

# RECOMMENDATIONS FOR A NATIONAL POLICY ON HOUSING, LAND AND PROPERTY RESTITUTION IN SRI LANKA



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# RECOMMENDATIONS FOR A NATIONAL POLICY ON HOUSING, LAND AND PROPERTY RESTITUTION IN SRI LANKA



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## ABBREVIATIONS

CFA	Cease Fire Agreement
DS	Divisional Secretary
ERRP	Emergency Rehabilitation and Reconstruction Programme
GA	Government Agent
GS/GN	Grama Sevaka/ Grama Niladhari
GSV	Go and See Visits
GOSL	Government of Sri Lanka
HLP	Housing, Land and Property
HSZ	High Security Zone
I/NGOs	International/ Non Governmental Organisation
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
IOM	International Organisation for Migration
LDO	Land Development Ordinance
LTTE	Liberation Tigers of Tamil Eelam
NEHRP	North East Housing Rehabilitation Programme
NFRI	Non Food Relief Items
REPPIA	Rehabilitation of Persons, Properties and Industries Authority
SEZ	Special Economic Zone
SLAF	Sri Lanka Armed Forces
UAS	Unified Assistance Scheme
UDA	Urban Development Authority
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNOPS	United Nations Office for Project Services
UNP	United National Party

## INTRODUCTION

Among the many challenges of post conflict rebuilding, reconstruction and rehabilitation, is the challenge of resolving displacement. The end of conflict, and the voluntary return of displaced persons to their homes and lands, does not necessarily end displacement. Ending displacement requires a concerted effort by the Government, humanitarian agencies, and other partner organisations to assist displaced persons to regain and rebuild their lives, confront changes to their environment, and reintegrate into normal circumstances of life. Among the many challenges of redressing displacement are – the destruction of property, break down of community structures and security, loss of documentation, loss of income and general vulnerability to poverty. This report and recommendations are in recognition of the need for the Government to establish clear policy guidelines in the aftermath of conflict, which links a process of ending displacement through each of the different stages of recovery, rehabilitation and development. It is also designed to provide specific information to all Government and Non Governmental Organisations working in the context of displacement, of those aspects which are vital to a process of Housing, Land and Property (HLP) restitution as an integral component of achieving durable solutions to displacement.

The civil conflict in the North and East of Sri Lanka of nearly 30 years has caused the displacement of approximately a million persons. According to official Government records, 312,712 persons remained displaced prior to the resumption of hostilities in July 2006. Another 301,879 persons are estimated to have become newly displaced by the post 2006 hostilities, following the closure of the Marvil Aru reservoir in Sampur, in the Eastern Province of Sri Lanka, by the Liberation Tigers of Tamil Eelam (LTTE), (though some of these persons have been subject to recurrent displacement since the later 1980s and early 1990s).

At the time of writing this report, the displacement of persons was a continuing phenomenon in the Northern parts of Sri Lanka with ongoing hostilities between the Sri Lanka Armed Forces (SLAF) and the LTTE. However, between the finalisation of the draft report and its publication, the SLAF were able to militarily defeat the LTTE and establish a comprehensive end to the conflict, in the middle of May 2009. The final stages of the hostilities however, led to a further displacement of approximately 270,000 individuals, the majority of whom still remain in large IDP

camps. The Government of Sri Lanka (GOSL) has expressed every intention of taking expeditious measures to return and resettle displaced persons. The discussion and recommendations of this report have therefore increased in their significance and relevance, in view of the potential challenges ahead for the return and restitution of displaced persons.

COHRE international has been instrumental in disseminating international standards embodied in the United Nations Principles on Housing Land and Property Restitution of Displaced Persons (referred to as the “Pinheiro Principles”), and in advocating for the human rights on which the principles are based. COHRE Sri Lanka, has in the past engaged in the wide dissemination of the Pinheiro Principles, and conducted a number of awareness and training programmes on what the implementation of these rights would entail in the Sri Lankan context of displacement. The Sri Lanka office, builds on the expertise of COHRE international in advocating and working towards the restitution rights of displaced persons in Sri Lanka. This report is the culmination of a process that began in 2006 to make an assessment of policies and practices that have been implemented in the past in Sri Lanka, and to propose how these processes can be brought in line with a human rights based approach. A series of workshops brought together both national and international experts to engage in discussion, and exchange experiences of past practices and their relevance to a process of restitution in Sri Lanka. The process culminated in a fact finding programme that was implemented in the Eastern Province of Sri Lanka in the Districts of Batticaloa and Trincomalee.

The above fact finding programme was conducted during the timeframe of June to October 2008, and constitutes the basis of this report and recommendations. It was initiated after the cessation of hostilities in the East in early 2007 and the relative peace that prevailed in its aftermath. Substantial initiative has been taken by the Government since for resettlement<sup>1</sup> or return of displaced persons to their original homes and lands. The fact finding programme comprised of three tiers, designed to obtain information from displaced persons, United Nations’ agencies and Non Governmental agencies working in the two districts and Government officials working in the resettlement process in the Eastern Province as well as in the Central Government. The relative peace and stability in the East and the Government’s commitment to resettle displaced persons in the region allowed the space to make an assessment of the legal and policy issues that need to be addressed

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<sup>1</sup> Note that the term ‘resettlement’ is used by the Government to refer to the return of displaced persons to their original homes and the re-establishment of normal circumstances of life; the equivalent term used in international law and usage is ‘return’, whereas the term ‘resettlement’ is used internationally to refer to the relocation of those who are involuntarily displaced, to a different area other than the place of origin. This report makes reference to both terms as it is relevant to the context of discussion.

for the implementation of an adequate and equitable process by which displacement is brought to an end and restoration of displaced persons' homes and lands can be achieved. It is to be noted at the outset, that the central focus of this report is on the process of restitution in Sri Lanka. The data of the fact finding programme will remain relevant. While the circumstances of the interviewees may change, the data will be utilised as a point of reference by which the progression of the current resettlement process may be monitored and evaluated for the purpose of policy formulation. Therefore the interviews and case studies of the fact finding programme are intended to be used on a continuous basis to inform the formulation of policy recommendations for the implementation of a rights based programme of HLP restitution in Sri Lanka.

Restitution is a concept that is increasingly endorsed by the international community as being relevant to instances of displacement around the world. Its standard legal meaning, of placing an aggrieved person in his or her pre-loss position, is a basic concept in both general law and in international human rights law. The right to restitution is approached by the international community as a human right on the premise that human rights violations, including those resulting from conflict and displacement, must be remedied by a process of restoration to re-establish as far as practicably possible the pre-loss position of those affected. Thus restitution is not merely the restoration of displaced persons to their former lives by random means that are available at any given time, but must be with reference to human rights principles and standards which are of universal relevance to securing the dignity and well being of all persons. While restitution is a holistic concept that requires consideration of all factors necessary for displaced persons to regain their former lives, the scope and ambit of this report is confined to HLP restitution, or a process that enables displaced persons to have their lost homes, properties and lands restored to them. HLP restitution of course is inextricably linked to many of the other factors that fulfil the restitution rights of displaced persons and enables them to secure durable solutions to their situation of displacement.

Standards for HLP restitution, as articulated by the international community and embodied in most part in the Pinheiro Principles, outline international standards and best practices for a process of HLP restitution that can fulfil the human right to return to their place of origin, namely the right to return, as well as the right to restitution. The Pinheiro Principles have been defined with reference to HLP restitution programmes, practices and policy formulations that have been adopted in circumstances where wars, civil conflict and natural disasters have resulted in the large scale displacement of persons, and much destruction and damage to housing, land and property have been caused. They are based on rights contained in international human rights treaties to which most states are party and are therefore

an authoritative, if not legally binding source. The value of the principles lies in the provision of a set of standards to guide governments and non government agencies, to rectify circumstances of displacement for both IDPs as well as for refugees returning to their home countries. The principles supplement the United Nations Guiding Principles on Internal Displacement or the 'Deng Principles', in making provision for the treatment of IDPs in keeping with humanitarian and human rights law. They also fulfil, to an extent, the lacuna in international law which makes little provision to specifically address the plight of IDPs.

The challenge is to translate the standards for HLP restitution embodied in the principles, to the particular context of their application in Sri Lanka in a manner that is relevant and meaningful. In this regard, COHRE is of the opinion that the adoption of a specific policy for HLP restitution for Sri Lanka by the Government is of paramount importance. A well defined policy statement will be a point of reference for the implementation of a programme of HLP restitution, especially in view that a process of restitution can lack certainty and clarity in many areas of its implementation. Currently, there is no comprehensive and well defined policy and practice for HLP restitution which comprehensively reflects an approach consistent with internationally recognised rights of displaced persons. The legal and policy analyses of this report will make specific reference to the above principles and standards, in order to identify and address gaps in the current process. The underlying premise of the recommendations is therefore the human rights to return and restitution.

The resettlement of displaced persons in the East is currently guided by the "Negenahira Navodaya", or the Eastern Resurgence; and the Gama Neguma (or village development) National Programme implemented by the Government, for the reconstruction, rehabilitation and development of the Eastern Province. The East is projected to emerge as one of the most developed provinces once the planned development programmes have been implemented. These programmes extend to infrastructure, human resources, health and sanitation facilities, and housing. It is assumed in this report that the HLP restitution, rehabilitation and development of displaced persons would fall within the overall development framework of the Eastern Province. The Government formulated a 'Plan for Emergency Assistance and Early Recovery for Resettled Areas in the Batticaloa District' in September 2007. This follows from a programme of emergency assistance to 'resettled displaced persons in Batticaloa', based on a model plan for the resettlement of the Vaharai DS division to be extended to other parts of the East. The early recovery plan makes links to the 'longer term development programmes for the Eastern Province'. The process of 'relief to recovery' outlined for resettlement comprises four different stages – the relief stage; early recovery; recovery and medium term development and the

development phase. HLP restitution is an integral component of the resettlement that has been planned by the Government, and it is essential to assess the degree to which a programme of restitution links through these different stages of post conflict rehabilitation and development.

Housing is addressed in the 'early recovery' and 'recovery and development' stages of the process. These stages deal with repairs to housing, compensation for loss of housing, and the construction of permanent housing. It is to be noted however, that restitution is a remedy for 'displacement', and not merely the loss of housing, land and property. It is a holistic concept, and requires that the restoration of housing is implemented in a manner that addresses the situation of displacement as a whole. Thus, the return of displaced persons, even with the promise of housing assistance and compensation, may not adequately address their displacement, if not implemented through a timely and equitable programme of return and restitution. Thus, the scope of the policy recommendations of this report is from a wider perspective of bringing displacement to an end and securing durable solutions to displacement.

The aftermath of the tsunami produced the Tsunami Housing Policy in 2006, which is to date the only explicit policy statement that addresses the restoration and reconstruction of housing for large scale displacement in Sri Lanka. This report and recommendations are in recognition of the need for a systematic and comprehensive restitution policy that can address the housing rights of all displaced persons, including those in protracted circumstances of displacement in the North and East, and those who were 'newly displaced' following the resumed hostilities in 2006. There is much to be learnt however, from the implementation of the tsunami policy, and from other policy initiatives that have been implemented thus far by the GOSL, such as the 'triple - R framework' or the National Framework for, Relief, Rehabilitation, and Reconciliation. The tsunami policy of 'building back better' for instance, is one such policy position that can benefit a process of restitution for all displaced persons in terms of meeting adequate standards of housing. It is vital that a rights based policy for HLP restitution is not superimposed on the system, but builds on other institutional, programmatic and policy developments that have been formulated in the past, to address displacement and resettlement. The Ministry of Resettlement and Disaster Relief Services is currently formulating a National Resettlement Policy in coordination with the UNDP. The findings and recommendations of this report are intended to contribute to the development of a National Resettlement Policy based on the precepts of the rights to return and restitution as a remedy for displacement.

A considerable concern in the context of Sri Lanka is the lack of financial resources for the restoration of conflict affected housing, as well as for the infrastructure and other development programmes that have been planned for the East. The

financial outlay that was available for tsunami housing, as a result of the flood of donor funding that was pledged to Sri Lanka, is not available for conflict affected housing. There is substantial pressure on the Government therefore to raise money to take forward the resettlement process from the post return recovery phase to the development stage with the building of permanent housing. UN Habitat records the current shortfall in housing due to conflict to be in the region of 210,000 – 220,000 houses in the North and East, at a current cost of US\$ 600 million. Much innovation and creative programming is needed to bring together a programme of housing and reconstruction that is able to meet the challenges of developing the East in the context of post conflict recovery and rehabilitation, and of meeting the post conflict housing requirement.

It is encouraging that the GOSL is committed to the implementation of a development programme in the Eastern Province, and has initiated a process to formulate a national resettlement policy, which includes the provision of shelter and housing for all displaced persons. A policy that reflects the will and commitment to follow a systematised process that links humanitarian and recovery measures to long term development is a positive step that precedes finding the means for the implementation of relevant policy. The lack of financial resources does not negate the rights and entitlements of displaced persons to have access to durable solutions to displacement and the restitution of their former lives. It is hoped that the policy recommendations contained herein can make a positive contribution to ensure that a national resettlement policy for Sri Lanka will be based on international human rights standards, in a manner that is relevant to the particular context of Sri Lanka.

The report, in section one, sets out the consolidated recommendations arising from the findings and analysis contained therein. Section two outlines the contextual background of conflict and displacement in the Eastern Province as is relevant to its discussions; the main objectives of the report; and the methodology that was adopted for the compilation of relevant data and information. Section three makes reference to the salient features of international law and national law as it relates to the human right to restitution and international standards on HLP restitution. Section four comprises an analysis of the main areas of investigation relating to HLP restitution, and section five outlines supplementary principles and information on vulnerability in the context of displacement which is overarching to the discussions of the entire report.



## SECTION 1:

### RECOMMENDATIONS (CONSOLIDATED)

The recommendations of this report, based on the findings of the survey and fact finding programme implemented in the Districts of Batticaloa and Trincomalee, and interpreted with reference to international standards for HLP restitution, as relevant to the context of displacement in Sri Lanka are as follows:

#### 1.1 General Recommendations:

It is hereby recommended that any national policy affecting HLP restitution should, –

Recognise the fundamental rights jurisprudence of the Constitution as a basis for the realisation of the human rights to return and restitution;

Reaffirm the human rights provisions of international treaty law that Sri Lanka is signatory to as is relevant to the realisation of the rights to return and restitution;

Incorporate international standards and principles that are commensurate with the fundamental rights of the Constitution and Sri Lanka's international human rights obligations, as is relevant to the context of displacement and restitution of displaced persons in Sri Lanka;

Establish effective linkages between the humanitarian and development phases of displacement, namely – relief, recovery, medium term development, and development, - such that the process of HLP restitution links through these different phases;

Outline time frames for a timely, equitable and progressive programme of HLP restitution, with clear benchmarks and indicators for each of the phases outlined above, for the ending of displacement and securing durable solutions to displacement;

Establish that the right to restitution is a holistic concept that is not limited to HLP restitution, but extends to the wider context of security, development and socio – economic progress, within which HLP restitution is implemented;

## **1.2. Defining Displacement and Achieving Durable Solutions to Displacement:**

The following is recommended to address the particular problems that arise from the different forms in which displacement can occur and continue -

- Formulate a definition of displacement based on international standards that takes into consideration - the different forms of displacement, including short term, recurrent, and protracted forms of displacement; and the different compulsions that may have led to displacement, - in order to identify all persons who should legitimately fall within the ambit of displacement based policy and programmes;
- Endorse the right of every displaced person to a durable solution of his/her choosing – including return to an original location, relocation or local integration, in view of any changes in their circumstances, which may have transpired during their displacement;
- To define the stages of displacement in terms of the process of assistance.

## **1.3. Registration, Assistance and Administrative Procedures**

The following recommendations are made with regards to the importance of administrative procedures in managing and administering displacement, and the requirement for policy to ensure that they meet standards of adequacy with respect to implementing a rights based programme of HLP restitution and durable solutions to displacement:<sup>2</sup>

- Provide policy guidance for an administrative process, preferably an extension of the current system of registration, that takes into consideration conditions of displacement after return, and which is able to monitor the granting of assistance and compensation and the overall process of HLP restitution, until conditions of displacement are brought to an end and adequate remedies for displacement related losses are provided;

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<sup>2</sup> See section 4.2.3 for discussion and analysis of these recommendations

- Establish distinct criteria for the de – registration of IDPs who will no longer remain in camps and shelters, while recognising that their displaced circumstances may continue after their movement from these locations, and eligibility for assistance and remedies may prevail;
- Provide adequate information to displaced persons of the post return recovery assistance that they are entitled to, as well as other forms of redress available to them at the different stages of return and restitution, together with information of the time frames for the delivery of such assistance and redress, and the means by which to access them;
- Establish clear and transparent institutional and administrative responsibility, to monitor the delivery of assistance and a programme of HLP restitution, at the provincial and district levels of government, including complaints mechanisms;
- Establish distinct and independent restitution claims procedure, whereby displaced persons may make claims of their entitlement, together with an independent review mechanism to ensure that grievances arising can be addressed in a timely and equitable manner;
- Include in the process mechanisms for meaningful consultation and participation to ensure that assistance can be targeted in a timely and efficient manner, without any undue expectation on the beneficiaries concerned;

#### 1.4. Compensation

The following recommendations arise from the need to establish equitable, adequate and timely compensation schemes with a framework of HLP restitution:<sup>3</sup>

- Define all entitlements due to displaced persons, that are to be met through a scheme of compensation with a view of restoring displaced persons into durable conditions of life;
- Make a careful review of all losses that should fall within the purview of HLP restitution policies and programmes, and ensure that all losses which affect a persons' HLP restitution rights are considered;

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<sup>3</sup> See section 4.3.3 for discussion and analysis of these recommendations; the losses identified by this report as relevant to HLP restitution are – loss by damage, loss by secondary occupation and loss by looting

- Establish distinct and independent claims procedures for schemes of compensation for all losses that fall within the ambit of restitution policy, with clear procedural guidelines that are accessible and easily implemented;
- Ensure that compensation schemes are at all times responsive to any changes in the monetary value of the relevant losses in order to avoid undue disadvantage to those who have suffered loss;

### *Loss by damage*

- Identify those instances which warrant the payment of financial compensation in lieu of restitution, where direct restitution is deemed not possible, and assess the most efficient form of compensation in the circumstances of the context;
- Maintain consistency across all schemes for financial compensation for housing, and determine the minimum financial compensation to be paid for both partial and fully damaged housing with reference to a pre – determined standard of housing based on consideration of adequacy according to international standards and in consultation with beneficiaries;
- Establish a minimum compensation package that is adequate in terms of international standards, with corresponding eligibility criteria on the basis of which all those in need can access assistance;
- Establish an incremental compensation scheme for displaced persons with relatively large losses that cannot be redressed by a pro – poor minimum compensation package, to be assessed on a case by case basis, in due recognition of the loss and disadvantage suffered as a result of displacement and the right of all displaced persons to full HLP restitution;
- Establish better harmonisation and coordination among the different schemes of assistance and compensation implemented under the purview of the Government, and those which are implemented by other agencies;
- Engage beneficiaries in a meaningful dialogue and consultation to assess their expectation of compensation and its adequacy in terms of redressing their losses;

### *Loss by Secondary Occupation (Military Occupation)*

- Establish a well defined and transparent process, where land is required for military installations or for other security related reasons, based strictly on military necessity and the principle that, where necessity ceases to exist, land must immediately be released;
- Formulate a package of compensation that is able to adequately redress the losses of those who are unable to pursue a durable solution of their choice, both in the short term and medium term, due to the secondary occupation of their homes and lands by the military;
- Engage those affected by the military occupation of their houses in a process of consultation and negotiation, to ascertain the extent of the loss resulting from occupation and a scheme of compensation that will meet the requirements of alternative arrangements for HLP restitution, both in the short and long terms;

### *Loss by Looting*

- Establish a scheme of compensation to redress loss by looting, with broad criteria for the submission of evidence to determine whether such loss resulted from displacement;
- Identify the items of loss for which the above scheme is applicable, with adequate dissemination of information among those affected by looting of their entitlements;

## **1.5. Housing Standards**

The following recommendations relate to standards for adequate housing, and the consistent application of standards among the different agencies and institutions involved in the overall HLP restitution programme:<sup>4</sup>

- A minimum standard of housing that may be used for a 'one size fits all' approach, based on standards of adequacy which are in keeping with the requirements of international standards of adequate housing;

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<sup>4</sup> See also section 4.4.3 for discussion and analysis of these recommendations

- Establishment of a process of consultation among beneficiaries, the Government and agencies involved in the construction of housing, in order that displaced persons are able to participate actively in the reconstruction process and are adequately compensated for their loss;
- Inclusion of internationally recognised standards for adequate housing in all reconstruction schemes, particularly when State Lands are allocated for the construction of housing schemes.

### 1.6. Land and Property Rights Documentation

The following recommendations are made in recognition that, while the inability to establish property rights due to the lack of documentation or for any other reason does not negate the right to restitution, land and property rights documentation is central to a process of HLP restitution:<sup>5</sup>

#### *Property Rights:*

- Ensure that all displaced persons have easy, efficient and cost effective access to an independent system by which their property rights are re-established;
- Suspension of all prescription periods that may lead to dispossession due to absence in all areas where people experienced displacement;
- All displaced persons who did not enjoy security of tenure before displacement to be granted secure land and property rights, either over the land where they used to live, or over a plot of land of at least the same quality or higher;
- All displaced are to retain at least the same type of property right over housing and land, especially where return is made impossible due to reasons such as continued military occupation or the establishment of High Security Zones (HSZ).

#### *Documentation:*

- Establishment of a clear, accessible and independent administrative mechanism for the provision of copies of lost land and property rights documentation in all districts of origin and receiving districts;

<sup>5</sup> See section 4.5.3 for discussion and analysis of these recommendations

- Wide dissemination of information of the administrative process, and of the importance of land documentation, among all displaced persons

### 1.7. Information and Participation in HLP Restitution

The recommendations outlined below are overarching to all matters affecting HLP restitution:<sup>6</sup>

- Incorporate policy guidelines to reflect that access to information and participation is a right in itself and is indispensable to the implementation of the right to return voluntarily, in safety and in dignity;
- Entrench the requirement for adequate dissemination of information to displaced persons and the participation of displaced persons on all matters affecting their entitlements and restitution rights, at all levels of government;
- Clear allocation of tasks and responsibilities among local authorities and agencies working directly with the displaced and returning population, for providing information and consulting with the displaced and returning population.
- Efficient dissemination and coordination of information between the different levels of Government, such that all necessary and relevant information is available to displaced persons in a timely and relevant manner;
- Endorse that at a minimum, displaced persons require access to the following information in order to enable them to make informed decisions:
  - The return process and the different steps for return;
  - Security issues;
  - Availability of infrastructure and services at places of return and relocation;
  - Livelihood situation at places of return and relocation, including possible restrictions on livelihoods and what assistance is available to overcome or remedy those in the interim;

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<sup>6</sup> See section 4.6.3. for discussion and analysis of these recommendations

- Permanent housing and compensation, and available temporary shelter in the interim;
- Eligibility criteria for access to housing and other assistance;
- Access and freedom of movement in areas of return and relocation, including access to farm land, freedom of movement to and from other places in the area

### **1.8. Marginalised and Vulnerable Groups, including Women**

The recommendations of this section are overarching to all aspects of displacement related policy, including HLP restitution policy:<sup>7</sup>

- To provide at the policy level for the development of expertise on assessing marginalisation and vulnerability, in the particular context of displacement, in conjunction with the relevant ministries and institutions with authority to implement policies and procedures concerning groups identified as marginalised and vulnerable;
- Inclusion of gender sensitive principles and provisions specific to upholding women's equality, including provisions to ensure that women do not lose previously held rights over land in the context of return and that women are guaranteed equal rights to inter alia voluntary return in safety and dignity; legal security of tenure; property ownership; equal access to inheritance; as well as the use, control of and access to housing, land and property.
- Adoption of procedures whereby both spouses are registered as joint right holders where new land is allocated to displaced persons;
- To strengthen and streamline gender based criteria for the allocation of temporary and permanent housing, and for the payment of compensation, consistently across all programmes and policies affecting HLP restitution

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<sup>7</sup> See discussion and analysis in section 5



## SECTION 2:

**CONTEXTUAL BACKGROUND,  
OBJECTIVES AND METHODOLOGY****2.1 Contextual Background**

The following study and recommendations on HLP restitution was compiled with reference to the programme of 'resettlement' that is ongoing in the Eastern Districts of Batticaloa and Trincomalee. The current resettlement programme can inform the formulation of a policy framework that is compliant with international standards on HLP restitution. The reestablishment of Government control in the East and the relative peace that followed, allowed for the persons displaced by the resumption of hostilities in July 2006 to return to their homes and lands.<sup>8</sup> Many of those displaced in 2006 have been subject to recurrent displacement, and their experiences reflect the complexities of displacement in a context of conflict that has spanned almost 30 years. These experiences are relevant to post conflict peace building and a process of restoration and development. The nature and experience of displacement, its adverse effects and losses suffered must essentially be addressed for the achievement of holistic and sustainable reconciliation and restoration. The socio-political dynamics of the context in which post conflict restoration and rebuilding takes place is important. They have an influence on the overall rehabilitation and development process. This indirectly affects a rights based programme of HLP restitution, and in turn, rights based HLP restitution can have a positive effect on the overall process of rehabilitation and development.

In the Eastern province, comprising of the districts of Trincomalee<sup>9</sup>, Batticaloa<sup>10</sup> and Ampara, the majority population comprises Tamil and Muslim communities of

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<sup>8</sup> This was following a defacto collapse in 2006 of the Cease Fire Agreement (CFA) entered into by the Government of Sri Lanka and the LTTE in 2002.

<sup>9</sup> Total population of 334,363 persons, with an increase of 30.6 per cent since the last census in 1981; 73.9 per cent of the population is located in rural areas outside of municipal and urban limits; re: Department of Census and Statistics (2007), Trincomalee District, pg 10 - 14

<sup>10</sup> Total population of 515,857 persons, with an increase by 56.2 per cent since the last census in 1981; 75 per cent of the population is located in rural areas outside of municipal and urban limits, re: Department of Census and Statistics (2007), Batticaloa District, pg 10 - 14

an almost equal percentage, with a significant minority Sinhala community. In the District of Batticaloa (hereinafter 'Batticaloa') 74 per cent of the population are Sri Lankan Tamil, 25 per cent Sri Lankan Moor,<sup>11</sup> and 0.5 per cent Sinhalese.<sup>12</sup> The ethnic composition in the District of Trincomalee (hereinafter 'Trincomalee') is 45.4 per cent Sri Lankan Moor, 28.6 per cent Sri Lankan Tamil, 25.4 per cent Sinhalese, and 1 per cent Indian Tamil.<sup>13</sup> The ethnic composition of the survey among displaced persons (hereinafter referred to as the 'survey') captured a population that was in its entirety Tamil. Much of the interviewees among the group classified as IDPs were located at the time in the District of Batticaloa, comprising also of Tamils displaced from Trincomalee to Batticaloa.<sup>14</sup> Among the group of displaced persons classified as Returnees<sup>15</sup>, interviews were conducted in Eachchalampattu, with a 100 per cent Tamil population; in the Town and Gravets, with a majority Tamil population, and Kuchchaveli and Muttur<sup>16</sup>, with a majority Muslim population (at 72 per cent in both DS Divisions).

The three Districts of the Eastern Province comprise 15 per cent of the entire land area in Sri Lanka. Much of the inter-communal tensions in the East over the last twenty five years have centered on policy issues of land re-distribution and competing claims to land by the three communities. A key factor that led to these contentions were the settlement of Sinhalese landless persons from the Southern and Western province of Sri Lanka in the dry zone,<sup>17</sup> including parts of the East, under economic policies designed to guarantee self sufficiency and economic independence in irrigation based schemes, which had begun during the colonial times and accelerated after independence. These settlements were perceived by the Tamil speaking communities<sup>18</sup> as a threat to the historical claims they had to these lands, and a deliberate attempt to change the demographics of the East. These issues have been fueled by the larger inter-ethnic contentions of post independent Sri Lanka.

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<sup>11</sup> The Sri Lankan Moor is commonly referred to as 'Muslim'

<sup>12</sup> Department of Census and Statistics (2007)

<sup>13</sup> Ibid

<sup>14</sup> See section 2.3 for Methodology

<sup>15</sup> Ibid

<sup>16</sup> Interviews were entirely in the GN Division of Thoppur

<sup>17</sup> The settlement schemes include - The Gal Oya Scheme of 1949; the Allai and Kantalai projects (Trincomalee), 1950's to late 1960's; re International Crisis Group (2008) Sri Lanka's Eastern Province: Land, Development and Conflict (2008), *Asia Report No. 159*, pages 4 -6

<sup>18</sup> Tamil speaking communities in the East comprise of - Sri Lankan Tamils, Sri Lankan Moors, and Tamil communities of Indian origin

These irrigation based settlements, and the ensuing changes in the demographic, social and political landscape, provide the backdrop for the story of conflict related displacement in the East. A growing Tamil militancy in the 1980's and a gradual militarisation of the Eastern settlements led to communal friction, forced evictions and displacement among the three communities. The mode of operation, and demands made by the Tamil militancy for a separate state, created a rift among Tamil and Muslim communities, which culminated in the 1990 massacre of 200 Muslims, and the forced eviction and displacement of Muslims from their villages situated in predominantly Tamil areas. The intercommunal tension that prevailed in the following years, while the LTTE gained control of much of the East, continued to prevail in the East throughout the lifespan of the Cease Fire Agreement (CFA) brokered between the United National Party (UNP) and the LTTE, which technically remained operational during the period 2002 - 2008, though subject to many violations. The incidents that ultimately led to the breakdown of the CFA and its subsequent dissolution found their context in the East. The largest military offensive during the period of the CFA was following the closure of the sluice gates of the Mavil Aru reservoir situated in the then LTTE controlled area of East Muttur and Eachchelampattu. The reservoir supplies water to approximately 30,000 acres of paddy land, cultivated predominantly by the Sinhalese communities downstream. The SLAF, citing humanitarian grounds, launched an offensive in July 2006 to recapture the Mavil Aru reservoir and take control of its sluice gates. This objective was reached by August 2006, but the military carried forward the offensive to clear the East of all LTTE presence, and by July 2007, the Government was able to claim that it had liberated the East from the clutches of terrorism and the LTTE.

The point of reference, for the purposes of this report, is the displacement that resulted from the military offensive carried out from July 2006 to July 2007. Those displaced during these hostilities are referred to as the 'newly displaced persons' or the 'new IDPs'. As of July 2006, a number of 'long term displaced persons' or IDPs in protracted conditions of displacement often referred to as the 'old IDPs', remained in Batticaloa and Trincomalee. The numbers for the 'old IDPs' in Trincomalee and Batticaloa respectively were 17,798 and 2,404 persons as of August 2008.<sup>19</sup> Many of the old IDPs live in welfare centers, though a few of them have returned to their own home, or have relocated to new places of residence (though they may have yet not received their displacement based entitlements)<sup>20</sup> However, many of those displaced

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<sup>19</sup> Ministry of Nation Building and Estate Infrastructure Development, Summary of the Island Wide Survey Report on Internally Displaced Persons, August 15, 2008.

<sup>20</sup> The old IDPs in Trincomalee have been displaced due to security reasons, since 1985, 1990 and 1995. The obstacles to returning to their original homes include rumors of continued LTTE presence and the fear of re-displacement, as well as other reasons such as the presence of wild elephants. Reasons for displacement among the old IDPs in Batticaloa include the military occupation of property since the

post July 2006 have been recurrently displaced prior to this date and have displacement histories that date back as far as the late 1980s and 1990s. The hostilities that began with the closure of the sluice gates of the Mavil Aru reservoir in Trincomalee extended to Batticaloa. Approximately 300,000 persons were displaced, of which 230,647 remained displaced, as at the end of 2007.<sup>21</sup> The sample population of the survey was selected almost entirely from among the new IDPs<sup>22</sup>. The extracts from the data of the survey and chart 3 below indicate the complex pattern of displacement that many of these displaced persons have been subject to.

“I was displaced in August 2006. I did not want to go to any camp so I came straight to my mother’s house here. I and my family were first displaced from our home in Pulipathakal, Koravali in 1990. We had a new house on the land just before we had to leave. When we returned about a year later the house was destroyed. In 2004 our house was re-built by the Government, but, [we] had to flee this new house too. I don’t know the current condition of this house. My neighbours said that their houses have been destroyed and I don’t expect that mine will be different. Since 1990 [we have] been displaced several times in between and spent many months between these two locations. Every time fighting started we would come here and then go back to where we are staying now. I do not remember well how many times but maybe around 6-7 times.”

- Muthumariamman Street, Kiran, July 02, 2008

Charts 1 and 2 below show the number of times interviewees had to move from one place to another and the length of displacements. The number of times the interviewee had to move includes the number of times they had to leave their original homes, as well as the times they had to move between different locations of displacement. The charts indicate that those who originate from within the current boundaries of the HSZ<sup>23</sup> in Sampur had to change location more than other groups.

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1990s (Manmunai North and Kalawanchikudy DS Divisions), and the main obstacles to return include security concerns, occupation of property and the lack of assistance; See Ibid, Summary of the Island Wide Survey Report on Internally Displaced Persons

<sup>21</sup> Ministry of Resettlement and Disaster Relief Services (2008), Performance and Progress Report, pg. 05

<sup>22</sup> See section 2.3 on Methodology for the classification of the sample population

<sup>23</sup> COHRE (2009) High Security Zones in Sri Lanka and the Right to Return and Restitution: a case study of the Trincomalee District, COHRE Report

Chart 1

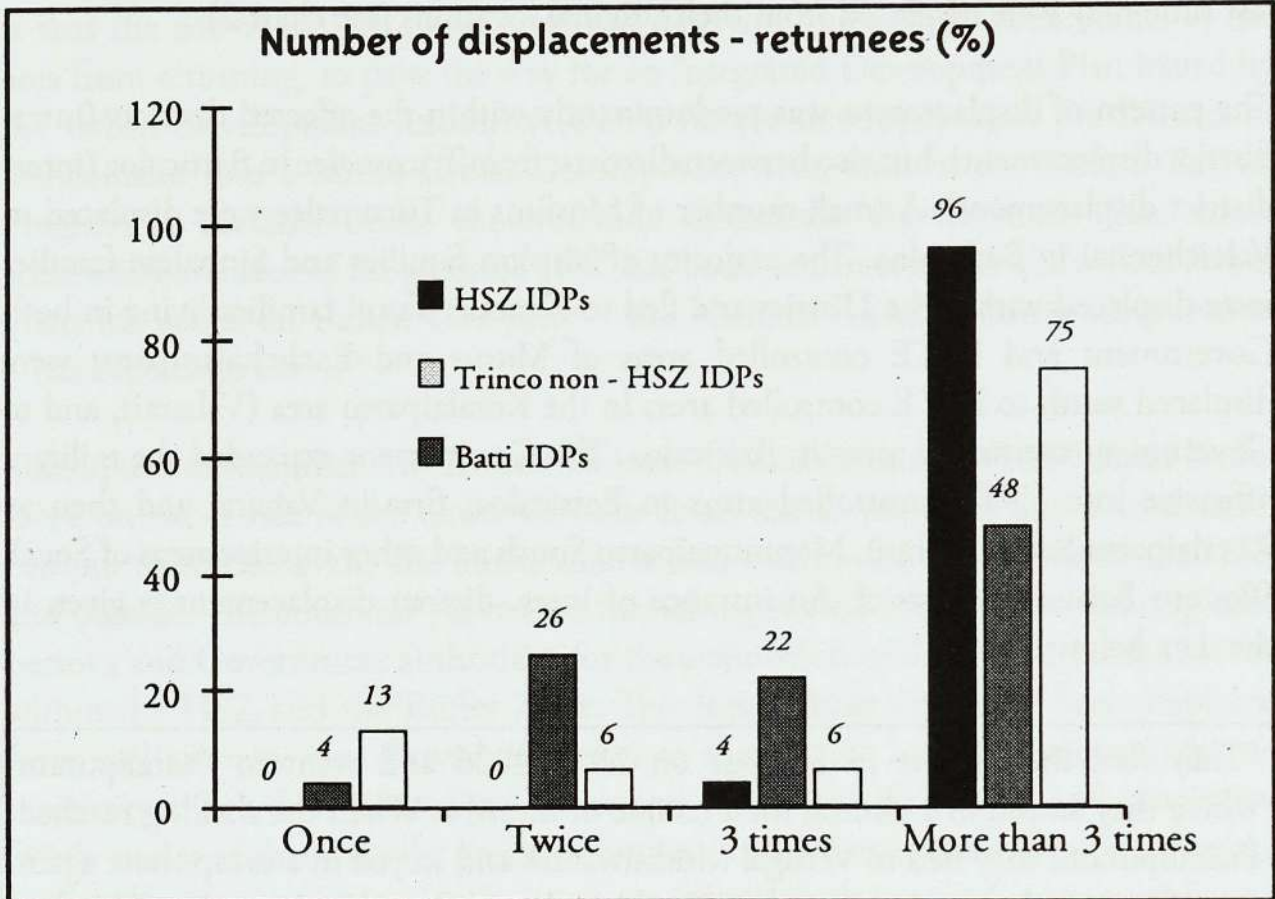
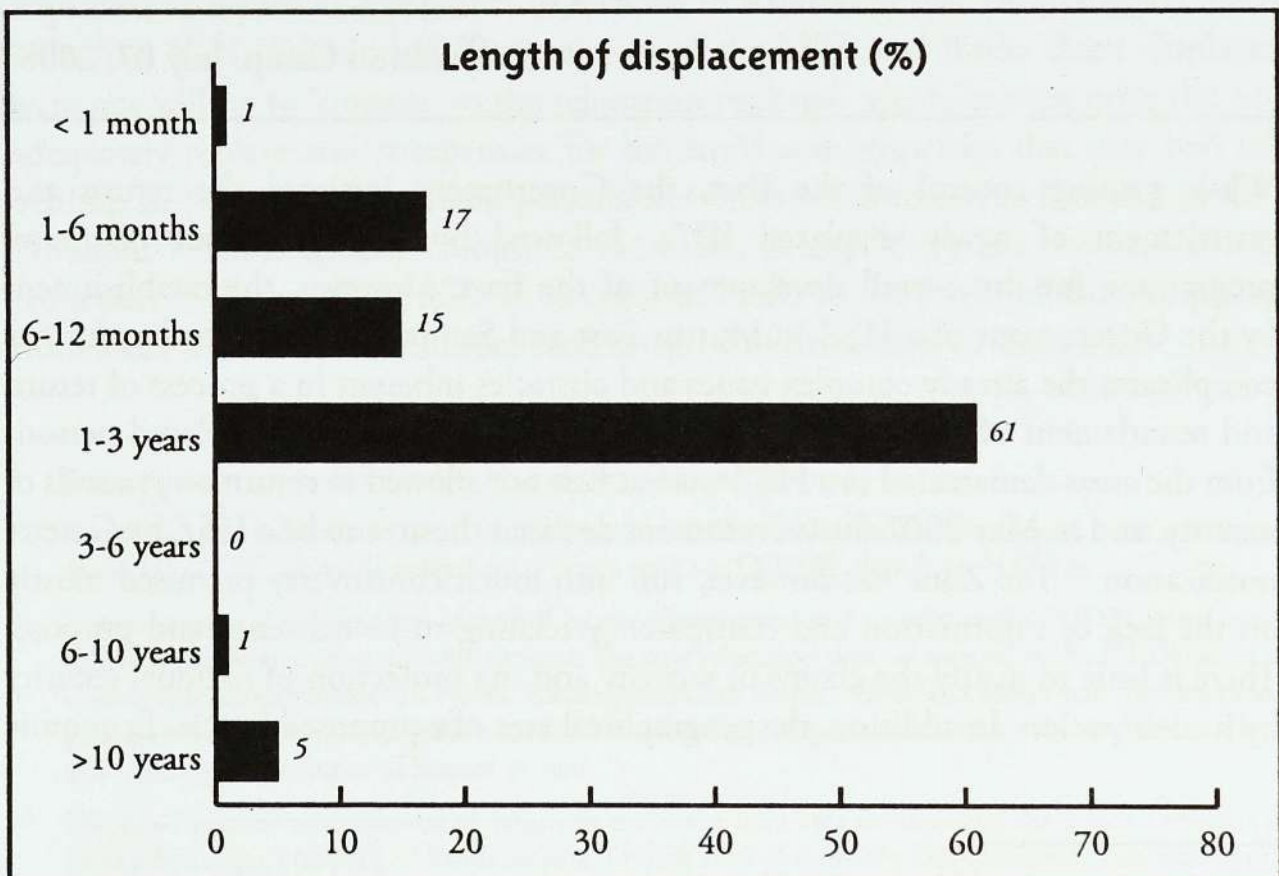


Chart 2



The majority of those interviewed have a displacement history of 1 – 3 years since the last time they were displaced from their original locations (see chart 2).

The pattern of displacement was predominantly within the affected districts (intra-district displacement), but also between districts, from Trincomalee to Batticaloa (inter-district displacement). A small number of Muslims in Trincomalee were displaced to Valaichennai in Batticaloa. The majority of Muslim families and Sinhalese families were displaced within the District and fled to Kantale. Tamil families living in both Government and LTTE controlled areas of Mutur and Eachchalampattu were displaced south to LTTE controlled areas in the Koralaipattu area (Vaharai), and to Government controlled areas in Batticaloa. The Government expanded the military offensive into LTTE controlled areas in Batticaloa, first in Vaharai and then to Koralaipattu South (Kiran), Manmunaipattu South and other interior areas of South Western Batticaloa District. An instance of inter -district displacement is given in the data below:

“They fled their home in Sampur on 28.04.2006 and went to Paatalipuram where they stayed in a church for a couple of months. When the shelling reached Paatalipuram, they fled to Verugal Mothuwarem and stayed in a camp there again for a few months; from there on to Karthiraveli and from Karthiraveli to Vaharai. From Vaharai they walked to Batticaloa. It took 36 hours or so of continuous walking. They have been at this camp since 24. 12. 2006”

- Kaliyankadu Camp, July 07, 2008

While gaining control of the East, the Government initiated the return and resettlement of newly displaced IDPs, followed by a development plan and programme for the overall development of the East. However, the establishment by the Government of a HSZ in Muttur East and Sampur, in Trincomalee, further complicates the already complex issues and obstacles inherent in a process of return and resettlement of displaced persons to their homes and lands. Displaced persons from the areas demarcated as a HSZ were at first not allowed to return on grounds of security, and in May 2007 the Government declared the area to be a HSZ by Gazette notification.<sup>24</sup> The Zone has however, run into much controversy premised mostly on the lack of information and transparency relating to its existence and purpose. There is little to justify the claims of security and the protection of national security by its delineation. In addition, the geographical area of a proposed Special Economic

<sup>24</sup> Gazette Extraordinary No. 1499/25, May 30 2007

Zone (SEZ)<sup>25</sup> and the demarcation of the HSZ overlap. The prevalent assumption is that the use of the HSZ is a means of deterring the original inhabitants of the area from returning, to pave the way for an Integrated Development Plan issued by the Urban Development Authority (UDA) for the development of the District of Trincomalee into a Metro Urban Development Area, and for the Eastern Revival Programme declared under the Mahinda Chinthana Development Plan. More specifically, the area of the gazetted HSZ has been demarcated to build a Coal Power Plant for which an Indian Company – the National Thermal Power Corporation – has been contracted.<sup>26</sup>

Subsequent developments in Trincomalee saw the establishment of a 300 meter Buffer Zone on either side of the Outer Circular Road that is being developed to connect Sampur to Kuchchaveli. The buffer zone is both within the boundaries of the HSZ and outside. There has not yet been a formal negotiated process between displaced persons and Government authorities for the acquisition of the private lands that fall within the HSZ and the Buffer Zone. This leaves those who have been displaced from and are now not allowed to return to these lands in much uncertainty and insecurity about their immediate future and the fate of their lands and properties. While many of them would prefer to return to their lands within the HSZ or the Buffer Zone, no compensation has yet been offered in the event they are not allowed to return. There has also been no indication from the Government whether and how it is legally tenable not to allow them to return. Instead, some of the displaced were requested to express their consent to relocate to Ralkulli or Pallikudiyiruppu Grama Niladhari (GN) Divisions.<sup>27</sup> The majority of the HSZ and Buffer Zone displaced were not willing to ‘consent’ to the relocation package, which in most cases did not adequately replace and compensate for the lands and properties that they had left behind. In May 2008, displaced persons were allowed to return to 6 of the 11 GN Divisions<sup>28</sup> that originally comprised the HSZ, though there has been no official reduction of the gazetted HSZ. This report will refer to the plight of those displaced from areas within the HSZ under each category of discussion in section 6.

<sup>25</sup> Extraordinary Gazette Notification No.1467/03, October 16, 2006

<sup>26</sup> A total of 6,993 individuals (1,877 families) are at the risk of losing their original lands, if the boundaries of the HSZ/ SEC are made permanent – Supra note 23 (COHRE Report on HSZs)

<sup>27</sup> New relocation sites have been identified by the Government and an offer made to IDPs living in the Killivetti transitional camp in January 2009. The new relocation sites are situated in the DS Divisions of Chanayoor, Kaddaiparichchan North, Kaddaiparichchan South, Nallur and Ilakanthai. The relocation package offered to HSZ and buffer zone IDPs is a standardised package of a house on 20 perches of land and a setting-in allowance of Rupees 25,000

<sup>28</sup> Displaced persons were allowed to return to the entire land area demarcating the 3 GN Divisions of Pallikudiyiruppu, Nalloor and Paddalipuram; limited areas of another 3 GN Divisions - Nawaratnapura, Chenayoor and Kattaparichchan, were made accessible to returning IDPs.

The return and resettlement of persons displaced after July 2006 commenced around September 2006, amidst allegations that the Government was forcing people to return. Reasons for these forced returns centered on the high profile coverage that the liberation of the east was receiving at the time, and included the need to demonstrate the initiative for speedy resettlement on the part of the Government. Many of the returns were heavily militarised with little space for those involved to make a free and informed choice about their return. The security situation in return areas was the foremost among the concerns of returning IDPs, including the possible break out of inter – communal violence, and retaliatory attacks. The first wave of returns was in the District of Trincomalee, soon after the capture of Sampur. Muslim IDPs who had fled Muttur town were compelled to return by the armed forces, central and local Government authorities, and Muslim community leaders, who were keen to return Muttur to a state of normalcy.<sup>29</sup> Thereafter, substantial pressure was exerted on Tamil IDPs to return to Muttur; and on Sinhalese IDPs to return to their homes in Seruvila from Kantale, to where they had fled to avoid LTTE shelling. In February and March 2007, those displaced in the Batticaloa District returned voluntarily to their homes in the Vaharai DS Division, and to Trincomalee District. On returning to Vaharai many of the returnees found their homes completely damaged and destroyed by the hostilities and also by looting. Returning IDPs were skeptical about the sustainability of their return as none of the assistance for shelter and livelihood and measures for security that had been promised seemed apparent or forthcoming in the initial months after their return.<sup>30</sup>

A progressive improvement was seen in the process of return and resettlement in the early part of 2007 and the months to follow. A 'go and see visit' (GSV) was organised in February 2007 by the Government Agents (GAs) of Batticaloa and Trincomalee to 9 GN Divisions in the Western parts of Muttur, in Trincomalee<sup>31</sup>. However, the numbers who participated in the GSV were small and did not fully ensure that returning IDPs had adequate information on which to base their decision to return. Other GSV's were organised to return IDPs to the Vaharai DS division in March, though very little consultation was conducted before the actual returns took place. There was significant progress with regards to the process<sup>32</sup> and logistics of the returns to Batticaloa West

<sup>29</sup> Inter – Agency Standing Committee (IASC) Report, Conflict Related Displacement in Sri Lanka: A study on Forced Displacement, Freedom of Movement, Return and Restitution, April 2006 – April 2007, pgs. 4 and 82

<sup>30</sup> Ibid

<sup>31</sup> Over 25,000 IDPs in Batticaloa District at the time were from Trincomalee, mostly from the Eastern Muttur and Eachchalampattai Divisions. Of the 2,800 from the Muttur West DS Division, only 23 participated in the GSV.

<sup>32</sup> The UNHCR conducted a number of consultations with the Ministry of Disaster Management and Human Rights, and the Ministry of Resettlement and other relevant officials on issues of – adequate information being provided to returning IDPs, pre – return assessments, and adequate assistance upon return.



in May 2007. The returns to Vellavelly, Paddipalai and Vavunatheevu and to Verugal in the Trincomalee District were in the most part voluntary, with officials from the Ministry of Resettlement deployed to oversee the process.<sup>33</sup>

An 'emergency assistance and recovery plan' for Batticaloa<sup>34</sup> was formulated in September 2007 by the Government for urgent intervention in the first six months of relief and recovery (post return), for which eight priority areas were identified.<sup>35</sup> The priority areas are – food and nutrition, water supply, housing, livelihood support, road and transport, health and education, public services, and religious activities. The plan was based on the 'model plan' for Vaharai, which had been formulated earlier, and was to be implemented in the DS Divisions of Batticaloa which had "completed resettlement" by end June 2007, namely – Vaharai, Paddipalai, Vellavelly and Vavunatheevu. The approach taken in the above report for recovery and relief planning is especially important for HLP restitution. It notes that while the six month timeline for the plan is an important tool for the relief and recovery phase of resettlement, that it is "important to draw clear parallels to the development process and identify linkages as well as early interventions that can benefit long term development". It is particularly important to define what these linkages are, especially in a challenging sector such as housing, where the progression to the development phase and permanent housing will require careful planning with clear entitlements and timelines for implementation. The report highlights the need for a 'housing policy in resettlement areas'.<sup>36</sup>

The Ministry of Resettlement records as at August 2008 that it was able to resettle 182,193 displaced persons of the Districts of Batticaloa and Trincomalee, out of the 230,647 persons who remained displaced in these Districts at the beginning of the year.<sup>37</sup> This number includes 69,705 persons of a total of 79,618 persons from Trincomalee displaced to Batticaloa.<sup>38</sup> Large scale returns took place to the DS Divisions of Kiran and Chenkalady towards the latter part of 2008, after de-mining activities had been completed. Throughout the returns however, a number of factors and circumstances have been apparent which are not conducive to a process of

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<sup>33</sup> IASC report (Supra note 29) pg. 82

<sup>34</sup> There has been no parallel plan for the District of Trincomalee, within the duration of the fact finding and survey for this report

<sup>35</sup> Consultative Committee on Humanitarian Assistance (CCHA), and the Ministry of Resettlement and Disaster Relief Services (2007), Plan for Emergency Assistance and Early Recovery For Resettled Areas in Batticaloa District, pg. 07

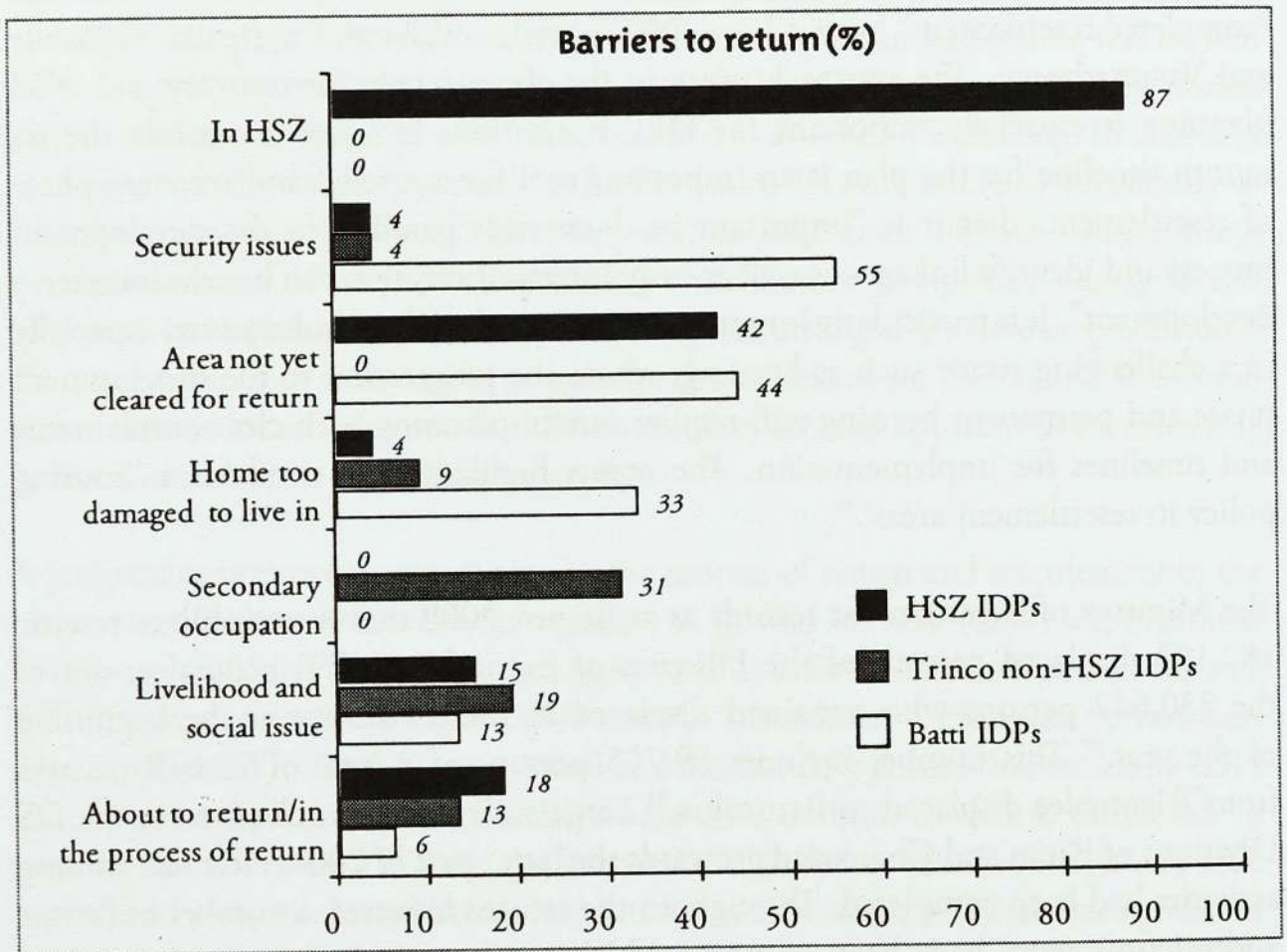
<sup>36</sup> Ibid, pg 10

<sup>37</sup> Ministry of Resettlement and Disaster Relief Services (Supra note 21) pg. 5

<sup>38</sup> Ibid

return that is designed to secure rights based restitution and durable solutions to displacement. These factors and circumstances include issues of security, untimely de-registration of IDPs (from the register of IDPs maintained in the District),<sup>39</sup> lack of information or inconsistency in available information,<sup>40</sup> the military occupation of homes and lands, and delays in assistance and compensation<sup>41</sup>. All these have been highlighted by the UN and humanitarian agencies working in collaboration with the Government, and are reflected in the survey conducted by COHRE among displaced persons.<sup>42</sup>

Chart 3



Among the ‘barriers to return’ investigated by the survey, issues of security remain an overarching concern among displaced persons, both among those still staying in welfare camps as well as those who had returned to their homes during the survey. Chart 5 indicates that, among the IDPs (located in welfare camps), those displaced within Batticaloa perceived security to be the primary barrier to their return. Security

<sup>39</sup> See section 4.2 for further discussion on the registration process for IDPs and issues of de – registration  
<sup>40</sup> See section 4.6 for further discussion on issues of information and the informed participation of displaced person in return and HLP restitution  
<sup>41</sup> See section 4.3 for further discussion on compensation  
<sup>42</sup> See section 2.3 and section 4.0 for further discussion and analysis

continues to be an issue among many of those who have returned to their original homes, some of whom do not feel entirely resettled as a result. When questioned on the factors that influenced the choice to return, 51 per cent of answers included that they 'felt it was safe to return'. The perception of safety was particularly low among returnees within Batticaloa (at 7 per cent), and among those returning to their homes within the gazetted demarcation of the HSZ (at 27.5 per cent). Two returnees, one from Kannankuda, Batticaloa and another from Srinivasapuram in Trincomalee stated as follows:

"Some families said that they felt safer now because earlier they were afraid of LTTE abductions. They also say fish and prawn are plentiful and they are ok, and they only need their homes to be built. Others say that their economic situation has fallen drastically and though the army has not harassed them, the mere presence of the army nearby scares them".

- from field notes, GS Division in Vavunatheevu, July 05, 2008

"We don't feel fully resettled. The army is everywhere; if we have to run it will not be possible because they are in every direction and some areas have been closed off. Last night we heard shooting in the Sampur direction, and we don't know what is happening. We prayed that the fighting has not started again and it would not come in our direction"

- Returnee from Srinivasapuram, Thoppur, Muttur, September 15, 2008

It is clear that the return and reintegration of displaced persons requires the consideration of a number of factors that link through the different stages of the resettlement process. Inadequate attention to issues such as security and information can potentially impede a meaningful process of integration and development. Section 6 of this report will make an in depth assessment of those areas that have a direct bearing on HLP restitution. A successful and sustainable programme of restitution that is designed to secure the end of displacement is not confined to the restoration of land and property only. Rather, it necessarily requires a holistic consideration of all factors necessary to remedy the fact of displacement.

## 2.2 Objectives and Scope of Recommendations

The aim of this study and report is to formulate recommendations for a restitution policy that is relevant to the context of displacement in Sri Lanka. Its specific focus will be on the restitution of housing, land and property based on the premise that sustainable return (and resettlement) is not possible without the restitution of housing, land and property in a manner that rectifies and remedies displacement at least as far as the loss of assets is concerned. The discussion of this report will refer to international standards for HLP restitution that have been developed based on precepts of human rights and humanitarian law. International standards for restitution embodied in the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, namely the Pinheiro Principles,<sup>43</sup> are an objective point of reference to assess whether a programme for restitution is conducive to the realisation of the rights to return and restitution. The programme of restitution itself however, needs to derive its relevance from the specific context of displacement in Sri Lanka.<sup>44</sup> Also, the report will attempt to define and demarcate the nature and ambit of the displacement to which the remedy of restitution is applicable. If restitution is to be acknowledged in national law and policy as a legal remedy to bringing displacement to an end, then it must necessarily have relevance to the definition of displacement that is defined by those same laws and policies.<sup>45</sup>

The Pinheiro Principles require that a programme of restitution and its elements are compatible with international human rights, refugee and humanitarian law and related standards. This requirement extends to 'all housing and land restitution procedures, institutions, mechanisms and legal frameworks'.<sup>46</sup>

These Principles do not require the super-imposition of a fixed programme of restitution irrespective of the context of application, but rather an assessment of whether existent mechanisms, procedures, and institutional involvement meet the basic standard to ensure the implementation of rights based return and restitution and durable solutions to displacement. Thus, the policy recommendations will translate these international standards into the Sri Lankan context in order to facilitate the development of legislation, policies and practices that can comprehensively address internal displacement in Sri Lanka and enable IDPs to return to their places of origin and recover their housing, land and property. It is to be noted that the scope of the

<sup>43</sup> The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, E/CN.4/ Sub.2/2005/17

<sup>44</sup> See section 3.1 for a definition of restitution

<sup>45</sup> See section 3.1 for a discussion on defining displacement

<sup>46</sup> Pinheiro Principles (Supra note 43) Principle 11

recommendations extends to addressing circumstances of internal displacement, both protracted and short term, and to Sri Lankan refugees. The recommendations are not confined to the objective of designing policies and programmes for the restoration of housing for displaced persons only, but are intended to link HLP restitution with a process of ending internal displacement in Sri Lanka. The recommendations do not constitute a policy statement in themselves, but are intended to facilitate the formulation of policy incorporating HLP restitution as a remedy to displacement.

The data collated from the fact finding programme and survey implemented in Batticaloa and Trincomalee provides the basis on which the recommendations are formulated. This data provides the necessary insight into the current resettlement programme that is being implemented by the Government, and will be used to make an evaluation of the ongoing return and resettlement in Sri Lanka from a perspective of restitution standards articulated at the international level, as is relevant to the context of Sri Lanka. Thus, while the baseline data may get out-dated over time, it will nevertheless be relevant to illustrate facts pertaining to the different stages of the return process, and will thereby continue to be relevant to a discussion on a rights based process of HLP restitution. The scope of the recommendations will maintain a perspective of the overall resettlement programme designed to bring displacement to an end, with a specific focus on HLP restitution, which constitutes a vital and central component of such a programme.

Thus, the general objective of this report is:

To formulate policy recommendations for a national HLP restitution policy that links through the stages of relief, recovery, post recovery, medium and long term development outlined by the Government for post conflict recovery and development, with due regard to a rights based approach to restitution that is relevant to the particular context of internal displacement in Sri Lanka.

The specific objectives of this report include: to –

- Make an analysis of the baseline data of the survey and fact finding programme, to make an assessment of prevalent gaps and issues in the process of resettlement, relevant to HLP restitution;
- Understand the obstacles to effective restitution and sustainable return from the perspective of displaced persons, as well as from the perspective of those who work with displaced persons, namely the GOSL, United Nations agencies, and the Non Governmental Sector;

- Outline the different durable solutions that are set out by international standards and the application and relevance of HLP restitution in each of these solutions;
- Discuss the scope of a scheme of adequate compensation, where the direct restitution of housing, property and land is not possible, both in temporary circumstances and in the long term;
- Highlight the importance of adequate administrative and restitution claims procedures, sufficient and accessible information, land documentation, institutional responsibility, and gender, for a rights based programme of HLP restitution;

It is intended that the policy recommendations will provide all agencies and institutions working with displacement, including the Government, UN agencies and Non Governmental agencies, with guidance on integrating internationally recognised standards for HLP restitution in the context of Sri Lanka's displacement.

It is further intended that the discussions and policy recommendations contained herein will be utilised in the formulation of a comprehensive resettlement policy that addresses all instances of displacement in Sri Lanka, and will contribute to an overarching housing and land policy, that can secure adequate housing for communities and persons in Sri Lanka.

The scope of this report and recommendations will not extend to the development phase outlined in the Eastern revival programme, for infrastructure, industrial and other economic development, unless the envisaged development has the potential to adversely affect the right to return and restitution of individuals or communities. It will however, draw attention to the importance of linking HLP restitution through the several stages of ending displacement culminating in the developmental phase.

### **2.3 Methodology**

The report and recommendations are compiled on the basis of a fact finding programme conducted in the Districts of Batticaloa and Trincomalee in the Eastern Province, and also at the Central level in Colombo. Information relevant to this report and to the formulation of the policy recommendations, was gathered from –

- a) Displaced persons in the Districts of Batticaloa and Trincomalee, by a survey implemented with the use of structured questionnaires;

- b) UN agencies and Non – Governmental Organisations both directly and indirectly involved with issues of displacement and HLP restitution at the district and central levels; and
- c) Government officials at both the district and central levels of Government.

The survey among displaced persons was implemented by UNOPS on behalf of COHRE. The sample for the survey was divided into two broad categories – displaced persons who resided at IDP sites<sup>47</sup> at the time of the survey, referred to as IDPs; and those who have left their locations of displacement, and returned to their original district or land, referred to as returnees.<sup>48</sup> It is to be noted that a returnee for the purposes of this study need not have necessarily returned to his or her original land and home; it is sufficient if the relevant individual or family has been in a process of return, in anticipation of returning to their original locations in the near future, and the Government authorities treat them as having returned to their original land for administrative and other purposes relating to the return process. Thus, the conventional understanding of ‘return’, where the assumption is that return must correlate to the point of origin, may not be applicable in the particular circumstances of returns in the East, where for a number of reasons, returnees are unable to return directly to their homes. Further, with regards to intra-district displacement, though the location of displacement may well be just a few kilometers away from the original land to which the displaced person returns, it is nevertheless a return. This definition of returnees allows for a comprehensive assessment of all obstacles and problems returning persons may encounter in the process of moving back into their former homes.

The division of the sample population into IDPs and Returnees was such that an assessment could be made of issues impacting HLP restitution among two groups of persons at different stages of the resettlement process.

The two main groups of ‘IDPs and Returnees’ of the sample was further broken down into the following sub-categories:

IDPs or displaced persons still residing in IDP sites (192 interviews) -

- a) HSZ IDPs – those displaced whose places of origin are within the boundaries of the HSZ in Sampur; Trincomalee (who at the time of the survey were displaced to locations in both Batticaloa and Trincomalee);<sup>49</sup>

<sup>47</sup> IDP sites: temporary locations that house persons in circumstances of displacement

<sup>48</sup> See section on interpretation

<sup>49</sup> The boundaries of the HSZ for the purposes of the survey are those which have been gazetted as constituting the HSZ, and not the boundaries which have been informally reduced to allow some of the HSZ IDPs to return to their homes.

- b) Non-HSZ IDPs – those displaced whose places of origin in Trincomalee were never inside the boundaries of the HSZ;
- c) Batticaloa IDPs – those displaced within the Batticaloa district, and have not returned to their homes in Batticaloa;

Returnees or displaced persons who have been in some movement to return to their original homes (192 Interviews)

- a) HSZ Returnees – displaced persons who have returned to their homes or areas close by that lie within the originally gazetted HSZ;
- b) Non-HSZ Returnees – those who have returned to their homes or areas close by to their homes in Trincomalee, in areas that were never demarcated as a HSZ;
- c) Returnees in Batticaloa – displaced persons who have returned to their homes or areas close by to their homes, in Batticaloa;

Two workshops were held in 2007 to bring together Government and Non-Governmental Organisations whose mandates are relevant to HLP restitution. The Pinheiro Principles were used as a basis for the discussions, with a perspective to their application in Sri Lanka.<sup>50</sup> The discussions and deliberations of these workshops contributed to conceptualising and framing the substantive content of the survey and fact finding programme in a manner that is relevant to the context in Sri Lanka and the current resettlement process.

Since September 2007, COHRE has been working closely with UNOPS and other agencies on the design of survey instruments and appropriate research strategies to gather information about the experience of displaced families, their understanding of the manner in which restitution can remedy their losses, their opinions about resettlement assistance, and their thoughts about their own resettlement in the future (which may or may not include returning to their place of origin). Prior to the survey implemented in the East, a survey was conducted with 254 tsunami affected families in transitional shelter sites in the Colombo District in October-November 2007<sup>51</sup>. A further pilot study was undertaken with conflict-affected IDPs in the Mannar DS Division in November-December 2007. The questionnaire utilised in the Mannar pilot study was developed to acquire a better understanding of issues and obstacles

<sup>50</sup> See section 3.1 for an outline of the Pinheiro Principles

<sup>51</sup> See [www.unops.org.lk/tsst](http://www.unops.org.lk/tsst), Housing and Compensation Survey (under Reports)



that are particular to conflict displacement, and therefore also to the East. The questionnaires implemented among IDPs and Returnees differed in certain sections, to reflect the different circumstances of the two groups.

The UNOPS assessment team conducted the survey with 384 IDPs and Returnees in the Districts of Trincomalee and Batticaloa during the period of July to September 2008.<sup>52</sup> It is to be noted that the total number of interviews among the two groups of displaced persons are a very small number in comparison to the total number of IDPs and returnees in the East at the time of the survey. The survey results cannot be used therefore to draw quantitative conclusions about facts and circumstances pertaining to the East as a whole. The purpose of the survey was primarily to identify trends in the different subject areas of the questionnaire that can inform a rights based programme of HLP restitution; and, to make a direct assessment of those qualitative factors, such as IDP/ Returnee perception of assistance, accessibility of information, participation, and the return process.

An initial field mission to Batticaloa was made in March 2008 to acquire an understanding of the ongoing resettlement programmes in the East. UNHCR offices, NGOs involved with shelter/ housing and relevant Government officials were approached in order to investigate those issues that impede a process of rights based HLP restitution and to inform them of the COHRE survey to be implemented by UNOPS. Information from this mission was used further to adapt the questionnaires to the context and to make a holistic assessment of the particular issues impacting return and restitution in the context of the East.

Another field mission was conducted in July 2008 to both the Districts of Batticaloa and Trincomalee to follow up on the findings of the first field mission to the District of Batticaloa, and to investigate issues particular to the District of Trincomalee, including the demarcation of the High Security Zone/ Special Economic Zone in Sampur. Information for the purposive selection of the survey sample was gathered during this mission, primarily in consultation with UNHCR field offices, as well as other agencies.

In selecting the sample, care was taken to include an even geographical spread as well as return areas identified with particular problems, such as extensive damage to housing, partial damage, displaced persons with no access to their lands (both before

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<sup>52</sup> DevInfo was used to collect data. The questionnaire was programmed using Emergency Info software and downloaded onto a Personal Digital Assistant (PDA). The data collectors input responses directly into the PDA. Each questionnaire is saved in the PDA and later downloaded onto a central computer as an XML file, processed and exported into a Microsoft Excel spreadsheet. Microsoft XLSTAT is used for analysis and the computation of descriptive statistics.

and after return), and those unable to return due to the demarcation of the HSZ. The incoming raw data and field notes were checked daily by COHRE and UNOPS to address any open questions and ensure consistency and quality of the data. Survey implementation was funded by UNHCR.

After the completion of the survey, the raw data was analysed by both COHRE and UNOPS in separate processes to include different perspectives and make sure that all information contained in the raw data was utilised for the policy recommendations. UNOPS provided a statistical analysis, and a narrative report for each of the Districts on issues emerging from the data for IDPs and Returnees respectively.

In addition, the field research included interviews with Government officials and with NGOs and UNHCR offices, both in the East and in Colombo, to complement the field data. Government officials were selected on the basis that they either work directly with IDPs and returnees or bear responsibilities and have insights into the process of return and restitution for IDPs. A previously developed set of questions was used to guide the interviews and give a framework for the conversations. However, this was only used as a guide to allow for comparisons, but did not constrict discussions to the question guide. Stakeholders from NGOs and UN agencies were interviewed to supplement information and to fill out any information gaps.

All participants of the data gathering stage were assured that the data gathered will be treated with absolute confidentiality and that anything said in the interviews and discussions would only be published in such a way that it is not attributable to specific persons unless COHRE has received their consent. The three tiered approach allows for the representation of the experiences of all stakeholders involved – the population subject to displacement, Government and UN agencies, and I/NGOs.

In November 2008, the data of the survey and its findings were presented at a consultation among UN agencies and NGOs who had contributed to the fact finding programme and survey, and a few others with expertise in the areas of displacement and housing. The findings of the survey were grouped into different subject areas and discussed among the participants in group sessions. The expertise of these agencies were thus incorporated by a consultative process in the formulation of policy recommendations for a national policy on HLP restitution, based on the survey and fact finding programme.

### SECTION 3:

## A THEORETICAL FRAMEWORK

The concept of restitution is applied in many different fields of law as a means of remedying a loss that has been suffered by one party, as a result of the 'unlawful' acts of another. The remedy of restitution attempts to 'restore' the aggrieved party to the pre – loss position in recognition of the loss that has been suffered. It constitutes an important component of the remedies outlined with respect to the violations of international human rights and humanitarian law. The remedy of restitution maybe used in conjunction with other forms of reparations for any loss and harm resulting from the above violations. The concept of restitution therefore is integral to 'restorative justice' in a context of conflict and displacement.

Restitution is increasingly viewed by the international community as a distinct human right that is central to securing the 'dignity' of those who are involuntarily displaced. Displaced persons have a right to be restored to their former lives prior to displacement, with adequate remedies for the losses suffered by the fact of displacement. Displacement related losses include, among others, loss of security and employment opportunities, loss of housing, land and property and land documentation, and a cohesive community and family life. An effective process of return and reintegration would require that the right to restitution is progressively realised, with due regard to the many human rights that are subject to violation by the displacement of persons.

Restitution is a holistic concept that requires among other things, that the environment of return, matters of security, infrastructure, livelihoods and housing, be restored progressively and consistently in a manner that is sustainable and durable, and consistent with human rights norms. The discussion in this chapter however, will be limited to the legal framework that is applicable to HLP restitution, deriving from international human rights law that is applicable to Sri Lanka and relevant national law and policy. It will also outline the principles and standards that are relevant to HLP restitution, that have been formulated at the international level for the implementation of HLP restitution. The policy framework presented in this report should be read with the concept in mind that every person affected by displacement in Sri Lanka has the right to HLP restitution.

### 3.1 International Human Rights Law and Standards

Sri Lanka is signatory to many of the international human rights treaties on the basis of which the right to restitution is recognised as a distinct right.<sup>53</sup> While the right to restitution is not expressly endorsed in treaty law as a distinct human right, the requirement to remedy the many human rights violations that result from displacement justifies the need to implement and realise the right to restitution as a distinct and independent right.

In recognition of the scale of displacement related problems around the world and the lack of consolidated principles on HLP restitution, a set of principles was developed outlining standards that are necessary to comprehensively address HLP restitution. These standards, namely the Pinheiro Principles, were adopted by the UN Sub-Commission on Human Rights in 2005.<sup>54</sup> They are based on international human rights; refugee and humanitarian law, and thus provide an authoritative set of norms that govern the realisation of the right to restitution.<sup>55</sup> The Pinheiro Principles provide additional clarity to the rights based principles consolidated by the Guiding Principles on Internal Displacement (referred to as the 'Deng Principles').<sup>56</sup> The Deng Principles consolidate and outline the rights and guarantees embodied in international human rights and humanitarian law as it extends to displaced persons. Persons living in circumstances of displacement are not in anyway prohibited from or entitled in any lesser degree to the equal enjoyment and protection of the rights and freedoms enjoyed by other persons under domestic and international law.<sup>57</sup> The Deng Principles outline principles relevant to the protection of displaced persons through out their displacement, including during the processes of return,

<sup>53</sup> Sri Lanka is party to all of the so-called principal human rights treaties, including the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which are the most relevant treaties for the right to restitution. In addition, Sri Lanka is party to the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). For ratification status, see <http://www.unhcr.ch/pdf/report.pdf>, accessed 22 January 2009.

<sup>54</sup> See Pinheiro Principles, *Supra* note 43

<sup>55</sup> For further reference on the norms and standards underlying the Pinheiro Principles, refer to UN Doc. E/CN.4/Sub.2/2005/17/Add.1, (11 July 2005), *Explanatory Notes on the Principles on Housing and Property Restitution for Refugees and Displaced Persons*, available at: <http://domino.un.org/unispal.nsf/fd807e46661e3689852570d00069e918/66eaf07a6f48554852570750067b429!OpenDocument>

<sup>56</sup> United Nations (1998), *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2/Annex

<sup>57</sup> *Ibid*, Principle 1; It is to be noted however, that under international human rights law certain derogations from the application of human rights may be allowed where the circumstances reasonably require such a derogation, in proportion to the necessity to derogate from the application of the human right for which derogation is allowed.

resettlement and reintegration. The primary obligation is with relevant authorities to ensure the voluntary return<sup>58</sup> of displaced persons in safety and dignity or to enable displaced persons to resettle (or relocate) voluntarily in another part of the country. This obligation includes the responsibility to facilitate the re – integration of displaced persons into their chosen place of residence in the post displacement context.<sup>59</sup> Further, such authorities have the duty and responsibility to implement a programme of just and equitable reparation, including assisting displaced persons to recover as far as it is practicably possible property and possessions left behind during displacement, or by the payment of adequate compensation or by any other means, which may remedy the loss of property and possessions.<sup>60</sup>

The Pinheiro Principles outline a set of standards for the recovery and restitution of property and possessions lost due to displacement, as specified by the Deng Principles. The right to HLP restitution is articulated as follows by the Pinheiro Principles:

“All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they are 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 and impartial tribunal.”<sup>61</sup>

Thus, the restoration of lost housing, land and property is a matter of ‘right’ and is not dependent on the discretion or ability of the relevant Government or authority to replace the pre – displacement *status quo* relating to housing, land and property. All persons who have been displaced by a natural disaster, conflict, or due to development induced displacement, have recourse to the right to restitution as an inherent human right central to safeguarding and protecting their dignity and well being. Compensation as a remedy<sup>62</sup> within the framework of the Pinheiro Principles should ideally be where the physical restoration of housing and property is not factually possible in a context of post disaster or post conflict. This principle goes on to require that States “demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice”.<sup>63</sup>

<sup>58</sup> Ibid, Principle 15(d)

<sup>59</sup> Ibid, Principle 28 (Section V)

<sup>60</sup> Ibid, Principle 29(2) (Section V)

<sup>61</sup> Pinheiro Principles (Supra note 43) Principle 2.1

<sup>62</sup> See section 4.3 for further discussion on compensation

<sup>63</sup> Pinheiro Principles (Supra note 43) Principle 2.2

Some of the salient principles that derive from and are embodied in human rights treaty law as is relevant to displacement are outlined by the Pinheiro Principles as overarching principles or human rights on which the right to HLP restitution is based.<sup>64</sup> The overarching principles provide the rationale on which the standards contained in the Pinheiro Principles are based. The overarching principles are, - the right to non – discrimination;<sup>65</sup> the right to equality between men and women;<sup>66</sup> the right to be protected from displacement;<sup>67</sup> the right to privacy and respect for the home;<sup>68</sup> the right to peaceful enjoyment of possessions;<sup>69</sup> the right to adequate housing,<sup>70</sup> and the right to freedom of movement.<sup>71</sup>

Displacement by definition<sup>72</sup> leads to the curtailment and/or denial of a number of human rights and is recognised as constituting a gross violation of human rights<sup>73</sup>. Under principles of international human rights law, where human rights violations occur, victims have the right to a remedy for these violations that should as much as possible re-establish the status quo before the violation occurred. The Basic Principles and Guidelines on the Right to a Remedy and Reparation<sup>74</sup> make reference to some of the salient international instruments and treaty law which provides a ‘right to a remedy for victims of violations of international human rights law’. These principles and guidelines do not create new international or domestic obligations, but outline certain standards and strategy for the implementation of obligations under

<sup>64</sup> Ibid, Principles 3 – 9

<sup>65</sup> Pinheiro Principles (Supra note 43) Principle 3; see also, Principle 4, Supra note 56; for further discussion see section 5

<sup>66</sup> Pinheiro Principles (Supra note 43) Principle 4; for further discussion see Section 5

<sup>67</sup> Pinheiro Principles (Supra note 43) Principle 5; Principle 6, Supra note 56

<sup>68</sup> Pinheiro Principles (Supra note 43) Principle 6

<sup>69</sup> Pinheiro Principles (Supra note 43) Principle 7; Principle 21, Supra note 56

<sup>70</sup> Pinheiro Principles (Supra note 43) Principle 8; Principle 18 (2), Supra note 56 refers to ‘basic shelter and housing’; also see discussion in section 4.4

<sup>71</sup> Pinheiro Principles (Supra note 43) Principle 9; Principle 12, Supra note 56; also see discussion in section 3.2

<sup>72</sup> See definition in Principle 2, Supra note 56

<sup>73</sup> See The Brookings Institute (2007) *When Displacement Ends: A Framework for Durable Solutions*, p.9: “In cases where durable solutions are being sought for IDPs due to conflict, formerly displaced persons have full and non-discriminatory access to local reconciliation mechanisms, as well as reparation **for having been the victims of gross violations of their human rights, in particular of having been forcibly displaced.**” (Emphasis added)

<sup>74</sup> United Nations (2006), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147, 21 March 2006.

international human rights and humanitarian law with respect to remedies for the violation of these laws. Principle 3 provides that:

“The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: [...] (d) Provide effective remedies to victims, including reparation, as described below”

Principle 19 clarifies that the remedy of restitution should [...] “restore the victim to the original situation before [...] the violation occurred” and “includes [...] return to one’s place of residence” as well as “return of property”.

Conflict induced displacement is associated with the loss of security and a complete breakdown of people’s normal lives. The human trauma and long term impact for those affected are severe both in psycho-social as well as in material terms. The right to HLP restitution addresses some of the material losses suffered by displaced persons, by the restoration of their rights, including the right to peaceful ownership and possession of homes, lands and properties, as guaranteed inter alia in the ICESCR and the ICCPR<sup>75</sup>.

Furthermore, the right to HLP restitution is an inherent part of the process of transition from conflict to peace. The UN Special Rapporteur on the Human Rights of IDPs has identified three elements, including restitution, that have proven to be necessary to make return of displaced persons and the process of transition, possible and successful:

“Safety of the life and limb of returnees must be ensured, i.e. violence must have come to an end [...]. Property left behind by those displaced must be returned to them and, where necessary, repaired or in cases of total destruction reconstructed, or returnees must be compensated for damages. The political, social and economic environment in the area of return must allow returnees to stay and start a life under normal conditions.”<sup>76</sup> (Emphasis added)

<sup>75</sup> Regarding housing, land and property restitution, the rights most immediately violated and require remedial action, are - the right to an adequate standard of living, including adequate housing (Art. 11 ICESCR), the right to non-interference with the home (Art. 17 ICCPR) and the right to liberty of movement and freedom to choose one’s residence (Art. 12 ICCPR). However, the enjoyment of many other human rights is regularly impaired – directly or indirectly – during displacement.

<sup>76</sup> Kaelin, W., (2006) *Internal Displacement and the Protection of Property*, in Realizing Property Rights, Rueffer und Rub, Zuerich, p.178.

The recommendations of this report are concerned with the second aspect outlined above, i.e. the return and reconstruction of property and compensation for damages to restore the material losses suffered and to ensure the sustainability of the overall return process.

### *Defining Displacement*

HLP restitution is a remedy for the fact of displacement and is central to achieving durable solutions to displacement, and to bringing displacement to an end. It is necessary therefore to have a definite understanding of when a durable solution has been achieved and when displacement may be deemed to have ended. International experience in contexts of displacement indicate, that there is little consistency among the international community of the instances in which State parties claim that they have effectively dealt with displacement and have brought displacement to an end.

The Deng Principles define Internally Displaced Persons 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 generalised violence, violations of human rights or natural or human – made disasters, and who have not crossed an internationally recognised State border.”<sup>77</sup>

The above definition allows for a broad interpretation of a displaced person, and is not limited to those who have been displaced by the ‘direct’ effects of armed conflict or violence. Consideration of equity and fairness would require that a policy relating to displaced persons should include all persons who have been compelled to leave their homes under some degree of real or perceived coercion.<sup>78</sup>

While the Deng Principles outline a broad definition of displacement and displaced persons, they do not outline any criteria or standard by which to determine when displacement has come to an end. It is observed that this omission was perhaps deliberate, in view that the ‘end of displacement’ should rather be determined by the factual situation of a particular context.<sup>79</sup> The circumstances of displaced persons

<sup>77</sup> Principle 2, Supra note 56

<sup>78</sup> A system of registration is used to identify and make a record of those who have been displaced. Registration is an administrative process that is utilised for the administration of assistance to displaced persons and to monitor their movements in displacement; See section 4.2 for further discussion

<sup>79</sup> See Mooney E., (2003) Bringing the end into sight for internally displaced persons, Forced Migration Review, pg 5



should be assessed to determine if it can be concluded that they have overcome their displaced circumstances to any reasonable degree, and have been restored into durable conditions of life. The effects of displacement, the loss of security, property and vulnerability to impoverishment may well continue after displaced persons have left camps and shelters under the direct protection of the State, and have returned home or to an alternative location.<sup>80</sup>

Thus, the ending of displacement is a process that continues well past the humanitarian phase of displacement to the post return or relocation phase within which HLP restitution is integral. It is essential for a restitution policy to link the ending of displacement through these different phases of displacement, in order that displaced persons are able to secure solutions to their displacement in a sustainable manner.

### 3.2 National Human Rights Laws and the Right to Restitution

The Constitution of Sri Lanka,<sup>81</sup> in Chapter III entitled 'fundamental rights', provides the main legal basis for the realisation and implementation of human rights in Sri Lanka. The human rights articulated in this Chapter are those that are determined as fundamental to the democratic aspirations and well being of the country. Among them are the fundamental rights which are of significance to the realisation of the rights to return and restitution.

Article 12 of the Constitution contains an 'equality clause' requiring that all persons are equal before the law, and have entitlement to the equal protection of the law. The article further incorporates positive measures to ensure the equality articulated therein, with specific provision for non – discrimination, based on grounds of – race, religion, language, caste, sex, political opinion, place of birth or on any one of such grounds. In light of this constitutional guarantee, it is necessary to examine the scope and application of equality and non – discrimination to a context of displacement in Sri Lanka. Equal protection of the law may differ in scope among those who are in circumstances of displacement, and who require special measures to have recourse to laws, regulations and procedures, that entitle them to the protection and dignity afforded to them by the equality clause in this Article. Ensuring that displaced persons have equal protection of the law may require special measures to ensure that relevant laws, policies and procedures that are not necessarily discriminatory on the face of it, do not result in the unequal treatment or implicit discrimination of displaced persons in its application. It is necessary for policies and practices affecting displaced persons to set standards in keeping with this Constitutional guarantee of equality,

<sup>80</sup> Also see discussion and analysis of the Sri Lankan context in section 2.1 and 4.2

<sup>81</sup> The Constitution of Sri Lanka (1978), Legislative Enactments (1980) Volume I, Chapter I

such that all procedures, mechanisms and strategies affecting displaced persons are tested for their equal treatment and non – discrimination of displaced persons.

The right to freedom of movement and of choosing one's residence within Sri Lanka is articulated in Article 14 of the Constitution, together with the right of every citizen to return to Sri Lanka.<sup>82</sup> The fundamental right to freedom of movement articulated by the Constitution is consistent with the provisions of the Universal Declaration of Human Rights<sup>83</sup> and the ICCPR which address the right to liberty and freedom of movement and the right to choose one's residence. The right to freedom of movement is overarching in its importance to both the rights to return and restitution. The freedom of movement, including the right to choose one's preferred residence, may be subject to violation both by the imposition of restrictions on the freedom of movement, as well as by the coerced or forced movement of persons in a context of displacement or post conflict resettlement and reintegration. A discussion of the fundamental right to the freedom of movement in relation to displacement and ending displacement, must essentially address issues surrounding displacement of persons, forced returns, and the inability to return to one's original location.

In addition to the human rights jurisprudence in the Constitution, Sri Lanka is signatory to many of the foremost international instruments and treaties governing international human rights. While many of the human rights in treaty law has not been expressly incorporated into legislation, the indivisibility and interdependence of human rights and the inability to realise one human right without realising the importance of other human rights to achieving basic human dignity, makes their incorporation implicit. Hence, the commitment of the Constitution to the realisation of human rights provides a sufficient framework within which to advocate and promote its commitments under international treaty law.

The Deng Principles translate the above provisions on liberty and movement in their applicability to displaced persons. They specify that, every human being shall have the right to be protected against arbitrary displacement, - including in situations of armed conflict, unless reasons of civilian security or military exigency requires their displacement;<sup>84</sup> displacement should not last longer than is required by the circumstances;<sup>85</sup> and the right of internally displaced persons to be protected against

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<sup>82</sup> Ibid, Article 14(1) (h) and (i)

<sup>83</sup> Universal Declaration of Human Rights (1948), Article 13(1)

<sup>84</sup> Principle 6(2)(b), Supra note 56

<sup>85</sup> Principle 6(3), Supra note 56

forcible return to or resettlement in any place where life, safety, liberty and/ or health would be at risk.<sup>86</sup>

The Pinheiro Principles further reiterate the parameters and standards of the right to return, in keeping with the right to freedom of movement and the right to choose one's residence:

“All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on free, informed, individual choice [...] with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries and places of origin.”<sup>87</sup>

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<sup>86</sup> Principle 15(d), *Supra* note 56

<sup>87</sup> Pinheiro Principles (*Supra* note 43) Principle 10.1

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## SECTION 4:

### ISSUES IMPACTING HLP RESTITUTION

This section contains both quantitative and qualitative data gathered from the survey conducted among displaced persons and supplemented by information collated from interviews with Government officials, the UNHCR and field based NGOs working with IDPs. Each subsection will also contain background information necessary to contextualise the data. The data presented in this section corresponds broadly to the subject areas that have been identified as relevant to HLP restitution as per international standards, and which have been investigated through the implementation of structured questionnaires among IDPs and Returnees. It is reiterated that the quantitative data (including the percentages) used in this section is not representative of the entire Eastern Province as a whole. Findings are based solely on the sample population of 384 displaced persons divided equally among IDPs and Returnees<sup>88</sup>, which is for the purpose of identifying trends that is apparent from the data that are relevant to the issues under discussion and which better clarify the qualitative value of the survey. In view of the ongoing resettlement programmes, the relevance of some of the quantitative data will be short-lived; however, its purpose is to indicate trends and features of the overall process that are relevant to the formulation of a restitution policy that is equitable, timely and endorses a rights based programme of HLP restitution in Sri Lanka.

The section will initially set out information on the different areas of loss that have been recorded through the survey.

#### 4.1 Losses arising from displacement

Given below is an outline of the losses suffered by displaced persons in the Eastern Province as recorded by the data and information of the fact finding programme. These categories of losses correspond to those which are identified by international standards as fundamental to any process of HLP restitution. However, this does not preclude that any other loss may be determined by national policy as relevant to HLP restitution. Remedying damage and destruction to housing and property constitutes one of the main components of HLP restitution and is the component most relevant

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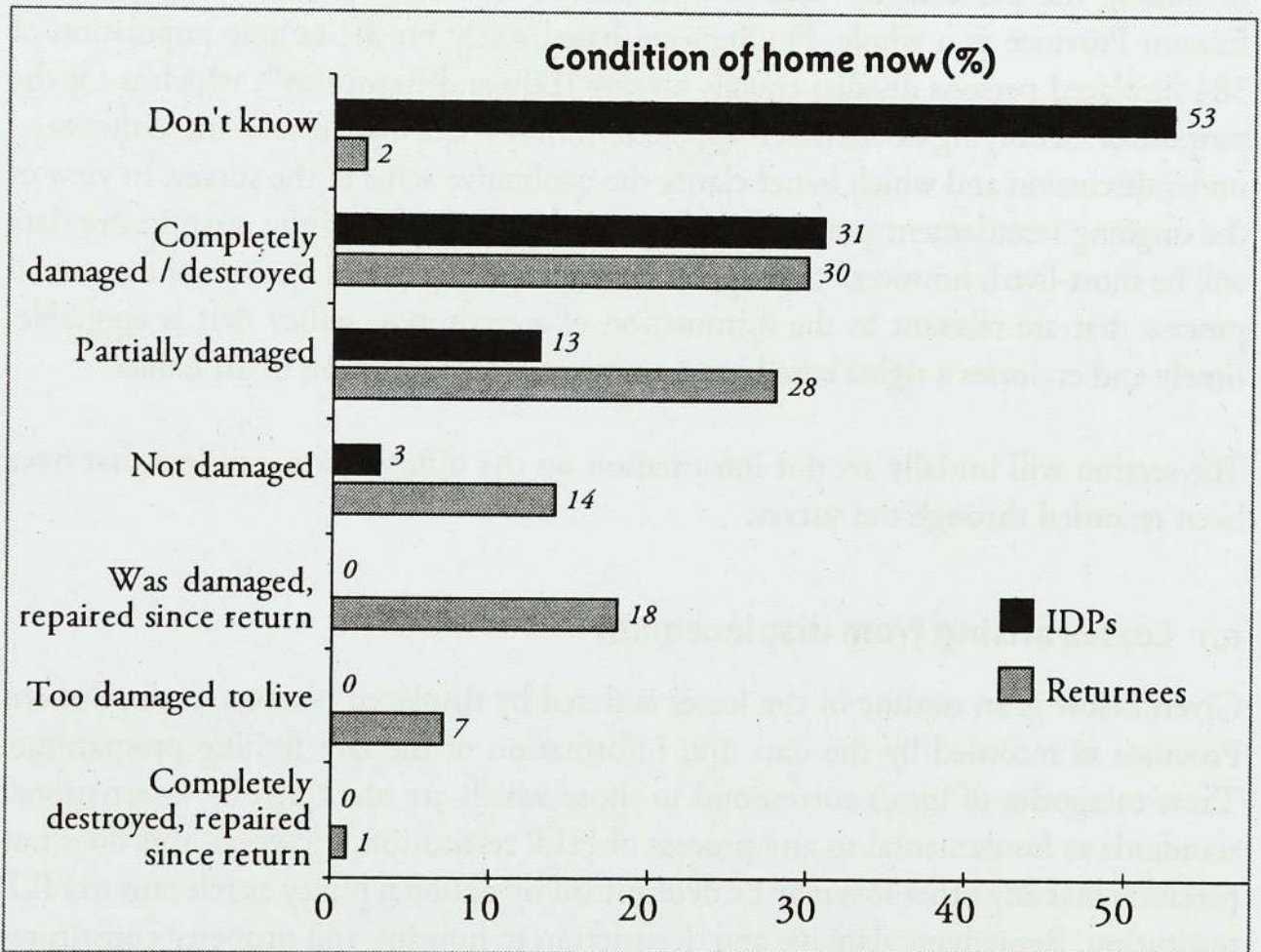
<sup>88</sup> See section 2.3 for Methodology

to the East, where destruction of housing and property is widespread.<sup>89</sup> However, a national programme of resettlement and development that aims to fully address displacement may not be possible unless other losses are also addressed as a matter of priority. Other losses that need to be remedied as a vital component of a restitution process are those arising from the loss of moveable property, and the loss of housing due to secondary occupation.

#### 4.1.1 Loss due to housing damage

Significant damage and destruction is caused to the homes and properties of displaced persons in the course of conflict. The condition of housing is often categorised in terms of the extent of damage that has been caused to it. Chart No. 4 below, indicates the condition of the homes of those interviewed according to the extent of damage, as described by the IDPs and returnees who have knowledge of the condition of their homes.

Chart 4



<sup>89</sup> Other components of HLP restitution include reestablishing property records or returning confiscated property to former owners. Discussed further in section 4.3 on compensation and section 4.4 on housing standards

Of the IDPs and Returnees who were interviewed, 31 per cent answered that their homes were completely damaged/destroyed during their displacement, i.e. destruction was so severe that their former homes had become completely uninhabitable.

“When we were in the camp and the fighting had ceased a little they allowed us to come to this area for our jobs (prawn and small fish catching). We couldn’t come close to our house, because they are mined, but we could take a look from the main road. We saw the place was burnt and the house broken”

Returnee to Vaharai DS Division, July 2008

“We lived in a temporary clay hut on the land and began constructing a permanent house. The foundation was done and some walls. Then we got displaced and had to leave behind all the construction material (including bags of cement, bricks and wood)... When [we] returned [we] found the new house destroyed. All the things were gone from [our] temporary hut and the construction material gone. But while everyone else’s house was repaired, [our] name[s] were not on the list...”

Respondent from Pallikudirrupu, September 15, 2008

The chart also indicates that a considerable amount of IDPs in camps had no knowledge of the condition of their homes (53 per cent). The percentage of IDPs without information of their homes was particularly high among those displaced from the demarcation of the HSZ and displaced to Batticaloa at 98 per cent, at the time of the interviews.<sup>90</sup> This is also the case among 2 per cent of Returnees, mostly among those whose lands have been included within the demarcations of the HSZ<sup>91</sup>, though they have returned from their locations of displacement to their homes, and receive some form of post return recovery assistance.<sup>92</sup>

Of the IDPs interviewed, 44 per cent are aware that their houses have been damaged (both partially and fully). Damage to housing of IDPs displaced within the District of Batticaloa, was as much as 88 per cent.<sup>93</sup> Only 13 per cent among this group are not aware of the condition of their homes. The majority of returnees (65 per cent)

<sup>90</sup> Original location of these IDPs are recorded as Muttur

<sup>91</sup> See section 2.1 on Contextual Background for a description of the HSZ

<sup>92</sup> See section 4.2 on Registration of Displaced Persons

<sup>93</sup> Among the areas where houses have been completely destroyed, as indicated by IDPs, are the DS Divisions of Kiran and Eravur Pattu, and Vaharai (Koralai Pattu North), in Batticaloa, and Muttur in Trincomalee

have answered that their house is completely damaged/destroyed, partially damaged or too damaged to live in at the time of the interview.<sup>94</sup> Only 19 per cent of returnees interviewed who suffered damage to their home have repaired this damage since return.<sup>95</sup> These repairs were in part made possible by assistance, and in part carried out on the initiative of returnees who had the capacity to do so. This indicates that a significant number of returnees are yet to receive any form of redress for their damaged homes in the way of housing assistance and/or compensation.

As to the cause of damage to housing, interviewees (both IDPs and returnees) gave answers as presented below. Interviewees could give multiple answers, so the total is greater than 100 per cent.

Damage to housing is a central concern to displaced persons, as well as to the entire return and resettlement programme. Adequate information of damage to housing prior to return; an accurate assessment of damage; and the availability of timely assistance for the temporary repair and rebuilding of housing; and compensation for damage caused, are all factors which will determine the success and sustainability of a resettlement programme and realisation of durable solutions to displacement. The following sections of this chapter will discuss data and information relating to damage, assistance and compensation in greater detail.

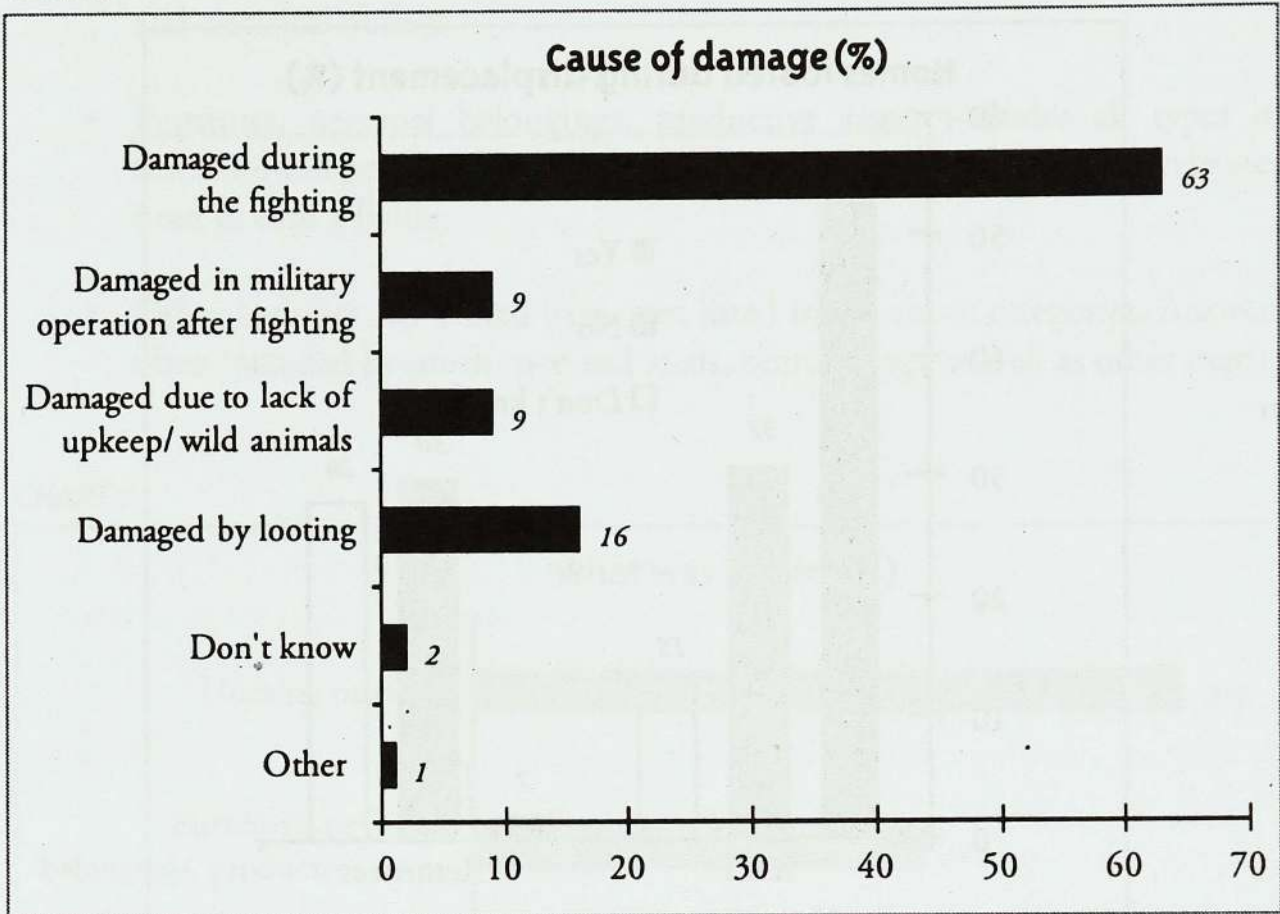
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<sup>94</sup> Among the return areas where houses have been completely destroyed – Eachchalampattu (Verugal), Kuchchaveli, Trincomalee Town and Gravets, and Muttur in Trincomalee; and partially damaged in the return areas of – Vellavelli in Porativu Pattu, Kokkadicholai in Manmunai South West, in Vaharai, and Manmunai West

<sup>95</sup> This includes 48 per cent of housing in Muttur, and 20 per cent of housing in Eachchalampattu and Kuchchaveli in the District of Trincomalee; and 5 per cent housing in the District of Batticaloa, which have been repaired since the return of displaced persons to their homes and lands, as per the sample of the survey.



Chart 5

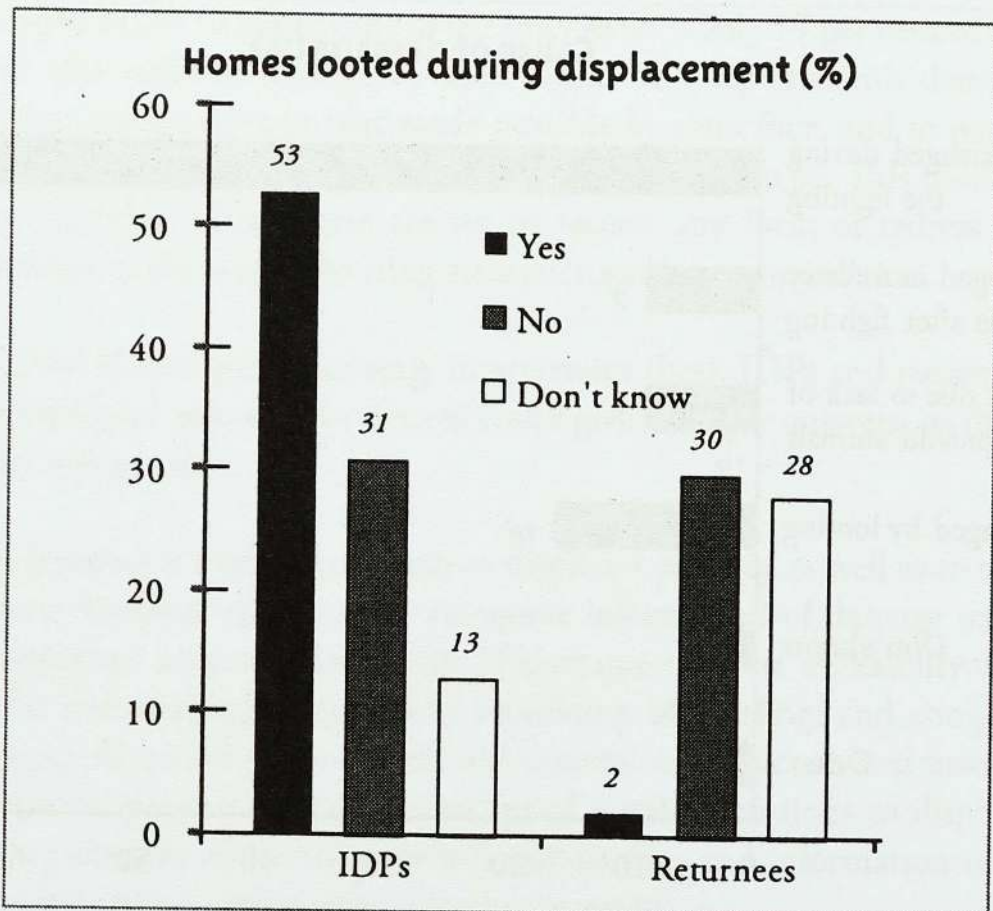


#### 4.1.2 Losses due to looting

The survey included findings relating to the loss and damage to property due to looting. The data included information of, the circumstances under which the looting took place; the items of loss and knowledge of who did the looting; and whether complaints had been made to the relevant authorities. These questions were asked on the basis that HLP restitution is premised on the principle of 'the right to peaceful enjoyment of one's possessions',<sup>96</sup> including one's private property and moveable possessions. Displaced persons have little control over the belongings they leave behind, and the loss of immovable property can at times lead to much deprivation, and at times to acute economic hardship. A policy for the return and resettlement of persons that incorporates a rights based framework for HLP restitution must necessarily redress any arbitrary loss and damage.

<sup>96</sup> See section 3.2 on Theoretical Framework

CHART 6



The majority of IDPs are not aware of whether their homes have been looted or not. Answers from returnees indicate a high incidence of looting during displacement from their homes. Looting has been the cause of significant damage to housing at 16 per cent, as seen in chart 5 above.

“My husband was able to go to the area in which our house is, but could not visit it because of the mines. People had told him that our house has been destroyed and looted; even the doors and windows have been taken”.

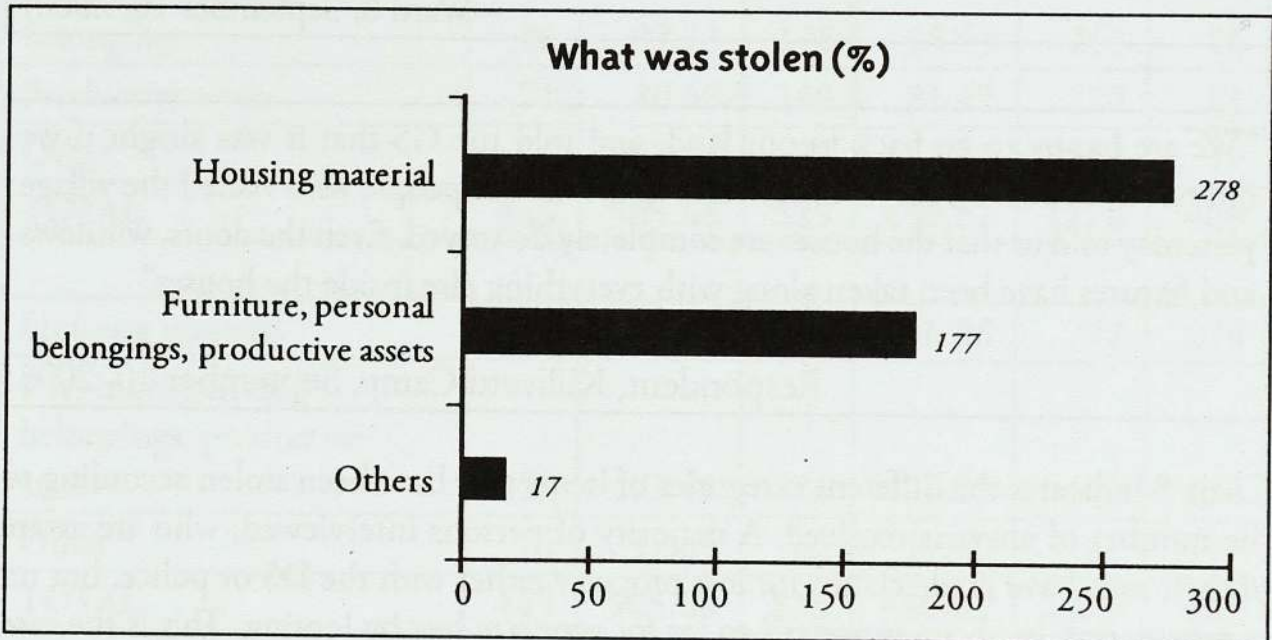
- IDP in Batticaloa, originally from Kiran, July 2008

Chart 7 outlines the different categories of items that have been lost among a total of 271 interviewees who stated that their homes had been looted. These interviewees gave multiple answers to the question of what was stolen, so that the total in the chart below is greater than 100 per cent.

In chart 7, answers are grouped in three broad categories:

- Housing material includes roof tiles, doors and windows, locks and hinges and electrical outlets
- Furniture, personal belongings, productive assets includes all types of furniture and personal belongings, and any tools and appliances interviewees need to earn a living;
- Other includes any looted items not listed in the above categories. Answers often included livestock, rice and seeds, cement bags, as well as other items.

CHART 7



It is apparent from the field notes that the economic loss resulting from lost property is diverse, and varies to a considerable degree among the interviewees. Some of the items are those which the interviewee relied upon for basic subsistence and livelihood.

“I lost my bullock cart and bull, 50 bags of paddy, 20 goats and 30 chickens. I found my cycle, milk cans and household things, including a solar panel and music system missing”.

Returnee to Vaharai DS Division, July 09, 2008

“... When I went there, I cried at the state of the house. One side was completely gone... and there was nothing inside. It was completely empty except for a few shreds of clothing and some pots and pans which were charred. We had many modern electrical items such as tv, fridge, furniture, lots of good saris, water pumps, a bicycle, ploughs and other tools. Nothing had been spared, even the doors and windows had been broken or stolen. We had 100 buffaloes and also 7 acres of paddy land. The coconut trees on our land have been cut, and buffaloes were all gone. The house did not look like my own and the land looked like it was from somewhere else. I could not believe this used to be my home...”

Respondent living in the Killivetti transitional camp, originally from Chenaioor  
- Ward 6, September 10, 2008)

“We are happy to go back to our land, and told the GS that it was alright if we did not have houses, we just wanted to go back. The people who visited the village yesterday told us that the houses are completely destroyed. Even the doors, windows and fixtures have been taken along with everything else inside the houses”

Respondent, Killivetti Camp, September 10, 2008

Chart 8 indicates the different categories of items that have been stolen according to the number of answers received. A majority of persons interviewed, who are aware of their loss, have made claims for lost property either with the DS or police, but no compensation has been processed so far for property lost by looting. This is the case even among the 70 per cent of returnees, a majority of whom have recorded their loss with the police.

Chart 8

What was stolen						
	IDPs (88)		Returnees (183)		Combined	
Roof tiles	42	47.73	62	33.88	104	38
Doors and windows	61	69.32	110	60.11	171	63
Locks and hinges	64	72.73	83	45.36	147	54
Timber	56	63.64	101	55.19	157	58
Electrical outlets	50	56.82	113	61.75	163	60
Furniture and personal belongings	86	97.73	175	95.63	261	96
Productive assets	71	80.68	149	81.42	220	81
Other	15	17.05	32	17.49	47	17
<b>TOTAL</b>	<b>445</b>	<b>505.68</b>	<b>825</b>	<b>450.82</b>	<b>1270</b>	<b>469</b>

Housing material	273	310.23	469	256.28	742	274
Furniture, personal belongings, productive assets	157	178.41	324	177.05	481	177
Other	15	17.05	32	17.49	47	17
<b>TOTAL</b>	<b>445</b>	<b>505.68</b>	<b>825</b>	<b>450.82</b>	<b>1270</b>	<b>469</b>

#### 4.1.3 Loss due to Secondary Occupation

Secondary occupation is identified by returning displaced persons as one of the barriers to return in the East of Sri Lanka (see chart 3). Returnees are not able to repossess their homes and lands, as they have come to be occupied by another party. Secondary occupation is not uncommon where there is large scale displacement and is particularly a problem in situations of protracted displacement, where the occupier can potentially make legal claims to the land on the basis of continued occupation and possession of the property and land. Secondary occupation can potentially lead to a number of complex situations, such as when abandoned property is occupied by other displaced persons who themselves are without shelter and homes to return to; and where there is occupation of property for military use by the national armed forces in times of emergency; and where complex legal issues pertaining to the legal ownership of the land and possessory rights over land arise from such occupation. The loss resulting from secondary occupation is potentially large, with much

inconvenience and frustration caused to returning IDPs who are unable to access or reclaim their lands.

Specific standards concerning secondary occupation are outlined by the Pinheiro Principles. The main part of the standards refers to the restitution rights of the secondary occupant, in the event the occupant is also in a situation of disadvantage as a result of displacement. States are required to ensure that such secondary occupants are protected against arbitrary or unlawful forced evictions. However, States must also ensure that 'safeguards of due process extended to secondary occupants do not prejudice the rights of legitimate owners, tenants and other rights holders to repossess the housing, land and property in question in a just and timely manner (emphasis added)'.<sup>97</sup>

Questions in the survey that addressed secondary occupation related to the nature and type of secondary occupation and what affected families thought they are able to do to regain possession over their homes and lands.<sup>98</sup>

In the East, due to the relatively short period of displacement among the newly displaced persons (post 2006), and the scale of displacement (there was nobody left to occupy abandoned homes and lands, apart from the military), the numbers of homes and lands that are in possession of secondary occupants, who themselves have been displaced, are relatively small. However, there has been widespread occupation of homes, lands and public property by the military in both the Districts of Batticaloa and Trincomalee, and military bases still continue to be located in and around the homes and lands of displaced persons currently residing in welfare shelters and camps and also in the homes of those who have returned to resettle. For those affected, military occupation poses a serious obstacle to their return, infringes on their ability to integrate into their normal lives and livelihoods, and thus seriously impacts their ability to find a durable solution to their displacement. For instance, around 150 families who returned to the DS Division of Eachchalampattu in Trincomalee towards the latter part of 2007 found their homes occupied by the military, and a majority of them continue to be affected without any indication of a time frame within which they might be able to take possession of their homes and lands, or of any compensation for their loss or recourse to alternative accommodation in the interim.<sup>99</sup>

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<sup>97</sup> Pinheiro Principles (Supra note 43), principle 17

<sup>98</sup> Also see section 4.3 for a discussion on compensation for loss resulting from secondary occupation.

<sup>99</sup> Information sourced from the field officers of the UNHCR

The numbers of the survey sample indicate a relatively high incidence of secondary occupation among IDPs from Trincomalee who wished to return to lands outside the HSZ (at 30 per cent). Between the two districts, a higher incidence of secondary occupation was recorded in the District of Trincomalee among the returnee population (at 13 per cent). Apart from the numbers involved, it is apparent that those who are affected by military occupation of their houses and lands are at a particular loss, and feel there is little they can do to assert their restitution rights. While it is understood that the military may need to occupy residential lands and properties during conflict and even to an extent post conflict, the lack of coordination and negotiation with the affected parties produce undue hardship and loss for returning IDPs. They discover the secondary occupation only on return to their lands, are constrained to live in temporary shelters or in a public building, and at times have no access to their agricultural lands for purposes of livelihood.

The following excerpts from the field notes of the survey give a better insight into the nature of problems resulting from unaddressed military occupation. They capture the different degrees to which displaced persons are disadvantaged as a result:

“When we returned we found that the army had occupied our houses. Some people houses were not occupied so they went back to living in them. For a few days we did not have any place to live in so we used the same tents we had used in Bambi wattuwan and built a temporary shelter on our cousin’s land. We stayed in it for days and then the army told us that they were moving out of our house and we could go and live in it. But the problem is they built their fence to the camp right on the edge of our house. Our toilet and well are within their camp compound, how could we go back to that house? So we continued to live in the tent.”

Returnee to Vaharai DS Division, July, 2008

“Our agricultural land is inaccessible because of the army camp they have set up in that area, so we could not go back to cultivating paddy like some of the other families have done. We used to cultivate paddy during the “Maari” season on that land, during the “Kodai” season there is no water in that area, so we would manage with labour and the home garden. Now the Maari season is almost here, but we don’t have our land.”

Returnee to Poonagar, Eachchalampattu, September, 2008

This family registered as IDPs and now they are registered as returnees. However, they have not returned to their own land because SLA/GoSL captured their land for their camp and sent out this family. The family is living on a nearby piece of land, but the land is owned by other private individuals. They asked about getting a piece of land for themselves at the DS office. Staff persons at the DS office said that they have to buy land with their own money and then only an I/NGO can provide them with shelter.

Returnee, Poomarathadichenai, Eachchalampattu, September 18, 2008

While the term secondary occupation commonly refers to the occupation of one's home, it is apparent from the above data that the military occupation of lands in the immediate vicinity of one's home can also be a potential barrier to return. While these army installations often do not constitute secondary occupation of homes and land of the returned population (in a strict interpretation of the term), they regularly have a serious impact on the ability of those affected to restart their former livelihood activities, or to integrate fully into their former lives. Impacts can be both real, where the army does not allow people to carry out certain activities, and perceived, where close proximity to the army leads to a climate of fear. Both issues have a real impact on people's ability and willingness to pursue durable solutions, and therefore need to be addressed.

There is no clear or consistent idea among displaced persons, as to what they can do to address the problem of secondary occupation. Many of them feel there is nothing they can do, and are resigned to wait until the relevant authorities take some action. Others feel they are powerless to do anything, because they did not have ownership of the land on which their homes are situated, or are unable to prove their ownership due to the loss of documentation. Some feel they can ask the military to move themselves, or through the Government Agent (GA) of the District. Those whose lands are occupied by relatives did not feel an equal sense of urgency to have them removed, as those whose lands are occupied by the military. While most of the affected parties feel they are entitled to compensation for their loss by secondary occupation, many are skeptical that they will receive anything, especially where occupation by the military is concerned.



## 4.2 Registration, Assistance and Administrative Procedures

### 4.2.1 Background

This section highlights the central importance of administrative procedures that are necessary to bring displacement to an end and implement a programme of HLP restitution. The discussion in this section will refer primarily to the system of IDP registration that is currently utilised, which serves as an important administrative tool by which conditions of displacement are managed and administered. Registration is usually conducted by local government authorities, the GN or the Divisional Secretariats of the relevant districts, to which persons are displaced.

Pinheiro Principle 12 outlines standards for procedures and mechanisms that are necessary for the implementation of a rights based programme of return and restitution. The formulation of procedures and other mechanism for the return and restitution of displaced persons should be implemented in a comprehensive manner with due regard to equity, transparency and non-discrimination:

“States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims. In cases where existing procedures, institutions and mechanisms can effectively address these issues, adequate financial, human and other resources should be made available to facilitate restitution in a just and timely manner”

Registration in Sri Lanka is used as a point of reference for the organisation and distribution of assistance to IDPs while they remain on the IDP register. A registration card or a ‘family card’ is issued to registered families, which entitles them to dry food rations, non food rations (NFRI) and the enrolment of children in schools in their places of displacement, and access to information on the possibility of returning home. Thus, the system of registration is the central means by which IDPs are able to access assistance. It also serves as proof of displacement, on the basis of which displaced persons can potentially make claims to displacement-based entitlements (both before and after returning to their places of permanent residence). Thus, it is important that a process of registration extends to include all persons who have been subject to involuntary movement from their place of residence, whether their condition of displacement is apparent or not.<sup>100</sup> The non-registration, or untimely de-registration

<sup>100</sup> The current process of registration captures IDPs living in temporary IDP sites (IDP camps and Welfare shelters), and also those living with host families, but may not be including those who have left conflict areas and are located in accommodation of their own in other regions.

of IDPs allows much room for such persons to be subject to discrimination and inequitable treatment, especially if it erodes their ability to access their entitlements and their restitution rights.

It is to be noted in this regard, that while registration is an important means of administering displacement, it should not be used as a final determinant of whether in fact a person is entitled to be treated as a displaced person. The fact of displacement is to be determined based on the facts and circumstances of the persons in question, and not on the basis of whether such persons are registered or not.<sup>101</sup> Displacement must be determined with reference to a definition of 'displaced person', that is inclusive of all persons who have been subject to involuntary displacement, and with due regard to the circumstances that led to their displacement. Therefore, administrative procedures such as registration should not be implemented so as to exclude displaced persons from the protection of the Government merely because they are not registered. Registration procedures are merely the tools by which the conditions of displacement are administered, and by which the process of return and reintegration of displaced persons may be facilitated and monitored.

IDPs are required to de-register if they move from their place of displacement to another location of displacement (where they would ideally be re-registered as IDPs), or pending return to their original locations and homes. Once displaced persons return to their homes and lands, they are listed by the local authorities as having 'permanently returned', and are then entitled to post recovery assistance (see below for discussion). The assumption is that, once displaced persons have returned and are provided with post recovery assistance (and even compensation for their loss), they are now on the road to 'permanent resettlement' and restitution to their original circumstances. Hence the de-registration of IDPs, is meant to be the beginning of the 'end of displacement'. One of the main issues apparent with the process of registration and administration of displaced persons, is the apparent lack of consistent criteria for the 'de-registration' of IDPs. As in the case where the registration of IDPs requires reference to a definition of displacement that is relevant to the circumstances of displacement in the context under consideration, the de - registration of IDPs would also require careful consideration of whether in fact their circumstances of displacement have come to an end.

Information of sporadic de-registration of IDPs is reported by humanitarian agencies and has also been recorded in the findings of the survey (see results of the survey below). De-registration occurs in instances where it is unilaterally decided by the authorities that IDPs no longer require assistance based on a variety of reasoning,

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<sup>101</sup> Also see section 3.1 for a discussion on 'defining displacement'

most often on the premise that they are now able to return to their original homes and will receive assistance upon return.

Once displaced persons return to their places of origin (or to an area of relocation), their return is recorded by the Grama Niladhari, and thus they are 'registered' as having 'returned, on the basis of which they are entitled to both financial and non-financial assistance. Returnees are not entitled to this assistance, unless there is indication that they have 'permanently resettled' (or permanently returned). Most often a record of their return is registered on a stipulated date, by which date they must return if they are to be listed for assistance. Whether or not the returnees receive their entitlements upon return, their registered status as an IDP ends on the premise that they have now returned and are able to recover their former lives.

#### 4.2.2 Results of the Fact Finding Programme and Survey

Relevant questions in both the IDP and Returnee surveys attempted to record, the extent to which the different stages of displacement is registered; and the information on instances of non-registration, or de-registration after having been registered; and whether displaced persons understand what the process of registration or de-registration implies for them at the different stages of their displacement (that is, while they remain in camps and also after they have made a decision to return/relocate or locally integrate into their places of displacement).

The findings of the survey and other supporting facts and information concerning the process of registration are given below:

The quantitative data of the survey indicate that registration of both IDPs and returnees is conducted consistently. Chart 9 indicates that a high percentage of IDPs and Returnees (while they were in camps) were registered as IDPs. Of the IDPs who were interviewed, almost 99 per cent have been registered, and nearly 86 per cent remained on the IDP register while still in displacement sites, i.e. camps and welfare shelters.<sup>102</sup> 95 per cent of those who have returned have knowledge that a record has been made of their return, and have thus been 'registered' as having permanently resettled in their place of origin.

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<sup>102</sup> This included 11 of the 12 families living with host families in the Kiran GN Division, as at July, 2008

Chart 9

Registered as an IDP						
	IDPs		Returnees		Combined	
Yes	190	99%	163	85%	353	92%
No	1	1%	2	1%	3	1%
Registered as a refugee in India	1	1%	27	14%	28	7%
<b>TOTAL</b>	<b>192</b>	<b>100%</b>	<b>192</b>	<b>100%</b>	<b>384</b>	<b>100%</b>

Chart 10

Recorded/ Registered as a returnee		
Yes	182	95%
No, was told I could not register	2	1%
No, no registration process	1	1%
Don't know	7	4%

Instances in which IDPs were taken off the IDP register, as recorded by the survey, include the following:

Many of the IDPs interviewed in Batticaloa (48 interviews) have been subject to recurrent displacement since the 1980s and following the hostilities in July 2006;<sup>103</sup> one female living with a host family in Kiran, was taken off the register, as she had traveled abroad for employment following her displacement in 2006:

“When I came here (to the place of displacement) I was registered, but in mid 2007 I went to Saudi to work as a maid. I was assaulted at my work place and not paid my salary, so two months ago, I returned. When I returned my name had been taken off the register and the [relevant authority] told me that it had been removed because [I] went abroad...”

IDP who is unable to return to Kiran, as at July 2008

In other instances, de-registration was based on a unilateral decision by the Government to return IDPs to their homes, though very often little information is available of the conditions of return on the part of the returning IDPs. It is observed that returning IDPs generally prefer to move together with other displaced persons from the area, for reasons of security:

<sup>103</sup> See section 2.1 for the context of displacement in the East

“The first time the Government authorities asked us to return to our place of origin, we refused, and thereafter our names were cut from the register. After that, some other families started to return. Some agencies said they will give us assistance, so we decided to return.”

Returnee to Kokkadicholai, Muthalaikudah, July 2008

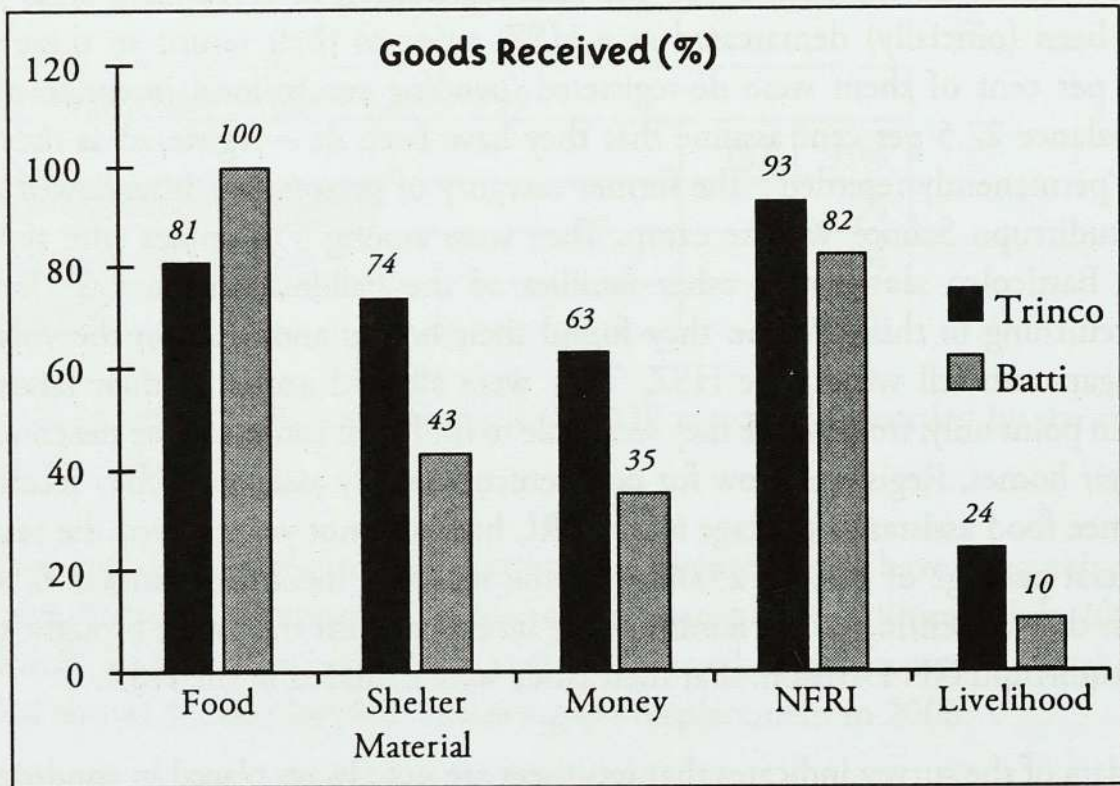
The survey results recorded a 100 per cent registration of IDPs from areas which have been (officially) demarcated as a HSZ, prior to their return to these areas. 72.5 per cent of them were de-registered ‘pending return/local integration’, and the balance 27.5 per cent assume that they have been de – registered as they have now ‘permanently resettled’. The former category of persons was interviewed at the Pallikudirrupu School Welfare camp. They were among 55 families who returned from Batticoola along with other families of the Pallikudiurupu GS Division. On returning to this Division they found their homes and lands in the village of Thangapuram fell within the HSZ. They were allowed access to their lands to a certain point only, from where they were able to find their cattle and see the condition of their homes. Registered now for post return recovery assistance, they receive the returnee food assistance package and NFRI, but have not yet received the returnee financial package of Rupees 25,000 and the monthly income of Rupees 6,500 to which they are entitled. The families were unaware, until they were brought to the Pallikudirrupu GN Division, that their lands were included in the HSZ.

The data of the survey indicates that returnees are not always placed in conditions in which they are able to recover their former lives after return, and live in circumstances that are very similar to those in which they lived while in displacement. Once IDPs return to their original locations, they are often referred to as having ‘permanently resettled’, though the process of return does not necessarily mean that the returnees have overcome displacement, or are at least in a process of overcoming displacement, to any considerable degree. Many returnees continue to live in circumstances of displacement after return and are not in a position to fully utilise the assistance towards overcoming displacement, or do not receive timely and adequate assistance and compensation to achieve full restitution (as illustrated by the data below). This can prolong conditions of displacement and can lead to periods of dependency on external assistance, long after return has taken place.

### Assistance

Most returnees in the sample in both Districts have received some form of assistance after return<sup>104</sup>, either in kind or a mix of in kind and financial assistance. Families that received a combination of both in-kind and financial assistance is higher in Trincomalee at 68 per cent compared to the 36 per cent in Batticaloa.

Chart 11



Food assistance (dry rations) is provided by the Government with the assistance of the World Food Programme, for periods ranging from six to eighteen months. Provision of non-food assistance, including post return shelter assistance is provided predominantly by the non-governmental sector and the UNHCR, on the basis of instructions received by the DS. Food assistance typically lasts for six months, though some returnees complained that they did not receive the full 6 months of assistance that was promised, and numerous others reported that assistance was not given equally across the board, in some instances within the same village. While it is encouraging that the vast majority of returnees receive at least some form of assistance, this inconsistency is a cause for concern with respect to ending displacement and facilitating an effective and equitable process of restitution. Most people interviewed had returned more than 6 months before they participated in the

<sup>104</sup> In Trincomalee, 99 per cent received some form of assistance, and in Batticaloa 98 per cent received assistance

survey, and hence did not receive assistance anymore when they were interviewed. Hence, relief assistance has come to an end without sufficient progression into the early recovery and recovery and medium development phase, with little information on housing restitution, resulting in a gap in the sequence of assistance.

Returnees in Kurinchmuani, Vavunathivu claim that dry rations and assistance stopped less than six months after returning. Shelter material was provided by UNHCR in the first three to six months for temporary housing; the GS has informed them that their names would be registered for a housing scheme to be implemented soon. A returnee to Kokkadicholai claims:

“After we came here we received food items for about three months from the cooperative. Though others in the area received other materials, we did not and have not yet received any other things.”

Returnee to Kokkadicholai, July 05, 2008

Further, the Government implemented a Unified Assistance Scheme (UAS), comprising of a unified package of financial assistance. This package includes a grant for post-return relief and settling in allowance (currently Rs.25,000), which returnees are entitled to irrespective of their needs and damage to property, if they fall within the eligibility criteria for the scheme.<sup>105</sup> Many of the returnees have not yet received any assistance under the UAS (due to a lack of funds), though a few in Batticaloa have received this assistance, based on a particular need, or at the end of a six month period, while others have been registered for the UAS.

“We receive Rs 2500/- per family if the family has less than 4 members and Rs. 6500/- per family if the family has more than four members. This money arrived every month for 6 months. Then we got a lump sum of Rs.25,000 from the ICRC. This was to start our livelihoods...”

Returnee to Vaharai DS Division, Batticaloa, July 08, 2008

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<sup>105</sup> See also section 4.3 on Compensation

She (the interviewee) and her family received Rs 25,000 once they came here but could not remember who gave it. They have not received any food rations for more than 2 months (emphasis added)

Returnee to Poonagar, Eachchalampattu, September 17, 2008

“... we received food and NFRI (pots and pans and clothes) for about 2 months, and Rs.20,000 from the ICRC to re-build [our] livelihoods, and then they followed that up with another Rs.15,000. In February 2008 the Government gave Rs.25,000...”

Returnee to Vaharai DS Division, July 09, 2008

It is apparent from the above data, that the Rupees 25,000 settling-in allowance that is due from the Government to returning displaced persons is at times granted by non-governmental entities. The displaced persons themselves are unsure from whom this entitlement should be accessed, but are willing to take whatever is given to them. There is little coordination of these funds, both at the Ministerial and District levels; in certain instances returnees have received funds in excess of the stipulated Rs. 25,000, and in other instances have received funds from both INGOs as well as the Government. Some, to the contrary, have reportedly received nothing.

Chart 12

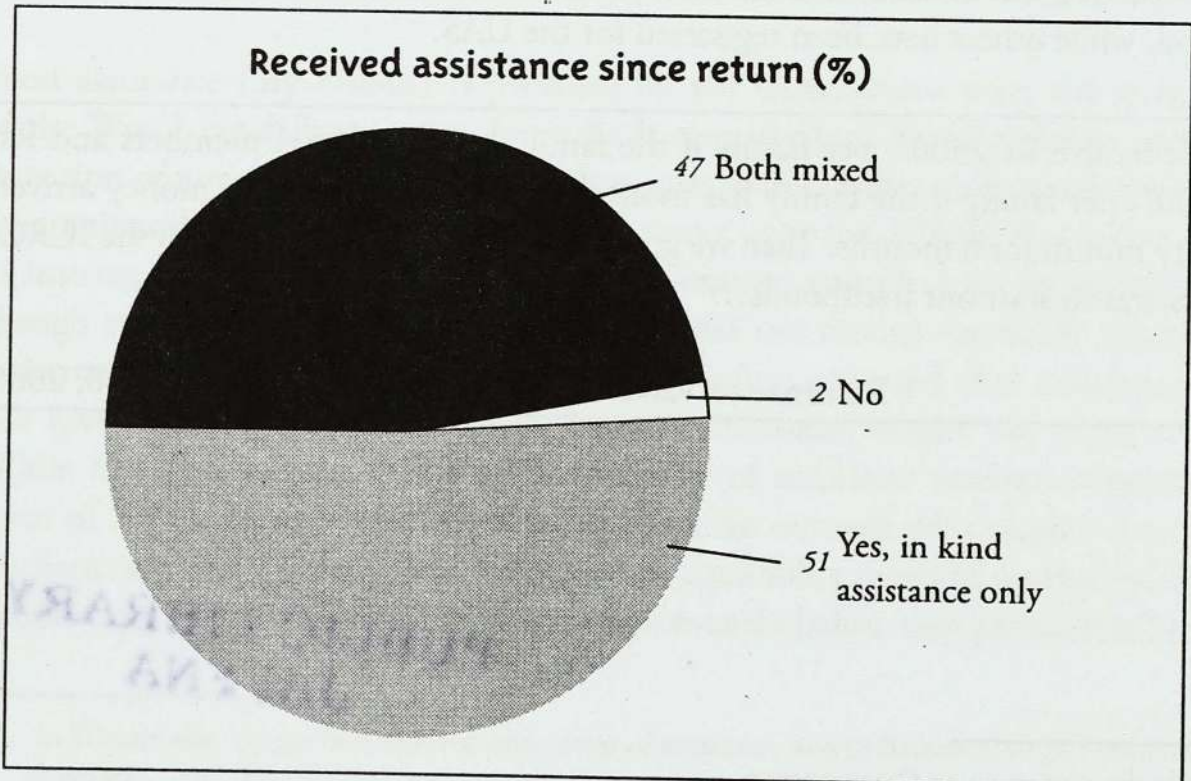
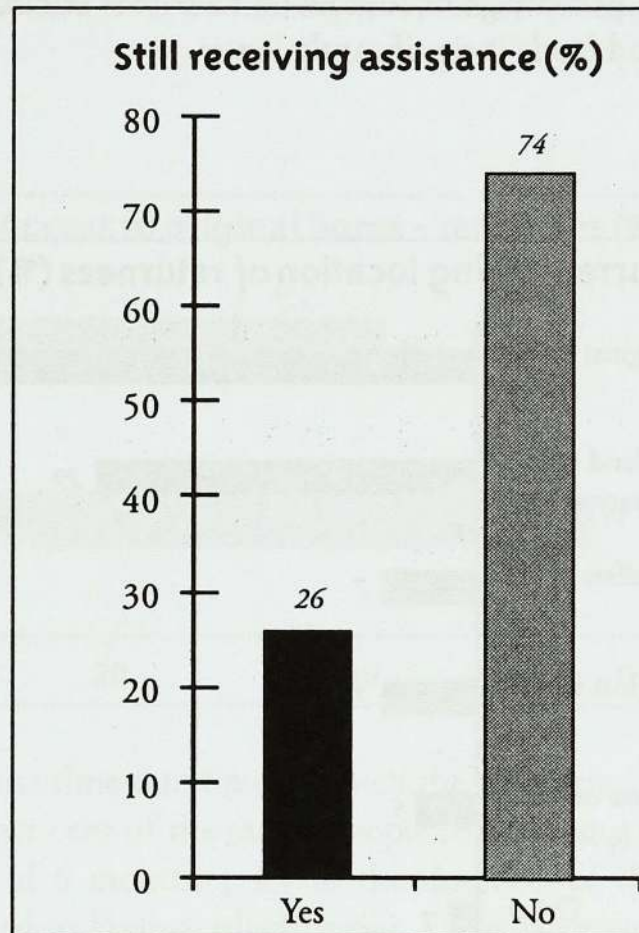




Chart 13



Among the returnees of the sample population, 98 per cent in Batticaloa and 51 per cent in Trincomalee were no longer receiving any assistance at the time of the survey. Among those grouped by the survey as returnees who were still receiving assistance, 71 per cent were in fact living in camps. While they had embarked on the process of return, this group is unable to return to their original homes because their properties had been taken over by the Government (for the HSZ or for military camps).<sup>106</sup> None of the Indian Returnees captured in the sample population receive regular and predictable assistance. While some indicated that they received money as a travel allowance from the UNHCR when they arrived back in Sri Lanka, others have received household items and livelihood support from UNHCR and IOM respectively.

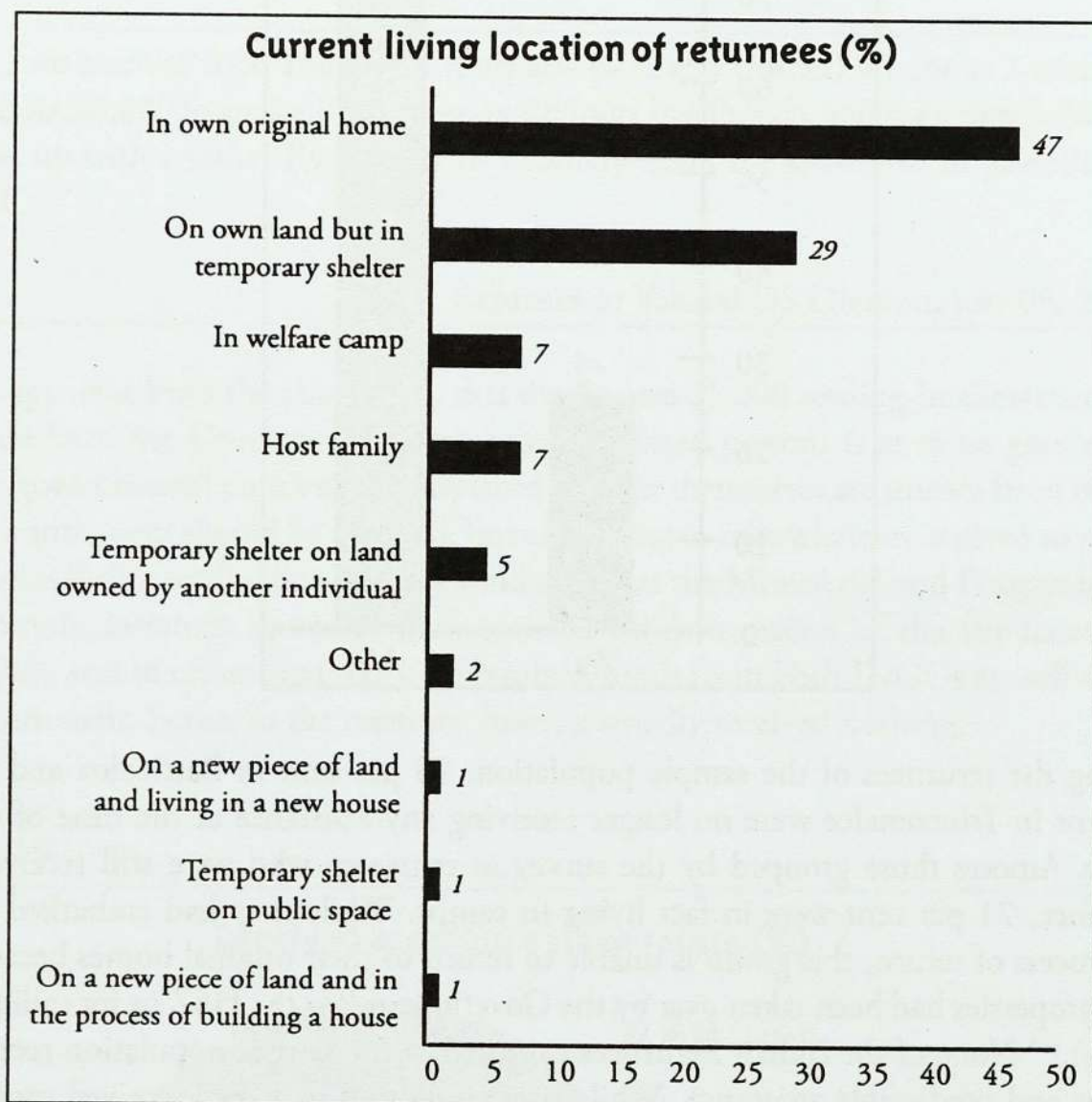
### *Shelter/ Housing*

Chart 14 indicates the current living conditions of Returnees. As the data indicates not all returnees live in their original homes, since going back to their areas of origin.

<sup>106</sup> UNOPS, COHRE, UNHCR, Examining the Return and Resettlement Programme in the Batticaloa and Trincomalee Districts, *UNOPS Survey Report*, October 2008, pg. 16

While 74 per cent of the returnee sample population no longer receives assistance as IDPs or returnees, the percentage of those who have re-established themselves in their original homes and lands is significantly lower.

Chart 14



Among the 52 per cent of IDPs who were de-registered on permanent return to their places of origin in areas that do not fall into the demarcations of the HSZ in Trincomalee, returnees to Poonagar, Eachchalampattu, occupy temporary shelters that were built for them by different NGOs. Though the GS has registered them for permanent housing, they still have no information in this regard, though it is now over a year since they have returned to their areas of origin.

Of those returnees who were not living in their original homes at the time of the interviews 58 per cent did not have access to their homes (chart 15). Reasons include the lack of temporary shelters on their own lands, that their homes have been included

within the demarcation of the HSZ and buffer zone on either side of a 'ring road' that is being built, or that their homes are occupied by the military.

Chart 15

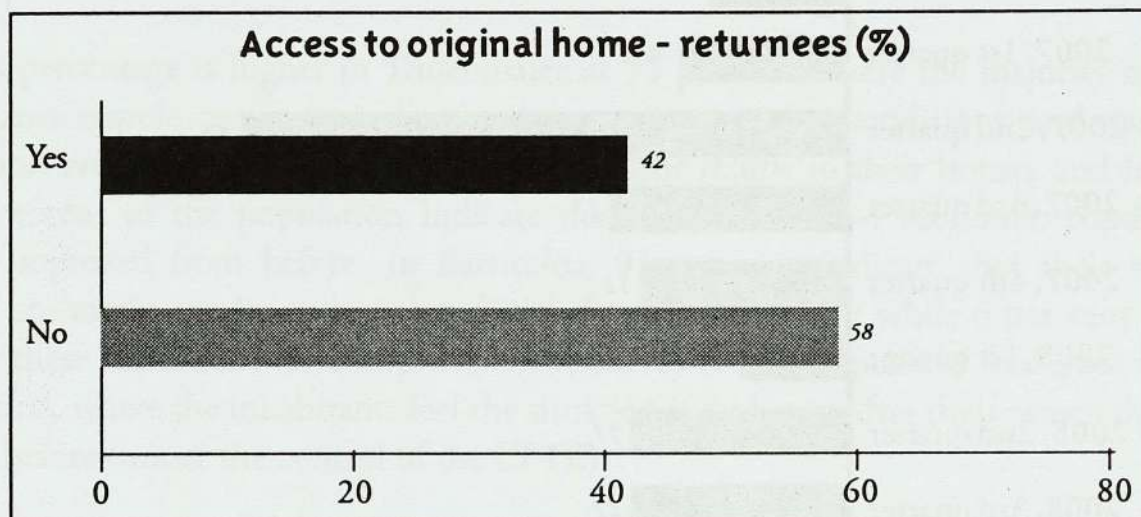
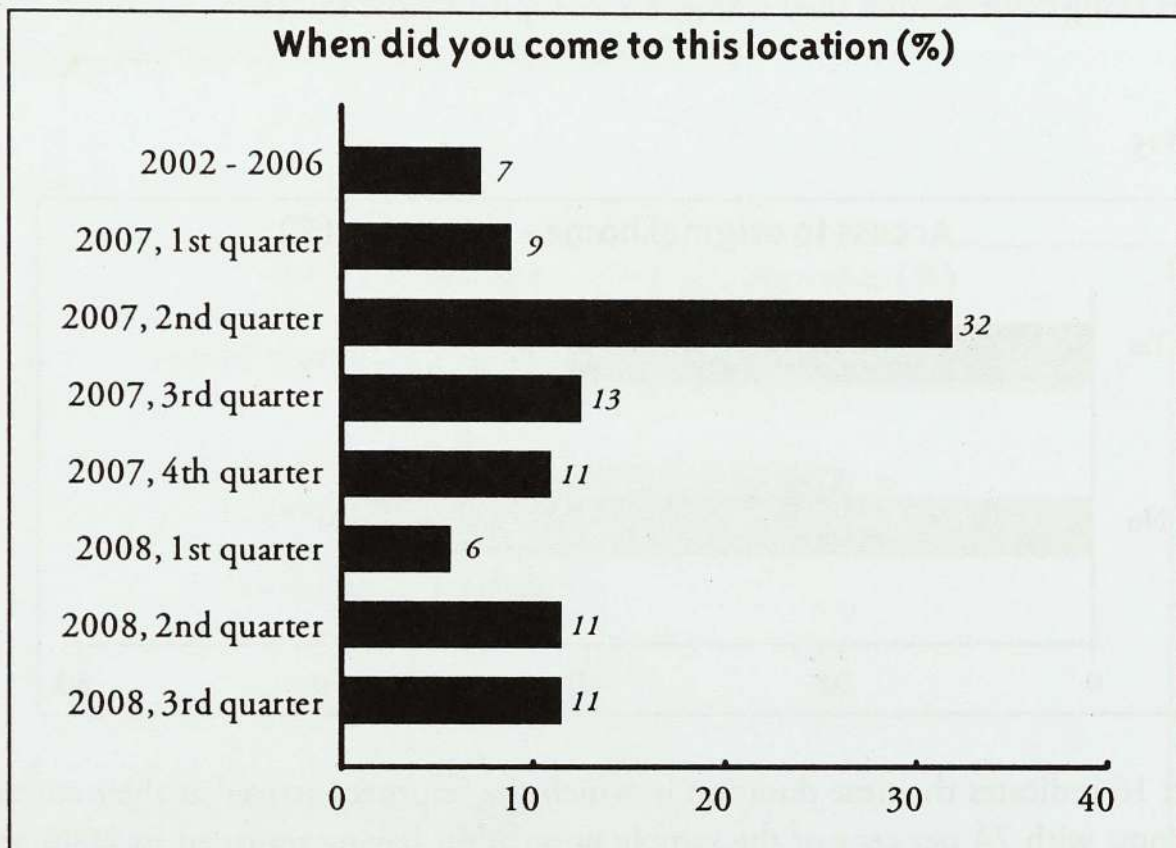


Chart 16 indicates the time duration in which the returnees arrived at their current locations, with 74 per cent of the sample population having returned in 2006 and 2007, a minimum of 6 months prior to the duration of the survey. Around 45 families who returned to Poomarathadichenai, Eachchalampattu, found their lands occupied by the army. They had no information of the condition of their lands before returning. Other lands in the area have been taken over for the new ring road and buffer zone on either side of the road, and are now army camps. The returnees allege that permanent housing was promised at the point they consented to return, but not even temporary housing was available when they returned in September of 2007.

“I asked the GS, Samurdhi Officer and RDS members about my house. They said it was completely destroyed and the army occupied my land. I was told that the Government will put up a camp for us in our village (for those whose lands have been taken) and then when the army moves from our land, we can take our land back, but the Government did not build the camp here, as promised. People had to buy new land, though they can't really afford to buy private land.”

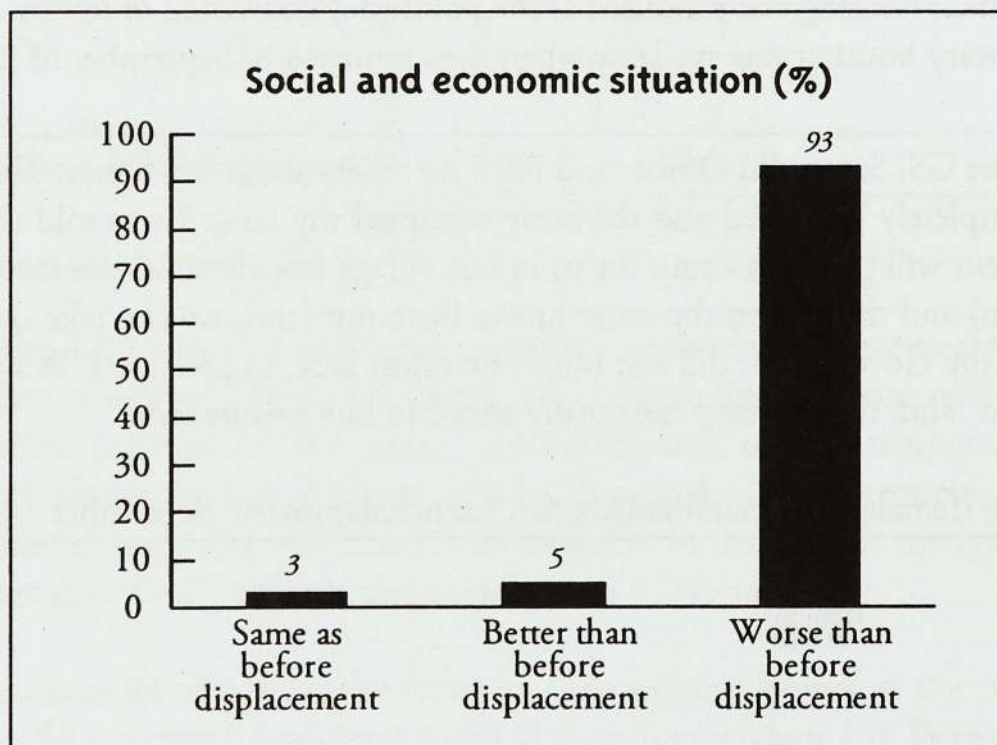
- Returnee (female), Poomarathadichenai, Eachchalampattu, September 18, 2008

Chart 16



*Perception of Socio – economic condition*

Chart 17



In the case of returnees, interviewees were asked to assess their feeling (a subjective statement) of overcoming displacement based on a comparison between their social and economic situation before displacement and now, after they had returned. As indicated here, most returnees 'feel' that they are worse off now than they were before becoming displaced.

This percentage is higher in Trincomalee at 95 per cent where the majority of the returnee sample continues to live in camps and temporary conditions, and was not compensated for their inability to access and/or return to their houses and lands. 3 per cent of the population indicate that their social and economic condition has improved from before. In Batticaloa, 91 per cent indicate that their social and economic condition is worse than before displacement; while 6 per cent state that these conditions have improved. The survey records a positive feed back from Vaharai, where the inhabitants feel the situation is far better after their return than it was before (under the control of the LTTE):

“We can go wherever we want to and sell our fish and prawns, so our income has improved. Soon the fishing season will end and we won't fish till next February. These few months will be tough, then it's September, after the rains come, we will go to Vattakal and plant some crops and some paddy on land there...”

Returnee to Vaharai DS Division, July 09, 2008

It is clear from the above data and information that the provision of assistance and shelter, and transition into permanent housing in the post return phase, does not follow a systematic plan of implementation and is most often arbitrary. This can potentially limit the predictability on the part of returnees, of their capacity and timeframe for successful restitution and reintegration.

#### Overarching Policy Issue

The lack of a well-defined administrative process that is transparent, equitable and timely to effectively coordinate the return of IDPs and that allows them to re-establish durable conditions of life, in keeping with standards of HLP restitution, and sustainable recovery and development.

### 4.2.3 Analysis and Recommendations

Based on the data of the survey, the current system of registration is efficient in making a record of those who have been subject to displacement, and are currently residing in temporary camps and shelters. It was beyond the scope of the survey to investigate whether displaced persons living in other circumstances, such as with host families and in conditions of protracted displacement in other districts or who have migrated to cities, have recourse to an equally efficient process of registration or similar administrative procedures that recognise and makes a record of their displacement. However, such a process for IDPs outside the relatively well administered camp environment is certainly of the same importance.

The main concern with the process of registration, as is apparent from the survey is the seemingly arbitrary manner in which persons are taken off the IDP register and are thereby de – registered as displaced persons. It is vital that a policy for the restitution of displaced persons is implemented on the basis of a clear definition of displacement by which displaced persons are registered as IDPs. At the same time, such policy must make provision for the conditions under which the Government no longer considers such persons to be displaced, and develop guidelines as to the point at which they may be removed from a register of displaced persons and cease to fall within the purview of the Government responsibility as displaced persons. Procedures should also be available to allow IDPs to have decisions on registration and de-registration independently reviewed.

The only defining factor that is apparent in the de – registration of IDPs, and their transition from IDP to returnee is that the persons concerned either have been in a process of return to their original homes, or are expected to return in the near future and are under some compulsion to return.<sup>107</sup> Thus, if there has been some movement by a displaced person, either to his or her original land or to a location that is fairly proximate to the original location, or to a relocation site within the District, then that persons no longer falls within the purview of a displaced person.

The data however, does not indicate that returning displaced persons are necessarily well placed to recover their former lives and re – integrate into conditions of normalcy. Many displaced persons are made vulnerable<sup>108</sup> by the disadvantaged circumstances that they return to, with little or no administrative procedures that take into account their conditions of life. Many returnees therefore continue in the same circumstances of displacement, while their status as an IDP is no longer applicable and they can therefore no longer access the assistance they are entitled to as displaced persons.

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<sup>107</sup> See discussion in section 2.1 on the return process in the East

<sup>108</sup> Also see section 5 on Marginalised and Vulnerable Groups including Women

Further, it is necessary to consider whether beneficiaries are able to utilise post return assistance efficiently towards the purpose for which assistance is given. It is a positive feature in the context of return, that displaced persons have recourse to financial and non – financial assistance. But given the sporadic nature of its implementation, there is no guarantee that the beneficiaries are able to utilise this assistance for their restitution into normalcy. For instance, returnees have been compelled at times to use the Rupees 25,000 settling – in allowance towards purchasing private land for their use, in the absence of temporary housing. In addition, for IDPs who have been de-registered prematurely and are given the returnee assistance package, are prone to utilise such assistance as relief assistance and not for its intended purpose of overcoming displacement.

In view that the permanent housing phase of the Government's resettlement programme has not yet fully commenced, it is imperative that returning displaced persons have adequate information concerning the provision of temporary housing, with a clear realistic time – line for access to permanent housing and adequate shelter and other assistance in the interim. While the local authorities have 'registered' the names of some families for both temporary and permanent housing, there is much uncertainty of when such housing will be forthcoming.<sup>109</sup>

Permanent housing has been outlined in the medium term recovery and development stages of the Government's resettlement programme,<sup>110</sup> and it is unrealistic that displaced persons will have immediate recourse to permanent housing. The lack of proper implementation of available humanitarian assistance, including shelter assistance, and inadequate information regarding permanent housing, while compelled to be in continued displacement in temporary conditions for a long duration of time, can potentially create much insecurity and instability among displaced persons. The return process should be accompanied by reliable information of the condition of return, and supported by an administrative process to monitor that displaced persons are in a fair way to being restored to their lands and houses and into sustainable conditions of life. Many of those who have returned (more than a year prior to the interview) are not very positive about their socio – economic circumstances after return, and have received relatively little or no information on assistance for permanent housing.<sup>111</sup>

All of the above has implications for a well defined process of information, consultation and negotiation between displaced persons and relevant authorities. It is important

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<sup>109</sup> Also see section 4.4 on Housing Standards

<sup>110</sup> See section 2.1 on Contextual Background

<sup>111</sup> Also see section 4.6 on Information and Participation in the Restitution Process

to establish beforehand what the scope of such a process of information, consultation and negotiation will be, in view of the implementation of an equitable, efficient, well – defined, and timely programme of HLP restitution. The vast majority of IDPs are eager to return to their homes and to conditions of normalcy. As indicated in the data many IDPs are not content to be dependent on hand outs from the Government and NGOs, and would prefer to engage in their own livelihood activity and have some means of their own. While care should be taken against cultivating a ‘dependency syndrome’ on the part of displaced persons, de – registration of IDPs pending return, should in all instances be an informed process that is negotiated, with adequate information of both the return and resettlement process.

Clear institutional and administrative responsibility is required to ensure the sustainability of the current resettlement of displaced persons by the Government. Currently, the DS and the local authorities are constrained to coordinate the delivery of assistance, as well as the coordination of temporary and permanent housing. There is space for much discretion among these officials for the delivery of assistance and in determining eligibility for shelter and permanent housing including compensation schemes. There is a lack of a parallel administrative mechanism to monitor the delivery of assistance and compensation, as well as to ensure that beneficiaries are well placed, and have the capacity to utilise assistance for the purposes for which it is given. As with the question of registration and de-registration, accessible and independent review mechanisms are important to ensure accountability in the delivery of assistance.

Further, there is an apparent lack of coordination among the different agencies involved in the delivery of assistance, in view that some families have received a settling in allowance in excess of their entitlement from INGOs, as well as from Government officials, while others have not received the allowance at all. It is necessary therefore to bring all agencies involved in the resettlement programme within one administrative framework with a clear and transparent indication of the areas of responsibility for post return recovery assistance and housing and property restitution. This can ensure that available relief and assistance can be utilised efficiently among a larger number of beneficiaries and streamline institutional involvement in a manner that displaced person themselves can comprehend and access. The data suggests reluctance on the part of displaced persons to work with Government officials, in part due to a lack of visibility of assistance from Government sources and concerns of transparency and inequity in the administration of assistance, whether real or perceived.

Thus, there is a distinct need for institutional responsibility to monitor conditions of displacement within a framework of a programme of HLP restitution, and adequate administrative procedures that can link a process of restitution through the different



stages of displacement with the objective of bringing conditions of displacement to an end.

## Recommendations

Policy recommendations arising from the information, data and discussion outlined above are as follows: to –

- Provide policy guidance for an administrative process, preferably an extension of the current system of registration, that takes into consideration conditions of displacement after return, and which is able to monitor the granting of assistance and compensation and the overall process of HLP restitution, until conditions of displacement are brought to an end and adequate remedies for displacement related losses are provided;
- Establish distinct criteria for the de – registration of IDPs who will no longer remain in camps and shelters, while recognising that their displaced circumstances may continue after their movement from these locations, and eligibility for assistance and remedies may prevail;
- Provide adequate information to displaced persons of the post return recovery assistance that they are entitled to, as well as other forms of redress available to them at the different stages of return and restitution, together with information of the time frames for the delivery of such assistance and redress, and the means by which to access them;
- Establish clear and transparent institutional and administrative responsibility, to monitor the delivery of assistance and a programme of HLP restitution, at the provincial and district levels of government, including complaints mechanisms;
- Establish distinct and independent restitution claims procedures, whereby displaced persons may make claims for their entitlement, together with an independent review mechanism to ensure that grievances arising can be addressed in a timely and equitable manner;
- Include in the process mechanisms for meaningful consultation and participation to ensure that assistance can be targeted in a timely and efficient manner, without any undue expectation on the beneficiaries concerned;

## 4.3 Compensation

### 4.3.1 Background Information

Compensation is an essential component in a scheme of restitution designed to remedy the fact of displacement. There may be innumerable instances in which it would be more practical and efficient for displaced persons to receive compensation in lieu of direct restitution of their houses, lands and property. International standards on HLP restitution require that compensation as means of redress for the loss of housing, land and property must essentially be within a framework of restitution, and not in any way take precedence over the return and restoration of displaced persons into their original conditions of life:

“All refugees and displaced persons have a right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principles of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is factually impossible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation”<sup>112</sup>

Thus, the granting of compensation should not in any way adversely affect the priority given to a process of direct restitution by the Government to restore persons into their pre – loss position. That is, compensation should not be preferred over a process of rebuilding and restoring housing, simply because it is the easier option in the political or socio – economic circumstances. Every effort must first be made to (physically) restore houses and property, before compensation is explored as an option for HLP restitution.

The principle above specifies that compensation should be an option where restitution is deemed ‘factually impossible’: Instances in which restitution is factually impossible would include circumstances where – housing, land and property is destroyed, or where it no longer exists. Whether in fact restitution is factually impossible in a particular context however, and whether compensation is the only available means by which the loss of housing, land and property may be redressed, is a matter to be determined by an impartial entity. Such a determination should be based on pre – determined criteria to establish those instances in which the Government should compensate for losses, whereas in all other instances, the Government is expected to engage in the direct restoration of housing. However, even in instances where

<sup>112</sup> Pinheiro Principles (see note 43) Principle 21

restitution is factually impossible, displaced persons still have a right to return to their former homes and lands. Hence, the most equitable and appropriate redress in such instances is most likely to be a combination of restitution (of the land) and compensation (for the destroyed home).

Compensation is not limited to financial compensation and may be a combination of financial and in – kind compensation. Cash compensation may be made available for any number of quantifiable losses associated with displacement other than for loss of housing. These may include – material damages for loss of earnings, lost opportunities, costs for legal and expert assistance, and the loss or destruction of immovable and movable assets.

The losses identified for purposes of compensation in this report, are broadly grouped into – loss by damage, loss due to looting and loss as a result of secondary occupation.<sup>113</sup> This section does not in any way advocate the payment of compensation over and above a policy position that gives priority to restitution as the preferred means of enabling displaced persons to return to their original circumstances. It also does not preclude the payment of compensation for losses in addition to those that have been categorised for purposes of discussion in this report. The areas of compensation dealt with in this report have been identified with reference to particular difficulties that displaced persons are confronted with when attempting to recover their losses, as was apparent in the information of the fact finding programme (see below).

There has been much progression in the schemes for compensating displaced persons, since the conflict escalated in the late 1980's. The initiatives and programmes that have been implemented demonstrate a consistent policy position on the part of the Government to assist displaced persons to be restored to their lands, and to provide for the repair and loss of housing. This has been done through the instrumentality of large scale donor supported development programmes such as the Emergency Rehabilitation and Reconstruction Programme (ERRP – I)<sup>114</sup> implemented between 1988 and 1996, which made allocations for compensation and relief measures, for housing grants, production enterprise grants and settling in allowances.<sup>115</sup>

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<sup>113</sup> See section 4.1 on 'Outline of Losses'

<sup>114</sup> The value of this programme amounted to US\$ 388 million, and was implemented in the Northern and Eastern Regions and in Districts at the border of the conflict zone. The funds allocated for the rehabilitation and reconstruction planned under this programme were under – utilised with the escalation of hostilities in the 1990s.

<sup>115</sup> Project allocations under the ERRP were channeled predominantly towards the rebuilding of infrastructure as the return of displaced persons was constrained due to continued hostilities.

The Rehabilitation of Persons, Properties and Industries Authority (REPPIA) was instituted in 1987<sup>116</sup>, with a mandate to assist persons affected by 'riot or civil unrest'<sup>117</sup>. An 'affected person' includes persons whose 'property, moveable or immovable, was damaged or destroyed'. The mandate for assistance and compensation extends to both outright grants and loan schemes. All assistance and compensation that is to be granted to affected parties by this Act was unified into one package – the Unified Assistance Scheme (UAS). The different components of the package include – an initial settling in allowance; a productive enterprise (cash) grant; temporary housing assistance, and permanent housing assistance.<sup>118</sup> The amounts paid under each of these components have been revised over time,<sup>119</sup> and currently amount to a maximum of rupees 100,000, usually divided between a livelihood allowance of rupees 25,000, and a permanent housing grant of 75,000,<sup>120</sup> which is the maximum amount fixed for repairs, or for re-building a temporary or permanent structure. Implementation of the UAS in the past by REPPIA has been predominantly in the Eastern Province.

A hand book issued by the Ministry of Rehabilitation and Reconstruction in 1988<sup>121</sup> gives a good insight into the implementation of the UAS. It outlines the criteria necessary to be eligible for the different components of the UAS. Eligibility is determined by income, type of employment, and the type of assistance that is required, upon the return by displaced persons to their original lands. After an interview by the GN, or the DS the applicant is issued a registration card for purposes of the scheme, on which the different components for which the returnee is eligible is marked. The applicant is expected to furnish the required proof to be entitled to the different components of the UAS. For instance, eligibility for the 'settling in allowance' is for those who have been – 'forced to flee from that person's home or community, to seek temporary shelter elsewhere, and if the house has been damaged or destroyed,

<sup>116</sup> The REPPIA was instituted by Act No. 29 of 1987; see section 26 of the Act for more details of its mandate and functions.

<sup>117</sup> This is taken to include persons affected by 'terrorist violence' and extends to displaced persons affected by the conflict in the North and East of Sri Lanka.

<sup>118</sup> See interpretation section regarding the use of the term 'assistance'. Assistance, especially for permanent housing, is not in the same category as post recovery assistance, and may well be defined as 'compensation' for the purpose of housing restitution.

<sup>119</sup> The UAS implemented by the REPPIA was revised in 1994 and 2002, with a grant of Rs. 50,000/- for repairing/ reconstructing a house, initiated in 1998

<sup>120</sup> This UAS was a revised cash grant of Rs. 25,000/- and a housing grant of Rs. 75,000/- in 2002 with the coming into force of the ceasefire, under the North East Emergency Reconstruction Programme (NEERP). Circular No. NEERP/UAS/01 (Revised), makes reference to the Hand Book of 1988; the survey form; instructions to AGAs (current DS's) and Registration Interviewers, Appeal Panels, and the Family Registration Card

<sup>121</sup> Ministry of Rehabilitation and Reconstruction (1988), Handbook on the Unified Scheme of Assistance

or if the household belongings have been damaged or destroyed or stolen during displacement'. The cash grant is paid on return to the original place of residence, and is contingent upon proof of the registration or ration card from the welfare centre in which the displaced persons resided, or a registration certificate from the District Secretary in the district to which the applicant was displaced, among other things.

Housing repairs and reconstruction grants (and loans), are based on the families' normal income. Housing grants (originally given as vouchers for building materials) are given to low income families earning below a stipulated amount per month. The current determinant of a low income family is a monthly income of rupees 2500 and below. Families with a monthly income above this amount are eligible for low – interest loans from designated banks and institutions. It is apparent from the stipulations outlined in the handbook that the UAS implemented by the REPPIA is essentially for the restoration of low income households, into low income housing. In the event that the socio – economic conditions of the majority of all displaced persons are fairly consistent in a given geographical area, the application of the UAS scheme by the REPPIA would not lead to much inequity or disparity in the restoration envisaged by it. Other compensation schemes differ in scope to the UAS implemented by the REPPIA; this can potentially lead to much disparity and inequity in the overall restitution and resettlement programme of the Government.

The compensation scheme implemented by the North East Housing Reconstruction Programme (NEHRP) differs substantially in value and scope to the UAS implemented by the REPPIA.<sup>122</sup> The NEHRP, a World Bank funded project, currently comes under the purview of the Ministry of Nation Building and Estate Infrastructure Development, and is implemented under the direction of the relevant Provincial Council for the restitution of low income housing. The Compensation paid under the NEHRP scheme is a cash grant to be paid in installments, determined by whether the beneficiary's original home has been assessed as a 'fully damaged house' or a 'partially damaged house'. The compensation is to be utilised to repair or build the houses by the beneficiaries themselves on a 'home owner driven' basis with the assistance of other institutional partners of the project, when available. The intention of the project is that beneficiaries should own a 'core house'<sup>123</sup> by the implementation of the compensation scheme. Thus compensation under the NEHRP project is given with reference to a pre – determined standard of housing. The quantum of compensation was initially Rupees 150,000 for a permanent house. Following the tsunami natural disaster in December 2004, this amount was increased to Rupees 250,000 in keeping

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<sup>122</sup> See Government Circular No. NEHRP/1, October 16, 2004, for an introduction into the NEHRP concept

<sup>123</sup> See section 4.4 on Housing Standards for more discussion on Core Housing

with the compensation that was being given under owner driven housing schemes for tsunami affected housing.

The Mahinda Chinthana Development Plan of 2006 outlined large scale development plans for the East to be implemented with donor assistance. The permanent housing grants outlined under the policy and plans for the 'eastern revival' programme, was increased to rupees 325,000. The Mahinda Chinthana Proposals (the latest formulation for compensation) – grants an initial Rs 150,000 for resettlement, and a further payment of rupees 250,000 as a housing grant once people return home.

It is to be noted that the financial outlay for the restitution of housing under donor driven housing schemes, vary between rupees 80,000 to rupees 1,000,000. Thus the value of the housing that is being restored, and consequently the standard of housing, has the potential to vary drastically between instances where there is direct restitution under donor driven schemes, and instances in which displaced persons are given financial compensation for their loss, as well as between the different schemes for financial assistance.

#### **4.3.2 Findings of the Survey**

The questionnaire attempted to investigate the perception of displaced persons, on whether they are entitled to some form of compensation, the quantum of compensation they feel they are entitled to; and the information that is available to them about their entitlements at the different stages of their displacement. An understanding of what displaced persons feel they are entitled to is vital to get a sense of what may be a reasonable solution to the loss they have suffered. This does not in anyway suggest that this should be conclusive of the compensation that they are 'legally entitled to'. They may in actual fact, for reasons of equity, be entitled to more (or less) than the assistance they expect or that is made available to them.

Other questions investigated the perception of IDPs with regards to institutional support that is available to them to access assistance and compensation. In addition, the survey recorded information on compensation for loss by secondary occupation and loss by looting, which have a substantial bearing on an effective process of HLP restitution.

The term compensation for the purposes of this survey includes financial and non – financial modes of compensation to redress displaced persons for any loss associated with their housing, land and property. The discussion in this section however, will in

the most part refer to financial compensation. The direct restitution of housing will be discussed under 'housing standards'.<sup>124</sup>

### Compensation for Loss by Damage

Chart 18 indicates that not an insignificant amount of persons preferred financial compensation for loss by damage. Around 15 per cent of all displaced persons interviewed, who are aware of the condition of their homes, indicated a preference for financial compensation to rebuild or repair the damage to their housing, or in some instances, financial compensation to spend on whatever they felt was a priority in the circumstances (the option to spend on anything). One reason for such preference is that some families have known only a life of war and displacement, and do not feel secure and confident to receive in – kind assistance and compensation:

“We would prefer money because we feel if we get our house re – built it might get damaged again. If they give us a house and things for the house, we might have to leave them again; so better they give us money, then at least we can keep it with us, for use when we need it.”

- Returnee to Kokkadicholai, July 04, 2008

Another 19 per cent indicated the expectation of financial compensation, together with other forms of compensation for the loss of their housing by damage and destruction. 3 per cent were unaware that they are entitled to any form of compensation whatsoever. As illustrated by the charts below, virtually all interviewees who suffered damage to their housing as a result of displacement think that they are legally entitled to receive compensation for these losses. None of the interviewees indicated that they do not believe themselves entitled to compensation for the loss of housing (see chart 19).

<sup>124</sup> The restoration of housing by direct construction, and expectation on the part of displaced persons that a house will be built by an agency will be discussed under Housing Standards in section 4.4. See section 4.1 for an outline of Loss by Damage

Chart 18

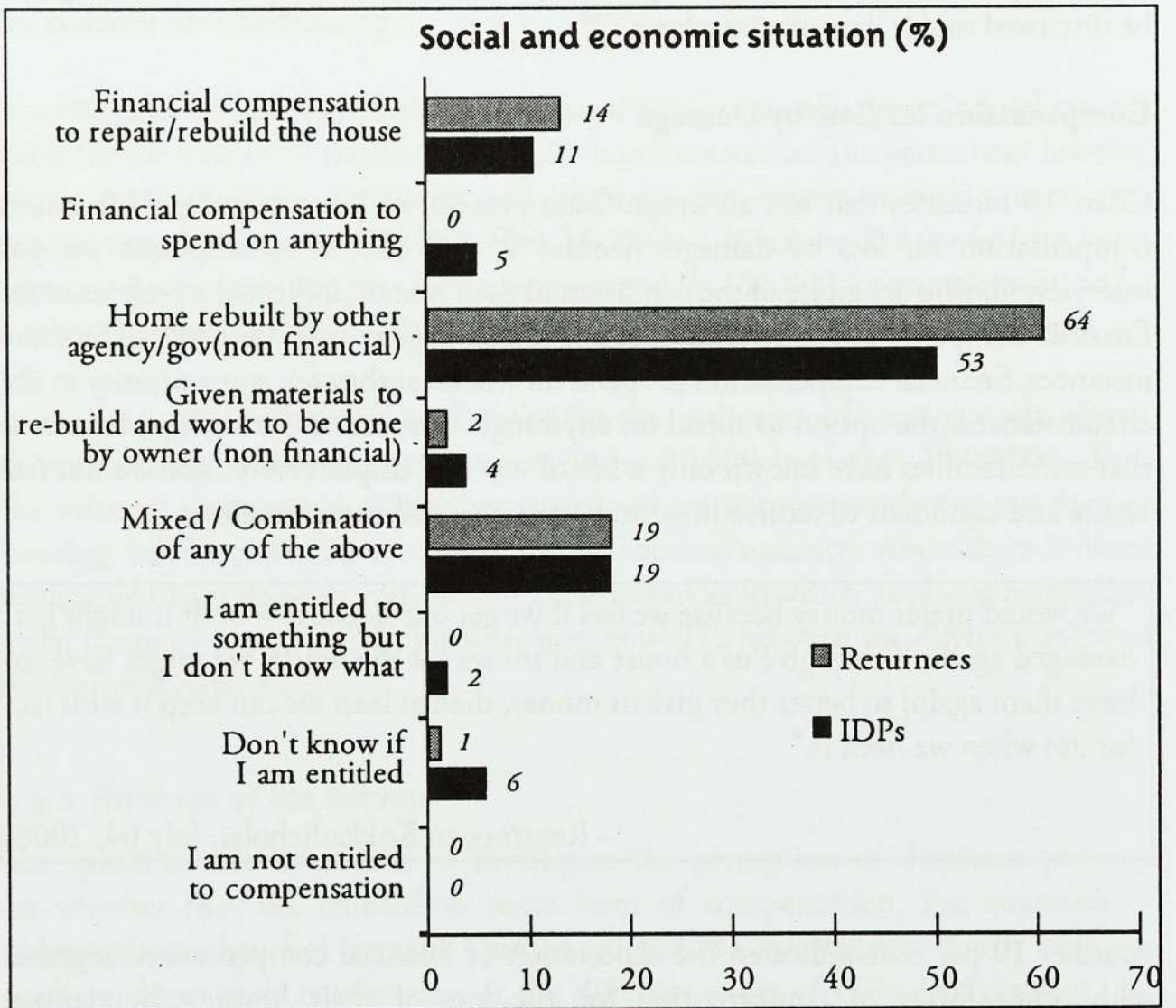
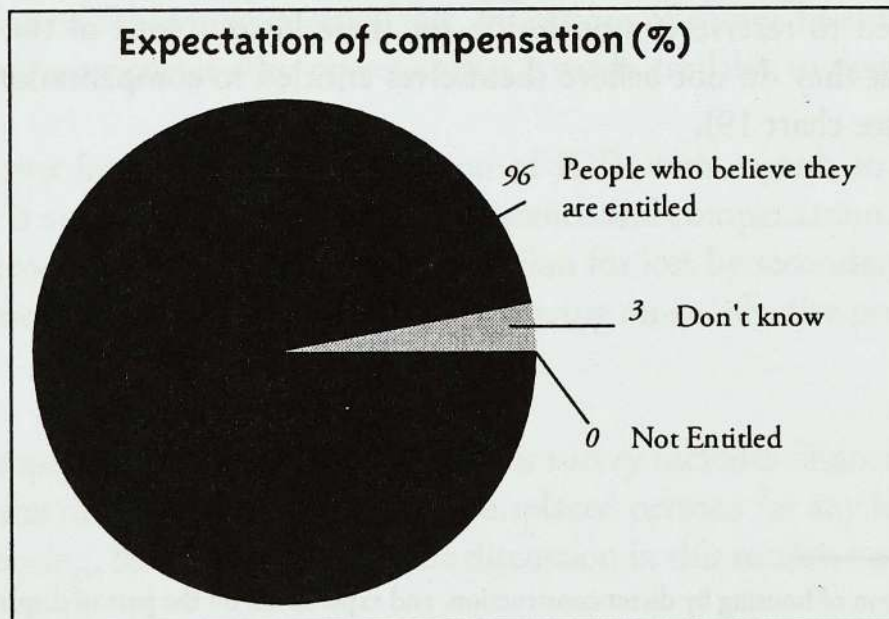


CHART 19





Expectations of compensation do not vary significantly between those who are still in displacement and those who have already returned to their home locations.

Of those who answered that they expected financial compensation for damage caused to their housing, many did not know how much they would be entitled to, and others indicated that it would depend on the extent of damage. But overall, most stated that they believed themselves to be entitled to a sum in excess of rupees 250,000 (see chart 20). This value is possibly in keeping with the compensation given to those displaced by the tsunami under 'owner driven housing schemes'. Among the interviewees who indicated a value between 100,000 – 199,000 as the financial compensation to which they should be entitled to, the majority was from Batticaloa. The 6 per cent of returnees who indicated an expectation of compensation below a value of Rupees 100,000, were all displaced within the Batticaloa District.

Chart 20

If financial, how much						
Rupees	IDPs		Returnees		Combined	
< 50,000	0	0%	0	0%	0	0%
50,000-99,000	0	0%	3	6%	3	4%
100,000-199,000	2	7%	6	12%	8	10%
200,000-249,000	0	0%	1	2%	1	1%
> 250,000	16	57%	17	33%	33	42%
Depends on how much the repair will cost			21	41%	21	27%
Don't know	10	36%	3	6%	13	16%
	<b>28</b>	<b>100%</b>	<b>51</b>	<b>100%</b>	<b>79</b>	<b>100%</b>

*\*Chart 20 includes persons who feel they are entitled to financial compensation*

In the areas of Vaharai and Kokkadicholai, the Rural Development Society (RDS), the Army and Samurdhi Officers were reported to be collecting data on damage and loss to housing, though displaced persons are unaware of the purpose of this data collection:

“RDS collect data about housing and property damages. But we don't know whether it is for giving compensation or just collecting information”

Returnee to Vaharai DS Division, July 08 2008

“We have been in touch with the GS and DS office about assistance and compensation. They said that they have registered us and are now waiting for the assistance and for us to be patient and wait. The GS said that various agencies will be coming to help us. They also promised to build toilets. But the general feeling is that they think this area is well – off because it is the town and there are lots of shops, so I think we will not get any assistance soon”

Returnee to Kokkadicholai, July 2008

While many persons have indicated that they would require financial compensation in excess of rupees 250,000 to address their housing loss, the few who have received Rupees 300,000 as compensation are unable to restore their housing to its pre-displacement condition, due to increasing prices of building materials. A number of displaced persons have received sums of moneys from NGOs to rebuild their homes. Neither the Government nor these development agencies have been able to however, grant adequate compensation to restore displaced persons to their pre – displacement levels, in most instances where displaced persons have received compensation for loss by damage. Displaced persons are often at a disadvantage in negotiating for a standard of compensation that is adequate in their particular circumstances, and are constrained to accept the standard sums that are offered under Government compensation schemes or by donor agencies:

“We were given 3 lakhs by an agency to rebuild our house (minus 10,000 that has to remain in the bank). They gave us specifications that made the house much smaller than what it used to be, but we took the money and started re – building. But all the building material has gone up in price; we were not able to complete the construction. Now we live in a half – built house”

Returnee to Poonagar, Eachchalampattu, September 17, 2008

However, in the DS Division of Vellaveli in southwest Batticaloa, families have benefited from the construction of permanent housing, while others in the same division, who did not have their houses repaired and rebuilt, have not received any compensation for damages and loss suffered more than a decade ago:

“After resettlement, a team (from a Government department) came and assessed the damages and repaired the house. Now the house has one habitable room and a hall. There is still a little more to be completed”

Returnee to Vellaveli, July 11, 2008

“In 1995 when we returned we lost more things than this time, because we had more things in our house. The house was also much more damaged. We still have not received compensation for that, so we don't expect any to come our way this time” (for the losses suffered during the last displacement). (Explanation added).

Returnee to Vellaveli, July 03, 2008

There is also a lack of differentiation between moneys intended as ‘assistance’ in the post-conflict recovery, and money paid as compensation for loss by damage to housing (with due consideration of restitution to a pre-loss standard, or at least an adequate standard of housing). While both IDPs and returnees are aware that they are entitled to assistance/compensation, there is a lack of criteria and information to indicate adequately ‘who’ is eligible for ‘what’ and ‘when’:

“World Vision gave us 2 and ½ lacks before to build a house; it was half built when we went to India. When we returned, they gave us 1 and ½ more to repair and complete it. The GS in the area keeps telling us that we have got 30,000 from the IOM so we don't need any assistance anymore; so any help that comes this way, we don't seem to be entitled to now.”

India returnee to Kuchchaveli DS Division, September 19, 2008

It is to be noted that for the 77 per cent of IDPs surveyed, who are displaced from the areas demarcated as a HSZ and who are unable to return to their homes and lands,<sup>125</sup> the expectation of compensation and redress for their loss is somewhat different.<sup>126</sup> Following what seems to be permanent expropriation of their lands by the Government with no negotiation and consultation with those who were displaced from these lands, compensation for physical loss and damage to housing is a secondary concern, in view of their inability to either access or return to their lands. Their claims to the right to return and restitution extend to the loss and deprivation

<sup>125</sup> See section 2.1 for Contextual Background on the HSZ

<sup>126</sup> See COHRE 2009, Supra note 23

arising from a prolonged inability to return to their lands without an adequate alternative solution to their displacement. As one inhabitant of the Sathurukondan Welfare Camp said:

“We are not really interested in the condition of our house. We will go back even if it is just to the soil of our land. We made sure we brought back the deeds of our land so that we can prove that it is ours.”

HSZ IDP, Sathurukondan Welfare Camp, June 30, 2008

Many among this group have a well defined expectation of what they are entitled to, regardless of whether they are aware of the current physical condition of their house:

“We will not accept anything in place of it (our lands). We will accept assistance (referring to the compensation package that has been offered) in addition to it, but not in place of it. I cannot really say what I want until I go and see the state in which our house and land is in. I also lost my husband, a loss I cannot quantify...”  
(Explanation added).

HSZ IDP, Sathurukondan Welfare Camp, displaced from Sampur, July 01, 2008

Based on the information gathered by the survey, it is apparent that many of the IDPs displaced from the HSZ, had private ownership of the house and land they used to live on, which in most instances is in excess of 20 perches, described as a ‘plot of land with a house, home garden and large trees’ (see charts 23 and 29). In addition, 82 per cent of this sample sub - category owned additional plots of land, consisting predominantly of agricultural land (71 per cent). It can be deduced from the data that based on their land ownership, descriptions of their housing and land, and levels of income, IDPs displaced from the HSZ by and large are wealthy, compared to other interviewees who have never owned a house made of cement bricks before displacement. The HSZ IDPs have been offered 20 perches of land per family in areas of Pallikuddiyuruppu, Ralkuli, and Ittikulam, to which areas none of the persons displaced from the HSZ want to relocate. It was not absolutely clear at the time of the survey whether this alternative offer of 20 perches for relocation was to be a temporary arrangement until relevant security issues were sorted, or whether it was meant to be a standard compensation package for HSZ IDPs irrespective of the value and extent of the land from which they were displaced. The IDPs themselves are reluctant to accept this offer to relocate, which is obviously

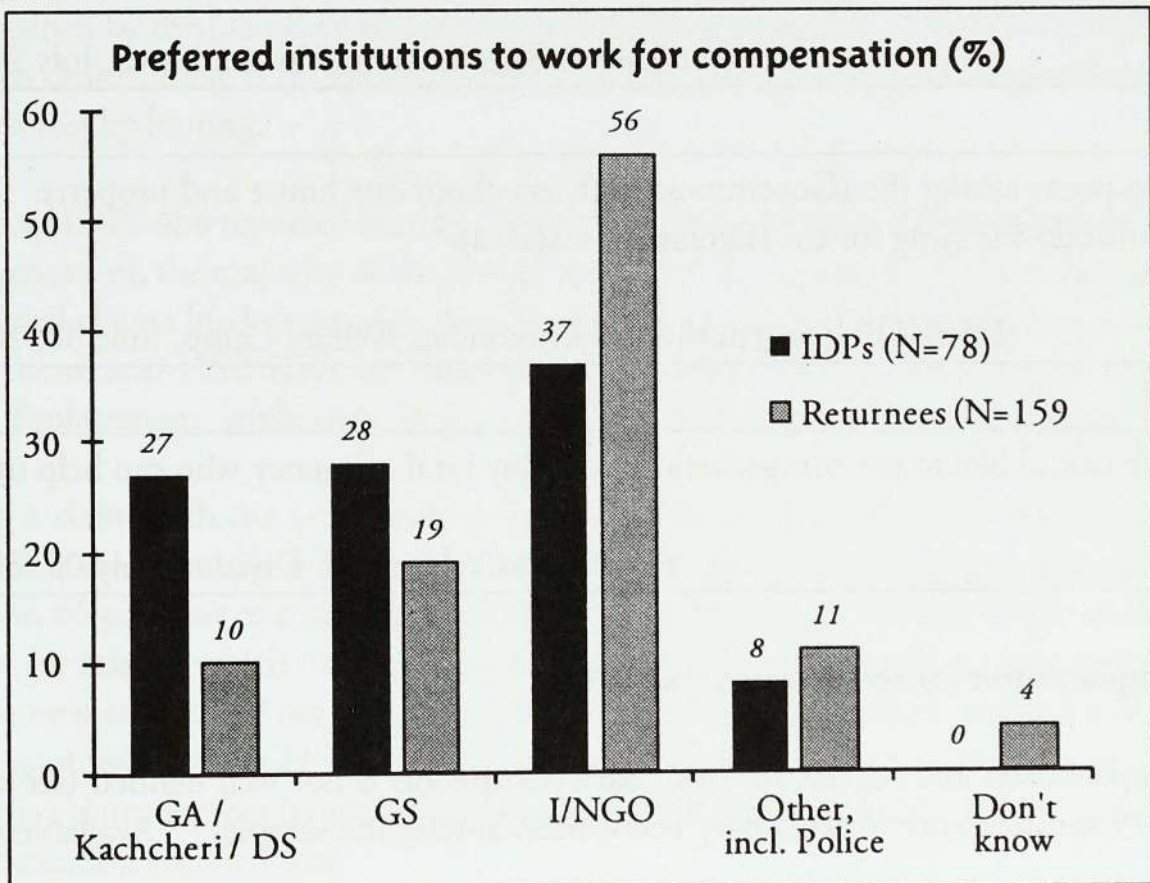
disadvantageous to them and which does not in their opinion constitute an adequate solution to their displacement:

“Some committees were formed within the camp and they went to see the alternative land that they have provided us with. They came back and said that they were offering only 10 perches and that was not enough. They also said it was impossible to do any agriculture there, because there was a lack of water. So the people refused to accept these lands, and we have all told the authorities that we will move from here only if we are given back our land. Otherwise, we will continue to live here”

HSZ IDP, living in the Killivetti Camp, September 13, 2008

The plight of the HSZ IDPs raises a number of issues that are relevant not only to their particular problems of finding a durable solution to their displacement, but also to other categories of displaced persons, such as those affected by the military occupation of their houses, who may not have access to compensation that can adequately compensate them for their loss of housing (discussed below).

Chart 21



Institutional responsibility for the implementation of a successful scheme of compensation that is able to meet the restitution rights of displaced persons is of central importance to a discussion of HLP restitution related compensation. The interviewees were asked whether they had been in touch with any agency or authority on the issue of receiving compensation for the damage to their houses (see chart 21). Of the 161 returnees (84 per cent ) who reported that their home had been at least partially damaged during their displacement (see chart 4), 80 per cent have approached authorities regarding compensation for their damaged housing. Both IDPs and returnees indicated a preference to work with I/NGOs to obtain some form of redress, despite the availability of assistance and compensation schemes implemented by the Government. Among the returnees interviewed, only 3 per cent of returnees in the Batticaloa District indicated any knowledge of the UAS (and the settling in allowance) as a factor that influenced their decision to return.

“When we came here we were given a form to be filled and to send to the DS’s Office. This form was about all the losses we had suffered. We filled this form about a month after we returned and gave it to the DS but we haven’t heard from the DS’s office yet.... Several agencies have come and asked us for information regarding loss and compensation. We have asked the UN also... they said they would give us temporary shelter for now and that the names of those whose houses are damaged have been registered by the DS’s office, and that we would get a house soon...”

Returnee to Kannankuda, Vavunatheevu, July 2008

“No point asking the (Government) officers about our house and property. They cannot do anything for us” (Explanation added)

HSZ IDP living in the Sathurukondan Welfare Camp, June 30, 2008

“We would like to get compensation from any kind of agency who can help us”

Returnee to Vaharai DS Division, July 09, 2008

### Compensation for secondary occupation

Compensation and redress for secondary occupation is not well defined (see chart 18–19 for incidence of secondary occupation among the sample).<sup>127</sup> Available relief

<sup>127</sup> See section 4.1.2 for an outline of Loss by Secondary Occupation

is dependent on the discretion and ability of the District officials to find alternative solutions to this problem, especially where secondary occupation by the military is concerned. While the majority of IDPs interviewed feel they will not receive any compensation, some feel they should receive a lump sum payment for their loss. One IDP displaced in Batticaloa feels entitled to alternative accommodation while the problem of secondary occupation is resolved. Displaced persons were asked to indicate what they felt were solutions to addressing this problem. Their varying responses included - asking the occupants to move themselves, and asking the GA of Trincomalee to intervene in instances of military occupation of their lands and houses. Among returnees, a significant number of those affected by military occupation feel there is nothing they can do about their loss.

Where assistance is given to those whose lands are occupied, people receive temporary shelters from NGOs, and financial assistance under the UAS package. But such assistance does not adequately compensate for their loss, or provide sustainable solutions to their predicament within a framework of HLP restitution.

### **Compensation for loss due to looting**

Claims for compensation for losses resulting from looting are high among both IDPs and returnees. None of those who have made claims for loss by looting have received any compensation at the time of interviewing. While claims for looting are entertained by the DS office and by the police, and relevant forms are filled on behalf of such claims, there is no apparent claims process that is set in motion to effectively redress loss by looting.

Of those IDPs who reported looting in Trincomalee, over 50 per cent made claims for compensation, the majority of them with the police. A majority of IDPs in Batticaloa who filed claims filed them with the DS. 84 per cent of IDPs in Batticaloa, and 65 per cent of non-HSZ IDPs in Trincomalee are aware that their houses were looted after displacement, while only 26 per cent of HSZ IDPs were aware of looting.

Filing a claim with the Government for compensation for loss by looting is a legal right that many people may not be aware of, or otherwise do not pursue for various reasons. 66 per cent of those who reported loss by looting in Batticaloa did not file a claim, for reasons which include - that they didn't think they would receive anything. The same is true for 47 per cent of IDPs displaced from Trincomalee to Batticaloa for reasons other than the HSZ. 100 per cent of IDPs interviewed in Trincomalee did not file a claim for lost items as they were not confident that they would receive any compensation for their loss.

“We have not been informed by the DS or GS that we can make such a claim. I think if we are entitled they will come and let us know”

Batticaloa IDP, unable to return to Kiran, July 02, 2008

Incidents of looting recorded by the survey among returnees are higher than among IDPs, most likely due to greater awareness among returnees of the conditions of their homes. Of the 93 per cent of returnees whose houses were looted, 70 per cent filed claims for compensation, a majority with the police, and 4 per cent with the DS. The general understanding in Batticaloa is that there will not be any compensation for looted items as of yet, though returnees have registered their losses with the DS.

“We asked the GS here. He said there would be no compensation for the things in the house immediately. But we registered all our losses with the DS office”

Returnee to Vaharai DS Division in Batticaloa, July 09, 2008

“This family lost all their belongings when they were displaced. They went to the police station when they returned and made a claim. Still they received nothing”

Returnee to Pallikudiyiruppu, September 15, 2008

#### Overarching Policy Issue

The need for a better definition of the different entitlements arising from loss induced by displacement, based on both legal and equitable criteria, and commensurate compensation for each of these entitlements, together with a distinct claims procedure.

#### 4.3.3 Analysis and Recommendations

Compensation for housing damage caused by conflict has been progressively increased over time, reflecting a commitment on the part of successive Governments to compensate displaced persons for loss of housing resulting from involuntary displacement. However, the disparity in the different schemes reflects the lack of a systematic consideration and assessment of the entitlements that are to be met through these schemes. Compensation given as outright grants, or ‘granted compensation’, are for the restitution of low income housing, with a current eligibility criterion of a monthly income level of rupees 2,500 and below per household. However, the



different schemes compensate at different values for the repair and reconstruction of permanent housing. Thus, it is not possible to envisage one specific standard of housing for low income households, as the value of the compensation for restoration of housing varies among different schemes.

A rights based approach to restitution would require a predetermined standard of housing, based on wider considerations of human rights, such as the right to adequate housing, and housing rights standards. A number of families in the sample population lived in clay and cajun huts before displacement (see chart 22), but restoration of these families to their pre – loss position would not be sufficient to fulfill the human right to adequate housing on which the right to housing, land and property restitution finds its basis. Governments are required to adhere to a minimum standard of housing to be determined on consideration of what is adequate in the relevant context of HLP restitution.<sup>128</sup> Compensation schemes must be consistent, and formulated with reference to a pre – determined standard of housing in keeping with the requirements of what is adequate in the context. Otherwise disparity in compensation schemes in the context of post conflict peace building can lead to much inequity and community tension and may give rise to allegations of unequal treatment and favoritism among different groups of displaced persons.

The pro – poor compensation schemes implemented by the REPPIA and the NEHRP take a ‘needs - based approach’ to housing restitution, in that they give preferential treatment to the urgent housing needs of the poor, the vulnerable and the marginalised. The eligibility criterion of rupees 2,500 for granted compensation however, is a very low cut off point in today’s economic context and may exclude families who earn slightly more, but who may be equally disadvantaged and impoverished by the fact of displacement or otherwise. It would seem inequitable if these families have suffered continuous and extensive losses as a result of involuntary displacement but are not eligible for any grants of compensation, and only have recourse to other assistance such as loans schemes that maybe made available to them, but the costs of which would be beyond their means. This report does not advocate that the Government compensates the ‘rich’ at the detriment of low income households, whose need may be more urgent in light of their greater propensity to impoverishment through displacement.<sup>129</sup> But with due regard to equality of treatment among all those who

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<sup>128</sup> Also see section 4.4 on Housing Standards

<sup>129</sup> This report has not made a study of insurance schemes that may be available to richer households, who can afford a premium for insurance against loss of housing by terrorist activity or civil unrest. On the basis of the sample population interviewed by the survey of this report, it is assumed that the majority of those who have been recurrently displaced in the East, may not be aware or have access to any insurance schemes that guard against risk to land and property.

have been involuntarily displaced, a compensation scheme must take into account the losses that have been suffered by all persons affected by displacement.

It is apparent from the data that there is no clear idea among displaced persons of the compensation that is due to them in lieu of direct restitution of their housing. The overall policy issue is not that people are being 'paid – off' instead of having their houses restored to them. It is more an issue of insufficient information of the redress that is available to displaced persons, who in most instances have only a vague idea of what they are entitled to, and the basis of such entitlements, and information of the quantum and adequacy of compensation. The question of what displaced persons are entitled to needs to be defined with respect to a number of considerations. Among them are legal considerations that govern land entitlements and the legal framework within which restitution must operate; equitable considerations based on precepts of human rights that infuse standards of adequacy and timely restoration; security and dignity; and considerations of policy and practice.

There is a distinct need to reassess the compensation that has been granted in certain instances which, though in excess of rupees 250,000, has proved insufficient to complete the restoration of housing with the increasing costs of building material. While compensation for the restoration of housing has at times been granted by INGOs, the primary responsibility of compensating displaced persons for their losses falls upon the Government, and hence INGOs cannot be held accountable for inadequate compensation unless these moneys have been paid in conjunction with a Government programme for housing. There is also some confusion between moneys paid as assistance by INGOs for purposes of recovery assistance (soon after return), and compensation paid for the recovery of losses. Rehabilitation and assistance programmes conducted by INGOs cannot be construed as constituting compensation for purposes of HLP restitution.

Adequacy of compensation for displaced persons affected by the HSZ in Sampur requires a number of additional considerations. These persons are currently detained from pursuing the durable solution of their choice, which is to return to their homes and lives in their places of origin. The option to relocate together with the compensation that has been offered in lieu of return, are increasingly referred to as a permanent solution to their displaced circumstances. Thus, the determination of compensation in these circumstances goes beyond considerations of restitution and requires the consideration of other relevant criteria that will address the loss of land, housing and livelihood due to the HSZ. If the reason for the protracted nature of their displacement is in fact concerns of security, then the assumption is that the relocation that has been offered is a temporary solution until such time that this group of persons is able to return. However, if for any other reason return is not

possible in the future (such as due to the impending development project to build a coal power plant in the area), then the determination of compensation should be with reference to law and policy affecting the acquisition of lands by the State, in addition to issues of HLP restitution following displacement.

Certain parallels may be drawn between the inability to return due to the HSZ and the military occupation of housing (including the installation of 'military zones' or de facto HSZs).<sup>130</sup> In both instances, there is uncertainty of the duration for which the affected persons will remain displaced. In addition, the affected persons are most often unable to negotiate for a solution to their problems due to lack of information, fear of the military, and/or capacity constraints. There is currently very little clarity regarding the compensation given to displaced persons whose houses are occupied by the military, with no evidence of any such compensation in the East. A policy for compensation must give due consideration to the difficulties arising from the loss of housing (both economic and social) due to military occupation. It must set out clear guidelines for solutions that respond to instances of prolonged military occupation, and military occupation of a short term duration. In the former instance, solutions could include the provision of adequate housing constructed for long term use, the provision of additional alternative land for livelihoods, and the payment of monetary compensation, including payments of rent in addition to the provision of land and housing. In instance of short term occupation, the provision of adequate temporary shelters, in close proximity to livelihoods, and the provision of assistance beyond the standard post return assistance, in keeping with the particular circumstances, especially if the ability to earn a living is affected after returning to their respective lands and having to live in de facto displacement, is mandatory.

There is also very little definition of compensation for loss by looting, though displaced persons are encouraged in certain instances to make complaints of their loss and have done so. The number of claims made for damage and loss through looting indicates that most displaced persons feel they are entitled to be compensated for undue deprivation of their personal goods and belongings. These claims however, may have inherent difficulties where claimants are unable to prove the items of loss, or indicate the persons responsible for their loss. A majority of those who have lost property are only able to guess as to when these items were lost and who must have done the looting. A policy for compensating loss due to looting must take into account these difficulties, and formulate clear criteria to compensate at the minimum, for those items of loss that affects the claimants' subsistence, welfare and well – being.

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<sup>130</sup> See COHRE 2009 (Supra note 23) for further discussion on 'Military Zones'

### Recommendations:

The following policy recommendations are based on both legal and equitable considerations concerning the payment of financial compensation, and arise from the information, discussion and data outlined above:

- Define all entitlements due to displaced persons, that are to be met through a scheme of compensation with a view of restoring displaced persons into durable conditions of life;
- Make a careful review of all losses that should fall within the purview of HLP restitution policies and programmes, and ensure that all losses which affect a persons' HLP restitution rights are considered;
- Establish distinct and independent claims procedures for schemes of compensation for all losses that fall within the ambit of restitution policy, with clear procedural guidelines that are accessible and easily implemented;
- Ensure that compensation schemes are at all times responsive to any changes in the monetary value of the relevant losses in order to avoid undue disadvantage to those who have suffered loss;

### *Loss by damage*

- Identify those instances which warrant the payment of financial compensation in lieu of restitution, where direct restitution is deemed not possible, and assess the most efficient form of compensation in the circumstances of the context;
- Maintain consistency across all schemes for financial compensation for housing, and determine the minimum financial compensation to be paid for both partial and fully damaged housing with reference to a pre – determined standard of housing based on consideration of adequacy according to international standards and in consultation with beneficiaries;
- Establish a minimum compensation package that is adequate in terms of international standards, with corresponding eligibility criteria on the basis of which all those in need can access assistance.
- Establish an incremental compensation scheme for displaced persons with relatively large losses that cannot be redressed by a pro – poor minimum compensation package, to be assessed on a case by case basis, in due

- recognition of the loss and disadvantage suffered as a result of displacement and the right of all displaced persons to full HLP restitution;
- Establish better harmonisation and coordination among the different schemes of assistance and compensation implemented under the purview of the Government, and those which are implemented by other agencies;
- Engage beneficiaries in a meaningful dialogue and consultation to assess their expectation of compensation and its adequacy in terms of redressing their losses;

#### *Loss by Secondary Occupation (Military Occupation)*

- Establish a well defined and transparent process, where land is required for military installations or for other security related reasons, based strictly on military necessity and the principle that, where necessity ceases to exist, land must immediately be released;
- Formulate a package of compensation that is able to adequately redress the losses of those who are unable to pursue a durable solution of their choice, both in the short term and medium term, due to the secondary occupation of their homes and lands by the military;
- Engage those affected by the military occupation of their houses in a process of consultation and negotiation, to ascertain the extent of the loss resulting from occupation and a scheme of compensation that will meet the requirements of alternative arrangements for HLP restitution, both in the short and long terms;

#### *Loss by Looting*

- Establish a scheme of compensation to redress loss by looting, with broad criteria for the submission of evidence to determine whether such loss resulted from displacement;
- Identify the items of loss for which the above scheme is applicable, with adequate dissemination of information among those affected by looting of their entitlements;

## 4.4 Housing Standards

### 4.4.1 Background Information

This section will discuss the different standards of housing that are used for the restitution of displaced persons in the East of Sri Lanka, and the issues impacting the development of consistent standards for housing restoration. Consistency in standards is particularly relevant to post conflict rebuilding and reconstruction in order to ensure non - discrimination among the different beneficiaries in the provision of adequate housing.

The Pinheiro Principles endorse the right to adequate housing<sup>131</sup> as an overarching human right on which the right to restitution is premised.<sup>132</sup> They reiterate that everyone has a right to adequate housing, towards which States are required to 'adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing'. Thus the principles require that a restitution programme must essentially restore displaced persons into 'adequate' housing rather than to housing conditions which may have been less than adequate prior to their displacement. The question of what is meant by adequate may have a number of different meanings in different contexts. However, the term has come to refer to certain standards which apply irrespective of the context with respect to fulfilling the human right to adequate housing. These standards are, - security of tenure, availability of services, housing materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

Broader interpretations of adequacy draw linkages to other human rights, without which the right to adequate housing loses its meaning; such as the rights to food, water and sanitation, livelihood, and security of the person, protection against inhuman and degrading treatment, non – discrimination and gender equality.<sup>133</sup> Several components of adequacy are dealt with and touched upon in this report. The main focus of this section will be on those components of adequacy that have a bearing on the structure of the house as opposed to the land on which the house is built.<sup>134</sup>

<sup>131</sup> The right to adequate housing is articulated in Article 11 of the United Nations, International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Sri Lanka is a signatory; See section 3.1, Theoretical Framework for discussion on Sri Lanka's human rights obligations under international law

<sup>132</sup> Pinheiro Principles (Supra note 43), Principle 08

<sup>133</sup> Human Rights Council (2008) Report of the Special Rapporteur on Adequate Housing, A/HRC/7/16, para.4

<sup>134</sup> See section 4.5 for a discussion on Land and Property Rights Documentation (including aspects of Property Rights, and Security of Tenure)

In Sri Lanka the structure that is used for housing restoration varies between projects and districts. There is some debate on the structural standards that should be used among INGOs, UN agencies, and the Government. The different approaches to the standard of housing are influenced to a large extent by the financial allocations that are available for permanent housing. It is apparent that the Government is committed to implement housing reconstruction programmes to meet the permanent housing requirements of all displaced persons, but unlike in the aftermath of the tsunami, funding for conflict - affected housing is limited. It would require creative and economically efficient methods and strategies to meet the housing requirements of the conflict displaced. The central issue however is the degree to which standards in housing can be compromised to make do with limited finances in the best possible manner.

The NEHRP Project, which falls under the purview of the Ministry of Nation Building and Estate Infrastructure Development builds houses based on the concept of 'core housing' for low income households affected by conflict.<sup>135</sup> A core house is defined as – 'a house with a minimum area of 400 square feet, a secured room, and an additional room, subject to beneficiary input on the design and any extensions to be supplemented with the beneficiaries own funds'.<sup>136</sup> Thus, the concept envisages a standard structure that is 'permanent', which the beneficiaries have the option of improving over time, if they so wish. The advantage of the core housing concept, despite its basic design, is that it is a cost effective structure that is permanent and durable, as opposed to a temporary or semi – permanent structure that displaced persons are often compelled to occupy till they have access to a permanent house.

Donor funded I/NGOs are somewhat reluctant to commit to the concept of core housing, as core housing does not measure up to the concept of a permanent house that is used by these agencies.<sup>137</sup> Also, they are not very clear on the concept of a core house and at times refer to core housing as 'transitional shelter'. Among their concerns is that the beneficiaries in question may not be in a position to upgrade core housing to a more habitable type of permanent accommodation in the long term, and will have little option but to live in the core house in the long term. However, other agencies are of the opinion that the provision of 'core housing' is the way forward to adequate housing in circumstances where finances are limited and there is an urgent need to restore displaced persons into habitable living conditions of some acceptable degree. Especially considering that available donor funded support is not

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<sup>135</sup> Also See section 4.3 on Compensation

<sup>136</sup> Circular No. NEHRP/1, Supra note 122

<sup>137</sup> Information based on interviews conducted by agencies directly involved in the construction of housing in the East for persons displaced by both the tsunami and conflict.

sufficient to plan for permanent housing while attempting to meet the entire housing demand in the East, there is no guarantee of permanent housing at a higher standard than core housing for all displaced persons who fall within the relevant eligibility criteria for housing restoration. The implementation of core housing would allow displaced persons to move into a durable structure without languishing in temporary shelters that are built for short term use, over long periods of time.

Other concerns relating to housing projects implemented by I/NGOs include the lack of systematic criteria that applies across all donor funded housing projects that are necessary to ensure equity, quality and consistency in the standards that are being used; and that agencies are requested to build houses on State Land allocated for new housing schemes in areas with little or no services such as schools, hospitals or other facilities. Criteria given for beneficiary selection to these agencies are also insufficient, with no proper guidelines for the allocation of housing. These issues are aggravated by poor coordination between the Central and Local Government with regards to procedural requirements necessary for the building of housing, and the selection of beneficiaries and allocation of houses.

Core housing is widely used in the Batticaloa District, while it is reported that the GA of Trincomalee is especially emphatic on introducing core housing only. This may be with a view to guaranteeing that displaced persons are restored to some form of a 'permanent' structure, than be forced to live in temporary structures for an undetermined period of time until a fully completed permanent house is made available to them. Overall, displaced persons are somewhat confused by the idea of core housing; they seem unhappy with the concept and compare the core houses to those that were built by donor funded agencies for the tsunami displaced in the aftermath of the tsunami in December 2004 (see below in survey results).

#### **4.4.2 Result of the Survey**

The survey contained a number of questions to understand the standard of housing interviewees enjoyed before they were displaced. The standard of pre – displacement housing is important for a programme of restitution for a number of reasons, including the formulation of adequate standards for the direct restitution of damaged housing; assessment of compensation where there is total destruction of housing or where persons are unable to return to their original locations, or where there is secondary occupation of houses and lands.

A majority of interviewees indicated a preference for the direct restitution of their houses and for their homes to be built by an agency or the Government, when asked what form of redress they would prefer for partial or full damage to their housing (see



chart 18). The percentage of returnees who prefer this option is 64. Approximately 50 per cent of their houses have been fully destroyed, or are too damaged to live in (see chart 04). Among IDPs 53 per cent were not aware of the condition of their homes at the time of the survey. Of the IDPs who are aware of the condition of their housing, 53 per cent would prefer the direct construction of their damaged housing.

Many of the returnees living in welfare camps and temporary shelters at the time of the interviews (see chart 15), live in anticipation of permanent housing; some of them have been registered by the DS or the GN for impending housing schemes. Information on the housing conditions of returnees indicates that 58 per cent of returnees in the Batticaloa District have returned to their original homes and lands, as opposed to 36 per cent in Trincomalee. The majority of returnees in Trincomalee continue to live in temporary shelters on their own land (24 per cent), in welfare shelters (15 per cent), or with a host family (14 per cent), with a few others living in temporary shelters in public spaces and on the lands of other persons. In the Batticaloa district, 34 per cent of returnees live in temporary shelters on their own lands; permanent houses were being built at the time of the interview for 'tsunami IDPs' displaced by the conflict in 2006 who have returned to (Puchchakerni) Vaharai. These houses are being built on State land, for which a proper documentation has still not been issued, and hence the returnees are yet to obtain a formal entitlement to the land on which the houses are being built.<sup>138</sup>

"We asked about permanent housing from the GS and the DS, because in our lives we never had a permanent brick house. We have always lived in mud huts or tin huts. We were affected by the war all our lives so we never got to build a permanent house. It is not fair if only the tsunami affected people are getting new houses. They got houses immediately after the tsunami and then when they were damaged after the recent fighting, some organisations came and re – built them. What about for us?"

Returnee to Vaharai DS Division, July 09, 2008

An assessment was made of the type of housing that displaced persons lived in before displacement. Most interviewees stated that they used to live in houses built from cement blocks or bricks before they became displaced, indicating the high quality of housing stock in most areas from which the sample population was selected (chart 22)

<sup>138</sup> A majority of families who live in temporary shelters in Batticaloa, either never had a 'permanent house' before displacement (by the tsunami and conflict), or their houses are too damaged to live in

Chart 22

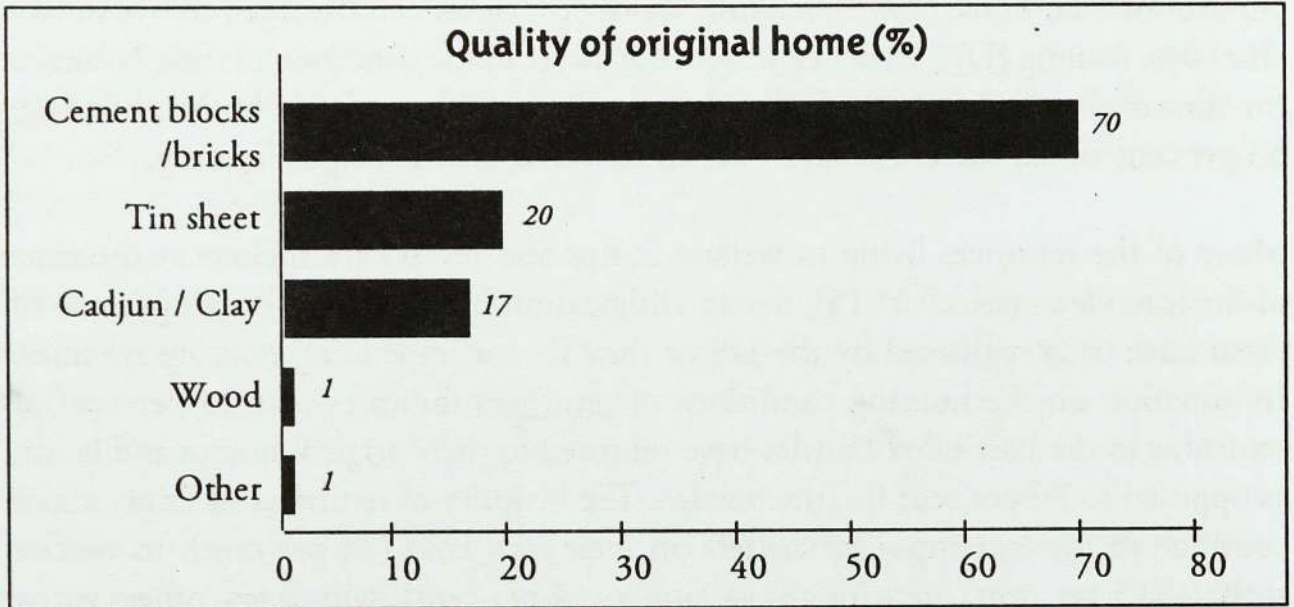
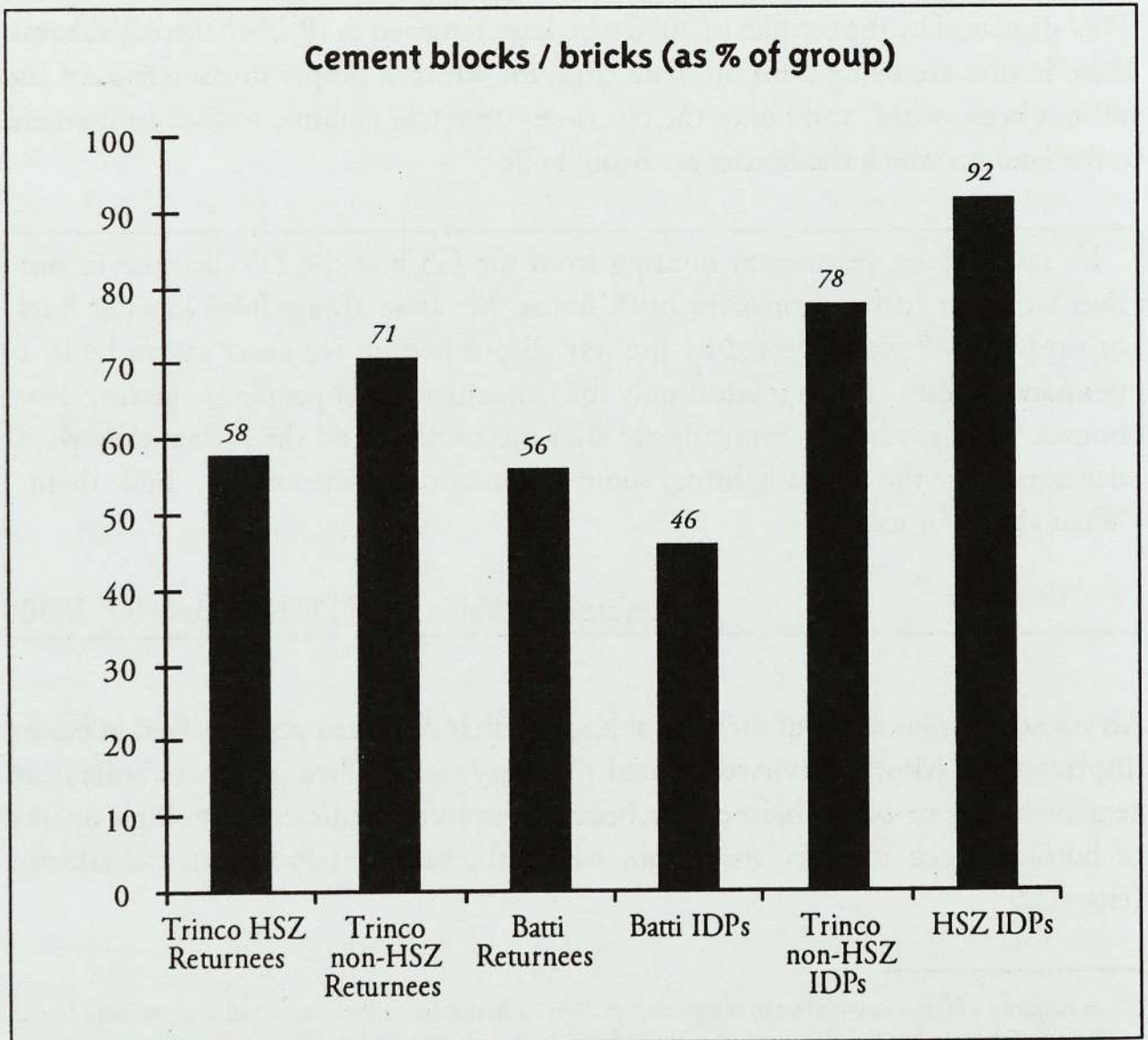
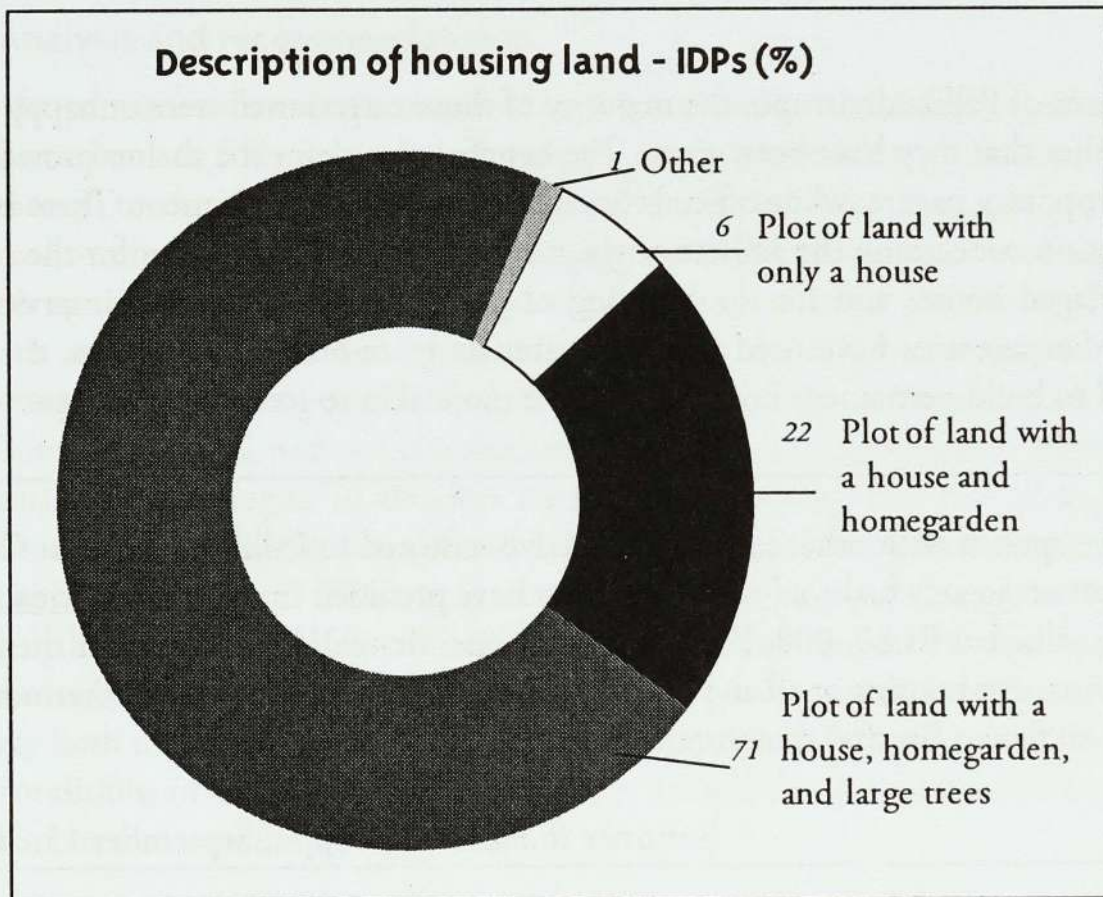


Chart 23



The number of people who stated that they used to have a cement block or brick house before displacement was especially high among IDPs who cannot return due to the current boundaries of the HSZ (chart 23). Cement block/ brick houses were least among Batticaloa IDPs and Batticaloa returnees at 46 per cent, while 56 per cent of returnees in Batticaloa claim to have lived in housing made of cement blocks, as many as 67 per cent perceived their original housing to have been permanent structures. This illustrates that the perception of what constitutes a permanent house is divergent within the District. There is however, an expectation among these returnees that the house that would be restored to them would be of a higher standard, as they did not have the opportunity to improve their living conditions while in displacement:

Chart 24



IDPs were further asked to give a description of the land they used to live on. The answers to this indicate that many of the IDPs interviewed from both Districts, were in possession of housing with an adjoining land area, before they became displaced. Thus, it may be necessary to re – think the ‘one size fits all’ approach that is most often used in the direct restitution of housing, where land allocations for constructing houses are standardised.

As the 'permanent house' phase is due to commence for a number of returnees, there is an apparent lack of clarity among both the beneficiaries and agencies of what constitutes a permanent house. The following statement illustrates the confusion in resettled areas both among the beneficiaries of housing, as well as among agencies:

"The Government promised to give Rs.250, 000 to build new houses for each family but they did not get all that money; some people received Rs.190, 000 or 110,000. However, people built the house according to their ability, but, the Red Cross told them to destroy all houses which are not strong enough, and that they will provide new houses, to the value of Rs.600, 000"

Returnee to Vaharai DS Division, July 09, 2008

In an area of Pallikudiyirrupu, the majority of those interviewed were unhappy with the shelter that they have been given. The beneficiaries claim the shelter provided is of a temporary nature, while officials have declared it to be permanent. There is also contention concerning the assistance given by donor funded agencies for the repair of damaged houses and for the building of permanent housing. The interviewees claim that agencies have used inferior materials to re-build their homes, or have offered to build permanent houses which are more akin to temporary shelters.

"I have spoken with other families who have returned to Pallikudiyirrupu. They say that an agency had told them that they have provided them with a permanent house valued at Rs.80, 000. However, I (the interviewee) do not consider them to be permanent housing at all and think it is a temporary shelter. And furthermore it is not sufficient (in size) to accommodate all members in a family"

Returnee to Pallikudiyirrupu, September 15, 2008

"After I came back to my home an agency came and helped me to repair my house. While I have been helped to repair my house, it is not as it was before. The material that the door is made of is not good and does not fit this house. I would need more compensation to restore the loss I have suffered"

Returnee Pallikudiyirrupu, September 15, 2008

“Our house was repaired, but it is temporary and not up to the standard of the house we left behind that got destroyed. They told us they would give us a proper house later and that we should wait until such time in this house”

Returnee to Pallikuddiyiruppu, September 15, 2008

### Overarching Policy Issue

The need for a definition of housing standards that are relevant to the context of displacement, and which are in keeping with the requirements of the human right to adequate housing, and international standards for HLP restitution.

#### 4.4.3 Analysis and recommendations:

While the permanent housing construction phase of the Government’s resettlement programme has not fully commenced, there is some initiative to implement some ‘permanency’ to the shelter and housing that is being built for displaced persons. There is however, an apparent lack of engagement and consultation among the different agencies and the Government of what constitutes a permanent house with each entity working seemingly in isolation from the other according to their own perception of housing standards. It is prudent for all agencies and institutions, both Government and non – Government, to engage in a progressive process of consultation and dialogue to develop standards of housing that are in keeping with standards of adequacy as defined both by international standards and the beneficiaries themselves.<sup>139</sup> While it is noted that 37 per cent of those interviewed previously lived in houses built of cadjun/clay or tin sheet, a process of restitution based on considerations of rights and equity must pay due regard to concerns of adequacy both in the quality of the house that is repaired or replaced, and the overall living conditions of displaced persons who have suffered much through involuntary displacement due to conflict.

The Government’s pro – poor housing programme implemented by the NEHRP project, takes a ‘one size fits all’ approach to the construction of core housing. This approach may be appropriate for communities who have never previously owned housing made of durable materials, and where the income levels and economic circumstances are uniform throughout the community. However, this approach

<sup>139</sup> A research study into the ‘nature and extent of inadequate housing in Sri Lanka’ was initiated in 2007 by Habitat for Humanity and the University of Colombo (SPARC) towards developing indicators for adequate housing in Sri Lanka

may be too 'fixed' and inflexible to meet the restitution requirements of permanent housing that had been of a higher standard prior to its destruction. It may be necessary to review this approach in view that it is unlikely, given the lack of economic opportunities during displacement that displaced persons who owned permanent housing prior to their displacement will be in a position to develop on core housing to meet the requirements of the housing they had before. This would in essence need careful formulation of criteria to determine the instances in which a 'one – size fits all' approach is to be adopted, and those in which a flexible approach or a 'rough cut' needs to be applied to housing reconstruction, in meeting the housing rights of displaced persons.

A possible alternative to the fixed approach to housing reconstruction is where all beneficiaries are given core housing with a view to expediting the reconstruction and restitution process, with additional financial compensation to meet any loss that may not be compensated by the granting of a core house.<sup>140</sup> This would require reference to pre – determined criteria for the valuation of loss, and proper institutional responsibility for the allocation of resources for families, where the one size fits all approach is not adequate. However, if the minimum standard is a core house, it must be first assessed for standards of adequacy, with flexibility to accommodate the number of persons in a family.

Possible instances which warrant the adoption of more flexible approaches to housing restoration would be where the size of the family has expanded due to prolonged displacement from the original home, or in situations where there are 'new families' in the household. Whether or not the question of extended families are addressed by a HLP restitution is a matter of the policy position that is adopted with reference to the context. But in view that restitution is an equitable remedy that requires flexible alternatives to loss and disadvantage arising from displacement, it is necessary to review these instances on a case by case basis, especially where these families due to displacement, have not had the opportunity to build up a normal livelihood and to progressively develop their housing requirements by themselves.

### **Recommendations:**

The discussion above calls for the review of the following considerations:

- A minimum standard of housing that may be used for a 'one size fits all' approach, based on standards of adequacy which are in keeping with the requirements of international standards of adequate housing;

<sup>140</sup> See also discussion in section 4.3.2 on Compensation for Housing Damage

- Establishment of a process of consultation among beneficiaries by the Government and agencies involved in the construction of housing, in order that displaced persons to participate actively in the reconstruction process and can be adequately compensated for their loss;
- Inclusion of internationally recognised standards for adequate housing in all reconstruction schemes, particularly when State Lands are allocated for the construction of housing schemes.

## 4.5 Land and Property Rights Documentation

### 4.5.1 Background Information

In order to adequately put the right to HLP restitution into practice, displaced persons must have a proper guarantee that they are able to regain any rights to land, which they owned or occupied prior to their displacement. Where displaced persons are not able to claim any rights over the land and housing where they used to live, a rights based HLP restitution programme needs to provide those people with housing and land (and rights over such land) in a manner that fulfills international standards for adequacy.

The international standards require, among other things, a systematised registration of housing, land and property rights as an integral component of any restitution programme.<sup>141</sup> Such a programme is to be accompanied by independent judicial or quasi – judicial procedures that are able to make pronouncements on land and property rights as necessary to ensure legal security of tenure. While states have a responsibility to ensure that existing registration systems are secure from destruction, they are also obligated whenever necessary to establish procedures for copying and securing records, and providing access to copies of any documentary evidence of land and property rights that may support a claim for HLP restitution. Where there is a real possibility of the loss of documentation in situations of mass displacement, the authorities should be careful to collate information of displacement and movement, among other information, that can provide a source of verification and an independent source of evidence for proving claims for restitution.

The rationale for these requirements is that, the loss of documentation and other evidence of land and property rights does not negate the right to restitution of a displaced person. Firstly, loss of records cannot mean loss of rights. Secondly, HLP restitution is to be approached from the wider perspective of addressing displacement,

<sup>141</sup> Pinheiro Principles (Supra note 43) Principle 15

and hence procedures for the restoration of land and property rights in a context of displacement must be framed with a view to bringing displacement to an end.

Thus, the standards also require restoration for persons who had types of tenure other than ownership, such as tenants, other legitimate occupants of land, or landless persons, who have been subject to displacement.<sup>142</sup> States are required to ensure 'to the maximum extent possible' that such persons are able to return and reposses the housing, land and property they had been using prior to displacement through the process of restoring formal rights or, where no formal rights existed, by conferring rights.

Under Sri Lankan land law, property rights are determined to a large extent by whether the land in question is privately owned or belongs to the State. Land tenure over State Land under different legal regimes is frequent especially in rural areas.

Private ownership gives the owner exclusive rights over the land to the exclusion of all others, which can be subject to the interference of the State under very limited circumstances. Displaced persons who have full ownership over their land are therefore unlikely to encounter problems in the process of return regarding their entitlement to the vacated land. Issues may only arise where land has been temporarily or permanently acquired by the State, for example in the context of the establishment of permanent HSZs or more temporary military camps and similar installations (although these can also last for a considerable amount of time).<sup>143</sup>

Property rights over State Land are by permits and grants regulated by legislation that give their holders property rights over State Land. A permit gives a person the right to use a piece of land for a certain period of time, specified in the permit document. The permit further specifies the purpose for which the land is to be used. Typically, this includes either exclusive use for agriculture, or use for both agriculture and living. Permits can be revoked if the permit holder does not use the permit for the purpose stated, or in the case of non-payment of permit fees. Permits therefore confer limited use rights over the land in question. Further, where a permit holder is in breach of the terms of the permit, simply by being absent, prescription periods outlined by legislation may be applied to revoke the permit. While this problem has never been reported in the context of displacement, legal clarity should be created by officially declaring that prescription rules will not be applied to displaced persons in order to ensure they do not encounter any challenges to the continued validity of their permit.

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<sup>142</sup> Ibid, principle 16

<sup>143</sup> See section 4.1.2 and 4.3.2 on Secondary Occupation



In contrast, a grant confers almost full ownership rights to the grant holder, with the exception that the land cannot be sold to others without permission from the relevant authorities. Grants are often given to people who have held a permit for a number of years, and once a grant is given, it can be inherited by successive generations.

#### **4.5.2 Results of the Survey**

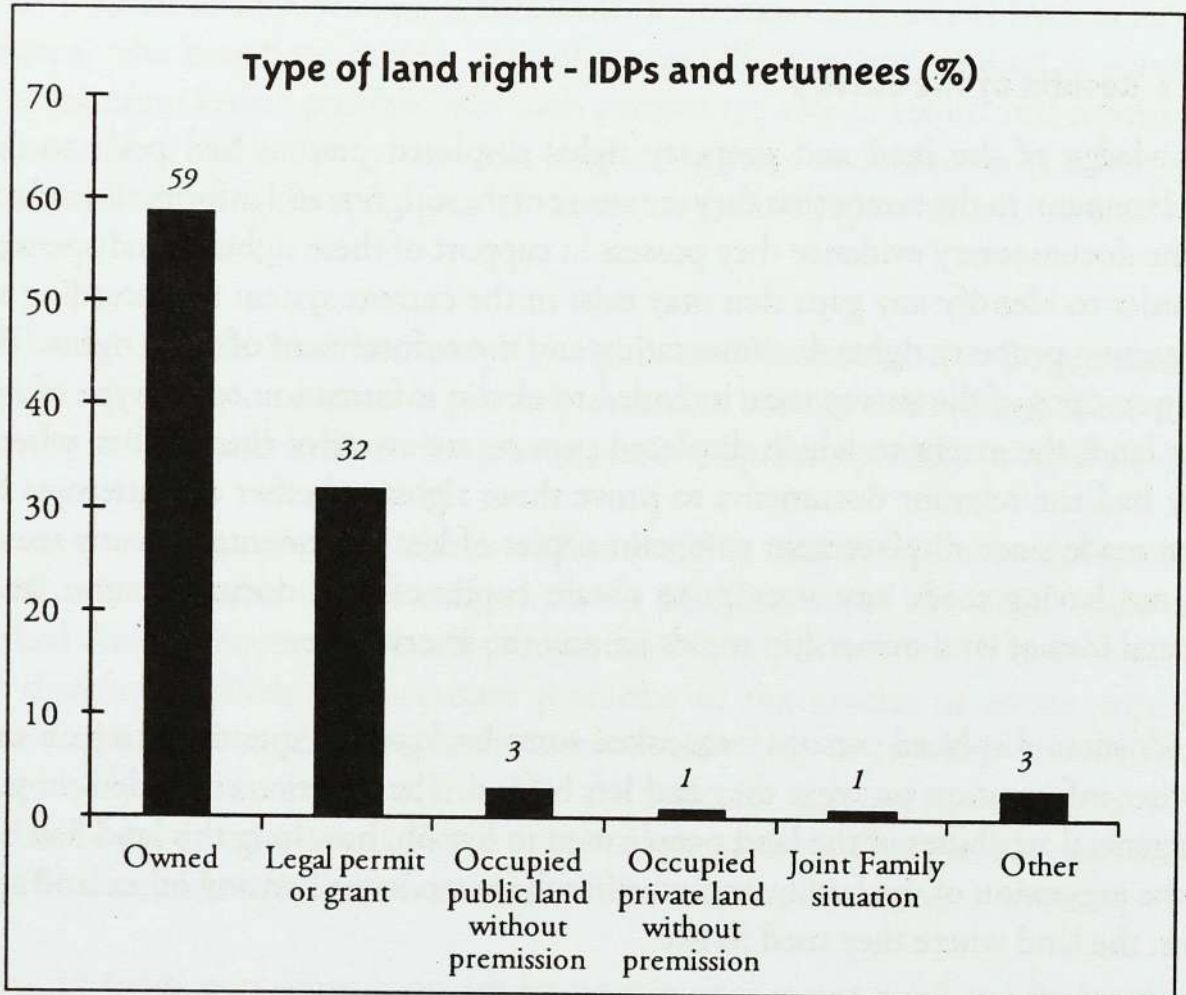
Knowledge of the land and property rights displaced persons had prior to their displacement, to the extent that they are aware of these rights; and information relating to the documentary evidence they possess in support of these rights, is indispensable in order to identify any gaps that may exist in the current system for recording and registering property rights documentation and the enforcement of these rights. Thus the questions of the survey were intended to obtain information of the type of right over land; the extent to which displaced persons are aware of these rights; whether they had the relevant documents to prove those rights; whether any attempts had been made since displacement to obtain copies of lost documentation; any reasons for not having made any attempt to obtain copies of land documentation, and a general idea of land ownership trends among the interviewees.

In addition, displaced persons were asked some background questions to gain some further information on what they had left behind. The questions included those on the general attributes of the land people used to live on, how long this land had been in the possession of the family, and whether the interviewee had any other land apart from the land where they used to live.

Following is a presentation of the quantitative and qualitative data that resulted from the questionnaire, together with indications of the problems that were identified from the survey results.

*Property rights*

Chart 25



Interviewees were asked what type of property rights they had over the land where they used to live. The list of answers included the most common types of property rights and other arrangements in Sri Lanka<sup>144</sup> (see chart 25)

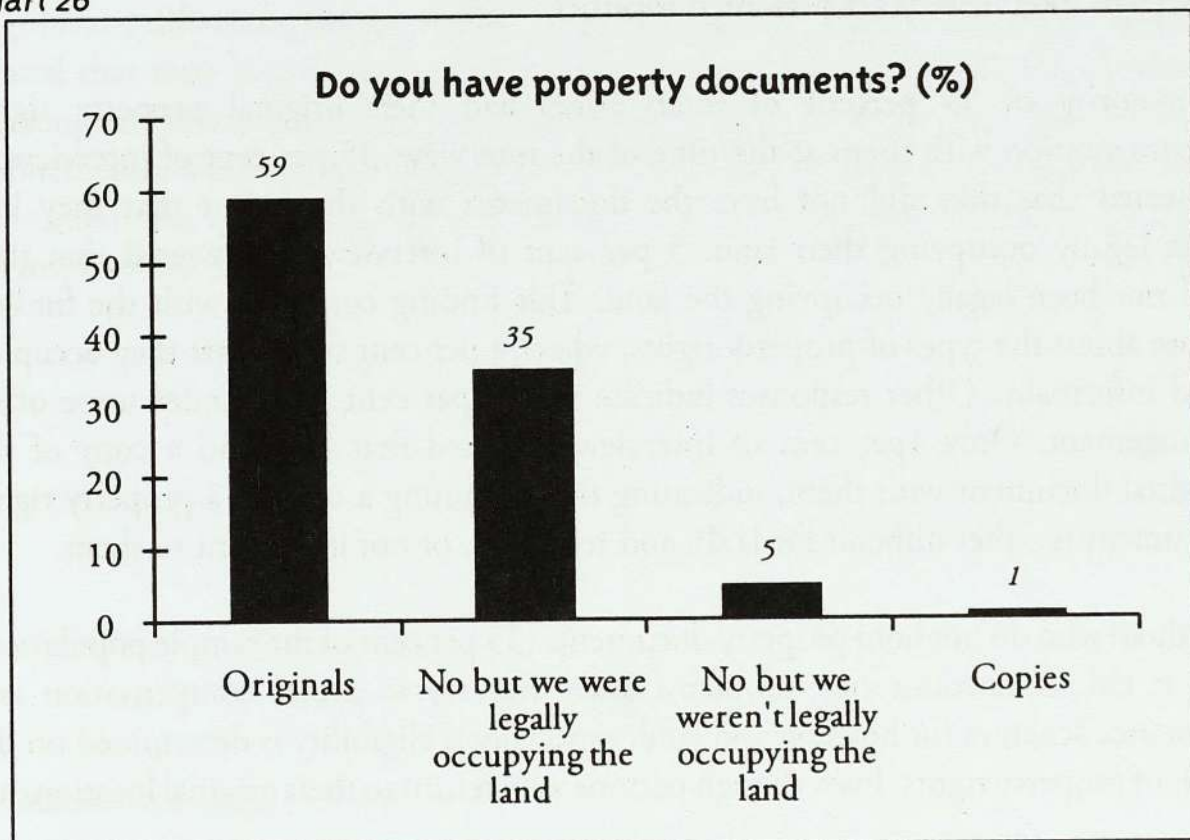
The answers show that, among the survey population, the majority of interviewees (59 per cent) own the land where they used to live, and have absolute title over such land. The next biggest grouping is people who have a legal permit or grant to possess and occupy state land (32 per cent). Most interviewees in this group stated that they are permit holders. However, interviewees seemed unsure about the distinction between permit and grant. Both answers are therefore represented together in the analysis to reflect the overall percentage of people who hold a title over State Land. Only 4 per cent of all interviewees answered that they used to live on public or private land

<sup>144</sup> The possible answers were: Ownership; permit; grant; joint family situation; rent (both formal and informal) and informal occupation of public and/or private land and other.

without permission, i.e. informally occupied land. 3 per cent of interviewees lived under some other arrangement, and 1 per cent used to live in a joint family situation, where the title was not held by the interviewee or a member of his/her nuclear family. It is to be noted that land ownership is particularly high among those displaced from the HSZ at 88 per cent.

It is standard practice for both permits and grants to be sold from one person to another in all parts of Sri Lanka. Legally, neither a permit nor a grant can be transferred freely to a third party, i.e. outside of the family, and any person who has "bought" permit or grant land is likely to encounter problems when trying to have the document transferred to his or her name (though such transfers are, at times, accepted as standard practice). In the event a displaced person has acquired a permit or a grant through a 'transfer' and makes an application for housing assistance, there is a danger that this assistance may be denied on the grounds that they do not hold a valid document over their land. While the survey results have not directly recorded this experience, a number of interviewees stated that they had "bought" land under a permit or grant but had still not transferred this land. Others who have attempted to access assistance after return but had no documentation of their property rights, were told that they would first need to prove their entitlement to the land.

Chart 26



“I bought permit lands from a private party for 15,000 some 25 years ago, one for the house and small crops and the other was paddy land. The land where [our] house was on, was 1.5 acres and the agricultural land was 3 acres. After buying we went to the Divisional Secretary’s office and got the permit transferred to my name”

IDP unable to return to Kiran, living at the time in the Saowcady Camp,  
July 07, 2008

“Some people we spoke to said that they needed to show land for NGOs to build a temporary house and land documents to get a permanent house”

Returnee, Poomarathadichenai, Eachchalampattu, September 18, 2008

### *Documentation*

The survey also recorded whether interviewees had the relevant property rights documents with them at the time of the interview<sup>145</sup>. The percentage breakdown for each answer was almost even between IDPs and returnees, so that answers from both groups of interviewees are presented together.

A majority of 59 percent of interviewees had their original property rights documentation with them at the time of the interview. 35 per cent of interviewees answered that they did not have the documents with them, but that they had been legally occupying their land. 5 per cent of interviewees answered that they had not been legally occupying the land. This finding correlates with the finding above about the types of property rights, where 4 per cent stated that they occupied land informally. Other responses indicate that 3 per cent lived under some other arrangement. Only 1 per cent of interviewees stated that they had a copy of the original document with them, indicating that obtaining a copy of a property rights document is either difficult for IDPs and returnees, or not important to them.

All those who do not hold property documents (35 per cent of the sample population) are at risk of encountering problems once they try to access compensation and assistance schemes for housing and land, especially if eligibility is determined on the basis of property rights. Even though persons who return to their original locations are

<sup>145</sup> The possible answers were: Originals; copies; no, but we were legally occupying the land; we were not legally occupying the land.

at times registered for housing assistance and compensation, this does not necessarily mean that parallel measures are taken to establish security of tenure of their lands. During the survey, returnees to Puchchakerni in Vaharai who were originally affected by the tsunami had not yet received the documentation to prove ownership of the land on which their permanent houses were being built after the tsunami.<sup>146</sup> Other problems associated with obtaining documentation include, that displaced persons often do not have the resources or the capacity to go about the task of obtaining documents in time. One returnee told researchers the following:

“The actual deed is still in my mother’s name. We have a letter from a lawyer saying that my mother is willing to transfer it to my name. We show this to people who want to build us a house, but we need a lot of money to transfer the actual deed into my name. We can’t afford to do this at the moment.”

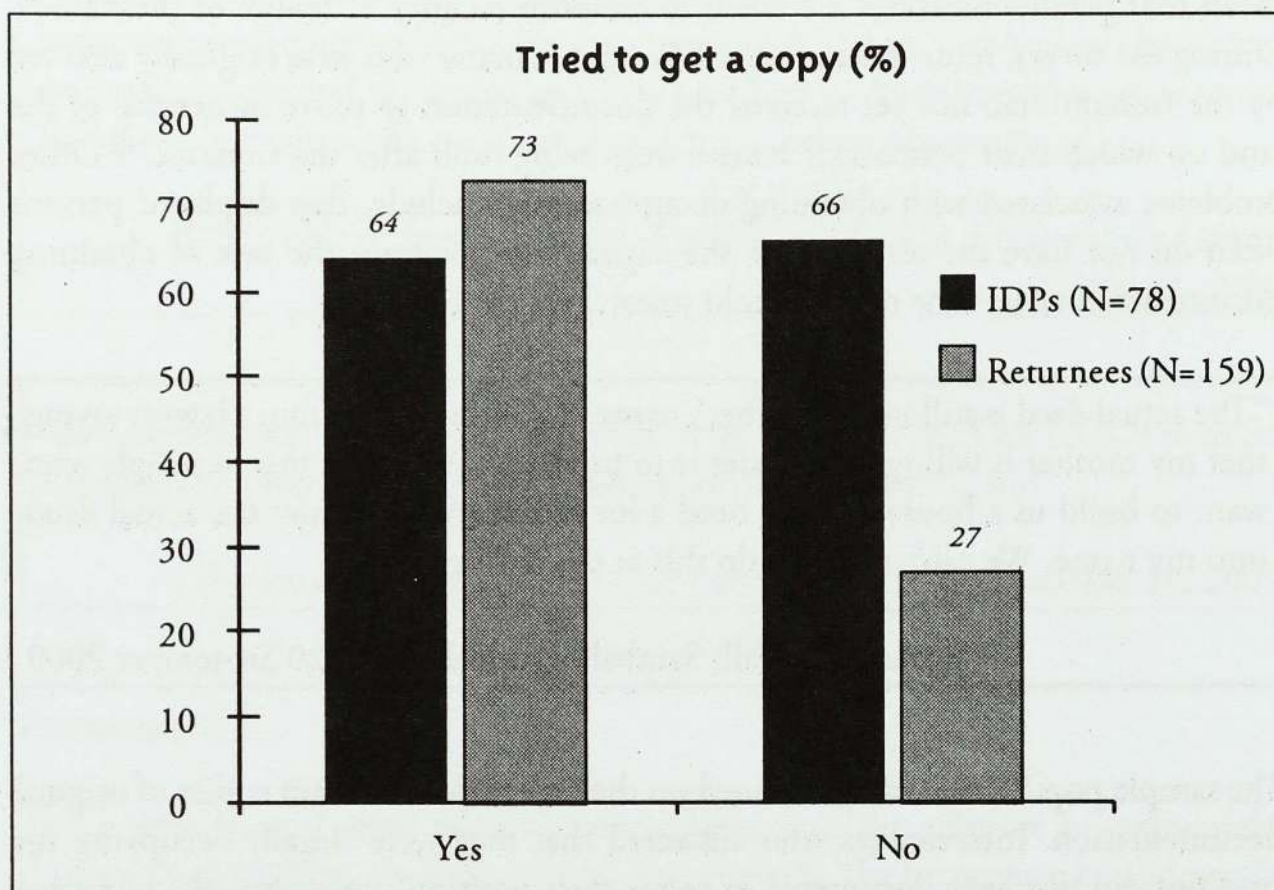
Returnee to Salli Sambalthivu, field notes 20 September 2009

The sample population was questioned on their attempts to obtain copies of original documentation. Interviewees who answered that they were “legally occupying the land but did not have documents to prove their position” were also asked whether they had tried to obtain a copy of the original document. The responses show a significant difference between IDPs and returnees. Among IDPs, only 34 per cent stated that they had tried to obtain a copy of their lost property rights document. Among returnees, this figure was significantly higher, at 73 per cent (see chart 27). Nonetheless, almost equal numbers of IDPs and returnees reported that they had no documents on them, again indicating that there are difficulties in obtaining copies of lost documentation.

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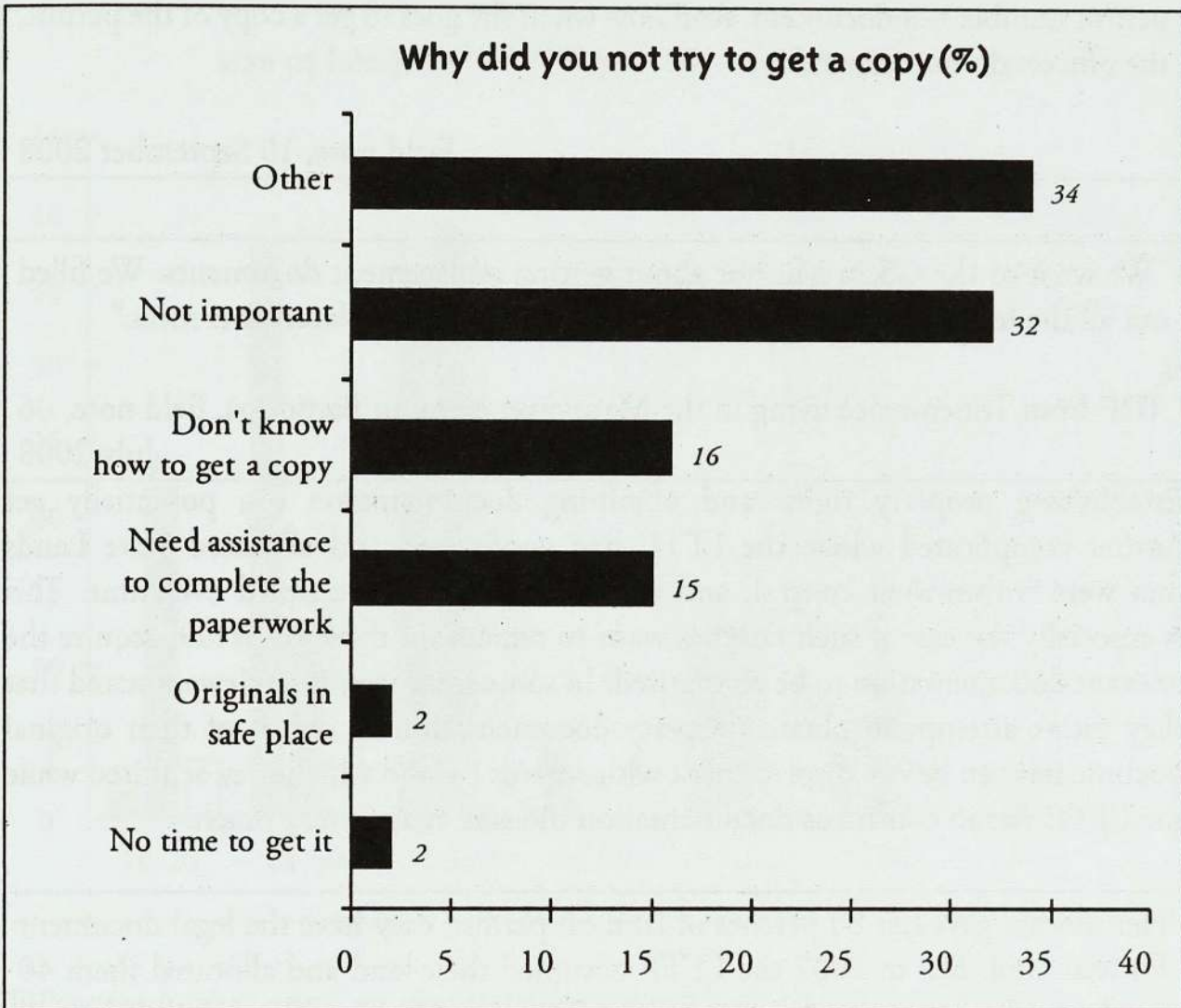
<sup>146</sup> A permanent housing scheme for 90 permanent houses in the Vaharai DS Division was to be completed by January 2009. All attempts to secure land documentation for the State Land on which the housing scheme was being established and inquiries made by the Vaharai DS and the donors of the project as to where the application for documentation were in the overall process to obtain them, had failed.

Chart 27



Those interviewees who did not have copies of their property rights documents with them at the time of the interview, and who stated that they had not tried to obtain a copy, were asked to give a reason for not trying to obtain a copy. In total, 62 interviewees (both IDPs and returnees) were asked this question. The results are shown in the chart below (chart 28):

Chart 28



The relatively small number of answers to this question (62) does not allow for a conclusive analysis of the reasons for not trying to obtain copies of property rights documents. However, the data is indicative of a lack of knowledge and general confusion among the displaced and recently returned population in the East about property rights documentation, as further evidenced by accounts from interviewees:

“I left behind the permit to my land when I was displaced, and have not applied for a copy because I do not have any money. I am also not aware that NGOs are providing legal aid to assist in obtaining copies of lost documents.”

Returnee to Thoppur, field note 15 September 2008

They have tried to get a copy of the paperwork at the DS, but they got only the permit number not document. And now when she goes to get a copy of the permit, the officers do not respond.

Field note, 10 September 2008

“We went to the GS in Muthur about getting replacement documents. We filled out all the forms. He has promised that we will get the replacements soon.”

IDP from Trincomalee living in the Manpower camp in Batticaloa, field note, 06 July 2008

Establishing property rights and obtaining documentation can potentially get further complicated where the LTTE had confiscated and allocated State Lands that were within their control, and which families have occupied over time. This is especially the case if such families want to remain on those lands and require the relevant documentation to be regularised. In some instances, interviewees stated that they didn't attempt to obtain property documentation or copies of their original documents even before displacement with regards to land which they acquired while the LTTE was in control as documentation did not matter very much.

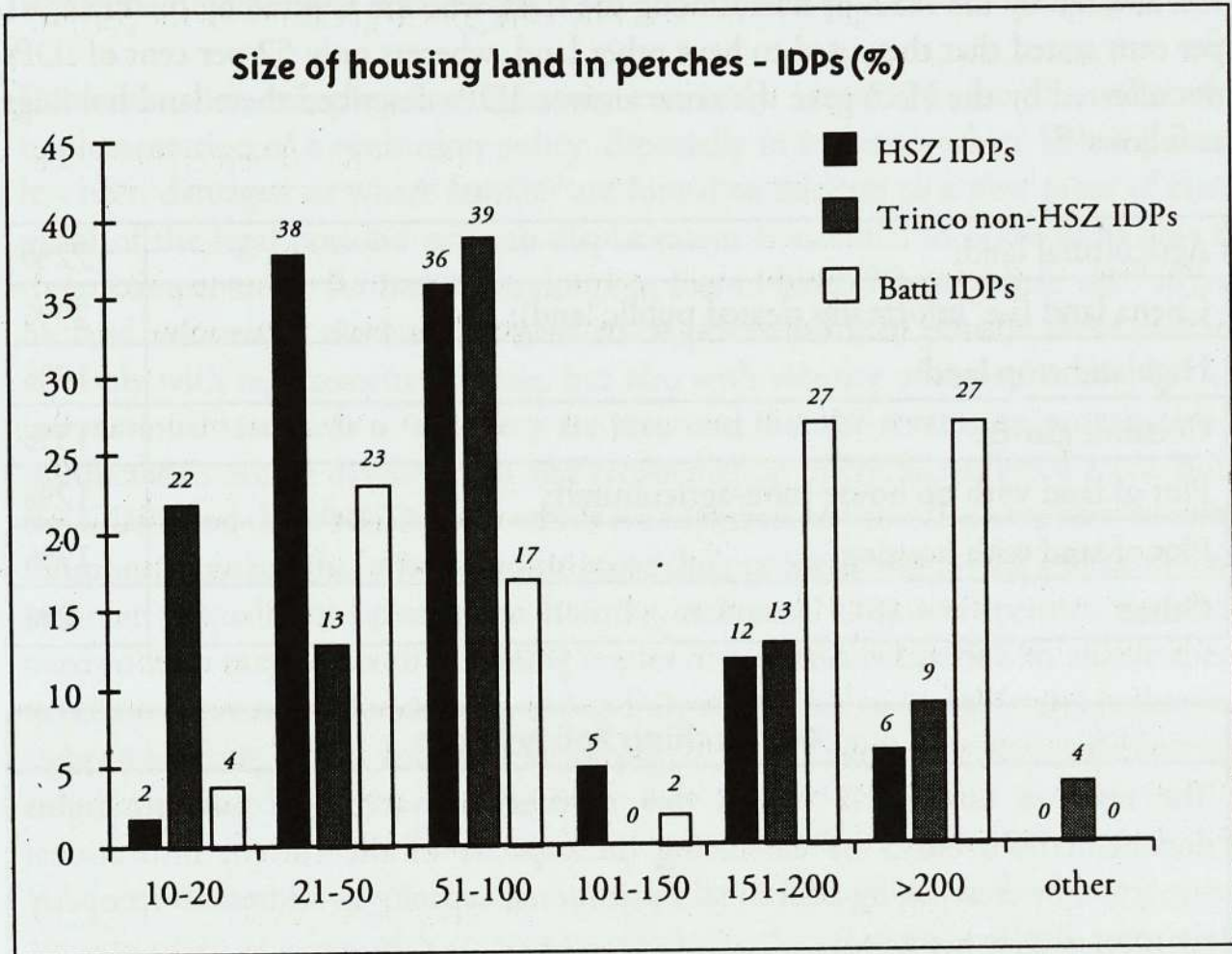
Her mother gave her 80 perches of land on permit; they have the legal document for that land. But in 2002 the LTTE occupied their land and allocated them 40 perches of land with no documentation. They consider the 40 perches their land now.

IDP from Kiran, originally from Pulipaithakai, July 02, 2008

As mentioned above, IDPs were also asked some questions about the type and size of land, as well as length of occupation. The purpose of these questions was to obtain an indication of the assets IDPs have left behind, both in material as well as in immaterial terms. In terms of the size of land that IDPs left behind, IDPs were asked to give an answer in perches. For the analysis, the answers were grouped to allow for a better overview of results. Answers were also disaggregated for the different groups of IDPs interviewed, as the survey showed a significant difference in the size of land IDPs used to live on, depending on where they were displaced from. The results are as follows:



Chart 29



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IDPs were further asked to describe the piece of land they used to live on to gain more information on the living conditions of IDPs before they became displaced. Based on the description IDPs gave in the interview, interviewers then grouped the answers into the following categories:

Plot of land with only a house:	6%
Plot of land with a house and home garden:	22%
Plot of land with a house, home garden and large trees:	71%
Agricultural land:	0%
Other:	1%

Most of the questions about property rights in the survey were asked in relation to the land where people used to live before they became displaced. However, since the East is an area characterised by agriculture, IDPs were also asked whether they had any other land apart from the land where they used to live. A majority of 70 per cent stated that they used to have other land. It is noteworthy that the answer to

this question varies significantly depending on whether the interviewee concerned was affected by the HSZ or not. Among the IDPs who are affected by the HSZ, 81 per cent stated that they used to have other land, whereas only 52 per cent of IDPs not affected by the HSZ gave the same answer. IDPs described these land holdings as follows<sup>147</sup>:

Agricultural land:	72%
Chena land (i.e. informally cleared public land):	29%
Highland crop land:	18%
Coconut groves:	13%
Plot of land with no house (non-agricultural):	12%
Plot of land with housing:	19%
Other:	2%

#### **Overarching Policy Issue:**

The need to establish a system that ensures easy access to property rights documentation, either by enhancing the capacity of the current institutional structure, or establishing additional institutional capacity to address the property rights of displaced persons.

### **4.5.3 Analysis and Recommendations**

Property rights and documentation are important in a context of restitution, where displaced persons are looking to re – establish themselves in secure and sustainable conditions of life. A holistic restitution programme is dependent to a large degree on proper documentation to re-establish the land and property rights to which displaced persons are entitled.

The data indicates that there is a distinct lack of awareness among both the displaced persons and the authorities of the importance of property rights documentation. A fair number of persons claim they were occupying land legally, though without documentation, while they did not feel the importance of obtaining original documentation or copies. Where displaced persons, and in some instances INGOs and donors implementing housing schemes, have applied for documentation, the relevant authorities have not been very forthcoming in processing documentation in

<sup>147</sup> Interviewees could give more than one answer. The percentage total is therefore greater than 100 per cent.

a timely manner. There is also an apparent lack of capacity among the local authorities where the processing of documentation is concerned.

Documentation of property rights is extremely important for the successful implementation of a restitution policy. Especially in instances where housing stock has been damaged or where families are forced to relocate to a new piece of land, proof of the legal position prior to displacement is essential in order to be able to claim compensation for housing damage or loss of land. Where people used to live on land informally, mechanisms need to be put in place to provide those persons not only with replacement housing, but also with security of tenure to ensure that international standards of adequacy are met, and that the restitution programme is conducive to overall development and reconciliation of conflict affected areas. Both the GOSL and the I/NGOs with which it cooperates to provide permanent housing solutions, stipulate that a family must prove their property rights over a piece of land in order to qualify for permanent housing assistance. Displaced persons therefore need to have easy access to obtaining copies of lost documentation to enable them to seek compensation for damage and to fully re-establish ownership and possession rights over their homes and land, or to acquire rights conferring security of tenure over housing and land.

While a number of agencies in the East engage in legal aid work, displaced persons are very often at a loss with regards to obtaining the relevant land documentation. This is due to reasons that include the lack of resources or a lack of knowledge of the process, which renders them dependent to a large extent on the authorities or agencies that intervene on behalf of them.

Where there are disputes relating to property rights between individuals or which arise from the land itself, undue dependency and discretion on the relevant local authority to make a decision regarding property rights may result in loss to a claimant of property rights if such a decision is not impartial or satisfactory. In such instances, it is paramount that an affected party has recourse to an independent authority that is able to make a determination of such property rights in a timely and efficient manner. Displaced persons must be made aware of avenues, such as mediation boards and other tribunals that are able to resolve property related disputes without much cost and inconvenience.

Another obvious category of concern are those who have informally occupied land before they became displaced, and who therefore hold no legal entitlement to such land under Sri Lankan law (unless there is a valid claim of prescriptive title to the land), or those who are landless. Unclear title over land, even though only a problem for a few participants of the survey (4 per cent, see above), is therefore an issue that needs

to be addressed in a restitution policy. Even if relatively small parts of the population are affected, unclear entitlement to land, unless addressed, can negate restitution after displacement for this group of persons. In theory, those who do not have title over the land they used to live on have no right to claim full restitution, as there is no question of land rights being 'restored' to them. From a purely legalistic position, there would only be scope for compensation for losses of property which stood on the land, such as a house or other assets, but not for land rights themselves.

However, the concept of restitution under international standards is a holistic one, and intends to contribute to durable solutions for all those who have been subject to involuntary displacement, including those who have no legal title over the land where they used to live. Thus a restitution policy needs to include a guarantee that nobody will be left out, and that as a minimum, every displaced person or family receives adequate land and housing. In Sri Lanka, the Tsunami Housing Policy has applied this standard in the form of "a house for a house, regardless of ownership". This policy ensures that those who did not hold title over their former homes are given land and a house, or cash assistance. The policy thereby provides a minimum standard to ensure that all displaced persons can achieve a sustainable and durable solution to their displacement. Despite some problems with the implementation of the Tsunami Policy, both in terms of reaching beneficiaries and in terms of making it work in practice, a large number of people benefited from this policy decision that was made in the aftermath of the tsunami, when it became clear that many of those affected did not actually have legal title to the land where they used to live.

Furthermore, issues pertaining to security of tenure, arising from unclear title to land or the lack of documentation are problematic in itself, even outside the context of displacement. Lack of security of tenure puts the persons in possession of land, at a greater risk of being dispossessed from their land, through eviction for political, economic and other reasons. People who do not have secure tenure, such as informal settlers, are typically poor and have limited options to improve their livelihoods. Even where they have the means to make improvements on their housing, the lack of security of tenure and the risk of losing possession will often mean that people chose not to make improvements and remain living in substandard housing. Security of tenure is therefore one of the cornerstones of the right to adequate housing, and the right to restitution. Security of tenure is especially important if restitution and durable solutions to displacement is to be placed in a wider process of development and reconciliation in the period of reconstruction after conflict.

## Recommendations

### *Property Rights:*

- Ensure that all displaced persons have easy, efficient and cost effective access to an independent system by which their property rights are re-established;
- Suspension of all prescription periods that may lead to dispossession due to absence in all areas where people experienced displacement;
- All displaced persons who did not enjoy security of tenure before displacement to be granted secure land and property rights, either over the land where they used to live, or over a plot of land of at least the same quality or higher;
- All displaced are to retain at least the same type of property right over housing and land, especially where return is made impossible due to reasons such as continued military occupation or the establishment of HSZ.

### *Documentation:*

- Establishment of a clear, accessible and independent administrative mechanism for the provision of copies of lost land and property rights documentation in all districts of origin and receiving districts;
- Wide dissemination of information of the administrative process, and of the importance of land documentation, among all displaced persons

## 4.6 Information and Participation in the Restitution Process

### 4.6.1 Background Information

The right of displaced persons to return to their homes voluntarily, in safety and in dignity is widely accepted and reflected in relevant international documents. In order to effectively realise this right, it is of pivotal importance for those displaced and in the process of return to have access to information about a wide range of issues, such as safety and security, the amount of destruction at places of origin, and what assistance, including compensation, will be available to enable people to re-establish their lives. Both during displacement and in the process of return, displaced persons need to be provided with information that enables them to make informed decisions about the next steps towards finding a durable solution to displacement. The displaced population further needs to have 'a seat at the table' with authorities and international agencies so that their needs and concerns can be addressed throughout

the planning and implementation phase of return and restitution programmes. This, too, is reflected in international standards on return and restitution<sup>148</sup>.

The Pinheiro Principles specify that - “States and other involved international and national actors should ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities” and the Guiding Principles on Internal Displacement outline that “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”.

The informed participation of displaced persons is thus paramount to the successful implementation of an equitable process of HLP restitution. As was highlighted in the preceding sections, the lack of information is a factor that adversely affects access to timely redress, for property lost through damage, secondary occupation and looting; and when establishing property rights documentation. This section will further discuss the data of the survey concerning the informed participation of displaced persons in HLP restitution.

#### **4.6.2 Findings of the Survey**

Throughout the survey, interviewees indicated that information is hard to come by, often vague or inaccurate, and leaves them with no choice but to wait and see what is to follow. Especially regarding available assistance, there is an apparent gap in information about available schemes of assistance and compensation and eligibility criteria for these schemes.

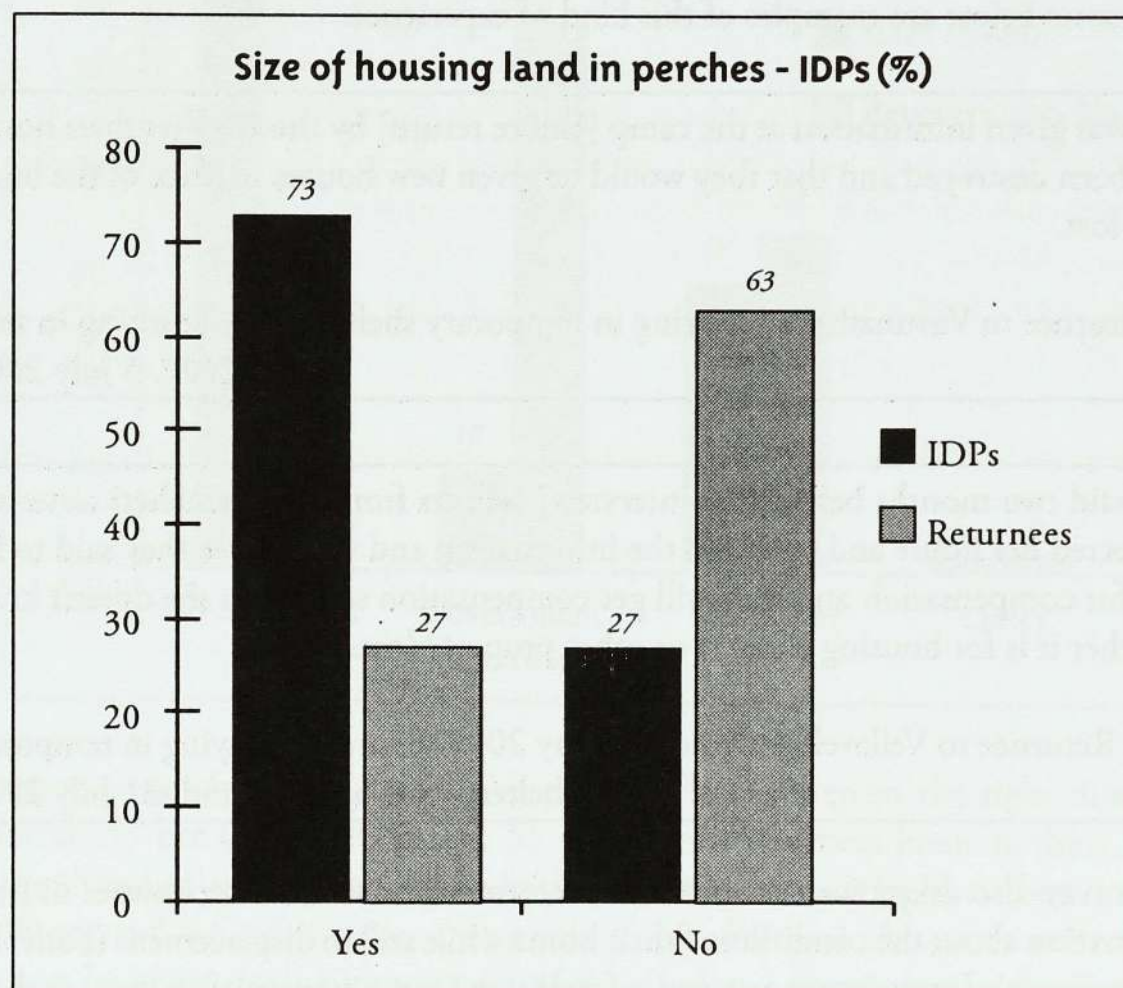
Both IDPs and returnees were asked whether they had been in touch with authorities or agencies about the condition of their home during displacement. The survey results varied significantly between IDPs and returnees. As shown in the chart below, a majority of IDPs (73 per cent) have sought information about their homes during displacement, while only 37 per cent of returnees had done so while they were still displaced. This discrepancy between IDPs and returnees is probably due to the difference in the displacement history between the two groups. Most of the returnees interviewed returned in 2007, relatively soon after open conflict ended. In contrast, the IDPs interviewed were still displaced in July-September 2008, more than one year after fighting ended. It is supposed that with the end of open hostilities and the resumption of relative normality in the East, there has been more space for contact

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<sup>148</sup> Pinheiro Principles (see note 43) Principle 14.1; and Principle 28.2, *Supra* note 56

with authorities and people are increasingly anxious to know about the condition of their home.

Chart 30



Even though 73 per cent of IDPs stated that they had sought information from authorities about the condition of their homes, this was not necessarily successful. As shown in section 4.1.1, chart 4, 53 per cent of all IDPs interviewed stated that they had no information about the condition of their home. Similarly, 51 per cent of returnees stated that they had no knowledge of the condition of their home before they returned. Though the survey is not representative of the IDP population in the districts of Batticaloa and Trincomalee, with respect to access to information, these results indicate clearly that current standards of access to information for IDPs and returnees need to be improved significantly in order to allow people to make informed decisions.

Answers to the question “what specific things has this authority/agency done for you with respect to your home” (recorded in field notes of the interviewers) show that in many cases, contact with authorities has not yielded information. Many

interviewees simply answered “nothing” to this question, or reported that local authorities promised that some kind of housing assistance would be available. In the case of returnees especially, who had in their majority returned to their land or a place nearby about a year before the interview, many were still living in temporary shelters and had no specific information about reconstruction assistance for damaged homes. The quotes below are examples of this kind of experience:

She was given information at the camp [before return] by the GS that their houses had been destroyed and that they would be given new houses in place of the house they lost.

Returnee to Vavunatheevu, staying in temporary shelter since returning in mid-2007, 5 July 2008.

She said two months before [the interview] officers from the Kachcheri came and inspected her house and collected the information and went. Also they said to her it is for compensation and they will get compensation soon. But she doesn't know whether it is for housing damage or other property lost.

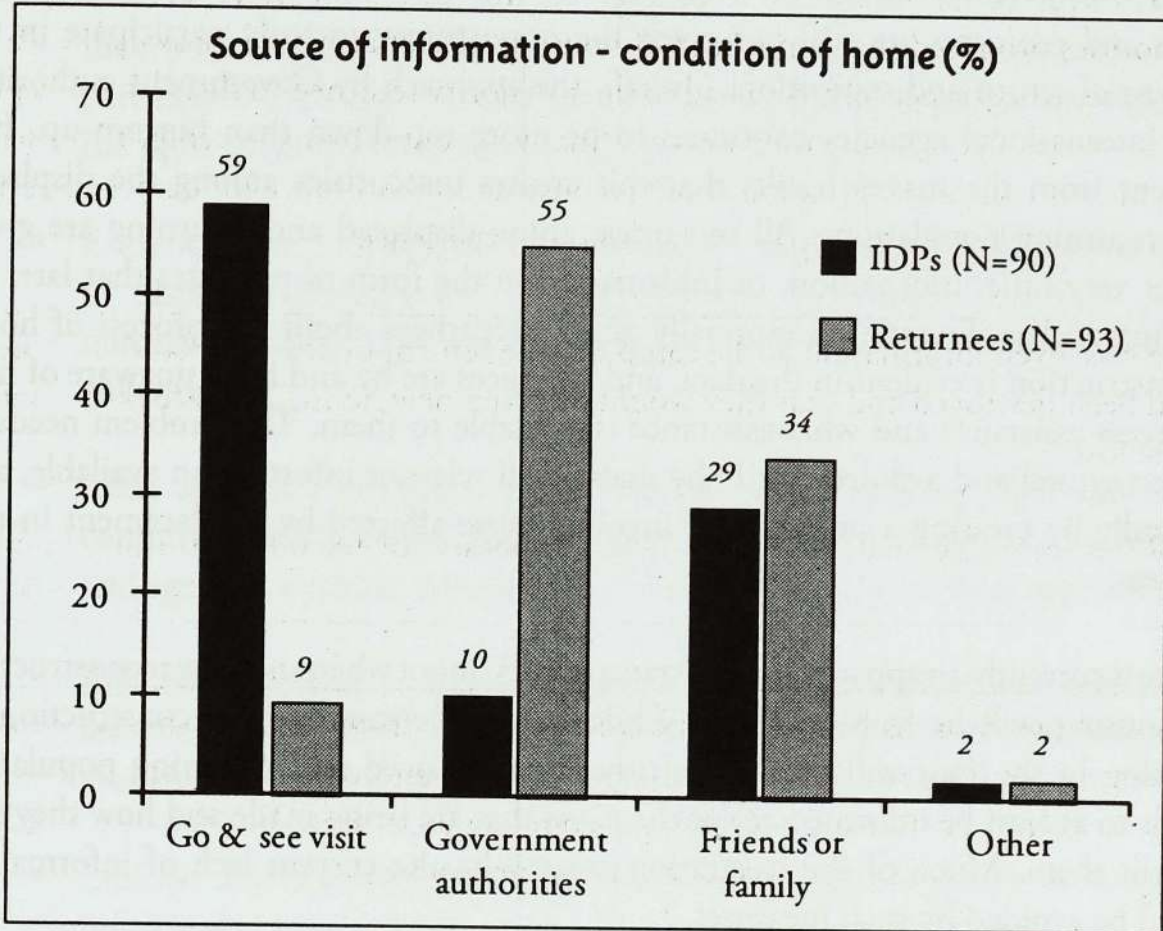
Returnee to Vellaveli, returned in May 2007. Currently staying in temporary shelter (tent) on own land, 31 July 2008.

The survey also asked for the sources of information, where interviewees did have information about the condition of their home while still in displacement (both IDPs and returnees). Interviewees received information from a variety of sources, as shown in the chart below. For both groups, the question was asked from the perspective of displacement, i.e. returnees were asked whether they had received information about the condition of their home during displacement, and if so, from where.

The chart reflects that the number of go and see visits was increased in the second half of 2007. Many returnees who were among the first people to return in 2007 did not benefit from GSVs before they returned, but instead relied on secondary sources for information. In contrast, a majority of those still in displacement at the time of the survey who knew the condition of their home, gained this knowledge through a GSV.



Chart 31



The increase in the number of GSVs particularly is a step in the right direction. However, 53 per cent of IDPs and 51 per cent of returnees knew nothing about the condition of their homes while in displacement, indicating that there is still a significant lack of information that needs to be addressed. Access to information needs to be given its due importance. If the displaced population in the East is to truly benefit from the development that has been planned for the East, they need to be given adequate information and genuine opportunities to participate in this process of development that impacts their lives fundamentally. Giving people access to information is one step further to ensure that they become part of the process, which would also lead to better ownership of the process and less frustration on the part of displaced persons.

#### Overarching Policy Issue

There is a lack of access to information and a process to empower and enable displaced persons to actively participate in decisions that affect HLP restitution and their post-displacement lives

### **4.6.3 Analysis and Recommendations**

IDPs and returnees are still not given the opportunity to truly participate in the process of return and restitution. Overall, the approach by Government authorities and international agencies continues to be more top-down than bottom-up. It is evident from the survey results that this creates insecurities among the displaced and returning populations. All too often, those displaced and returning are given either very little information, or information in the form of promises that later do not materialise. Frustration especially among returnees about the process of home reconstruction is evident in the data, and returnees are by and large unaware of how to access assistance and what assistance is available to them. This problem needs to be recognised and avoided, firstly by making all relevant information available, and secondly by creating a process that involves those affected by displacement in this process.

There is currently an apparent lack of transparency about when and how reconstruction of housing will be implemented. While it is understood that reconstruction of housing in the East will take some time, the displaced and returning population needs to at least be informed about the plans that are being made and how they will benefit them. Much of the frustration created by the current lack of information could be avoided by such measures.

Local authorities, who should be responsible for disseminating information to those displaced and returning, often seem to have little information themselves. This is perhaps the underlying reason why many interviewees stated that they were promised assistance, but that this assistance had not materialised at the time of the interview. It appears that local authorities simply pass on information that some assistance scheme is planned, but hold no further information on the details of those schemes themselves. While local authorities are duty bearers and best placed to disseminate information, they need to be enabled by the Central Government to fulfil this duty by providing them with detailed information. Finally, access to information and participation needs to be understood as a right in itself, and treated as such, by properly integrating it into the process of return and restitution.

As set out in section 3 above, restitution of housing, land and property aims to provide those affected by displacement with a remedy for their displacement, and needs to be seen in the larger context of finding durable solutions to displacement. The displaced population has a right to this remedy as a consequence of the losses they have suffered. Having access to information and the ability to take part in the restitution process is a prerequisite for those affected by displacement to exercise this right.

## Recommendations

- Incorporate policy guidelines to reflect that access to information and participation is a right in itself and is indispensable to the implementation of the right to return voluntarily, in safety and in dignity;
- Entrench the requirement for adequate dissemination of information to displaced persons and the participation of displaced persons on all matters affecting their entitlements and restitution rights, at all levels of government;
- Clear allocation of tasks and responsibilities for providing information and consulting with the displaced and returning population among local authorities and agencies working directly with the displaced and returning population;
- Efficient dissemination and coordination of information between the different levels of Government, such that all necessary and relevant information is available to displaced persons in a timely and relevant manner;
- Endorse that at a minimum, displaced persons require access to the following information in order to enable them to make informed decisions:
  - The return process and the different steps for return;
  - Security issues;
  - Availability of infrastructure and services at places of return and relocation;
  - Livelihood situation at places of return and relocation, including possible restrictions on livelihoods and what assistance is available to overcome or remedy those in the interim;
  - Permanent housing and compensation, and available temporary shelter in the interim;
  - Eligibility criteria for access to housing and other assistance;
  - Access and freedom of movement in areas of return and relocation, including access to farm land, freedom of movement to and from other places in the area



## SECTION 5:

# **MARGINALISED AND VULNERABLE GROUPS, INCLUDING WOMEN**

A majority of displaced persons are made vulnerable in some form or manner by their displaced circumstances, and the very fact that they are displaced also contributes to furthering their social marginalisation. Assessing marginalisation and vulnerability in the context of displacement requires careful consideration of the specific context under assessment and of the particular groups of persons who, for various reasons are more likely to suffer human rights abuses than are others, and therefore warrant special attention and treatment. These groups generally include racial and ethnic minorities, women, children and disabled persons, who are invariably subject to problems and challenges that are particular to them. There may be other categories of persons however, who are equally vulnerable in the circumstances and conditions under consideration. Marginalisation and vulnerability in the context of displacement is not static, and must be assessed and reassessed in light of the particular context.

### **5.1 The Rights of Marginalized and Vulnerable Groups in International Human Rights Standards**

International standards for HLP restitution, contained in the Pinheiro Principles endorse the overarching principles of equality and non – discrimination as a basis on which an equitable process of restitution may be implemented. All persons have the right to be protected from discrimination on the basis of race, sex, language, political or other opinion, and disability, among other things.<sup>149</sup> Discriminatory treatment of vulnerable groups may not be deliberate, or overtly apparent in procedures, practices and policies relating to HLP restitution; the failure to take specific positive measures to address obstacles that impede certain groups from benefiting equally in the overall process of HLP restitution may however, give rise to ‘de facto’ discrimination. Thus the protection of vulnerable groups from discrimination may require the special consideration of their different circumstances in order to achieve equality of treatment, or the exercise of ‘substantive equality’. For instance, where groups of persons have difficulties in making a claim of ownership of their lands and lost property due to

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<sup>149</sup> Pinheiro Principles (Supra note 43) Principle 3

language barriers, the lack of education or the lack of financial resources, the precepts of non – discrimination and equality require that positive measures are taken at the policy and programmatic level to address these difficulties and obstacles, in order that these persons have equal access to HLP restitution procedures.

The international standard contained in the Pinheiro Principles is in keeping with the provisions for non – discrimination and equality contained in international treaty law governing human rights and humanitarian law.<sup>150</sup> For instance, the right to equality between men and women is guaranteed in Article 3 of the ICCPR.<sup>151</sup> The relevant international treaties address challenges to the realisation of human rights of specific groups of persons, such as women, children, racial minorities, the disabled and the elderly. While the above treaty law is not explicitly extended to internally displaced persons, they endorse provisions of general application to the rights and freedoms of all persons within the jurisdiction of State parties. Further, the application of the non – discrimination clauses in these treaties are to be interpreted broadly, as many of them contain an all encompassing “other status” category among those who have been explicitly outlined as falling within their protection. For instance, Article 2 (2) of the ICESCR obligates States Parties to –

“undertake to guarantee that rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or “other status” (emphasis added)

Thus, all guarantees of protection against discrimination on grounds of race, gender or on any other basis is extended to internally displaced persons by the all - encompassing nature of international treaty law. However, it is to be appreciated that discrimination and the lack of equal treatment in the context of internal displacement may differ in nature and scope to other more ‘ordinary’ circumstances and would require the use of relevant expertise, to identify and understand the vulnerabilities of different groups to discrimination and unequal treatment.

<sup>150</sup> Some of the prominent international treaties include - International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XX), adopted on 16 December 1966; International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200 A (XXI), adopted 16 December 1967; Convention on the Elimination of Discrimination Against Women, adopted by General Assembly Resolution 34/180, United Nations Document A/34/46 (1980); Convention of the Rights of the Child, adopted by General Assembly Resolution 44/25, United Nations Document A/44/49 (1990)

<sup>151</sup> Article 3 stipulates “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.” International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.

## 5.2 Gender

Within the context of displacement, there is no doubt that women encounter particular hardships. In a 2005 resolution on internally displaced persons, the former United Nations Human Rights Commission conveyed its “particular concern at the grave problems faced by many internally displaced women and children, including violence and abuse, sexual exploitation, forced recruitment and abduction.”<sup>152</sup> The Commission also commented on “the need to pay more systematic and in-depth attention to their special assistance, protection and development needs, as well as those of other groups with special needs.”<sup>153</sup> From the commencement to the conclusion of displacement, a main worry for women is whether they will be able to obtain access to land and/or housing. They may have to confront intricate problems in their attempt to secure housing. When security is ameliorated, displaced women who go back home generally discover that their homes or land have been demolished or inhabited by others.<sup>154</sup>

The right to equality between men and women is given specific articulation in the Pinheiro Principles as an overarching principle that extends to all aspects of an HLP restitution process.<sup>155</sup> The State must ensure equality among men and women and boys and girls in prescribed areas, which include the right to voluntarily return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use and control of and access to housing, land and property. States are also called upon to ensure equal joint ownership rights of both female and male representatives of households, at the policy level as well as in practice. A gender sensitive approach is to be applied at all levels of the restitution process – in policies, programmes and practice, such that they do not disadvantage women and girls.

The above principles reflect the emphasis given by international treaty law to the equal rights of men and women, in the realisation of the human rights articulated therein. Many of these human rights are interlinked to the right to restitution and constitute the underlying basis for the articulation of this right.<sup>156</sup> The right to adequate housing for instance,<sup>157</sup> is to be realised with due regard to considerations

<sup>152</sup> UN Commission on Human Rights, Human Rights Resolution 2005/46, Internally Displaced Persons, 57th meeting, (19 Apr. 2005), para. 4. [*adopted* without a vote. See chap. XIV, UN Doc. E/CN.4/2005/L.10/Add.14].

<sup>153</sup> Internal Displacement Monitoring Centre (IDMC), *Housing, Land and Property*, paragraph 80

<sup>154</sup> *Ibid.* paragraph 81

<sup>155</sup> Pinheiro Principles (Supra note 43) Principle 4

<sup>156</sup> Also See sections 3.1 and 3.2

<sup>157</sup> Article 11 of the ICESCR, read with Articles 3 and 2(2)

of equality and non – discrimination between men and women. However, there is often social acceptance of discrimination against women, resulting from cultural norms and social patterns that characterise the perception of women within society and communities. Thus, international articulations on the equal treatment of women and non – discrimination against women, have attempted to place gender equality and non - discrimination in the mainstream of discussions impacting the realisation of human rights. General Comment No. 16 to the ICESCR<sup>158</sup> is important in this regard, and gives interpretation to the word ‘gender’ to include perception of women which are detrimental to the equal realisation of their rights:

“... Gender refers to cultural expectations and assumptions about the behavior, attitude, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women. Gender – based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognised as autonomous, fully capable adults, to participate fully in economic, social and political development, and make decisions concerning their circumstances and conditions...”<sup>159</sup>

The Comment further calls for ‘temporary special measures’ which may be necessary to bring disadvantaged and marginalised groups to the same level as the other beneficiaries and to suppress and address conditions which perpetuate discrimination.<sup>160</sup>

It is essential therefore to understand concerns of gender as cross cutting over a programme of HLP restitution and to assess the particular human rights violations that women (and girls) are subjected to based not only by their circumstances as displaced persons, but also by cultural and communal perceptions that are detrimental to their equal treatment.

In Sri Lanka, perceptions associated with the use of the ‘head of the household’ terminology has been identified by research studies, as potentially impacting on the rights of women to hold property over which they have entitlements.<sup>161</sup> Based on

<sup>158</sup> United Nations (2005), Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, General Comment No.16, E/C.12/2005/3

<sup>159</sup> Ibid paragraph 14

<sup>160</sup> Ibid paragraph 15

<sup>161</sup> See, COHRE (2007) Post Tsunami: Women and their Right to Own Property – Report of 100 Case Studies from the Southern and Eastern Province in Sri Lanka, COHRE Report



the traditional and cultural perceptions of the phrase, it is often assumed that this terminology refers to the male of the household. This perception reinforces women's marginalisation in practice by obfuscating the reality that household responsibilities can be equitably shared by women and men. Under this framework, women are most likely to be regarded as the 'head of the household' only if they are single or otherwise unaccompanied by a man, a view which implicitly reinforces patriarchal views about the roles of women and men in the family. It also runs counter to Pinheiro Principle 19.3, which notes that "States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to non-discrimination and to equality in both law and practice."

In a research study conducted by COHRE with hundred tsunami affected households in the Southern and Eastern Provinces of Sri Lanka, it was apparent that the application of the concept of the 'head of the household', and the incorporation of such terminology in administrative procedures and documents used for HLP restitution, has led to adverse results for women who held property rights prior to displacement. In the sample population of the above research study, in 70 per cent of the families, women had owned land prior to the tsunami.<sup>162</sup> However, of those who received houses and property after the tsunami (either by the Government or by a private entity), as much as 85 per cent indicated that the property was given in their husband's name, though the property was in the wife's name prior to the tsunami.<sup>163</sup> It is apparent that it is taken for granted that the application of the head of the household concept is predominantly taken to refer to the 'man' of the house to the exclusion of the woman who may be in an equal position to represent the household concerning its welfare. It is therefore advocated by this study that the 'head of the household' concept should not be used at all in determining property rights in a context post displacement restitution. In the alternative, where neither party (the husband nor the wife) owned the property prior to displacement, title should be given in 'joint ownership' with the aim of removing and reinforcing the presumed position that the man alone is entitled to receive title to the new property based upon the concept of the head of the household. This is in keeping with the standards endorsed in the Pinheiro Principles, internationally.

### 5.3 Information of the Survey and other information

Women in the East, belonging both to Sri Lankan Tamil and Muslim ethnic communities are often the title holders of property through dowry systems by which property is handed from one generation of female to the next. The fact that a large

<sup>162</sup> Ibid, pg. 4; of this 70 per cent 64 per cent said they had clear title to the land.

<sup>163</sup> Ibid pg 5

proportion of land is presumably held in ownership by women is confirmed by the results of this survey conducted by COHRE in the East, on which the main part of this report is based. The survey did not attempt to investigate gender issues specifically, but incorporated certain questions that would potentially indicate the particular difficulties for female represented households in relation to HLP restitution.

The survey indicates an average family size of 4.28 persons per household, among the sample population. A total of 23.18 per cent (89 families) of these families are single parent households, and 22.14 per cent (85 families) of all families are female headed. (see chart 32)

More than 40 per cent of the property rights over the land where interviewees used to live are registered in the name of the woman of the household. 37 per cent of titles are held by the wife of the family, and another 3 per cent of interviewees stated that the property right was registered in the name of the single female head of the household.<sup>164</sup> A total of 28 per cent answered that relevant documents were registered in the name of the mother/father, son/daughter, or grandmother/grandfather. Since these answers were not further disaggregated by gender, the percentage of women holding property rights over the land where the family used to live is higher than 40 per cent, although the sample was not big enough to make a reliable calculation on how much higher than 40 per cent this figure would be for the relevant Districts.

The quantitative data of the survey indicated very little gender specific issues, other than to illustrate that ownership of property by women is a matter that needs careful consideration in policies and practices affecting HLP restitution. The qualitative data gathered from female represented households were able to indicate more specific gender related problems and issues, though the incidence of these issues were not quantified. Some of the overarching issues are as follows:

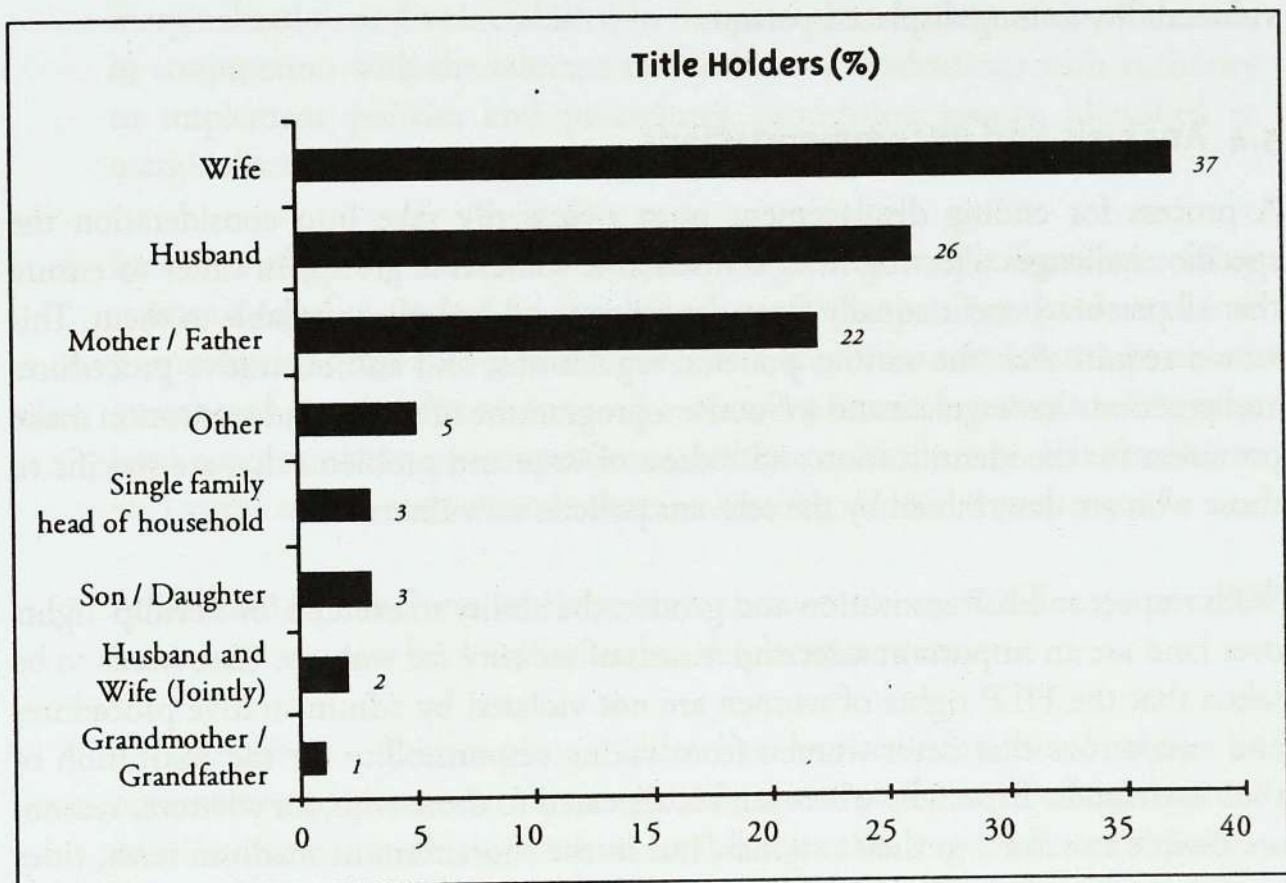
There is apparently a greater dependency on assistance given by the Government and NGOs on the part of female represented households in situations where displacement is prolonged beyond expected, as they are less likely to find alternative livelihood opportunities in their places of displacement. Many of them prefer to engage in livelihood activities in their original homes due to reasons of security, even in instances where they have been offered land in relocation sites. Thus, the inability to exercise one's right to return for a single female may result in a greater vulnerability to poverty and insecurity, especially in circumstances where the prospects of return

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<sup>164</sup> The COHRE survey questionnaire referred to female represented families as 'female headed households' for practical reasons, though the 'head of the household' concept is not advocated by COHRE in view that it has the potential to create a number of assumptions that may be detrimental to the equal treatment of women in a household.

and restitution are uncertain. For instance, a woman originally from Muttur, located in an IDP camp in Shathurukundan – 03 at the time of the interview does not have the opportunity to engage in livelihood activities as she is entirely dependent on hand outs from Government and NGOs. The temporary shelter that she is occupying is made of tin sheet and is very hot during the day. She has no choice but to wait until she is returned to her original home as she is not confident to relocate to another area. She is not ready to live in another locality, in view of her single circumstances. While she has contacted an NGO regarding the condition of her land and property, she has little confidence that Government officials will be able to help her in anyway. She has the original deed of her land which is in her name.

Chart 32



Further, there is much concern and insecurity among female represented households with regards to temporary shelter and permanent housing in their locations of origin, and the lack of information and uncertainty concerning the condition of the housing in their original locations.

It is to be noted that there is provision for assessing vulnerability in donor funded housing programmes such as the NEHRP, and compensation schemes, such as the scheme implemented by REPPA. Priority is given by the NEHRP to female represented households and the elderly in the selection of beneficiaries on the basis

of points which are allocated according to established criteria. However, there is still an apparent lack of concrete policy to address vulnerability in the context of displacement, which has an overarching influence on all aspects of the return and restitution processes.

While there are special measure and criteria in certain instances, to address social exclusion and discrimination based on gender, improper dissemination of information concerning such measures among displaced persons, and the lack of sufficient procedure to ensure their participation, can potentially dilute the positive effect of measures intended for the assessment of vulnerability. Unless, there is adequate information and space for participation in the HLP restitution and return by groups identified as 'vulnerable,' there can be very little accountability and review of any special measures that are in place for ameliorating social marginalisation and vulnerability among displaced persons.

#### **5.4 Analysis and Recommendations**

A process for ending displacement must necessarily take into consideration the specific challenges affecting marginalised and vulnerable groups in order to ensure that all persons benefit equally from the redress and remedies available to them. This would require that the various policies, regulations, and administrative procedures and practices that regulate and influence a programme of return and restitution make provision for the identification and redress of issue and problems that are specific to those who are determined by the relevant policies as 'vulnerable'.

With respect to HLP restitution and gender, the ability to exercise 'ownership' rights over land are an important asset and means of security for women. Care needs to be taken that the HLP rights of women are not violated by administrative procedures and regulations that deter women from taking responsibility for the restitution of their own lands. Especially where land is allocated to those who, for whatever reason, are unable to return to their original land in the short term or medium term, titles over the new land should be allocated to the person in whose name the previous land was registered in. Where there is an allocation of a new piece of land ownership rights should not be granted on the basis of the 'head of the household', and solely to the man of the house, based on the assumption that he alone takes full responsibility of the household. In such instances COHRE advocates for the 'joint ownership' of the new land between the male and female partners of the household. The experience of land allocation after the tsunami has shown that many women lost the land rights that they held prior to the tsunami, as titles for new land were by default given to the head of the household who, in most cultural contexts of Sri Lanka, is perceived to be the husband.

The lack of shelter and housing, and inadequate information concerning the condition of original homes and their restitution, can potentially result in unique hardship for women and children, the elderly and the disabled. This is especially the case where vulnerable persons have few family members that they can depend on, or have little means of livelihood.

The question of vulnerability would require expert skill to investigate issues and challenges affecting vulnerable groups, and concrete and consistent policy measures to address vulnerability in the context of displacement.

## Recommendations

- To provide at the policy level for the development of expertise on assessing marginalisation and vulnerability, in the particular context of displacement, in conjunction with the relevant ministries and institutions with authority to implement policies and procedures concerning groups identified as marginalised and vulnerable;
- Inclusion of gender sensitive principles and provisions specific to upholding women's equality, including provisions to ensure that women do not lose previously held rights over land in the context of return and that women are guaranteed equal rights to *inter alia* voluntary return in safety and dignity; legal security of tenure; property ownership; equal access to inheritance; as well as the use, control of and access to housing, land and property.
- Adoption of procedures whereby both spouses are registered as joint right holders where new land is allocated to displaced persons;
- To strengthen and streamline gender based criteria for the allocation of temporary and permanent housing, and for the payment of compensation, consistently across all programmes and policies affecting HLP restitution

The text on this page is extremely faint and illegible. It appears to be a multi-paragraph document discussing policy recommendations, but the specific content cannot be transcribed due to the low contrast and blurriness of the scan.

## CONCLUSION

Foremost among the repercussions of the conflict in Sri Lanka is the displacement of thousands of persons from their homes and lands. Some have remained in conditions of displacement for the better part of the conflict, and others have been subject to recurrent displacement with sporadic access to their homes and lands. It is a daunting challenge to address and undo the effects of events that have led to dramatic changes in the lives of individuals and communities.

Substantial progress has been made over time, in the institutional, programmatic and procedural framework for the protection of displaced persons and management of displacement in the Sri Lankan context. Programmatic and policy initiatives have progressively made reference to international human rights law and humanitarian law, and international standards on displacement. There is much initiative on the part of Government to recognise the particular needs of displaced persons, and a commitment to resolving and remedying such issues. A lack of attention to restitution standards and principles however, has the potential to impede the human right to restitution and adequate remedies for displacement. There are a number of shortcomings in the 'resettlement process' that is currently underway in the Eastern Province, by which the process falls short of the rights based approach to HLP restitution as embodied in universally endorsed international standards and principles.

Central to HLP restitution and to securing durable solutions to displacement, is the need to conceptualise the beginning and the end of displacement. If HLP restitution is to be recognised as a remedy for displacement, it is essential that there is clear criteria to determine a case of involuntary displacement, on the basis of which displaced persons can make legitimate claims for redress of their displacement based losses. Especially in view of the complex and varied circumstances in which displacement has taken place in Sri Lanka through out the duration of the conflict, a flexible definition of the beginning and end of displacement is paramount to the formulation of effective policies and programmes to address HLP restitution. There is currently no formal policy pronouncement of who is deemed a displaced person to determine eligibility for assistance and redress, and of the point at which displaced persons have integrated into normal conditions of life and are no longer considered to be displaced persons.

There is a tendency to equate the end of displacement with the ending of humanitarian assistance, once displaced persons have either returned to an original location or relocated. The conceptual basis for the right to restitution as a remedy for displacement requires that the process of HLP restitution is incorporated into the different stages of post conflict resettlement and rehabilitation. Progression to the developmental stage of post conflict rehabilitation and reconstruction must be with the recognition that displacement ends only at the point that displaced persons are fully re-integrated to their pre-displacement lives, or to better conditions of life in keeping with standards of adequacy in international law, and have received adequate remedies for the material losses they have suffered during displacement.. Hence, planning for post conflict rehabilitation and development and the allocation of funds, must necessarily give due consideration to the issues that impact HLP restitution at each stage of the relief to development process.

A considerable issue in the East that has the potential to stall or even impede a timely and equitable process of HLP restitution, is the apparent lack of planning for permanent housing. While the return or the so called resettlement process is progressively being brought to an end, there is very little clarity of when the phase for permanent housing will commence. Local authorities have little information and capacity to influence the implementation of a programme of permanent housing and a process of reintegration that is sustainable. The main implication of the above delay is that, while the humanitarian and relief phase of return is deemed to have ended (approximately six months following the return to original areas), the scope for recovery and medium term development is still limited or non-existent, in the absence of planning for permanent housing. If timely progress is not made for permanent housing, displaced persons risk falling into a protection gap with respect to their right to adequate housing, which in turn has the potential to infringe on the enjoyment of other human rights and the overall process of post-conflict reconciliation, reconstruction and development.

Compensation for displacement related losses within a framework of HLP restitution relates closely to the reconstruction and rehabilitation of permanent housing. The divergent compensation schemes that are currently implemented imply a variance in the minimum standards for housing envisaged by the different compensation schemes. The apparent discrepancy in housing standards, among different regions and housing schemes contributes further to potential inequities in the application of a minimum standard of housing in a context of post conflict reconstruction and rehabilitation.

Issues of secondary occupation, the lack of security of tenure and inadequate regularisation of property rights and property documentation as highlighted by



the findings of this report, are practical constraints to the effective realisation of the right to restitution. The lack of documentation or evidence of tenure does not negate the right to return or the right to have original lands and properties restored. However, post conflict restitution and rehabilitation would require that these issues be regularised with urgency in view that the ending of displacement and securing of durable solutions can potentially depend on whether they are effectively and efficiently addressed with clear institutional guidelines and time frames.

Overarching to a process of HLP restitution is the availability of adequate information, and the effective participation of relevant stakeholders in the process, and in the wider context of reconstruction and rehabilitation. The apparent shortfalls in the flow of accurate information to the beneficiaries of the current resettlement process has a variety of negative implications, most notably on the ability of displaced persons to make informed and voluntary choices to return to places of origin and on their ability to participate in the resettlement process in a meaningful manner. Beneficiaries are further impacted by the insufficient and delayed flow of information among relevant institutions at the central, provincial and district levels. Access to information underpins the effectiveness of institutional and administrative mechanisms relating to restitution claims procedures, and the extent to which restitution is participatory and transparent. There is a danger otherwise that decision making will be entirely a top – down process, with little relevance to the concerns of displaced populations.

There is a clear need for a coherent and consistent policy to articulate the overarching considerations of a rights based HLP restitution policy in keeping with the fundamental rights requirements of the Constitution, as well as Sri Lanka's international obligations. Such a policy is central to addressing and remedying the effects of conflict and displacement. A national policy for HLP restitution can integrate restitution into the larger developmental framework, and provide the impetus to making development relevant to post conflict peace building, reconstruction and rehabilitation.

## INTERPRETATION

**Assistance:** All forms of support that is given to persons to meet their immediate and future needs, based on the priority of the moment, which may or may not be determined by reference to the legal entitlements of the beneficiary.

\*The granting of assistance does not preclude the beneficiary from receiving compensation

**Claim:** A claim is a legal right to something; to file or to make a claim means to make a formal application to put into practice, or enforce the claim;

- **Restitution Claim:** a claim that arises from an individual's right to be returned and restored to sustainable conditions of life that have been disrupted and destroyed by displacement;
- **Restitution Claims Procedure:** formal or informal procedures that allow for the assertion of restitution rights to be considered by entities entrusted with the task of receiving and determining restitution claims

**Compensation:** Financial or non – financial redress for loss or harm suffered by an individual, which is granted with reference to a right (either legal or equitable) on the basis of which the individual is entitled to financial or non- financial redress.

**Conflict:** All events related to the conflict between the GOSL and the LTTE.

**Current displacement:** Refers to the displacement situation a person is currently in, where persons have been displaced several times.

**De – registration of IDPs:** The fact of removing a previously registered IDP from the register of IDPs at which point the de – registered persons fall outside the scope of assistance given in reference to the IDP register;

**Deed:** A document which proves in law that a person has some form of ownership over property. Ownership rights outlined in the document can be either legal ownership or leasehold ownership (where the property is rented).

**Displacement:** The situation of being away involuntarily from ones place of origin because of the conflict, the tsunami or for other reasons the person could not control.

A person is displaced until s/he has found a satisfactory durable living situation, either at his/her place of origin or at another place.

**Durable Solutions:** Solutions designed to secure sustainable conditions for displaced persons with a view to bringing displacement to an end; solutions may include – restitution, relocation or the local integration of displaced persons.

**Entitled:** To have a legal right to something (legal right includes equitable rights which may not be explicit in legislation, but which arise from human rights and humanitarian law).

**Entitlement:** A legal right to something;

- Equitable entitlement: a right to which a person is entitled to on the basis of legal considerations which are not articulated in legislation, but which is relevant as a matter of legal principle to the subject under consideration;
- Legal entitlement: a right to which a person is entitled to which is explicit in (national) legislation;

**Ethnic group:** A group whose members identify with each other as a group or who are recognised by others as a distinct group. The distinction can be based on various factors, such as a common culture, language, religion, physical distinction or ancestry.

**Female Represented Household:** A household where a woman alone is responsible for the family:

**Grant/grant holder:** A grant gives a person the right to use a piece of State Land indefinitely and for a specific purpose (e.g. to live on it, for agriculture). The right to use the land is inherited by the children, so that the land can be used by many generations of the same family;

\*The rights given to the grant holder does not amount to full ownership of the land (for instance, it does not allow for the sale of the grant to another person). It is to be noted that in practice the sale of granted land is quite common in Sri Lanka.

**High Security Zone:** Area where civilian presence is restricted or prohibited by the military. Prohibitions and restrictions are most often for reasons of public security under emergency regulations. It does not matter whether the area is an official HSZ

that was announced in the Government Gazette, or whether it is an area where civilian presence is in fact restricted or prohibited.

**Home:** A home is the place where a person or a family spends much of their time and/or uses as the centre of the life of the person or family. It is also the place where people will usually keep their belongings and where they feel safe and 'at home';

**Informal Agreement:** A verbal or written agreement which does not fulfill all the conditions required by law to be legally valid. Many informal agreements are verbal, but some are written. There are many formal legal rules for agreements relating to immovable property (e.g. land, houses). If an agreement does not follow these rules, the people who made the agreement can not rely on it and can therefore face problems.

**Inter – district displacement:** Displacement to a location in another district other than the district in which the displaced person's place of origin is situated.

**Internally displaced person:** A person who had to leave his/her home because of the conflict, the tsunami or for other reasons that the person could not control.

**Intra – district displacement:** Displacement to another location within the same district in which the displaced person's place of origin is situated.

**Local integration:** The process of integrating displaced persons into the locality of their displacement, based on the decision of the displaced persons to remain in such a locality and become residents there. Local integration is complete once the displaced persons have successfully re-established their lives as residents at the place of their displacement.

**Looting:** Stealing of property while the owner and other members of the community are away and property is therefore unprotected.

**Own/ownership:** A legal concept meaning that the owner has full title to the property. This means that the 'owner' has the legal right to do whatever he or she wants with the property. Indications of full ownership rights include the right to sell the property, and that the owner has (or had at one time) a 'title deed' (a formal document indicating ownership of property).

**Permanent house:** A house that is intended to be a permanent place of residence, and which is built with due regard to considerations of durability and adequacy that are in keeping with the requirements of permanent occupation and possession.

**Place of origin:** Is the village or town where the home of the IDP is and where s/he used to live before becoming displaced; and the locality in which a displaced person is able to carry on with normal day to day life that he or she was accustomed to before displacement;

\*Note: the place of origin for purposes of restitution can change, especially in circumstances of protracted displacement. Thus, those who were initially displaced from their birth place may have settled permanently in another location, from which they are subsequently displaced. In situations such as these, there can potentially be more than one 'place of origin' and more than one restitution claim. In international standards and law, the process of re-establishing and reintegrating of IDPs to their original homes is called 'return';

**Registration of IDPs:** The administrative process by which the fact of displacement is recorded by district and local authorities on an IDP register, which is a point of reference for the management of displaced persons and for the purpose of administering displacement based assistance.

**Relocation:** Where displaced persons, for reasons of their own, do not want to return to their place of origin, but prefer to settle in a completely new location to where they are living in displacement; relocation is complete once the displaced persons have successfully re-established their lives at the location where they decided to move to.

**Resettlement:** The process by which those who are involuntarily displaced are re-integrated into areas of relocation (for reasons that include, acquisition of land for large development related projects, or the resettlement of persons due to landlessness and for agricultural purposes).

\*This term is commonly used in Sri Lanka to refer to the return of IDPs to their place of origin

**Restitution Rights:** Rights (and entitlements) that are a natural result of the recognition and implementation of the human right to restitution.

**Restitution:** A legal remedy to redress all loss and harm, arising from a specific incident or circumstance, by placing the individual in his or her pre-loss position as far as it is practicably possible;

\*The concept of what is 'practicably possible' at a given stage of the restitution process needs to be decided with reference to national policy, but should not at any instance compromise those rights arising out of the right to restitution

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**Return:** The voluntary return of IDPs to their places of origin with sufficient information and knowledge of the conditions of return in the place of origin; return is complete once the displaced persons have complete access to their lands and are not under any threat of eviction, or under any coercion to vacate their lands for any reason whatsoever.

**Returnee:** A displaced person who has been in some movement with the intention of returning to his or her home in the place of origin.

**Secondary occupation:** The occupation and possession of houses, land and property that have been abandoned by those who are displaced. Houses and/or land may be used by other individuals or families, who may themselves be IDPs, or by the military/police, or by other persons.

**Squatting/encroaching:** The occupation and/or the use of land and buildings without a legal right to do so, and without the permission of the State (in the case of state lands) or the private owner of the land (in the case of private land).

**Temporary shelter/ house:** Accommodation which is built with the intention that its occupants will take residence for a predetermined period of time only.

**The Right to Restitution:** The human right articulated in recognition of the right to return and to be restored to the pre – loss situation of the displaced person, and to sustainable conditions of life that are of an equal or higher standard to the pre loss conditions of life prior to displacement.

**Welfare camp:** The term ‘welfare camp’ used in the charts of the survey refers to a camp setting of any kind, as opposed to individual shelter or housing, which accommodate persons who have been subject to displacement, and have not yet found a durable solution to their displacement. Returnees who stated that they currently stay in a “welfare camp” mostly stayed in transitional shelter sites, designed for short term stay.



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