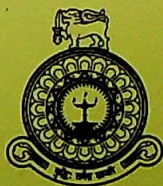


The Normative Framework on Internal Displacement: A Literature Review

Gehan Gunatilleke



**Centre for the Study of Human Rights
University of Colombo
2010**

THE NORMATIVE FRAMEWORK ON INTERNAL DISPLACEMENT: A LITERATURE REVIEW

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Foreword

Due to the urgent need to identify the situation of Internally Displaced Persons (IDPs) in Sri Lanka, the Centre for the Study of Human Rights, University of Colombo, was commissioned by UNDP to carry out Consultations with IDPs. Initially, therefore, existing legal and other documents that were available in relation to IDPs were reviewed; to gain an understanding of what was available at the time for IDPs and the gaps in terms of the provision of services. The purpose of conducting this review was to provide assistance in the preparation of a national policy for IDPs in Sri Lanka.

This publication provides an overview of the basic requirements of UN Guidelines and Principles specifically in relation to IDPs; examples of situations of IDPs in the global context and the Sri Lankan context; together with lessons learnt from the experience of the tsunami; and the manner in which these principles and guidelines could apply to the IDP situation in Sri Lanka.

The CSHR would like to thank Mr Gehan Gunatilleke, who completed this review within a limited time frame and the Peace and Recovery Unit of UNDP for the support provided in enabling the publication of this document.

- CSHR -

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1. Definition and Profiling

Definition According to the Guiding Principles on Internal Displacement¹

Internally Displaced Persons (IDPs) are “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 internationally recognized State border.”

IDP Profiling²

Review: Danish Refugee Council Internal Displacement Profiling Toolbox, 2008

According to the Danish Refugee Council Internal Displacement Profiling Toolbox, an IDP profile is an overview of an IDP population that shows, at a minimum:

Core Data

- Number of displaced persons, disaggregated by age and sex (even if only estimates)
- Location/s

Wherever possible, additional information could include, but not be limited to:

- Cause(s) of displacement
- Patterns of displacement
- Protection concerns
- Humanitarian needs
- Potential solutions for the group/ individual, if available

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The toolbox comprehensively discusses the question of ‘what is IDP profiling’ and analyses some of the most commonly accepted IDP profiling methodologies. The toolbox is an important resource tool for data management and security, since it provides extensive guidance on data collection, data processing, data analysis and reporting, data dissemination and consent and confidentiality.

Three important country studies have also been carried out and provide useful examples on how the toolbox may be best put into use:

- Somalia – a broad one-off socio-economic profiling in five selected IDP settlements in 2006-07
- Sudan, West Darfur – general profiling in a larger area of responsibility focusing on mapping/GPS readings and core data collection at the village and community level
- Russia, North Caucasus – emergency registration and confirmation process on behalf of the aid community, as basis for aid distribution

2. International Standards

One of the most important aspects of the mandate of the Representative of the Secretary-General has been the development of international standards for IDPs.

Guiding Principles on Internal Displacement³

The 30 principles in this document set out the rights and guarantees relevant to the protection of IDPs in all phases of displacement i.e. providing protection against arbitrary displacement; protection and assistance during displacement; and during return or internal resettlement and reintegration.

The UN Commission and the General Assembly by unanimously adopted resolutions, have taken note of the Principles, welcomed their use, and encouraged UN agencies, regional organisations, and NGOs to disseminate and apply them. Individual governments have begun to incorporate them in national policies and laws, international organisations and regional bodies have welcomed and endorsed them, and some national courts have begun to refer to them as relevant restatements of existing international law.

Summary of Contents

- The principles provide guidance to all relevant actors: the Representative in carrying out his mandate; states when faced with the phenomenon of internal displacement; all other authorities (including de facto authorities), groups and persons in their relations with IDPs; and inter-governmental and non-governmental organisations.

- The principles establish that IDPs must not be discriminated against simply because of their displacement, or because of their race, sex, language, religion, social origin or other similar factors.
- The principles restate the right not to be arbitrarily displaced and prohibit displacement on ethnic, religious or racial grounds.
- The principles reaffirm that “national authorities” have the obligation to ensure that IDPs basic rights to food, water, shelter, dignity and safety are met. They should accept the assistance of the international community where they do not have the capacity to provide assistance and protection to IDPs.
- In the return phase, the principles emphasize the importance of voluntary and safe return, as well as the need to assist the displaced to recover their property and possessions.

Review: Walter Kälin, *The Guiding Principles on Internal Displacement, Annotations*⁴

The second edition of the Annotations follows very closely the structure and content of the first edition but reflects the significant legal developments that have taken place since the publication of the Annotations in 2000.

These developments include the following:

- The seminal 2005 study prepared under the auspices of the ICRC on customary international humanitarian law, containing rich material on displacement related issues; and

- A series of new human rights instruments with some significance for the displaced including –
 - The 2007 UN Declaration on the Rights of Indigenous Peoples⁵
 - The 2001 Draft articles of the International Law Commission on State Responsibility,⁶ which clarifies when disregard for human rights by non-state actors may amount to breaches of international law entailing state responsibility
 - The “Pinheiro” Principles on Housing and Property Restitution for Refugees and Displaced Persons⁷; and
 - The Basic Principles and Guidelines on Development-Based Evictions and Displacement, submitted to the UN Human Rights Council in 2006 by the Special Rapporteur on the Right to Adequate Housing⁸

This resource comprehensively deals with Principles Relating to Protection from Displacement; Principles Relating to Protection during Displacement; Principles Relating to Humanitarian Assistance; and Principles Relating to Return, Resettlement and Reintegration.

Review: Walter Kälin, How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework⁹

This resource deals with how the Guiding Principles can support the response strategies of the internally displaced. Five principal methods are discussed:

- First, the Guiding Principles provide a framework for understanding the problem

In many countries, IDPs do not realise that they have certain rights or that local authorities have obligations toward them. They are not aware of internal displacement as a phenomenon or realise that there are people in other countries suffering from the same problem or that there are international approaches being developed to address the problem.

In Indonesia, for example, it was found that IDPs were very interested in learning about a document that explained their plight; it was also found that they were interested in learning that internal displacement was not limited to Indonesia, but was a worldwide problem for which solutions were being sought, and that there might even be an emerging international responsibility toward IDPs.

- Second, the Guiding Principles are an empowerment tool. When displaced people learn that certain standards do exist, it gives them ideas for empowering themselves.

In Colombia, despite the security threats that IDP women faced and the material deprivation they suffered, they were heartened to learn that a document existed with articles specific to their particular needs. In particular, Principle 20 on the right to documentation and on the right of women to have documents in their own name resonated with these women.

- Third, the Guiding Principles are a monitoring tool. This is evident in Colombia, Sri Lanka, Georgia and Macedonia, where the Principles have been translated into the local languages, and outreach programmes are underway.

- Fourth, the Guiding Principles can serve as an advocacy tool. Of course, this works best when IDPs are already in conditions of relative safety and can pursue advocacy vis-à-vis their local and national authorities.
- Fifth, the Guiding Principles define “protection” for the internally displaced and provide a framework for developing protection strategies.

Review: Handbook for Applying the Guiding Principles¹⁰

While there is no international consensus on who should undertake protection activities, *The Handbook for Applying the Guiding Principles*, published by the United Nations and the Brookings Institution, sets out the kinds of steps that can be taken to enhance protection for the internally displaced. It contains a section on “What You Can Do,” which offers a framework for a protection strategy.

The Handbook, for example, suggests that channels of communication should be opened between displaced communities and national or local authorities, and it shows how international organisations and NGOs can assist in achieving this. It also recommends that members of displaced communities should visit proposed relocation sites to evaluate their safety.

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3. Rights Framework¹¹

Basic Needs

Housing	<p>Access to housing and land is a concern lasting from the beginning to the end of the displacement cycle. Once displaced people are forced out of their place of origin, they can face difficulties in finding adequate shelter and land to ensure minimum food security and self-reliance. If they are not provided with alternative solutions, IDPs tend to encroach on the land of populations living in the areas to which they have fled, which can then create further tensions. E.g. Kenya</p> <p>In many post-conflict situations, institutions have been established to process property claims and resolve disputes. In 2006, new restitution or compensation mechanisms were created in Iraq, Georgia, Lebanon and Northern Cyprus. However, obstacles to these mechanisms include the authorities' lack of will, the weak role of the international community and the fragility of the rule of law and state authority inherent in post-conflict situations.</p> <p>In the context of a poorly functioning formal state system for land transfers and purchase, and with the breakdown of the customary system as the result of displacement, land titling initiatives can thus have a negative effect, particularly on vulnerable individuals, such as displaced people, women (particularly widows) and children. Members of these groups are usually considered to have tenancy rights only, and not ownership rights. Land titling</p>
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	<p>usually benefits those in power and men. Given inequitable laws and practices denying wives joint ownership of family land, women often lose out in this process. Furthermore, in cases where land titling contributed to violations of rights and was one of the causes of displacement, a return to the <i>status quo ante</i> will not necessarily lead to a fair outcome. Restitution in such situations should be replaced by some form of land redistribution.</p> <p>Furthermore, the Pinheiro Principles recognise the right to housing and property restitution and the right to return. Principle 2 states that all displaced persons “have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal”.</p>
Health	<p>The existing, and limited, IDP-specific health data suggests that in more than half the countries affected by internal displacement, including practically all African and most Asian countries, IDPs have no access to adequate health care. The main reasons are the breakdown of health services in war-affected areas, the lack of national financial resources, and the remote location of the IDP settlements.</p> <p>Most diseases IDPs are exposed to can be prevented. They include diarrhoea, acute respiratory infections, tuberculosis, malaria, cholera, measles and meningitis. Polio, which broke out in the Horn of Africa in 2006, is another possible threat. The little information that is publicly available on the health</p>

	<p>status of IDPs is mostly based on anecdotal evidence, as not many health surveys specifically focus on IDPs.</p>
Nutrition	<p>Nutrition and health constitute the core subsistence rights of IDPs, along with shelter and clothing (Guiding Principle 18.2). But conflict, ethnic discrimination, landmines or operational difficulties in reaching remote populations heavily undermine that right.</p> <p>For most countries, very little information is available on the nutritional status of IDPs, either because there are no surveys or because the displaced were not addressed separately from the general sample population.</p> <p>Countries with IDP-specific nutritional information include Burma, Colombia, the CAR, Chad, Ethiopia, Liberia, Somalia, Sudan, Uganda, Timor Leste and, to a lesser degree, Angola and Nepal.</p> <p>All surveys indicate extremely high malnutrition rates among IDPs, with some above the critical 15 percent emergency threshold set by the World Health Organisation.</p> <p>Improved access to arable land and tools during displacement would greatly enhance IDPs' access to food and reduce their dependence on humanitarian aid. While efforts are made in Uganda and northern Somalia to provide IDPs with land, in many countries, fertile land cannot be accessed due to conflict-related insecurity.</p>

	E.g. Colombia, Côte d'Ivoire, Burma, Eritrea, India and Bangladesh
Water and sanitation	In many countries, IDPs' access to clean water and sanitation is inferior to that of the general population. These countries include Angola, Burma, the CAR, Colombia, Ethiopia, Iraq, Liberia, Mexico, Nepal, Peru, the Philippines, Somalia, Sudan and Uganda. A study carried out by Oxfam on the health of conflict-displaced populations in south Ethiopia found that many of them survived on two to three litres of water per day.

Vulnerable Groups

Women ¹²	<p>Despite progress in the development of law and policy on addressing sexual and gender-based violence in armed conflict, individual cases as well as patterns of abuse against displaced women and girls continue to be reported. As pointed out in a report on Uganda by a consortium of NGOs, gender-based violence is often neglected in humanitarian programming, in spite of being one of the most serious protection issues facing IDPs.</p> <p>Sexual violence against displaced women and girls remains an under-reported aspect of conflict. In many countries, displaced women and girls do not report incidents of abuse and violence to medical and humanitarian organisations.</p> <p>Nevertheless, cases of sexual and gender-based violence were reported among IDP communities in a number of countries, particularly in the DRC, Sudan, Colombia, Nepal, the Philippines, Iraq,</p>
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	<p>Chad, Uganda, CAR, Somalia, Burma, India, Liberia, Kenya, Côte d'Ivoire and the Russian Federation.</p> <p>In 2006, following a comprehensive review of the extent to which humanitarian interventions address the needs of women, girls and boys, the Inter-Agency Standing Committee, the primary mechanism for inter-agency coordination of humanitarian assistance, identified key gaps. Based on these, it proposed five areas for action:</p> <ul style="list-style-type: none"> • Developing gender equality standards; • Ensuring gender expertise in emergencies; • Building capacity of humanitarian actors on gender issues; • Using sex and age disaggregated data for decision-making; and • Building partnerships for increased and more predictable gender equality programming in crises.
Children ¹³	<p>The report, <i>State of Neglect: Displaced Children in the Central African Republic</i> identifies certain key issues applicable to IDPs in the Central African Republic. Some common issues concerning displaced children as applicable to other countries facing similar crises may be listed as follows:</p> <ul style="list-style-type: none"> • Internally displaced children face severe protection problems from ongoing insecurity and violence. They have suffered trauma after witnessing extreme levels of violence such as the killing of family members. During displacement, many children, particularly girls, face sexual

harassment and abuse. Many others are at risk of being recruited into armed forces or groups.

- The nutrition, water and sanitation, health, and shelter needs of displaced children remain largely unmet. Many are in urgent need of adequate shelter, having been forced to sleep outdoors during the rainy season, exposed to higher risks of contracting malaria or respiratory infections.
- Displaced children face economic exploitation as they are forced to work in fields belonging to host communities in exchange for food or meager pay.
- Finally, displaced children from minority groups face ethnic discrimination.

The source document also includes a list of important recommendations to the various following stakeholders. Most of these may be considered as benchmark recommendations applicable to countries such as Sri Lanka, where displacement of children is attributable to a number of reasons.

4. National Policy Formulation

Country studies are valuable to national policy formulation for two main reasons:

- They provide insights that may be useful for deepening the understanding of the generic problems of internal displacement; and
- They provide guidance on specific situations and on what needs to be done by the Governments concerned and the international community to address the problems involved.¹⁴

Review: Protecting IDPs: A Manual for Law and Policy Makers¹⁵

This manual is addressed to national policymakers, competent ministries, legislators, and civil society groups concerned with internal displacement in the hope that it will be of direct and concrete assistance in crafting laws and policies that will prevent internal displacement wherever possible and mitigate its effects on the lives of IDPs worldwide.

This manual is meant to provide guidance to national authorities seeking to prepare and enact domestic legislation and policies addressing internal displacement in their country. By presenting advice on how to shape laws and policies addressing the protection and assistance needs of IDPs and ensuring their rights, the manual draws on two key sources:

1. The rules of international human rights law and international humanitarian law, as reflected in the UN Guiding Principles on Internal Displacement; and
2. An increasing body of IDP-specific laws and policies already enacted and implemented by national authorities in countries of every region in the world.

As the Guiding Principles state, it is not the international community but national authorities that “have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction”.¹⁶ The manual aspires to recognise the efforts made by national authorities in many countries to assist and protect IDPs, to highlight laws and policies that have been most compatible with international norms of law, and to encourage and assist those in positions of responsibility in other countries affected by internal displacement to undertake the difficult but crucial task of drawing up protective laws and policies of their own.

In many cases, the fact of displacement works against IDPs, creating both physical and administrative obstacles to the realisation of their rights, which do not apply to non-displaced citizens. For instance, non-displaced persons are not generally in need of shelter nor do they have to leave their property behind, risking that it will be taken over by somebody else. Likewise, achievement of the right to political participation is beyond the reach of IDPs in situations where they can only exercise their right to vote at a ‘place of origin’ they cannot safely return to. This manual discusses some of the technical and legal complexities of addressing such displacement-specific protection needs.

Recent Developments in Domestic Laws of Other Countries¹⁷

India, Nepal and Sri Lanka have attempted to develop national IDP mechanisms. However, these policies are not always sensitive to the needs of all the disadvantaged sections of the population and often selectively benefit favoured groups of IDPs.

India

Discussion of a draft IDP policy continued for two decades and it was only in 2004 that a National Rehabilitation Policy for Project Affected Families (NPRR) was passed with minimal debate. NPRR

only applies to those displaced due to development projects and is primarily meant to safeguard the interests of resource-poor, landless agricultural labourers, forest dwellers, artisans and adivasi groups. It is believed that the NPRR should safeguard adivasis from arbitrary displacement through a consultative process; however, the policy has no provisions to consult these groups.

Angola: the government incorporated the Guiding Principles into its law on resettlement in order to guide IDP returns after the civil war (2000).

Colombia: the Constitutional Court cited the Guiding Principles as a basis for judgments in support of IDPs (2000-2001).

Peru: Congress adopted a law in 2004 based on the Guiding Principles, establishing material benefits for IDPs.

US: USAID, the US foreign aid agency, issued a policy document to guide its assistance to IDPs, referring to the Guiding Principles as a “framework for response” (2004).

Other governments: Burundi, the Philippines and Uganda have developed national policies based on the principles.

Sri Lanka

Several ministries and institutions have responsibilities in respect of displacement related issues:

- **Ministry of Disaster Management and Human Rights**
– coordinates among State-actors, including ministries and the military and also between national and international actors

- **Ministry of Resettlement and Disaster Relief Services** – has primary responsibility for camps and welfare centres and the provision of essential services including assistance to the long-term displaced
- **Ministry of Nation Building** – has responsibility for registration of IDPs which is implemented through the GAs and distributes food provided by WFP to the newly displaced.
- **Resettlement Authority** – is charged with formulating and implementing a resettlement policy and coordinating “the efforts of the Government, donors, international non-governmental organisations, civil society agencies and others [...] in order to end displacement of persons”. Its authorising legislation grants power in the areas of documentation, property disputes, housing, education and health infrastructure, recovery, development and livelihoods. However, it neither indicates substantive standards nor assigns accountability for implementation in relation to other governmental actors.

Note: In the Sri Lankan context, there is no clear designation of roles amongst the various institutions involved. There is no authority that bears overall responsibility, monitoring and accountability in dealing with internally displaced persons and coordinating responses.

The National Framework for Relief, Rehabilitation and Reconciliation recommends policies relating to the rights of IDPs. It also adopts the Guiding Principles. However, these principles are not transformed into concrete legislation at the national level. It is also not legally binding, does not address all phases of displacement and lacks specific goals and policies applicable in that national context.

Housing

The Tsunami Housing Policy and Tsunami Special Provisions Act contain strong elements of restitution. However, as noted by COHRE,¹⁸ it fails short of providing a restitution process fully compliant with international standards, as the entitlements contained in the policy are not justiciable. The restitution element of the policy was put into practice by providing families either with financial compensation (cash grants to rebuild a house) or with a house built by a donor (compensation in kind).

Note: However, there is currently no comprehensive restitution policy for the whole country that can address the rights of the displaced persons to return home and to have their housing, land and property restored to them.

Vulnerable Groups

The National Child Protection Authority has the responsibility to address the humanitarian concerns of children affected by armed conflict and also to maintain a register containing all available information relating to every child who is left as an orphan. The Tsunami Special Provisions Act also dealt with custody of children and young persons.

Confusion arises in relation to education and admission of displaced children to schools. The National Policy on Admission to Schools (Circular No. 2006/20) requires that displaced students who do not possess a birth certificate or leaving certificate should produce a letter obtained from the Gramaseva Niladhari and a refugee camp certificate, both of which certify that the student had been affected by terrorist activities or natural disasters. The Policy also specifies that an affidavit to confirm the date of birth should be produced if the child is unable to submit a birth certificate. However, section 2.1 of the National Policy states that

a school will accept an affidavit confirming the date of birth of a student (where a birth certificate cannot be produced) only if the number of applications is less than the vacancies in a particular school.

Social Impact

It is natural for tensions to develop when host communities are under significant economic strain themselves, or when assistance to IDPs appears to favour IDPs over non-displaced communities that are similarly situated. E.g. Puttalam is economically disadvantaged with comparatively high levels of unemployment.

In terms of targeted measures to eliminate tensions between host communities and IDPs, Confidence Building and Stabilization Measures (CBSM) have been introduced to build trust. E.g. Peace Committees and IDP advisory groups; and peaceful coexistence measures including student exchanges.

Review: Andres Angel, National Legal Framework for IDPs in Sri Lanka: A Critical Analysis¹⁹

This study discusses the legal entitlements of IDPs in Sri Lanka where the ethnic conflict between the Sinhalese majority and Tamil minority has led to one of the worst crises of internal displacement in South Asia. In the absence of legislation that spells out the rights of the displaced, and a national legal framework that specifically and holistically refers to internal displacement, IDPs can be deprived of the basic necessities of life, which in turn leads to their marginalisation from society.

This study places special attention on evaluating constitutional provisions that affect IDPs, on legislation pertaining to displacement, and the National Legal Framework for Relief, Rehabilitation, and Reconciliation (NFRRR). Sri Lanka is used

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as a case study to operationalise a general theoretical discussion of IDP legal frameworks in a concrete national context. Therefore, critical attention is given to an alternative solution in a binding national legal framework for Sri Lanka's IDPs. Accordingly, the analysis suggests that adopting a national legal framework through an Act of Parliament will lessen the viability of vicious cycles of crime and poverty developing nationwide, thereby contributing to integral development in Sri Lanka.

The study makes the following recommendations in respect of a legal framework:

- The legal framework for IDPs should be based on the universally recognised principles of international law and the Guiding Principles on Internal Displacement.
- It should establish the goal of preventing displacement by anticipating the risks that may generate displacement, disseminating information on human rights, and creating necessary programs of attention for populations at risk of being displaced.
- It should define, determine, and clearly stipulate the state's responsibility towards internal displacement, ensuring that the rights of IDPs be enacted and protected under the law.
- It should establish the right to humanitarian attention with guarantees that would ensure protection and assistance in terms of health, shelter, food and transportation needs; provide certain legal guarantees to IDPs to access humanitarian aid, projects, and programmes; and offer the necessary mechanisms that allow IDPs to develop the mediums necessary for their sustainable subsistence.

- It should establish objectives, parameters and basic schemes for a national policy for the fundamental protection of IDPs; and guarantee that the national policy:
 - Includes projects and programmes for development of IDPs at all phases of displacement
 - Designs and adopts judicial, economic, and social plans for the prevention of displacement and for the resettlement of IDPs.
- It should provide the means for protection at all phases.

Review: Sri Lanka: Civilians Displaced by Conflict Facing Severe Humanitarian Crisis¹

This report includes an overview of the internal displacement situation in the country prepared by the Internal Displacement Monitoring Centre followed by a compilation of excerpts from relevant reports by a variety of different sources.

Causes of displacement have also been discussed along with analyses on the post-tsunami displacement situation and the renewed conflict outbreak in 2006.

The report highlights some useful **population figures and profiles** the IDPs in terms of geographical distribution according to districts and causes of displacement.

Some discussion is also included on **vulnerable groups**, particularly in respect of protection concerns of displaced women in the North and East and children at high risk of recruitment and malnutrition.

In terms of **patterns of displacement**, the six IDP situations identified by the Special Representative on the Human Rights of

IDPs have been addressed in the report. The report, however, stresses that complex displacement situations need group-specific solutions.

The report also discusses the rights framework applicable to IDPs. Considering **physical security** and **freedom of movement**, it concludes that a very high percentage of the internally displaced are concerned about the security and shelter situation in return areas.

On the question of **subsistence needs**, the needs of both conflict-related IDPs and tsunami-affected populations have been analysed with special emphasis placed on the conditions in welfare centres. Furthermore, discussions on food, health, water and sanitation, shelter and non-food items are included in the report along with corresponding statements and reportage by various field-based organisations.

In terms of **education**, the issue of education disruption during conflict and the fact that teacher shortage and school occupation by the Army are obstacles to education have been dealt with in the report.

Some observations on **public participation** have been included in the report. It also analyses the government's policy on voting rights for the internally displaced and special arrangements to permit the internally displaced vote during elections.

The report also deals with the documentation barriers for IDPs and returnees and the reality that many internally displaced have lost personal and property documents during conflict displacement. Aspects of citizenship, particularly the system of 'local citizenship', which is said to prevent certain groups of IDPs from accessing full national citizenship, has also been addressed.

The law and policy in respect of **property issues** is another area discussed in the report. The report focuses mainly on state land and displacement and women who face obstacles in gaining legal title to land and property. The report observes that policy changes encouraging privatisation may hinder resettlement of the internally displaced and that neither the state nor the LTTE have a clear stance on the issue of prescription.

Another crucial area discussed in the report concerns '**patterns of return and resettlement**' where problems with IDP returns have been highlighted. These problems include security concerns and the lack of opportunities for resettlement. Some important analyses in respect of the IDPs in the Eastern Province have also been included in the report.

Finally, **national and international responses** have been comprehensively dealt with in the report. One of the key observations in this regard is that the Government's response is essentially inadequate and that there has been limited involvement by the civilian administration. The Government's response is said to have delayed due to multiple ministries and centralised decision-making. The report includes several recommendations in this regard, as well as some recommendations on ensuring equal response to conflict victims and to tsunami victims.

National IDP status²¹

Several countries have adopted legislation providing for the creation of a national status for IDPs or selected groups of IDPs (those displaced by a particular conflict, for instance). Such statuses have, for example, been created by law in Azerbaijan, Bosnia and Herzegovina, Colombia, Croatia, Georgia and the Russian Federation. Though not required under international law, such a status usually provides for the registration of those entitled to the status and provides beneficiaries with social, economic and legal

assistance to safeguard rights endangered by displacement and support the implementation of durable solutions. These statuses, however, should not deprive IDPs of their rights under human rights and humanitarian law.

5. Analysis of Similar Consultations in Sri Lanka

Review: The People's Consultations on Post-Tsunami Relief, Resettlement and Rehabilitation, undertaken by the Disaster Relief Monitoring Unit (DRMU) of the Human Rights Commission of Sri Lanka, with the support of UNDP (2005).

The principle objectives of this consultation are:

- To conduct consultations at the village-level in the Tsunami-affected areas to ascertain the needs of the affected.
- To disseminate information to Tsunami-related issues and decisions (official decrees, policy decisions, statements on post-Tsunami entitlements) to the affected communities.
- To disseminate the findings of these consultations to policy makers.

A total of 13 districts facing IDP situations came under the purview of these consultations while over 800 focus group discussions were carried out in 1100 villages. The main findings of this exercise may be summarised as follows:

- Opinion on the State and the Pace of Relief and Recovery

Normalcy was often assessed through the parameters of permanent housing and the recovery of livelihoods. There were varied responses as to how effective and efficient the State and NGOs were. While some were reasonably satisfied with the work carried out, others were patently dissatisfied. There was broad consensus that the speed of the recovery process was slow and inefficient.

Reasons for lack of speed and inefficiency:

- Highly centralized government machinery
- Inadequate needs assessments
- Corruption, lack of transparency and accountability

E.g. – discrepancy in Aid distribution

Competition between NGOs and INGOs was also seen as an impediment to effective delivery of assistance to the affected.

In the North and the East, there were some sentiments that the armed conflict and the minority status of those affected made them more vulnerable and less empowered to make demands to the local and national government. In essence, the people were keen to see a more transparent delivery mechanism.

- Land, Resettlement and Housing

It was observed that the frustration with regard to the slow pace of resettlement had led people to express a desire to find their own land and build their own houses. It was also found that while the transitional shelters were a stop-gap solution to displacement, people did not wish to remain in them for too long. Women in particular felt that these shelters provide little privacy and security.

On the issue of housing, there was broad consensus that standard models and value brackets ought to be adopted to avoid discrepancies on the ground.

- Livelihood

While the fisheries sector was the most affected by the Tsunami, it was clear that across the board, people were of the opinion that the delivery of assistance could have been more efficient had a proper consultative process been adopted. Also many people pointed to a mismatch between their needs and the equipment provided.

However, many believed that overemphasis on the fisheries sector resulted in the neglect of other industries. Most notably, the agricultural sector seems to have been overlooked. Furthermore, those that engaged in other livelihoods remained largely unaware of financial facilities available to them. E.g. small grants and micro finance schemes.

- Health

People felt that water and sanitation facilities have been less than adequate. Diseases amongst children were observed as being above average while psychological problems were also commonly observed.

- Education

A high number of absenteeism and dropouts were observed within Tsunami-affected districts. However, not much emphasis was placed on education as immediate concerns of resettlement and restoration of livelihoods took precedence.

- Social and Cultural Impact

Those affected by the three-decade long armed conflict observed how the Tsunami-affected were given higher priority and how Tsunami-recovery was taking place far more rapidly and efficiently than conflict recovery. The most visible area of disparity was in respect of resettlement, where a tremendous effort was taken to resettle the Tsunami-displaced from transitional shelters to permanent housing, while many of the conflict-displaced have languished in camps for many years.

Those from middleclass backgrounds expressed the view that they felt embarrassed to receive handouts from strangers. Many were critical of the culture of dependence created in the aftermath of the Tsunami.

In certain districts, there were strong sentiments that delivery favoured one community over another. This was particularly true in multi-ethnic areas where one community took a greater role in the recovery process, thereby leading to resentment amongst other communities. Furthermore, this environment of mistrust led to allegations that some organisations carried out relief work with the agenda for religious conversion.

- Opinions of Host Communities

While most host communities have been fairly accommodative, those consulted expressed concerns over a loss of social equilibrium. Concerns over social disharmony and criminalisation were also expressed.

- Opinions of State Agencies and the Non-Governmental Sector

Many state officials struggled to cope with their tasks and responsibilities following the humanitarian crisis that resulted from the Tsunami. Many officials expressed frustration, as the information flow from the central government was often extremely slow, and at times, unclear and conflicting. A need to issue all circulars and government communiqués in the vernacular languages was also highlighted.

The non-governmental sector expressed concerns over difficulties in accessing relevant local authorities and complained that the district coordination committees were ineffective. There was also a sentiment that the state authorities favoured INGOs over NGOs.

Note: While this consultation comprehensively deals with the rights framework applicable to tsunami-affected IDPs, it must be borne in mind that these IDPs did not face significant challenges in respect of their civil and political rights. Thus any future consultation ought to carefully consider issues relating to the freedom of movement, political participation, security, forced recruitment and allegations of mass internment.

Endnotes:

¹ F. M. Deng, the Special Representative of the UN Secretary-General, Report on Guiding Principles on Internal Displacement, submitted to the Commission on Human Rights pursuant to its resolution 1997/39, UN ESCOR, 54th Session, Agenda Item 9., UN Doc. E/CN.4/1998/53 (1997), Introduction, Para.

² IDP profiling is the collaborative process of identifying internally displaced groups or individuals through data collection, including counting, and analysis, in order to take action to advocate on their behalf, to protect and assist them and, eventually, to help bring about a solution to their displacement.

³ UN Guiding Principles on Internal Displacement, *supra* note 1.

⁴ Walter Kälin, *The Guiding Principles on Internal Displacement, Annotations* (2nd Ed. 2008) in Studies in Transnational Legal Policy, No. 38 published by The American Society of International Law and The Brookings Institution – University of Bern, Project on Internal Displacement (2008).

⁵ A/RES/61/295 of 13 September 2007.

⁶ A/RES/56/83, Annex.

⁷ E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1.

⁸ A/HRC/4/18, Annex I.

⁹ Walter Kälin, *How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework*, Brookings/Cuny Project on Internal Displacement (2001).

¹⁰ Brookings Institution Project on Internal Displacement, *Handbook for Applying the Guiding Principles*, (1999).

¹¹ See Internal Displacement Monitoring Centre, *Internal Displacement* (2006).

¹² *Id.*, at p.67.

¹³ See Internal Displacement Monitoring Centre & Norwegian Refugee Council, *State of Neglect: Displaced Children in the Central African Republic* (2008).

¹⁴ See Mr. Francis Deng, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, including the Question of the Programme and Methods of Work of the Commission: Human Rights: Mass Exoduses and Displaced Persons*, Report of the Representative of the Secretary-General, submitted pursuant to Commission on Human Rights Resolution 1993/95, E/CN.4/1994/44, 25 January 1994, at para.15.

¹⁵ Brookings-Bern Project, *Protecting IDPs: A Manual for Law and Policy Makers*, (2008).

¹⁶ UN Guiding Principles on Internal Displacement, *supra* note 1, Principle 3(1).

¹⁷ Paula Banerjee, *IDP Protection at the National Level in South Asia*, FMR/ Brookings-Bern Special Issue, at p.18.

¹⁸ Also see the IDP consultations undertaken by the Centre on Housing Rights and Evictions (COHRE) in Mannar and the Eastern districts with the support of the Ministry of Resettlement and Disaster Relief Services and UNHCR in 1997.

¹⁹ Andres Angel, *National Legal Framework for IDPs in Sri Lanka: A Critical Analysis*, Institute of Peace and Conflict Studies, IPCS Research Papers (2008).

²⁰ Published on 1st May 2009, <http://www.internal-displacement.org>.

²¹ See www.internal-displacement.org.

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Centre for the Study of Human Rights - CSHR; University of Colombo, was established as a service oriented, non-profit organisation in 1991 within the Faculty of Law, University of Colombo; at a time when there was a need to make people aware of their rights and to assist them to access remedies for the violation of rights. The aim of the Centre is to provide education, capacity building and knowledge services as well as to conduct research in the area of Human Rights.

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