill either of their respective mandates or visions.

The Government and the Third Party share an essentially politicized relationship. Thus, the response of the Sri Lankan Government to the Third Party Perspective and intervention is rather perplexing, as it is evident that the impediments and restrictions imposed by the Government upon humanitarian agencies and the lack of Government facilitation for their exertions, as well as the disregard for their recommendations are self-detrimental. For, the Third Party Perspective, layered to a considerable extent by the dynamics of international relations, has formidable leverage in sustaining State wellbeing and realigning its foreign affairs. In affronting it, the Government faces the risk of losing the favourability of the international community both economically and politically, which has multiple political connotations specially in a severely fractured political complexity such as Sri Lanka. A more immediate and direct repercussion would be the withdrawal of assistance to the displaced/returnees by the agencies, as was imminent when UNHCR threatened to pull out of the Vaharai return process if forcible return was not brought to an end.

Though the primary duty and responsibility for providing humanitarian assistance to IDPs/returnees lies with the Government, The Third Party, or the humanitarian community, too shoulders an equally grave responsibility towards these populations, especially when the Government is unable to or is inefficient in discharging this responsibility. Guiding Principle 27 provides that humanitarian organizations need to give due regard to the protection needs and human rights of IDPs when providing assistance and “in doing so, these organizations and actors should respect relevant international standards and codes of conduct”.

However, the Third Party does not uphold a flawless existence, and there indeed appears to be several constraints to a proactive response and the perfection of best practices.

For instance, a hierarchy is visible even within the Third Party, with international agencies – particularly the UN agencies – assuming priority and prominence presumably due their stake in the political economy of the country, and local CBOs possessing the least capacities, both in resources and in their ability to influence Government policies. This has generated a friction among local and international agencies and has to a certain extent contributed towards the internal tensions within the humanitarian community.

Discordance among the humanitarian agencies raises a serious concern and was especially visible during the protests against forced return in Vellaveli, UNHCR and IASC declaring it to be ‘in line with international standards’ and the return sites being ‘conducive for return’, after a one-day assessment of the return process, and agencies such as the Centre for Policy Alternatives deeming it to be ‘not a completely voluntary process’ and even charging ‘critical international agencies including UNHCR’ of a ‘significant policy shift from March 2007’ and a ‘gradual loss of will’ to publicly raise concerns regarding the return process⁷⁸. A fear of being asked to leave the country can be assumed to be one reason, among several, that has caused some of the agencies to shift their policies or lose their will, specially in a context where a

⁷⁷ Meeting of the CCHA Sub Committee on Resettlement and Welfare. 5 June. 2007.

⁷⁸ See *Batticaloa Field Mission*, CPA, May 2007, pp. 9.

number of INGOs have been restricted from entering the country. Nevertheless, these inconsistencies in the advocacy endeavours and the discrepancies in the messages conveyed by different agencies question their credibility and confuse the public. Furthermore, the absence of a unified stance has posed further difficulties for the humanitarian actors in playing a stronger, more proactive advocacy role in protecting the rights of the returnees.

There is also an evident lack of coordination among relief agencies as well, specially in the provision of material assistance to returnees, which has resulted in avoidable duplications and gaps in their services. This was attested to by the CHA Fact Finding Mission report which reports that the DS of Vaharai has requested for a coordinated involvement of agencies in the event agencies wished to provide assistance. Close liaison with the DS is essential in implementing relief and development work for equity and transparency⁷⁹. Though an effort has been made by I/NGOs to sustain a dialogue with the Government through discussions with the Ministry of Resettlement and other relevant authorities, for instance when planning the return movement to West Batticaloa, to “work out an acceptable mechanism with the Government and secure adequate monitoring and a shared provision of assistance by Government and aid agencies”⁸⁰, at times the agencies too attempt to exclude the Government from its strategies. This, on the one hand is futile, for Government, as the sovereignty, is the final arbiter of the implementation of any national plan and its involvement is an imperative in ensuring their sustainability, and on the other hand is impertinent, as they are bound by a pledge to coordinate their activities with the Government and all other stakeholders at all levels⁸¹.

Further, allegations of hidden agendas provoked by debates on ‘NGO politics’ as well as the unscrupulous conduct of several agencies question their impartiality and objectivity, the benchmarks of humanitarian intervention that they are bound by international humanitarian law and codes of conduct.

In addition to the lack of Government facilitation and their own inadequacies, the negative media portrayals and the absence of a well coordinated mechanism to channel information between the humanitarian community and the communities they seek to serve have resulted in public misconceptions and mistrust of humanitarian agencies, further hindering agency performance.

The entire gamut of issues resulting from the dynamics of the inter-relations among the Government, the People and the Third Party Perspective has its final toll on the IDPs, the real casualties of war and political agenda. The various players of conflict use the war itself as a propaganda toll and thus even the plight of the IDPs is exploited by relevant parties, not based on humanitarian concern, but rather political profit which can also be easily converted into economic gain. Especially in instances when the protectors of the People become the perpetrators instead, the doubly victimized IDPs have no recourse but to resign themselves to passive submission, giving rise to speculations as to the validity of the democracy that is said to rule the country.

⁷⁹ See *Fact Finding Mission to Vaharai*, CHA, May 2007, pp. 5.

⁸⁰ See Amin Awad, “Draft Return Plan of IDPs to West Batticaloa.”, 11 May 2007.

⁸¹ See Principle 8 of *Guiding Principles for Humanitarian and Development Assistance in Sri Lanka*.

5. The Rights Based Approach

The 'Rights Based Approach' (RBA) has gained much prominence and wide currency in the contemporary discourse of the development community. The violation of the rights of returnees has been the focus of and basis for the fervent advocacy campaigns of the key actors and stakeholders in the field dealing with displacement, who, from the initial return movement in Vaharai, have remonstrated volubly against forcible return of IDPs and the lack of participation of IDPs in all stages of the return process.

The active participation of IDPs in the design and execution of their return and in any other programme that concerns their lives and their future is unquestionably an essential and critical component of a Rights Based Approach. And meaningful participation entails not only consultation but the active involvement of and contribution towards the discussions, strategies and decision making processes that aim to restore and rehabilitate their lives. But most importantly, it indicates that they have the right not only to be provided a legitimately recognized space to voice their opinions but also to be listened to, recognized and respected.

Nevertheless, engaging the IDPs in the planning and implementation of the return process in a meaningful manner has proved to be of practical difficulty due to several reasons. The RBA provides that the IDPs are entitled not only to their rights but also to the conditions or the environment in which they would be able to fully assert their rights, in this instance, the right to participation. Principle 11 article 2 (c) of the Guiding Principles on Internal Displacement states specifically that the IDP shall be protected against 'Acts of violence intended to spread terror among internally displaced persons'. Yet one of the main obstructions to active participation has been the fear that is inculcated in the minds of the IDPs, by both the military and the paramilitary forces, which withhold them from voicing their concerns or resisting any arbitrary decisions imposed upon them, due to a justifiable fear of repercussions and the imposition of severe penalties to life. Most regrettably though, even the humanitarian community has succumbed to this 'fear factor', when they should be collectively defying such malignant forces and persist in their effort to pressurize and lobby for the creation of space for people's participation, and in considering it as an unassailable condition, and if allowed to continue unaddressed, risks the unconscious acceptance and sustenance of systematically lethargic, minimalistic participation or the vacuum of non-participation. If the humanitarian community is earnest in their insistence upon a RBA, it is their responsibility to stretch their capacities in advocacy, assistance and protection to truly 'empower' the IDPs, instead of using the 'fear factor' a justification for deeming IDP participation as 'unrealistic'. The lack of facilitation by the Government has aggravated difficulties. For instance, the Government has done nothing to allay the fears of the IDPs/returnees, through an information campaign or by cleansing the environment of terror-inducing elements. There was also an absence of a structured, organized and efficacious civil administrative mechanism with devolved responsibility placed upon the Grama Niladari (GN), which could have facilitated IDP participation through the appointment and consultation of camp leaders or authorized representatives of the IDPs. Furthermore, the lack of consultation and involvement of the humanitarian agencies and the restrictions imposed upon their access to return sites prior to, during and following the return process, has prevented the third party intervention as well, in protecting the IDPs right to participation.

Meaningful participation also necessitates that the IDPs be informed of and ensured access to the existing mechanisms established to address their grievances and to draw their

feedback on the adequacy and viability of the assistance provided. As Chinkin states, “people have no legal security where they are ignorant of, or can make little use of, their existing or new rights. [Yet] the court structure [is] weak, financially out of reach, or unavailable in the rural areas.”⁸² A report published by the Calcutta Research Group in 2006 also reveals that IDPs on most accounts have no knowledge of either the national or international mechanisms established to address their needs and identifies the sensitizing of the IDPs on these mechanisms as a primary need⁸³. This finding is applicable to the present situation of displacement and return as well, as the information given in Section 3 regarding the lack of informed and voluntary return illustrates.

Thus, in the recent return process in Vaharai and Porathivu Pattu, the IDPs became as usual the mere recipients of assistance and programmes, with no power to influence the manner in which policies and programmes for their return were designed, and little opportunity to voice their concerns⁸⁴. Yet it cannot be over-emphasized that the consultation and participation of the displaced is of paramount importance to the effectiveness of endeavours to protect and assist them and in respecting their rights. As ‘A Framework for National Responsibility’ points out, national and international responses to internal displacement can be significantly informed and enhanced through consultation with IDPs⁸⁵, and if assistance and protection programmes reinforce and are built upon the ‘coping skills’ that IDPs generally develop in their struggle to survive in extreme conditions. Recognition of the skills, knowledge and capabilities of IDPs and policy outputs that reflect this recognition would be the ultimate signifier of an effective adaptation of a RBA.

The RBA essentially elevates the IDP from a patronized ‘beneficiary’ bestowed with privileges to a dignified ‘right holder’ claiming entitlements. However, the attitude towards the displaced, of the Government, the humanitarian community, the civil society as well as the displaced themselves, where the IDPs are considered and treated as ‘beneficiaries’ or recipients of aid, is a major impediment in making the RBA a reality. The IDPs are accustomed – and expected – to be ‘grateful’ and obliged for the assistance they receive, and do not realize that they have a right to claim protection and humanitarian assistance from their Government and the humanitarian community. It is in the same spirit that they are expected to take whatever is given, regardless of their actual needs or the quality of the assistance, as they have nothing else. Even the humanitarian community, though inadvertently, is culpable of contributing to this attitude, which, quite ironically, contradicts the very standards, principles and ideals of Human Rights that they so passionately promote. For instance, the development vocabulary continues to address the IDPs as ‘beneficiaries’, and is still to identify them as ‘right holders’. Further, including the IDPs in discussions or the development of protection/assistance strategies has still not become a staple in the best practices of the agencies. Both the Government and the aid agencies have developed the habit of ‘targeting’ the IDPs with programmes, and their patronizing attitude supplemented by the ‘project mentality’ ultimately results in the objectification and dehumanization of the IDP, rather than in the realization of their rights.

In an epoch where the social value of an individual and her/his socio-political standing or recognition is highly dependent upon her/his economic value, the hapless IDP who has lost all her/his belongings and a lifetime’s accumulation of wealth/assets, all provisions of economic

⁸² See Christine Chinkin, 2004, pp. 228.

⁸³ See *Voices of the Internally Displaced in South Asia*, 2006.

⁸⁴ See “*Addressing Internal Displacement: a Framework for National Responsibility*”, April 2005, pg. 20.

⁸⁵ Ibid.

security and the ability to contribute towards the economic development of the country has inevitably been rendered an approximate to a non-entity, an acronym. The autonomous self and the sovereign individual are thus distortedly translated into a conceptual 'beneficiary', with opportunistic organizational and Government tags attached to her/him. Not only are they being considered incapable of taking decisions concerning their own lives and their views unsought or dismissed, but they are constantly being shoved from one 'welfare centre' to the other, and herded like cattle to 'return home'. In addition to the harassments and abuses that the IDPs were subjected to during displacement, the degrading manner in which they have been treated at times during return, with utter disrespect for their safety and dignity, is not only evidence of violation of Guiding Principles or Human Rights but is more a disturbing indication of utter ignorance and disregard for basic values of humanity. For instance, the CPA fact finding mission has witnessed an incident at the transition site during the return movement to Vellaveli, where the driver of the bus transporting IDPs to their homes has initially refused to make a third trip, even though it has been evident that the bus could not accommodate all the remaining displaced families. This has resulted in chaos as a little girl who has been pushed into the bus through a window while her parents remained on the ground screamed and leapt out of the window in a hysterical state when the bus driver revved his engine⁸⁶.

The Government's habitual indifference towards the plight of its people or the violation of their rights and the lack of political will, reflected in the return process as well, have over the years resulted in despondency and disillusionment of the IDPs. The response of the Government to the constant urges to respect and protect the rights of its citizens at best has been one of lassitude, complacency and insensitivity, and when manifested as an active response, is usually based in political agendas. On the other hand, the third party perspective and its sustained allusions to Human Rights and RBA, instead of nudging the Government out of its deeply ingrained political apathy, are actually heading, though unwittingly, towards a risk of 'clichéing' Human Rights. Constant parroting of the Guiding Principles and the development of numerous concepts, theories and strategies, extensive analysis, expositions and debates, and the formulation, revision and affirmation of an exhaustive body of laws and policies on the protection of Human Rights have had proportionately limited impact on the ground realities of heinous and daily human rights violations. On the contrary, in the process, the notion of Human Rights have become rather remote, dispassionate and clichéd, yet another 'intellectual concept' that has little empathy with the real human being and distant from the daily human experience. Often, though unintended, the individual and the individual experience, especially that of the emotion/psychology, are lost in the definitions, conceptualizations and the intellectual jargon of 'Human Rights', and can be considered as two important factors not arrested or appreciated adequately by the RBA.

In the context of displacement, trauma is the most intimate and inexorable psycho-emotional experience of an IDP. From the moment of displacement till long after return or resettlement, Trauma trails the steps of an IDP. Being the subjects of multiple displacement, harassment, intimidation, degradation, rape, torture and numerous other outrages on life, the inanimate objects being tossed about at the will of the more powerful, pushed from pillar to post and to the edge of subsistence and sanity, separated from kith and kin, having lost all hope along with everything that they ever possessed, disillusioned, weighed by uncertainty, repeatedly

⁸⁶ See *Batticaloa Field Mission*, CPA, May 2007, pp. 4.

victimized, incapacitated, patronized, deprived and marginalized, and confused and lost in the abyss of conflict and political power struggles, have cumulatively culminated in the prolonged Traumatic experience of the IDP. The fear psychosis that has engulfed the displaced has only intensified the pain of Trauma. End of displacement, or return, does not guarantee the end of Trauma, as the deeply etched impressions of traumatic experience cannot be easily erased and would be carried throughout their lives. Therefore, psycho-social interventions need to take priority in any long-term rehabilitation strategy or policy, if these long endured psychological wounds are to be healed and durable solutions to displacement are to be found. However, the advocates of RBA do not appear to place sufficient emphasis on the 'Trauma Factor'. Apart from the distractions of the urgency of immediate assistance and the prominence given to the construction of shelter, development of infrastructure and public services and restoration of livelihood in long term rehabilitation, this negligence could also be attributed to the general impression that any deviation from the 'intellectual' and leaning towards the 'emotional' would discredit the discourse of human rights and would question the gravity and plausibility of a RBA.

The Guiding Principles do provide for the establishment of the conditions that would prevent the inducement of Trauma, for instance Article 2 (c) of Principle 11 mentioned above, while referring, though in brief, directly to the right of 'mental integrity' and 'counselling':

Article 11

1. Every human being has the right to dignity and physical, **mental** and moral **integrity**.

Article 19

1. When necessary, internally displaced persons shall have access to **psychological** and social **services**.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate **counseling** for victims of sexual and other abuses.

(Emphasis added)

However, two limitations could be identified. On the one hand, the Principles do not adequately capture or address the range or the extent of the Trauma experienced by the IDPs. On the other hand, even the limited provisions are not put into practice. According to a research conducted in 2006 by the Calcutta Research Group, psychological intervention in IDP camps and following return, in Sri Lanka has been non-existent (0%)⁸⁷. The situation has not improved one year later, by the time of the return movements to Vaharai and West Batticaloa. No mention of any psycho-social intervention appeared in any of the preliminary assessment reports of humanitarian agencies.

Human Rights have initially been developed with the objective of preserving the dignity of the human being, which is considered the most central and esteemed aspect of a human being that differentiates we/man from beast. It conceptually attaches itself to the human being by way of biology – from her/his birth – and is thus considered intrinsic and irrevocable. And human dignity, we need to be reminded, is inextricably intertwined with human emotions. Thus, dignity cannot survive where terror and pain reign supreme. This propounds the argument that the right to

⁸⁷ See *Voices of the Internally Displaced in South Asia*, 2006.

‘mental integrity’ and a trauma-free existence is a primary and fundamental right of every individual, not secondary to any other civil, political or social right. The Government, as the prime duty bearer and the guardian of Fundamental Rights of its citizens, is bound to protect this right, and bears full responsibility for the Trauma experience of the individual to the extent that it is caused by state induced factors such as war and forced displacement. The humanitarian community, or the third party, as the recognized promoter, advocate and monitor of peace, security and a dignified life for all people, has the duty and the responsibility to accentuate the importance of the right to mental integrity and a trauma-free existence in promoting the ideals of a RBA.

Homogenization of the displaced is inevitable and understandable when providing short term assistance in the immediate aftermath of a crisis of mass-scale displacement. However, during long term rehabilitation, it needs to be kept in mind that the IDPs vary in their needs as well as their experience. For instance, the most vulnerable segments of the displaced population, i.e. women, children, elders and the disabled, are often victimized, re-victimized on multiple accounts, and are quelled in perpetual trauma. Women and girls are raped and exploited; children are born and raised in the dismal confines of temporary shelters; the elderly and the displaced, defenseless and considered an encumbrance, are abandoned and even thrown mercilessly out of the camps. Thus, positive discrimination of these groups is mandatory in a RBA, and has been acknowledged in the Guiding Principles on Internal Displacement which, on a number of occasions emphasize upon the importance of the involvement specially of women (Principle 7.3 (d), 18.3, 19.2, 23.3/4) and also of children (Principle 4.2, 23.2) and advocate special consideration for the elderly and the disabled (Principle 4.2). Yet once again, practice has been a far cry from principle, as the recent return movements evidenced.

Often, gender specific issues – the concerns of women in particular – tend to become submerged in the aftermath of return, as the general needs of the community such as food, housing and livelihood requirements take priority. Furthermore, focus upon addressing ethnic difference or political ideologies that fuelled the conflict can obscure gendered perspectives and continued sex-based discrimination.

However, conflict itself is highly gendered and gender relations are fundamental to every conflict and its aftermath⁸⁸. Women’s different experiences during conflict are likely to be central to their determination of their post-conflict priorities and needs⁸⁹. To illustrate, in modern conflict the strategies of warring parties essentially involve the deliberate targeting of civilians for abuse, and women’s bodies and homes often become the sites of war and violence. Similarly, each phase of displacement, including initial displacement, flight, protection and assistance in displaced persons’ camps, resettlement and reintegration, has different implications for female and male IDPs⁹⁰. Both returnee and internally displaced women and girls often suffer discrimination, degradation and human rights abuses throughout their flight, settlement and return.

The gendered impact of conflict generally persists even after return. It cannot be assumed that violence ends for women with formal return. Rather, there is merely a shift in the forms and locations of gendered violence. Gendered violence is likely to continue in ways still connected to the conflict, for instance, violence committed by those suffering from post-traumatic stress, by men returning to households headed by women during the war, by men facing dislocation and

⁸⁸ See Cristine Chinkin, 2004, pp. 228.

⁸⁹ Ibid, pp. 214.

⁹⁰ See *Women, Peace and Security*, 2002, pp. 25-26.

unemployment on return⁹¹. Their relations with war-traumatized children, family members and former fighters all place gendered demands⁹² upon the women who become the de facto carers of others displaced by the conflict.

It is therefore essential that women's experiences are fed directly into a RBA and all stages of the return process and taken into account in the ensuing peace and reconstruction processes. *A RBA should essentially be gendered.*

Yet the focus on women as a vulnerable group tends to obscure women's capabilities. Women have survived in situations of armed conflict, often shouldering immense responsibilities (pg 99, w). Thus, it is important that women be perceived not only as victims of conflict but as agents for transformation and empowerment⁹³. Though war dismantles traditions and communities, it is argued that it also opens new spaces for women to assume new roles entailing non-traditional tasks and thereby gain a higher degree of freedom, flexibility and empowerment. As Chinkin points out,

Not only is 'post-conflict' a misnomer for women, so too are the notions of reconstruction and rehabilitation. Both concepts assume an element of going back, restoring to a position or capacity that previously existed. But this is not necessarily what women seek. The goal is rather societal transformation, that is, not restored dependence and subordination but rather an enhanced social position that accords full citizenship, social justice and empowerment based upon respect for standards of women's human dignity and human rights that may never have previously existed⁹⁴.

Regrettably though, such arguments and expectations are rendered futile and even irrational by persistent discrimination against women that at times intensifies after return/resettlement, obstructing all avenues for freedom and 'empowerment'. For instance, even when women and adolescent girls are part of the formal economy, there are marked differences in the attitudes towards their employment after conflict⁹⁵. Following return/ resettlement, women and adolescent girls who worked side by side with men and adolescent boys are usually expected to retreat in to the confines of their homes and restrict themselves to domestic chores and familial obligations, and resume their traditional subservient role of the dependent 'nurturer'. Resistance is viewed as problematic, and behaviours and skills that they have developed while displaced maybe viewed as threatening and result in public criticism⁹⁶.

In most instances, girls are denied their right to education due to social, cultural, religious or political restrictions. It is frequently the adolescent girl or the girl child who is compelled and expected to sacrifice their education and childhood, specially in situations of poverty which permeates return/ resettlement communities, due to the need for their labour input to support the household income as well as household management.

In addition, returnee women often find themselves deprived of the right to recover their property, including their homes, rendering them more vulnerable and susceptible to further abuse and exploitation.

⁹¹ See Christin Chinkin, 2004, pp. 223.

⁹² Ibid, pp. 217.

⁹³ Ibid, 214.

⁹⁴ Ibid, 218.

⁹⁵ Ibid. 9, pp. 117.

⁹⁶ See *Women, Peace and Security*, 2002, pp. 121.

Further, though post-conflict arrangements make provisions for the reintegration of soldiers – usually men – into society, little or no consideration is given to rape victims and their return to normal life, other than the inclusion of such offences in catalogues of international crimes committed in the conflict⁹⁷. In both IDP camps and post-return, women and girls are at risk of human rights abuses due to the weakening of existing community and family protection mechanisms. Internally displaced/ returnee women and girls are subjected to physical and sexual attacks, rape, domestic violence and sexual harassment, increased spousal battering and marital rape. Studies from conflict areas have found that women and girls suffer more than men and boys from reproductive and sexual health problems due to poor nutrition, sanitation and sexual abuse⁹⁸. Many women and girls carry the psychosocial trauma resulting from gender-based violence along with the harrowing memories of displacement, yet the lack of knowledge about the effects of trauma and cultural barriers to openly discussing traumatic experiences, particularly of sexual violence, has resulted in further exclusion and prolonged traumatization of women. Women may also be reluctant to litigate (against abuse and violence) for lack of resources, of confidence in a fair hearing or for fear of retaliation⁹⁹.

A number of legal mechanisms exists which guarantee protection of the human rights of women, theoretically allowing them to seek redress against violations of their rights. Yet as ground realities depict, the inclusion of human rights instruments is insufficient to guarantee to women the same protection of their rights as men. For instance, Article 5 (a) of the Women's Convention requires states 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 women¹⁰⁰.

In addition, Guiding Principle 11.2 (a) and (b) advocate:

11.2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected particularly against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labor of children.

However, the highly idealistic notions of gender equality/equity, the human rights of women and women's empowerment are but appealing mirages as yet, much coveted yet frustratingly elusive in the social structures of entrenched patriarchy which continues to resurface against all attempts at subversion or transformation. Hence, a gendered RBA, though highly desirable, is still a distant vision, a hope in the horizon. The impediments on a gendered RBA have been summarized by Savitri Goonesekera, the independent expert member of CEDAW from Sri Lanka, as quoted in 'Peace Work: Women, Armed Conflict and Negotiation':

"Programmes by a consortium of international agencies maybe developed to ensure that women receive humanitarian assistance in conflict areas or obtain access to services. Such

⁹⁷ See Christin Chinkin, 2004, pp. 223.

⁹⁸ Ibid. 96, pp. 119.

⁹⁹ Ibid. 97, pp. 226.

¹⁰⁰ Ibid, pp. 221.

programmes may hesitate to integrate aspects that are likely to be controversial or perceived as 'politically sensitive' because they raise 'human rights' issues such as discrimination or gender-based violence. For instance an agency may have a programme on providing girls and women access to education, or adequate pre-natal or post-natal care, without addressing the issues of forced and early marriage, gang rape by law enforcement authorities or custodial violence"¹⁰¹.

It is particularly important that gender perspectives are fully integrated into initial surveys, appraisals and assessment missions in reconstruction efforts¹⁰², and practical measures taken to protect the rights of women and to redress instances of their violations. Pressure to design programmes rapidly however, often lead to the neglect of gender perspectives, even though the 'gender component' is now the fashionable imperative in all humanitarian initiatives. Few gender-specific initiatives exist, and even the few programmes that take gender perspectives into consideration are being designed and implemented in a fragmented, ad hoc manner, without proper consultation of women or cultural sensitivity, and thus naturally fail to deliver the expected outcomes and at times exacerbate gender-based tensions in the community.

Moreover, international agencies, who claim expertise on the gender discourse, are at times ignorant of or indifferent to local conditions, initiatives and programmes and fail to respect local agendas or to involve local women in decision making processes, attempting to impose programmes designed and sponsored internationally, sans localization. The officials responsible for the implementation of humanitarian programmes and bureaucrats exerting authority over the local administration and grievance mechanisms, when not versed in gender matters, have proven to be an additional hurdle for local IDP/ returnee women to overcome in presenting their issues and concerns.

The challenges and gaps in humanitarian responses to crises of displacement as well as post-return needs and reconstruction, and the need for a gender-specific approach in the design and execution of assistance and protection programmes have been well captured in *Women, Peace and Security*:

Often, humanitarian assistance programmes view women as one more category in a list of vulnerable groups, for instance: the poor, the disabled, the elderly, the homeless, children and women. This formulation is problematic on two grounds. First, there are gender dimensions and differences within each of these vulnerable groups that must be understood. For instance, the 'poor' comprises of both men and women and there are important differences and inequalities between women and men in relation to the causes and effects of poverty and potential coping strategies. Although they may share needs and priorities, women and men, girls and boys will also have different responsibilities, experiences and needs and different resources they can draw on. Furthermore, there are often important differences among women within each category, based on ethnic group, class, age, religion or position in the conflict that should not be overlooked¹⁰³.

The concluding phrase of the above extract brings to light a critical aspect of 'targeting' which is often not taken into account in humanitarian interventions: the individual woman and her experience. Women's experiences throughout conflict (and displacement) would have been diverse and there can be no assumption that all women will share the same priorities¹⁰⁴. Therefore, their post-conflict situations will also vary. An effective return and reconstruction

¹⁰¹ Ibid, pp. 222.

¹⁰² See *Women, Peace and Security*, 2002, pp. 126.

¹⁰³ Ibid, pp. 99.

¹⁰⁴ See Christian Chinkin, 2004, pp. 217.

process which seeks durable solutions to ending displacement should therefore be built on the widest base of experience and need to take account of local women's lived experiences during the conflict and displacement and their enormous responsibilities post-conflict/ post-return. Yet homogenization of 'women' as a category often fails to appreciate the individual experience of the woman and therefore the diverseness is not sufficiently captured, leaving gaps in the post-conflict rehabilitation and reconstruction of communities, the effects of which is bound to stretch from the personal to the public over time.

Hence, a critical lapse occurs in the regular interpretation of the RBA in its failure to grant due importance to the individual and the individual experience. Though the entire body of civil and political rights speaks of the rights of the individual, and the Sri Lankan Constitution testifies that "the Dignity and the Freedom of the Individual may be assured"¹⁰⁵, the individual and the individual experience, in reality, are often given the secondary status, specially in the provision of assistance and protection to the victims of humanitarian crisis or mass-scale displacement. The human being or the individual is often eclipsed by facts and figures, aggregates, categorizations and definitions, the conveniences necessitated by humanitarian intervention. In the general clamour to serve 'the displaced', for instance, the individual internally displaced person is generally bypassed or ignored. As mentioned in Section 3, there have been instances where certain IDPs were allowed to remain in the camps without returning home, on an individual basis, yet these can be considered the exceptions rather than the rule.

The abstract of the collectivity often takes precedence over the daily reality of the individual, whose autonomy is the natural compromise in the imposed homogeneity of the needs of the affected. Nevertheless, it needs to be kept in mind that the constitution of the collectivity, the community and the society is conceivable by virtue of the individual, the agent of social action. "Society does not have an existence above or beyond these individuals, and thus cannot be properly said to carry out actions, since actions require intentionality, intentionality requires an agent, and society as a whole cannot be properly said to possess agency; only individuals can be agents"¹⁰⁶. As Weber points out,

In sociological work these collectivities must be treated as solely the resultant and modes of organization of the particular acts of individual persons, since these alone can be treated as agents in a course of subjectively understandable action¹⁰⁷

Watkins reinforces this impression with the claim that the "ultimate constituent of the social world are individual people"¹⁰⁸. Thus, it is important to highlight the importance of the individual and prevent subsumption in the collective, specially in the provision of humanitarian assistance and protection. For social objectives to advance, the individual and her/her aspirations must be recognized and respected. However, it is not in consideration of individual benefit so much as of individual choice, for the individual IDP/returnee is entitled to options depending on her/his needs rather than being compelled to accept whatever is offered to the community.

Consequent to the tsunami disaster, the Government and the humanitarian agencies implemented a variety of 'projects' aimed at assisting the victims. Yet one of the main blunders was made in overlooking the priorities of individual needs and targeting an imagined collectivity with homogenous needs. Specialized needs and individual sensitivities were blatantly ignored.

¹⁰⁵ See *The Constitution of the Democratic Socialist Republic of Sri Lanka (1978, Preamble, pp. 1.*

¹⁰⁶ See <http://en.wikipedia.org/wiki/Individualism>

¹⁰⁷ Qtd. in <http://plato.stanford.edu/entries/methodological-individualism/>

¹⁰⁸ Ibid.

The projects were designed first and the identified ‘beneficiaries’ were then slotted into the projects, whereas it should have been the reverse. As a result, spacious houses (with no furniture or electricity) were given to people who were more in need of livelihood provisions and used the newly built toilets as store rooms. There is a great danger of replicating these blunders in the rehabilitation of returnees as well, if due consideration is not given to the needs of the individual or the individual family. As the CHA Fact Finding Mission too recommends, ‘relief and livelihood support should target essential families rather than providing general assistance’¹⁰⁹. Though at the onset this may seem as a formidable task, it would not be impossible, impractical or ‘unrealistic’ if an efficient, well-coordinated administrative mechanism is put in place.

The RBA has been well captured and articulated in the Guiding Principles on Internal Displacement. Yet the gaps and traps of ‘rights’ articulations and the difficulties in the application of the ideals of the RBA has allowed little scope for its progression from a conceptual notion into the daily reality of the people. Thus, a full understanding of the concept of human rights and a commitment to their implementation is essential if the conceptual ideals enshrined in human rights documents are to be practicalized and a Rights Based Approach to be meaningful.

6. New Mechanisms – The Future in Perspective

Designating a national focal point on internal displacement is essential in order to ensure sustained attention to the problem and also to facilitate coordination within the Government and with local and international partners¹¹⁰. There exist several different institutional options such as:

1. Adding the responsibility for the internally displaced into the mandate of existing Government agencies or Ministries
2. Establishing a body designated to focus exclusively on IDPs
3. Establishing a Government committee, working group or task force on IDPs that regularly brings together officials from the relevant Ministries and departments to jointly discuss IDP needs, facilitate coordination including with the international community, and develop strategies for ensuring an effective response¹¹¹.

During the history of displacement in Sri Lanka, the responsibility of addressing issues concerning the displaced has been apportioned to various Ministries including the Ministry of Resettlement and Disaster Relief Services (M/R&DRS), Ministry of Disaster Management and Human Rights (M/DM&HR), and Ministry of Nation Building & Estate Infrastructure Development (M/NB&EID). In addition, the National Human Rights Commission of Sri Lanka (NHRC) has been given a significant role to play in the protection and promotion of the human rights of the IDPs.

However, there are a confusing number of Ministries and authorities mandated to work on displacement. For instance, return/ resettlement falls under the subject of Nation Building for which there are six Ministries. Yet coordination among these bodies does not appear to be efficient or systematized, which often result in duplications in redress efforts and discrepancies in the distribution of resources.

¹⁰⁹ See *Porathivupaththu (Vellaveli) Resettlement Fact Finding Mission*, CHA, May 2007, pp. 5.

¹¹⁰ See *Addressing Internal Displacement: A Framework for National Responsibility*, April 2005, pp. 18.

¹¹¹ Ibid.

In spite of the prominence that has been given to IDPs in its three year strategic plan from 2003-2006, the NHRC too has not been able to fully engage on the rights issues of the IDPs, faced with the key obstacles of limited resources and human capacity as well as the lack of political authority. The NHRC is granted only a percentage of the funding it has requested from the Government and repeated pleas to increase funding and mobilize personnel to diverse regions have met with procedural and bureaucratic obstacles. Its mandate is also of limited scope and does not possess utmost binding powers.

The Resettlement Authority

The scale and magnitude of the issues surrounding internal displacement convey a rising urgency in the call for re-assessment of existing redress mechanisms and finding durable solutions for ending displacement, the national potential for which was heavily debated. Return, resettlement or reintegration of IDPs, under appropriate conditions, is a preliminary step towards reaching the arduous goal of ending displacement. Hence, the need was perceived to trial the option of the establishment of a focal point designated exclusively for the return, resettlement, reintegration and rehabilitation of IDPs. Thereupon, following the instructions of the Minister of Resettlement, a Task Force was appointed in February 2006 with a mandate to design an Authority for the speedy return/ resettlement/ reintegration of IDPs in Sri Lanka.

The Jathika Saviya Authority (commonly referred to as the Resettlement Authority), established under the Jathika Saviya Bill, Act of Parliament no.9 of 2007, was inaugurated on the 26th of April 2007, with the objectives of¹¹²:

1. Ensuring resettlement and rehabilitation or relocation in a safe and dignified manner of internally displaced persons and refugees; and
2. Facilitating the resettlement or relocation of the IDPs and refugees in order to rehabilitate and assist them through the facilitation of their entry into the development process.

The management of the affairs of the Authority is vested in a Board of Directors (BOD) consisting of¹¹³:

1. Two *ex-officio* members, namely:
 - a). The Secretary to the Treasury or his representative; and
 - b). The secretary to the Minister of the Minister in charge of the subject of Plan Implementation or his representative; and
2. Seven members appointed as Directors by the Minister of Resettlement from among persons possessing proven expertise in the areas of resettlement, relocation, rehabilitation, infrastructure development, finance and provincial administration.

In order to carry out its objectives, the Authority is expected to discharge a number of functions which include¹¹⁴ (Emphasis added):

1. **Formulating a national policy** and plan, implement, monitor and coordinate the resettlement of the IDPs and refugees

¹¹² See *Jathika Saviya Authority: A Bill*, November 2006, Part II: Objectives, Functions and Powers, pp. 4.

¹¹³ *Ibid*, Part I: Establishment of the Jathika Saviya Authority, pp. 1.

¹¹⁴ *Ibid*. 112, pp. 5-6.

2. **Convening all agencies**, including the Government, donors, international non-Governmental organizations and civil society agencies required for the task of resettlement, **in order to end displacement**
3. Receiving **representation on the needs of the displaced** and represent them to agencies
4. Mobilizing the displaced to initiate and implement **partnerships** for the recovery and **development** in accordance with **individual** or community needs
5. Providing **access to information on policies**, resources and progress on activities earmarked for their recovery and **facilitate dialogues** with concerned intervening agencies
6. Facilitating **restoration of basic human rights** including cultural rights to empower displaced persons
7. Forging better understanding between the internally displaced persons and host families
8. Assisting in the provision of infrastructural facilities, education and health facilities, promotion of livelihood activities and mobilization of local and foreign financial resources to implement planned programmes.

For the purpose of efficient discharge of its functions, the Authority may exercise the powers to¹¹⁵:

1. Acquire and hold, mortgage, sell or otherwise dispose of any movable or immovable property
2. Clear and redevelop the land acquired either from the State or from private individuals
3. Enter into and perform all such contracts, as it may consider necessary for the discharge of its functions
4. Accept gifts, grants or donations whether in cash or otherwise and to apply them in the discharge of its functions

(Emphasis added)

The functions and the powers are reflective of the unique potential of the Authority to represent the needs, interests and aspirations of the displaced while ensuring their partnership and active, informed participation in their recovery and rehabilitation. Its mandate also presents the Authority with the opportunity to make the actions of the intervening agencies, both Governmental and non Governmental, accountable to the displaced.

The Authority is not an operational agency. It neither requires significant staffing nor does it require centralized functions that once more debilitate existing powers at the centre and periphery. The design contemplates concepts such as time sharing of employees of specialized agencies and the possibility of the Authority meeting budgetary requirements by providing services¹¹⁶.

Another interesting facet is that the Authority seeks a life span of only six years, during which it is expected to accomplish its mission of restoring ‘normalcy’ and rebuilding the lives of the displaced through facilitating their return/ resettlement/ reintegration and entry into the national development process. Though ‘ending displacement’ is mentioned once, and implied to be the end goal, no provision has been made in the Jathika Saviya Bill for the prevention of re-displacement, or for the arrest of the causes of displacement, and seems to have been drafted on

¹¹⁵ Ibid, pp. 6.

¹¹⁶ See “The Resettlement Authority”, Apr-Jun 2007, pp. 9.

the premise that the cause of displacement has ended, or the end of displacement is the act of return/ resettlement itself. Yet the durability of resettlement, or the prevention of re-displacement, is dependant on the extreme conditions of political security. Thus, in order for the Authority to achieve its objective, a concerted effort needs to be made in parallel to find a solution to the armed conflict, and for its endeavours to be effective and meaningful, it is vital that they be supported by a pro-active peace process¹¹⁷. Hence, the six year period should be taken as an ultimatum, not only for the fulfillment of the Authority's responsibility in returning or resettling the displaced, but also for the national responsibility in ending displacement.

The Consultative Committee on Humanitarian Assistance (CCHA)

The Consultative Committee on Humanitarian Assistance (CCHA) is an attempt at the third option, where high-ranking officials of prominent Governmental and non Governmental agencies gather on a monthly basis to address issues of humanitarian assistance at the national policy level. Presently, the emphasis is upon addressing the daunting issue of displacement and return.

The CCHA was first formed in October 2006, following H.E. President's meeting with the Ambassadors of the Co-Chair countries, with a mandate to discuss and take policy decisions on issues concerning humanitarian assistance.

The CCHA is chaired by the Minister for Human Rights and Disaster Management, and is comprised of:

Secretary, Ministry of Defense; Secretary, Ministry of Disaster Management and Human Rights; Secretary, Ministry of Foreign Affairs; Secretary, Ministry of Nation Building & Estate Infrastructure Development; Secretary, Ministry of Resettlement & Disaster Relief Services; Commissioner General of Essential Services (CGES); Representative of Secretariat for Coordinating the Peace Process (SCOPP); Chairman of the Co-chairs; US Ambassador; Resident Coordinator of the UN; Heads of Agencies of UNHCR, ICRC, OCHA, ECHO & the Consortium of Humanitarian Agencies (CHA).

In order to facilitate the work of the CCHA, five sub-committees have been formed under the apex body of the CCHA. These sub-committees, which are co-chaired by a representative of the Government and a UN agency, address the following areas:

1. Logistics and Essential Services (co-chairs: Ministry of Nation Building and Estate Infrastructure Development, CGES and WFP)
2. IDPs: Resettlement and Welfare (co-chairs: Ministry of Resettlement and Disaster Relief Services, Ministry of Nation Building and Estate Infrastructure Development, and UNHCR)
3. Livelihoods (co-chairs: Ministry of Fisheries and Aquatic Resources and ILO)
4. Education (co-chairs: Ministry of Education and UNICEF)
5. Health (co-chairs: Ministry of Health and WHO)

The sub-committees meet once a month (at least a week prior to the CCHA) to discuss and resolve all operational issues that fall within their respective area and submit a monthly report to the CCHA, indicating policy areas that the CCHA needs to address as well as any issues that

¹¹⁷ This takes into consideration that mass-scale, long-term and recurrent displacement in Sri Lanka is most often conflict related.

cannot be implemented by the respective sub-committee. Moreover, the sub-committees allow for broader consultation with specialist agencies.

Two significant decisions that were made at the 10th Meeting of the CCHA are¹¹⁸:

1. Request to the UN to provide consultants to work with relevant line ministries in drawing up an overall plan of action on post-resettlement needs which can then be a guiding factor to utilize donor assistance in a coordinated and systematic manner.
2. Letter to be written to the Advisor to HE the President to provide the CCHA with an overall plan on resettlement in order to get UN/ donor buy-in.

The CCHA has also been instrumental in gaining access and providing humanitarian assistance to IDPs in the North and the East of Sri Lanka.

The Internal CCHA is a mechanism that was developed recently as an affixture to the CCHA, with the objective of facilitating the information flow between the grassroots or the districts and the higher authorities or the CCHA. The Advocacy Team of the CHA acts as its focal point, where issues identified at the grassroots are framed and referred to the CCHA on the one hand, and conversely, decisions made by the CCHA are conveyed to the grassroots through the CHA district network. This can be inferred not only as an attempt at better coordination of information but also at a 'bottoms-up' decision making process, as it involves the consultation of affected communities at the grassroots level.

Thus, this mechanism involves consultation at all levels, from tracks one to track three, and takes a more holistic approach towards humanitarian intervention.

Being a high profile committee involving both national and international presence and all key stakeholders, the CCHA claims substantive decision-making powers. Therefore, it is a platform where many of the constraints in addressing displacement issues can be managed, and coordination and mobilization of funds and resources can take place, enabling timely, congruent and consistent resource allocation.

Given the powerful mandates of both the Resettlement Authority and the CCHA, they have great potential in enabling the effectual and efficient redress of issues concerning the internally displaced persons.

However, the channels of information and the process of decision implementation are often impeded by barricades of bureaucratic procedure, lethargies and delays, lack of coordination, political manipulations and overarching corruption, resulting in the gulf between policy decisions and their actualization. To illustrate, at the 10th meeting of the CCHA, it was decided 'with the concurrence of Secretary/ Defense that agencies providing humanitarian, livelihood and infrastructure development assistance will be given access to the Eastern Province, namely Trincomalee, Batticaloa and Ampara districts'¹¹⁹. However, though agencies have clearance from Colombo to visit these areas, access is denied at the security checkpoints, and many of the agencies are yet to gain continuous and unimpeded access to the returned communities.

¹¹⁸ Decisions taken at the 10th meeting of the CCHA, June 2007.

¹¹⁹ Ibid.

Furthermore, lack of proper communication and coordination with the affected communities has rendered the decisions detached from the ground realities and requirements, and therefore at times unrealistic and unfeasible. For though consultation of the internally displaced (including the returnees) is an acknowledged imperative in principle, and an assured incorporation in the development of redress mechanisms and strategies to address their issues, it is questionable as to what extent such ideals are realized in practice. Hence, it is important that both the Authority and the CCHA, to ensure maximum correspondence between the needs of the IDPs/ returnees and their fulfillment, timely assistance and constant protection as well as to ensure transparency and accountability, put monitoring and feedback mechanisms in place. Engaging representatives of the affected populations who have better insight into the realities and challenges at the grassroots, therefore, would be vital.

It would also be more effective if there is better coordination between the Authority and the CCHA, and the composition of such mechanism to take into consideration the inclusion of representatives of the security hierarchies, as regardless of decisions made by civil authorities, their practical implementation is regulated to a considerable extent by the security establishment, in a political-security context which necessitates considerable military intervention in the civil administration.

Nevertheless, the Resettlement Authority and the CCHA, if steered in the right direction, are effective tools that would prove to be of great value in finding durable solutions to ending displacement, as well as for the effective practicalization and localization of universal humanitarian standards on internal displacement and the meaningful application of the values and principles of Liberal Democracy and the Rights Based Approach.

7. Conclusion

No system of governance, democratic or otherwise, can be perfect, and flaws and irregularities are to be expected. Yet the violation of a large number of the Guiding Principles on Internal Displacement by the Government of Sri Lanka, implying the violation of the corresponding international human rights and humanitarian laws upon which the Principles are based by analogy and to which the Sri Lankan Government is also signatory, is a clear indication of the Government's inexcusable failure in fulfilling its responsibilities towards its people, in protecting and assisting them especially during a humanitarian crisis for which the Government itself is responsible. It is indisputable that the primary responsibility in assisting and protecting the internally displaced persons rests with the Government. Thus, it is the Government's responsibility to dialogue with the People with sincerity and allow them better recognition than that of 'shadow participants' in a consultative process which is intended to find meaningful and durable solutions to end the plight of the displaced.

The 'right to return' encompasses a complex array of rights, issues and socio-political dynamics, i.e. conduciveness of return sites, options presented to the returnees, the psycho-social impacts of displacement, the gendering of conflict and post-conflict situations, the particular concerns of women and vulnerable groups, the significance of the individual experience, empowerment of the IDPs and their participation in decision-making processes, the functions and directives of redress mechanisms, third party politics in humanitarian intervention, the interplay among the stakeholders, i.e. right holders, duty bearers and the facilitators, and numerous other

factors, as have been discussed in the preceding sections. Therefore, physical return itself is inadequate in ensuring that the right has been protected.

Most importantly, return/ resettlement cannot be fully justified until a durable solution to the cause of displacement is found and therefore, return to one's home in a conflict situation, without a simultaneous attempt at securing lasting peace, would have little coherence. *The right to return, in effect, is the right to peace.*

It is also important that the human being is not forgotten in the methods and procedures of humanitarian intervention and that an attempt is made to subjectify the 'IDPs' through an improved Rights Based Approach which gives due recognition to their needs, entitlements, capabilities and dignity. However, unless rights are practicalized and localized, and applied in ground situations that call for their protection, the notion of 'rights' would remain a mere abstract, the sole utility of which would be the provision of intellectual stimulation for academic debates, a provoking argument for arm chair critiques or compelling material for election campaigns.

However, this paper is not an effort to make recommendations on perfecting the system or to present ideals to approximate. It is rather an effort to remind ourselves of *our* responsibility to urge our representatives, the 'democratically elected' Government, of their responsibilities and obligations towards the People. However, 'national responsibility' does not connote the Government's responsibility alone but that of the entire Nation, to which each of us claims a bond. It is an acknowledgement of our obligations, moral and personal as well as social, as ordinary but concerned citizens of a *united* (rather than a *unitary*) Nation. Internal displacement and IDPs, though a national problem of vast magnitude, is a subject that has not yet penetrated the public consciousness, and people remain either ignorant of or indifferent to the daily plight of the displaced. As prolonged conflict has immunized the public to violence, similarly, political apathy has become rooted in the people as a result of repeated betrayals by political hierarchies over generations. Yet we need to engage ourselves in public matters with greater earnestness and vigour, at all levels but most crucially at the individual level, for as the agent of social action the individual exerts considerable power over social dynamics. Hence, the sensitization of the individual is critical, as is the awakening of her/his socio-political consciousness, for therein lies the potential for a 'social revolution'.

References

- Addressing Internal Displacement: A Framework for National Responsibility.* The Brookings Institution – University of Bern, April 2005.
- Assessment of Returnee Families to Vaharai DS Division.* June 2007. United Nations Office for Project Services (UNOPS), United Nations International Children's Emergency Fund (UNICEF), Office for Coordination of Humanitarian Affairs (OCHA). PowerPoint Presentation at the IDP Protection Working Group Meeting, UNHCR. 14 June. 2007.
- Awad, Amin. "Draft Return Plan of IDPs to West Batticaloa." E-mail to abeynaike@un.org. 11 May. 2007.
- Bandara, Kelum, and Yohan Perera. "Resettlement Authority Bill Gets Green Light." *Daily Mirror*. 21 February. 2007.
- Batticaloa Field Mission.* 17-18 May. 2007. Centre for Policy Alternatives (CPA), INFORM Human Rights Documentation Centre, International Movement Against Discrimination and Racism (IMADR) and Law and Society Trust (LST). Sri Lanka. 4 June. 2007.

Chinkin, Christine. "Post-Conflict Reconstruction and Rehabilitation." *Peace Work: Women, Armed Conflict and Negotiation*. Ed. Radhika Coomaraswami, and Dilrukshi Fernando. International Centre for Ethnic Studies, 2004. pp. 208-236

"Decisions." *10th Meeting of the Consultative Committee on Humanitarian Assistance*. Ministry of Defense, Public Security, Law and Order. 7 June. 2007.

"Democracy." *Wikipedia, the Free Encyclopedia*. 24 July. 2007. Wikimedia Foundation, Inc. 25 July. 2007<<http://en.wikipedia.org/wiki/Democracy>>

Fact Finding Visit to Batticaloa. 10-11 April. 2007. Centre for Policy Alternatives (CPA), INFORM Human Rights Documentation Centre, Law and Society Trust (LST) and Women and Media Collective. Sri Lanka.

Fact Finding Mission to Vaharai. 21 May. 2007. Consortium of Humanitarian Agencies (CHA). Sri Lanka.

"Global Statistics." *Internal Displacement Monitoring Centre*. Norwegian Refugee Council. 21 June. 2007<<http://www.internal-displacement.org/8025708F004CE90B/>>

Guiding Principles for Humanitarian and Development Assistance in Sri Lanka

Highlights: Emergency Assessment, Vaharai DS Division and Vaharai North DS Division. 10-11 May. 2007. United Nations Office for Project Services (UNOPS), United Nations International Children's Emergency Fund (UNICEF), Office for Coordination of Humanitarian Affairs (OCHA) and (DevInfor).

"Human Catastrophe in the East." *Daily Mirror*. 31 March. 2007.

"Individualism." *Wikipedia, the Free Encyclopedia*. 12 August. 2007. Wikimedia Foundation, Inc. 15 August. 2007<<http://en.wikipedia.org/wiki/Individualism>>

Inter-Agency Standing Committee (IASC) Country Team, Colombo, Sri Lanka. *Situation Report # 79*, 14-21 June 2007.

IASC Batticaloa Situation Report, 23 March 2007

Jayasinghe, Uditha. "IDPs Moved Against Their Will?" *Daily Mirror*. 20 March. 2007.

"UNHCR Presence Not Felt in Batticaloa Campa". *Daily Mirror*. 21 May. 2007.

Kälin, Walter. *Guiding Principles on Internal Displacement, Annotations*. Washington D.C., 2000.

Kamalendran, Chris. "So Near Yet So Far." *Sunday Times*. 17 June. 2007.

Koser, Khalid. "Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace Building." 2007 (unpublished)

Meeting of the CCHA Sub Committee on Resettlement and Welfare. 5 June. 2007.

"Methodological Individualism." *Stanford Encyclopedia of Philosophy*. 3 February. 2005. 2 August. 2007<<http://plato.stanford.edu/entries/methodological-individualism/>>

Minister of Resettlement. *Jathika Saviya Authority: A Bill*. The Gazette of the Democratic Socialist Republic of Sri Lanka, Supplement Part II of 17 November. 2006. 20 November. 2006.

Perera, Amantha. "Second Mass Resettlement Scheme Underway in the East". *The Sunday Leader*. 20 May. 2007.

Perera, Shakuntala. "Internal Displacement in Sri Lanka". *Daily Mirror*. 16 November. 2006.

Personal Interview with Government Official. Resettlement Authority. 12 June. 2007.

Pinto-Jayawardena, Kishali. "Subverted Justice and the Breakdown of the Rule of Law in Sri Lanka." *article 2* Vol.6. No.2 (2007): pp. 9-31.

Porathivupaththu (Vellaveli) Resettlement Fact Finding Mission. 22 May. 2007. Consortium of Humanitarian Agencies (CHA). Sri Lanka.

Ratnam, Easwaran. "UNHCR Pulls Out of Resettlement Process in East." *Daily Mirror*. 22 March. 2007.

"Humanitarian Agencies Allege IDPs Forced to Return". *Daily Mirror*. 24 March. 2007.

"Representative Democracy." *Wikipedia, the Free Encyclopedia*. 13 August. 2007. Wikimedia Foundation, Inc. 15th August. 2007<http://en.wikipedia.org/wiki/Representative_democracy>

Shipka, Thomas A. *Philosophy: Paradox and Discovery*. McGraw-Hill Humanities/Social Sciences/Language; 5 edition, 2004. pp. 468-475.

"Sri Lanka." *Internal Displacement Monitoring Centre*. Norwegian Refugee Council. 21 June. 2007<<http://www.internal-displacement.org/idmc/website/countries.nsf/>>

“Sri Lanka: 30,000 Displaced Return Home in East”, www.reliefweb.int 30 May 2007

The Constitution of the Democratic Socialist Republic of Sri Lanka (1978). Government Publications Bureau, 1991.

“The Resettlement Authority”. *IDP Newsletter*. Vol.2. Issue.2 (2007): pp. 8-9.

Trincomalee Fact Finding Mission. 23-27 April 2007. Centre for Policy Alternatives (CPA) and International Movement Against Discrimination and Racism (IMADR). Sri Lanka.

UNHCR. “Sri Lanka: Return Starts of Displaced People in West Batticaloa”. *Reuters AlertNet*. 15 May. 2007. 15 May. 2007.

Voices of the Internally Displaced in South Asia. A report by Calcutta Research Group, Kolkata, 2006.

When Displacement Ends: A Framework for Durable Solutions. The Brookings Institution – University of Bern, May 2005.

Wijeratne, Sarasi. “Vaharai Limping Back to Normalcy”. *The Sunday Leader*. 3 June. 2007.

Women, Peace and Security. United Nations: UN Publication, 2002.

Zakaria, Fareed. “The Rise of Illiberal Democracy.” *Globalization and the Challenges of a New Century*. Ed. Patrick O’Meara, Howard D. Meklinger and Mathew Kraia. Bloomington: Indiana University Press, 2000. pp.181-195.