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National Human Rights Commissions and Internally Displaced Persons

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Editor's note

**National Human Rights Commissions and Internally
Displaced Persons**

– Illustrated by the Sri Lankan Experience

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Editor's note.....

The problem of internal displacement ranks as one of the gravest consequences of the internal armed conflict that was prevalent in the North and East of Sri Lanka for almost two decades. The protection and promotion of the human rights of internally displaced persons (IDPs) is undoubtedly a high priority area in the local context, although any kind of action in this regard has been essentially at a dormant level.

However, in the year 2001 the Human Rights Commission (HRC) of Sri Lanka commissioned a study on internal displacement with a view to exploring what role it might play in addressing the situation of IDPs in the country. In this month's issue of the LST Review, we reproduce an occasional paper by Dr. Mario Gomez, who worked closely with the Sri Lankan HRC in relation to the above study. The paper includes a description of the author's experience as well as a more general discussion on how national human rights commissions might contribute to defending the rights of the internally displaced.

The first part of the paper deals with the rationale for the establishment of HRCs in the world and also the history and jurisdiction of the HRC of Sri Lanka. After a brief introduction to the phenomenon of internal displacement in Sri Lanka, the paper goes on to discuss the key findings of the Study initiated by the HRC in relation to internal displacement in Sri Lanka. These findings refer *inter alia* to,

- the vulnerability of the IDPs as a result of their displacement that was found to affect every aspect of their livelihood;
- the lack of a coherent policy and a legal framework to provide effective protection for IDPs;
- the need to strengthen the capacity of the regional network of the HRC to intervene in issues relating to IDPs;
- the lack of a specified desk in the HRC's main office to deal with complaints relating to IDPs etc.,

The paper then goes on to discuss the recommendations of the Study, which are addressed to the HRC as well as to the Government via the HRC. The recommendations to the HRC *inter alia* suggest that,

- the HRC as a first step should develop a policy on the role it intends to play with regard to IDPs;
- the HRC should establish a sub-committee or a desk at its main office, the focus of which should be to develop a policy in relation to IDPs and to oversee its implementation etc.,

It is also recommended that the HRC should urge the Government to set up a central body on internal displacement, which should have authority over all actors involved in the welfare of the IDPs. Some of the other recommendations that are addressed to the Government deal with, disarming of paramilitary groups, implementation of voluntary relocation programs, issues relating to relocation and resettlement, Government embargoes, legislative reform etc.,

The next segment of the paper critically analyses how the Sri Lankan Human Rights Commission's experience in relation to internal displacement can be studied and made use of by other HRCs in the world faced with similar situations in relation to IDPs. The paper discusses in detail, the potential - though not necessarily the capacity - of HRCs to deal with the protection and promotion of the human rights of IDPs, given their location within the State machinery and their status as national institutions.

In conclusion, the author highlights a practical consideration. He emphasises that, the issue of whether these recommendations will be taken up or not and if so to what extent would depend heavily on "... the social and political context, the personalities and staff involved that direct these institutions and the type of engagement that civil society actors have with these institutions".

Dr. Mario Gomez's paper was originally published by the Brookings Institution – SAIS Project on Internal Displacement (Washington DC) in July 2002. Considering the valuable insights and recommendations made with regard to this timely issue, the paper is reproduced in this month's Review. We acknowledge with gratitude, the support and cooperation of the Brookings Institution in this regard.

National Human Rights Commissions and Internally Displaced Persons

Illustrated by the Sri Lankan Experience

Mario Gomez*

*This paper was published by the **Brookings Institution – SAIS Project on Internal Displacement**** in July 2002. It is reproduced here with their permission.*

Overview of National Human Rights Commissions

Creating human rights commissions has become a highly fashionable endeavor for many of the world's governments. Over the past twenty years national human rights commissions have sprung up across the globe and are now an intrinsic part of the institutional landscape. Encouraged by international actors and pressed forward by domestic ones, countries with varying social and political backgrounds have moved to set up these institutions.

A national human rights commission is a state-sponsored and state-funded entity that enjoys (or is supposed to enjoy) considerable autonomy. It can be set up under an act of parliament, under the constitution or by decree, with the broad objective of protecting and promoting human rights. In carrying out its responsibilities, it may perform a range of functions. These include conflict resolution through adjudication or mediation, human rights education, documentation and research, advising governments on human rights issues and human rights standard setting. The first human rights commission was set up in Canada in 1947, and in some other parts of the world the institution of the Ombudsman has been vested with a human rights jurisdiction.¹

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¹ See International Council on Human Rights Policy, 'Performance & Legitimacy: National Human Rights Institutions' (Geneva: 2000); Linda Reif, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection' (2000), *Harvard Human Rights Journal* 13; and Mario Gomez, 'Sri Lanka's New Human Rights Commission,' (1998) 20 *Human Rights Quarterly* 281 – 302.

Human rights commissions received prominence after the United Nations began to actively promote the concept. In 1991 the UN Centre for Human Rights organized a consultation on 'national human rights institutions.' One of the results of this meeting was a statement of principles entitled 'Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights' (Paris Principles).² These principles were subsequently endorsed by the UN Commission on Human Rights in 1992 and by the General Assembly and Vienna World Conference in 1993. The Office of the UN High Commissioner for Human Rights (OHCHR) recently initiated a program that provides support for countries that are in the process of setting up such institutions. The OHCHR has provided technical and other support to a number of countries that have established national institutions.³

The Paris Principles emphasize that these commissions should operate independently of government and have the necessary resources and infrastructure to function effectively. They also draw attention to the flexibility of these institutions and state that the members of these commissions should be drawn from different sections of society. Some NGOs, among them Amnesty International, have also issued guidelines on human rights commissions.⁴ The Amnesty standards emphasize that while human rights commissions can be an important mechanism for the protection of human rights, they can never replace and should not in any way diminish the legal structures enforced by an independent and impartial judiciary.

Human rights commissions have emerged as the international community has recognized that reactive strategies alone are not sufficient to adequately protect human rights. While human rights monitoring and litigation have an impact, in some cases lack of human rights protection is related to a lack of capacity within government. Governmental institutions in some cases may be unaware of the human rights implications of their actions and policies. In other cases they may lack the knowledge and skills to be able to address human rights concerns. Human rights commissions, because of their location within government, have the potential to build this human rights capacity within other governmental structures.

Of course, evaluations of national human rights commissions have been mixed. As one expert who has studied these commissions commented:

The rapid proliferation of these institutions, though widely celebrated, is in many ways puzzling. It is unclear why some governments would create national institutions to

² *Principles relating to the Status and Functioning of National Institutions*, UN Document E/CN.4/1992/54, Annex (1992).

³ See Human Rights Watch, 'Protectors or Pretenders: Government Human Rights Commissions in Africa' (New York: 2001).

⁴ Amnesty International, *Proposed Standards for National Human Rights Institutions*, IOR 40/01/93, (January 1993). Also reproduced in (1996) VI Law & Society Trust Review, Issue No. 100.

*implement international norms that they routinely violate. Nor is it self-evident why very different states would create NHRIs that are remarkably similar.*⁵

Nevertheless, some human rights commissions have performed effectively. For the human rights activist the question is how national institutions can be used in a positive way. What roles and functions can they best perform? Are the roles and functions they best perform determined largely by each country's social and political context or are there general or universal roles for these institutions? Should activists engage with these institutions or ignore them? If they do engage with them, what should be the nature of the engagement and what sort of resources and energy should be put into this engagement?

For those working to promote the rights of internally displaced persons (IDPs), the question is whether these institutions have a role to play in protecting the displaced. In 2001 the Human Rights Commission of Sri Lanka, which was created in 1997, initiated a study on internal displacement in the country in an effort to generate recommendations for how the Commission might take steps in this area. This paper reports on the Sri Lankan experience. It describes how the study was conducted and summarizes its key findings and recommendations. It then addresses the broader implications of the study for human rights commissions in general and considers whether and how these institutions can respond to the concerns arising from the global phenomenon of internal displacement.

The paper also examines how the Guiding Principles on Internal Displacement - the first international standards developed for internally displaced persons - can be integrated into the work of the Sri Lankan and other national human rights commissions. The Guiding Principles were developed under the direction of the Representative of the Secretary-General on Internally Displaced Persons, Dr. Francis M. Deng. Although not a binding instrument like a treaty, they consolidate into a single document the legal standards relevant to the internally displaced and also clarify grey areas and gaps in the law. They have gained widespread acceptance at the international, regional and national levels and have been cited in domestic courts and incorporated into the law of different countries.⁶ Increasingly they are being used by governments, international and regional organizations, and NGOs in developing policy and programs for IDPs.

⁵ Sonia Cardenas, 'Adaptive States: The Proliferation of National Human Rights Institutions,' Working Paper, Carr Center for Human Rights Policy, Harvard University (2001).

⁶ Republica de Colombia, Corte Constitucional, Sentencia Numero Su-1150/2000, Expedientes de Tutela T-186589/T-201615/T-254941, Magistrado Ponente: Eduardo Cifuentes Munoz, see 'Report of the International Colloquy on the Guiding Principles on Internal Displacement,' Vienna, 21-23 September 2000 (Brookings Institution Project on Internal Displacement), p. 3.

Functions of National Human Rights Commissions

The following are the functions that national human rights commissions generally perform:

1. Examining proposed legislation to see whether they comply with human rights standards.
2. Recommending reform of existing legislation so as to bring such legislation into line with human rights standards.
3. Advising government departments and institutions on incorporating human rights criteria into their administrative practices and into legislation.
4. Making public inquiries into cases where there is evidence to suggest gross violations of human rights or systemic violations.
5. Undertaking general awareness raising, education and information activities on human rights for the public at large, and also for specific groups such as the judiciary, public servants and the private sector.
6. Inquiring into and resolving complaints brought by members of the public about alleged human rights violations.
7. Making inquiries into human rights cases at its own initiative.
8. Monitoring human rights violations and the progressive realization of rights.
9. Undertaking litigation, where appropriate.
10. Producing documentation and research.
11. Developing national action plans for the promotion and protection of human rights.

The Sri Lankan Human Rights Commission

In response to both international and domestic pressures, the Sri Lankan Parliament passed legislation in 1996 establishing a permanent Human Rights Commission (HRC). In March 1997, seven months after the legislation was passed, the first Commissioners were appointed and the Commission started

functioning in July. The first Commissioners, who were all male, moved cautiously in interpreting their mandate and focused mainly on receiving and resolving complaints from individual victims or persons acting on their behalf. While the Sri Lankan human rights movement had great expectations for the Commission, the Commission's profile during its first three years was low and public awareness of its activities was limited. It had only a marginal impact on the advancement of human rights in the country.

Prior to its creation, the idea of setting up a human rights commission had been under discussion in Sri Lanka for many years. In 1991 the government made a commitment to the UN Commission on Human Rights that it would set up a permanent commission. As far back as 1990 a Sri Lankan NGO prepared draft legislation on the subject.⁷ The draft legislation was discussed at an All Party Conference during the tenure of former President Ranasinghe Premadasa. Representatives of political parties who participated in the conference agreed on a draft, but no further action was taken. Almost five years later a new government revived the idea and began preparing fresh legislation. The Commission that was finally established was given a broad mandate by its enabling legislation.⁸ Earlier, advice had been obtained from the Australian government and its Human Rights Commission on the proposed mandate of the Sri Lankan Commission.

The legislation establishing the Commission provided it with a broad range of powers that included investigating and mediating human rights complaints, advising government departments on incorporating human rights criteria into legislation and administrative practices, engaging in human rights education, reforming existing legislation, initiating investigations on its own initiative, and generating research and documentation.⁹ Among the other powers of the Commission was the authority to intervene in ongoing litigation and to initiate new litigation. If an investigation by the Commission disclosed an infringement or an imminent infringement of a fundamental right, it could refer the matter to a court having jurisdiction over the matter.

The Commission could also undertake investigations at its own initiative or on the receipt of a complaint. Complaints would have to be lodged by the victim or by some other person or group acting on the victim's behalf. The complaints would have to allege a violation of one of the rights in the fundamental rights chapter of the Constitution¹⁰ as a result of 'executive or administrative

⁷ The Law & Society Trust, a human rights group in Colombo, prepared several drafts which were discussed by representatives of almost all major political parties at the All Party Conference process during the tenure of former President Premadasa.

⁸ Human Rights Commission Act, No. 21 of 1996.

⁹ See Gomez, 'Sri Lanka's New Human Rights Commission.'

¹⁰ The rights protected by Chapter 111 of the Sri Lankan Constitution (1978) include the right to freedom of thought, conscience and religion; freedom from torture, cruel, inhuman or degrading treatment or punishment; equality before the law and equal protection of the law; freedom from discrimination; freedom from arbitrary arrest; freedom of speech, assembly and association, including the right to enjoy and promote one's own culture; the right to engage in any lawful occupation, profession, trade, business or enterprise; freedom of movement and the freedom to return to Sri Lanka.

action.' The phrase 'executive or administrative action' is taken from the Sri Lankan Constitution and restricts human rights liability to those actors and acts associated with the state. The Supreme Court has interpreted the phrase widely and has held that a failure to act in situations where there is a duty to act would also incur liability.

The power of the Commission to initiate investigations is a significant one. One of the advantages of commissions with this authority is the ability to respond quickly and effectively to violations and human rights emergencies, and this power is intended to ensure that it will be able to do that. This role also differentiates human rights commissions from courts. Courts almost always act on the receipt of a complaint. Seldom do they act on their own initiative, although there are a few cases in India where the state's high courts have acted on their own authority.

The Commission was also authorized to make recommendations to the government on the signing of international treaties or other instruments. There is also a specific power vested in the Commission to monitor the welfare of detainees, including those in administrative detention, and make recommendations for improving their conditions of detention, although the Commission does not have the power to order their release.

In the case of detainees, the Human Rights Commission took over from a Human Rights Task Force (HRTF). The HRTF was set up to oversee the conditions of those detained under the country's national security laws: the Prevention of Terrorism Act (PTA) and the Emergency Regulations introduced by the President under the Public Security Ordinance. Although its legal foundations were weak, the HRTF performed an important function due mainly to its dynamic chair, a former Supreme Court judge, who used his stature as a former judicial officer to gain access to detention centers and to engage with military commanders on a regular basis. The Human Rights Commission also inherited what is perhaps its most useful institutional weapon - a network of 10 regional centers set up previously by the HRTF. The experience of the HRTF in Sri Lanka is illustrative of an institution that made a positive impact despite its weak legal basis. In many institutions, personalities can make a difference and this is an example of where a committed personality infused a weak institution with significant power.

During the first few years of its existence the Sri Lankan Human Rights Commission was divided on how proactive it should be and the balance that should be struck between mediating complaints and undertaking other types of human rights activity. Its activities consisted almost entirely of mediating complaints and when the term of the first commission expired in March 2000, there was a backlog of approximately 11,000 complaints. While some members had close links with members of the domestic human rights movement, as an institution the Commission made very little effort to interact with NGOs or work in partnership with them.

A Focus on Internally Displaced Persons

The new group of Human Rights Commissioners who took office in 2000 and who for the first time included a woman, envisaged a broader role for the Human Rights Commission. Apart from investigating and mediating individual complaints, the new Commission decided at an early stage to engage in and promote human rights education, investigate systemic and group violations of human rights and to examine law and policy for their compatibility with international human rights norms. The Commission also decided to work in partnership with NGOs and other civil society organizations in implementing its mandate.

One of the Commission's early decisions was to examine the status of vulnerable groups and to consider the role that the Commission could play with regard to these groups. At least three groups were identified: women, persons with disabilities, and internally displaced persons. The Commission saw IDPs as a particularly vulnerable group and a segment of the population that required its attention. Until that time the Sri Lankan Commission had not examined human rights violations pertaining to IDPs although Sri Lanka had a fluctuating population of between 500,000 to one million IDPs for more than twenty years and the conditions under which they lived were harsh.

The new Commission decided to initiate a study into the status of the displaced. It should be noted that under the Human Rights Commission Act of 1996, the Commission was given the power to undertake research with regard to human rights and to disseminate and distribute the results of such research.¹¹ It also was authorized to advise and assist the government in formulating legislation and administrative directives and procedures with a view to promote and protect fundamental rights.¹²

Since displacement had been affecting the human rights of a significant part of the Sri Lankan population for a number of years, the Commission sought to generate a set of findings and recommendations that would identify a role for the Commission in this area and help it intervene in an effective and sustained way. Its study was intended to advise the Commission on the activities it could initiate, both in the short term and medium term, prioritize areas of intervention and identify possible areas of collaboration between the Commission and other organizations working in this area. Another purpose of the study was to ascertain the potential for applying the Guiding Principles on Internal Displacement in Sri Lanka. At the international level, as earlier noted, the Representative of the UN Secretary-General on Internally Displaced Persons had developed Guiding Principles culled from international human rights law, humanitarian law and refugee law by analogy. These Principles constitute a set of human rights standards that should apply during the different phases of

¹¹ Section 11(f) of the Human Rights Commission Act, No. 21 of 1996.

¹² Section 10(c).

displacement – pre-displacement, during displacement and during return or resettlement and reintegration.

The Asia Foundation's Colombo office facilitated and supported the Human Rights Commission study.¹³ A number of preliminary meetings were held at which representatives of the Commission, human rights groups and domestic and international humanitarian organizations participated. One of the conclusions of these meetings was that there already existed a number of studies on internal displacement in Sri Lanka. Rather than initiate a new study, it was agreed that the Commission's study would focus on collating the existing studies with little additional field work. Based on already existing literature, the study would develop a set of recommendations for the Commission. Interviews with key individuals and organizations would supplement this approach.

Three NGOs were then commissioned to collaborate in the study. Following a process in which the Asia Foundation, on behalf of the Human Rights Commission, wrote to a number of domestic NGOs and think tanks to ascertain their interest in carrying out the study, the following organizations were selected: the Center for Policy Alternatives (CPA), the Consortium of Humanitarian Agencies (CHA) and the Law & Society Trust (LST).

The Terms of Reference of the study asked the three organizations to fulfill the following functions:

The Center for Policy Alternatives (CPA) to:

Identify the entire range of human rights violations to which IDPs are subject and the relative severity and intensity of these violations;

Identify the factors that give rise to the human rights violations experienced by IDPs and prioritize reforms in law, policy and practice to minimize their vulnerability to such violations.

The Consortium of Humanitarian Agencies (CHA) to:

Identify and categorize the various populations of IDPs, including their general geographic distribution, and organizations and actors with whom they come into contact;

Examine the Guiding Principles on Internal Displacement developed by the

¹³ The author would like to acknowledge here the role of the Asia Foundation in Colombo, especially its Resident Representative, Mark McKenna.

Representative of the UN Secretary-General, ascertain the potential for their implementation in Sri Lanka and make recommendations to the Human Rights Commission on the role it could play in this regard;

Examine the role, functions and capacity of the Regional Coordinators of the Human Rights Commission, and prepare specific recommendations for strengthening their capacity to respond to the concerns of IDPs. This included an analysis of the types of complaints that reach the Regional Coordinators and those that do not.

The Law & Society Trust (LST) to:

Examine the legal, policy and institutional framework pertaining to IDPs and prepare recommendations for strengthening this framework.

The study commenced in April 2001 and its findings were released in August 2001. Preliminary findings were shared among the three organizations, which maintained close contact with each other.

Overall, the study contained a number of recommendations for strengthening the capacity of the Human Rights Commission in the area of internal displacement.

Before discussing the findings, however, it is instructive first to examine internal displacement in Sri Lanka and to highlight some new positive developments that occurred subsequent to the completion of the study. The following analysis has been prepared by the author.

Internal Displacement in Sri Lanka

For almost a million Sri Lankans, the right to freedom of movement guaranteed by the country's Constitution and the International Covenants on Human Rights has been until recently largely an illusion. IDPs, the group closest to the ethnic conflict, have had little freedom in choosing their places of residence, work, study or leisure. They have had little choice in opting to remain or to flee. These choices have been determined for them by other, more powerful actors. As a group they are identified by a common history of uprootedness and continue to have fewer opportunities to meet their basic needs than those Sri Lankans who have not been forcibly displaced.

The number of IDPs has fluctuated between 500,000 and 1,000,000 since the 1980s. Sri Lanka's ethnic conflict escalated in the early 1980s after anti-Tamil riots in 1983. The riots saw Sri Lanka descend into a spiral of violence that has wrecked the economy and torn apart its social fabric. As in all internal conflicts, the heaviest casualties were civilians and since 1980 thousands upon thousands

of Sri Lankans have been uprooted and forced to flee their homes. An estimated 200,000 have fled overseas while the majority has remained displaced within the country's borders. Many of the IDPs have been displaced several times. According to statistics provided by the Commissioner General of Essential Services (CGES), as of January 2, 2002, there were approximately 174,250 persons in 346 welfare centers in the districts of Jaffna, Kilinochchi, Mullaitivu, Mannar, Vavuniya, Trincomalee, Batticaloa, Ampara, Puttalam, Anuradhapura, Kurunegala, Polonnaruwa, Colombo and Matale. A further 509,036 displaced persons were staying with friends and relatives. The IDPs outside the camps are also eligible to receive rations from the state. According to the CGES statistics, there were a total of 683,286 persons displaced as of January 2, 2002, both within and outside camps. However, these statistics do not capture the total number of displaced people who either are not eligible to receive dry rations due to economic reasons or have not registered with the government and who are living in other areas, including the city of Colombo.

Numbers Displaced (estimated)

<i>December 1994</i>	<i>525,000</i>
<i>October 1995</i>	<i>649,049</i>
<i>December 1995</i>	<i>1,017,181</i>
<i>May 1996</i>	<i>839,161</i>
<i>October 1996</i>	<i>770,837</i>
<i>December 1996</i>	<i>768,356</i>
<i>March 2001</i>	<i>707,215</i>
<i>January 2002</i>	<i>683,286</i>

*Source: Ministry of Rehabilitation and Reconstruction/ Commissioner
General of Essential Services (CGES)*

The experiences of the displaced have varied. While they share a common experience, in that they have all been uprooted and forced to flee, their experiences as displaced persons have differed depending on their geographical location, their ethnic background, the interaction they have had with local and international NGOs, and their relationship with the local population. In 1990 approximately 100,000 Muslims were evicted from Jaffna and Mannar by the Liberation Tigers of Tamil Eelam (LTTE) who gave them 24 hours in which to collect their belongings and flee. Almost twelve years later they continue to live the lives of displaced people in Puttalam, Anuradhapura and Kurunegala. The conflict in Sri Lanka has generated at least six broad categories of displaced persons:

- Those displaced and living in camps (or welfare centers);
- Those displaced and living outside camps (or welfare centers);

- Refugees who have returned from Tamil Nadu, India and are living in transit camps;
- Those who have been resettled;
- Refugees being repatriated by Western governments; and
- Refugees outside the country.

When the initial movement of people began, there was some hope that this displacement and dislocation would be temporary. This hope did not materialize and while some who were forced to flee in the initial stages of the conflict have resettled, thousands more have since been displaced, and many who re-settled have been re-displaced. Many of those who are currently displaced have been displaced several times over.

In the early 1990s the situation with regard to the displaced population was relatively stable. The LTTE had de facto control over most of the Jaffna Peninsula while the government forces made an attempt to regain control in the east. In 1992 and 1993 many people were re-settled in the east, in Mannar and some other areas, in a government-sponsored initiative and many returned from refugee camps in southern India in a UNHCR-sponsored initiative.¹⁴ Previously the state and NGOs had focused almost exclusively on providing emergency relief and assistance. This was shaped by the belief that displacement was a short-term phenomenon which needed to be addressed through short-term strategies.

However, as displacement acquired a semi-permanent character, approaches changed. The emphasis shifted to helping the displaced 'take responsibility for their lives' and to trying to foster a sense of independence among the displaced. Less attention was given to 'handouts' and increased attention to activities that were geared to establishing self-reliance. Thus, access to employment emerged as a major concern. In the wake of the October 1995 offensive, however, the emphasis again shifted to 'relief and assistance' because of the massive displacement that took place and the humanitarian consequences that ensued.

October 1995 was a turning point. The Sri Lankan armed forces, which until that point had been content to let the LTTE control most of the Jaffna Peninsula, launched a major operation to take control of the Peninsula. Thousands left the Peninsula as a result of this operation.¹⁵ Many left because of LTTE pressure, while others fled the shelling and the bombing that accompanied the operation. In December 1995 the Sri Lankan armed forces took control of a largely empty Jaffna town and in April 1996, after a further operation, they resumed control of much of the Jaffna Peninsula. It was estimated that the Sri Lankan armed forces controlled between 60 to 80 per cent of the Jaffna Peninsula at the end of 1996. In 2000 the LTTE launched a counter operation to re-take

¹⁴ 'Sri Lanka: State of Human Rights 1993' (Colombo: Law & Society Trust), pp. 256-306.

¹⁵ See Mario Gomez, 'People in Between' (Washington DC: US Committee for Refugees, 1996).

control of Jaffna. While they succeeded in re-capturing significant portions of territory, they failed to re-take Jaffna. The ensuing battles had adverse consequences for civilian life in the area.

The government of Sri Lanka has assumed some responsibility toward the displaced but its policy has been heavily influenced by military imperatives. The military and defense apparatus has played a crucial role in determining the extent and nature of the humanitarian response to the displaced, including the range and quantity of supplies that should reach the conflict areas. It will play a strong role should the conflict erupt again. Almost all supplies sent to the conflict areas required clearance by the Ministry of Defense, which sometimes took many months, resulting in delayed deliveries of food and medicines.

There also have been allegations of bribery and corruption against members of the armed forces and others in the government involved in providing relief. In particular, the Regional Coordinators of the Human Rights Commission have received such complaints.¹⁶ Yet to date none of these allegations have been proved and no prosecutions have been initiated.

Women and Displacement

In a 1993 visit to the country, the Representative of the Secretary General on Internally Displaced Persons found that IDPs were especially vulnerable to threats to their physical security. Women were identified as a particularly vulnerable group.¹⁷

In a report released in January 1994, the US Committee for Refugees (USCR), a Washington-based NGO, quoted a female NGO worker who observed that:

*... the people most affected by this conflict have been women - morally, physically, financially. Some lost not only their husbands, but also their grown sons. Many women are traumatized, they don't know for sure if their husband [disappeared or] is dead or alive; some have been in and out of camps since 1985.*¹⁸

Women and children constitute the largest group among displaced populations worldwide.¹⁹ In Sri Lanka, the number of displaced women exceeds those of the men significantly. In addition to the

¹⁶ Consortium of Humanitarian Agencies (CHA), 'Internally Displaced Persons and the Human Rights Commission' (2001), p. 68, part of the collaborative study on IDPs for the Human Rights Commission.

¹⁷ Report of the Representative of the UN Secretary-General on Internally Displaced Persons, Francis M. Deng, *Profiles in Displacement: Sri Lanka*, UN Document E/CN.4/1994/44/Add.1, January 25, 1994.

¹⁸ 'People want Peace' (Washington DC: US Committee for Refugees, 1994), p. 12.

¹⁹ See generally Roberta Cohen, 'Refugee and Internally Displaced Women', The Brookings Institution - Refugee Policy Group Project (1995).

problems shared by other internally displaced persons, women also face gender-based discrimination and are exposed to gender-specific violence and exploitation.²⁰ In 1993, the Representative of the Secretary-General reported that some women had been raped prior to being displaced.²¹ Incidents of rape in the conflict areas continue to increase.²² A recent Amnesty International report notes a 'marked rise' in allegations of rape by police, army and navy personnel in 2001 and observes that among the victims of rape by security forces are 'many internally displaced women.'²³ The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) in its recent Concluding Comments on Sri Lanka noted with alarm 'the high and severe incidences of rape and other forms of violence targeted against Tamil women by the police and security forces in the conflict areas.'²⁴

The USCR team which visited Jaffna in November 1996 quoted an 'international organization official' who observed that 'rape in Jaffna is widespread' and also a 'woman in Jaffna' who pointed out that women are 'scared to come out of their homes because of the fear of rape.' The report went on to note that many instances have not been reported because of the fear of retribution and the social stigma attached to rape.²⁵

The collapse of community and family structures, including the support provided by the extended family, has made displaced women even more vulnerable. The UN Special Rapporteur on Violence against Women observed that lack of access to health care and food has been one of the main problems faced by refugee and internally displaced women generally.²⁶ Women have also been forced to assume many of the responsibilities of family life after displacement. In some cases women have lost their husbands and thus the burden of carrying on with family life has fallen exclusively on them. In other cases their husbands have been otherwise preoccupied and it is the wife who has had to shoulder the responsibility. The Sri Lankan experience shows that displaced women are more likely to seek work or engage in economic activity than men. There has also been a large increase in the number of female-headed households in the country. The UN CEDAW Committee noted with concern the high percentage of households headed by women, 'half of whom are elderly, many illiterate and have

²⁰ Ibid. See also Preliminary Report of Radhika Coomaraswamy, the Special Rapporteur on Violence Against Women, E/CN.4/1995/42, 22 November 1994, para. 294.

²¹ Report of the Representative of the UN Secretary-General on Internally Displaced Persons, Francis M. Deng, *Internally Displaced Persons*, UN Document E/CN.4/1995/50, February 2, 1995, para. 30.

²² See also University Teachers for Human Rights (Jaffna), 'Jaffna: The Contest between Man & The Beast Within,' Special Report No. 7, 29 August 1996, pp. 16-18.

²³ Amnesty International, AI-index: ASA 37/001/2002, 28 January 2002.

²⁴ Committee on the Elimination of Discrimination against Women, 26th Session, CEDAW/C/2002/I/CRP.3/Add.5, 30 January 2002, para. 31.

²⁵ Hiram Ruiz and Katie Hope, 'Conflict and Displacement in Sri Lanka' (Washington DC: US Committee for Refugees, 1997), p. 12.

²⁶ Preliminary Report of Radhika Coomaraswamy, the Special Rapporteur on Violence Against Women, E/CN.4/1995/42, 22 November 1994, para. 310.

*meager means of income.*²⁷ International human rights law recognizes the family as the basic unit of society and in need of protection and support.²⁸

Human rights law also protects the right to privacy.²⁹ Displacement has affected this right in particularly significant ways. The conflict has affected the privacy of family life in situations where the family has remained intact and survived the conflict. The conditions of existence of most of those resident in camps has resulted in particularly severe invasions of privacy, especially for women. Their 'areas' of habitation are sometimes cordoned off only by old saris and other pieces of rag. A representative of a donor agency who visited Vavuniya in November 1996 observed that at least two women had been forced to give birth in the overcrowded, unhygienic detention centers in Vavuniya town. USCR observed that two babies were still-born in the Vavuniya detention centers in 1996.³⁰

The Right to Information

One of the other major areas of concern during all these years of conflict has been lack of information. Until recently, information coming out of the conflict areas was sparse. The government kept a tight rein on information often through censorship or by preventing journalists and human rights activists from traveling to the conflict areas. This was especially true of the 'uncleared areas'- areas under the control of the LTTE. Censorship of news relating to military operations was frequently enforced. The emergency regulations under which the censorship operated were framed broadly and were found by the NGO Article19 to infringe upon international standards of freedom of expression in times of national security.³¹ On different occasions, censorship regulations were also found to be applied in an arbitrary manner.³²

At the same time, representatives from the media were occasionally taken by the military for closely supervised visits to the north. But the Sri Lankan public was largely forced to rely on press releases from the Ministry of Defense and the LTTE, neither of which could be relied upon for objectivity and depth of coverage. Most of the video footage on the conflict that Sri Lankan viewers saw was produced by the Ministry of Defense. Those with the greatest degree of access were members of relief organizations and international humanitarian organizations, but in order to protect their field

²⁷ Committee on the Elimination of Discrimination against Women, 26th Session, CEDAW/C/2002/I/CRP.3/Add.5, 30 January 2002, para. 41.

²⁸ Article 16(3) of the Universal Declaration of Human Rights (UDHR), Article 10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 23 of the International Covenant on Civil and Political Rights (ICCPR).

²⁹ Article 12 of the UDHR and Article 17 of the ICCPR.

³⁰ Ruiz and Hope, 'Conflict and Displacement in Sri Lanka,' p. 32.

³¹ See Elizabeth Nissan, 'Reform at Risk' (London: ARTICLE 19, 1997), pp. 8-9.

³² Ibid.

staff from possible expulsion, they have chosen not to publicize their findings in any regular or sustained way.

The LTTE has also manipulated information. The sophisticated and manipulative use of information has been a crucial component of LTTE strategy. For both the government and the LTTE the control of information has been part of the war being fought on the ground. The public's right to know and the displaced population's right to free expression have too often been of secondary importance.

There were at least three exceptions to this policy. The first was when the UN Secretary-General's Representative on Internally Displaced Persons visited Sri Lanka at the end of 1993. His visit was facilitated by the government and he was given permission to travel to areas under LTTE control, although ongoing fighting prevented his doing so. In 1998, the Special Representative of the UN Secretary-General on Children and Armed Conflict visited Sri Lanka on an official visit and held discussions with LTTE representatives in which he raised concerns about freedom of movement for displaced populations and the recruitment of child soldiers.

The third exception was the permission granted in November 1996 to a two-member team from the NGO the US Committee for Refugees (USCR). The organization's initial request to visit Sri Lanka had been turned down in August. However, subsequently, approval was granted and the Sri Lankan government facilitated the team's visit to Jaffna. The team was flown there by government aircraft and was given the freedom to meet with a number of different groups. They also visited the Vanni and met with representatives of the LTTE. Their visit to the Vanni was facilitated by the UNHCR. The USCR report was released in March 1997.³³

Among organizations in Sri Lanka, the University Teachers for Human Rights Jaffna is one of the few domestic groups that publishes regular reports on the conflict, collected from sources based in the north and east. But overall, the public's right to information on the conflict and on the conditions of the displaced has been restricted by the use of censorship and informal restrictions on travel to areas of conflict. As a result, there has been little scope for an independent investigation of human rights and humanitarian issues in conflict areas by human rights defenders and the media.³⁴ These restrictions have also negatively affected the right to free expression of the displaced and their freedom to communicate with others in the rest of the country.

In October 1995, a group of human rights activists and international lawyers, after an examination and analysis of relevant international standards, observed that:

³³ Ruiz and Hope, 'Conflict and Displacement in Sri Lanka.'

³⁴ See also Nissan, 'Reform at Risk.'

³⁵ Ibid.

*Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of inter governmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. A government may not exclude journalists or representatives from such organizations from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.*³⁶

However, this standard was breached almost continuously in Sri Lanka over the past 20 years - both by the government and armed forces and by the LTTE. In the case of the government, the all-encompassing concept of 'national security' provided justification.

Fortunately, this has changed since the end of 2001. The Sri Lankan government relaxed its policy on traveling to the conflict areas both for journalists and others. Since the unilateral ceasefire declared by both parties on 24 December 2001, there has been increasing movement between the two areas. There has also been increasing independent coverage of events in the areas of conflict.

Events since December 2001

Since the study was presented to the Human Rights Commission, there have been important new developments. On February 23, 2002 Sri Lankan Prime Minister Ranil Wickremesinghe put his signature to an agreement that committed the government to halt military operations against the LTTE. A day earlier the leader of the LTTE signed his assent to a similar undertaking agreeing to cease all military operations, including suicide attacks and attacks against civilians. This formal agreement preceded unilateral declarations of ceasefire by both sides on Christmas Eve the previous year.

The agreement has silenced the guns in Sri Lanka, at least for the moment, and brought the country as close to peace as it has come in recent years. However, this is not the first time that the country has attempted to negotiate a peace. Since 1985, there have been at least five attempts at reaching a negotiated solution between the Sri Lankan government and the LTTE. None of these succeeded. In

³⁶ *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, Principle 19. These principles were drafted by a group of experts in October 1995 in South Africa, at a meeting convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of Witwatersrand.

this most recent initiative, both international and domestic pressures contributed to pushing the parties to the negotiating table. The international climate since September 11, 2001 has made it difficult for the LTTE to fundraise and operate from western capitals. Within Sri Lanka, a bleeding economy and pressure from key constituencies, such as the business sector, have been critical in persuading the government to negotiate. As many Sri Lankans know, the dividends of peace, both economic and other, are potentially very large. The challenge at the moment is to steer the process of negotiations prudently through years of acrimony and the clamor of the hardliners on both sides. This recent agreement was facilitated by the Norwegian government and for the first time will include an international group of monitors to oversee the ceasefire.

The ceasefire has had an immediate impact on the humanitarian situation. It has allowed an increased supply of food, medicines and other basic supplies to enter IDP areas. Prices have also become lower as food and other supplies have become more easily available.

Key Findings of the NGO Study

The study requested by the Human Rights Commission of Sri Lanka strongly highlighted the vulnerability of IDPs as a result of their displacement. Their vulnerability was found to affect every aspect of their lives: the quality and quantity of the food to which they had access; the quality of education their children received; the level of health care available; the types of employment they could engage in; and the housing in which they lived. According to the study, every single right spelled out in the Guiding Principles on Internal Displacement was not being fully complied with in Sri Lanka. While different segments of the IDP population experienced violations differently, harassment, arrests, abductions, rapes, torture, executions, exploitation and imprisonment were part of their general existence. Certain categories of displaced people, such as females and single heads of households, the elderly and the disabled, were particularly vulnerable. The study concluded that these people's special needs were not being effectively addressed and their rights to life and dignity were being violated.

Another of the key conclusions was the lack of a coherent policy on displacement. According to the study:

Without doubt the most worrying concern is the lack of a governmental framework on displacement or of a clear division of responsibilities among Government Departments and Aid Agencies. No ministry has overall responsibility for the welfare of IDPs nor are there comprehensive policies or guidelines on displacement. Various departments, ministries and aid agencies are responsible for various aspects of relief,

protection and assistance. The allocation of ministerial areas of responsibility appears to be driven by political motives, such as securing a vote base.

The study observed that one of the biggest obstacles is the lack of vision on the part of the government. State policy toward IDPs is vague and constantly shifting. Often the policy is shaped by military factors rather than on recognition of the rights of IDPs. In addition a number of state entities are involved with little coordination among them.

There were some areas, especially with regard to arrest and detention, in which IDPs were particularly vulnerable. Amending the Prevention of Terrorism Act and the Emergency Regulations to bring them into line with international human rights principles was a matter of priority and the study recommended that this was an intervention that the Human Rights Commission was well placed to make.

The lack of a coherent policy and a legal framework constituted obstacles to providing effective protection for IDPs. Yet an effective policy and legal framework were seen as only one part of the solution. What was most lacking was the political will to respond to the needs of IDPs based on a recognition of their rights. Their displacement was the result of conflict. Their rights and the assistance they received were at least until recently also controlled by the imperatives of the conflict.

The discrimination that resulted from the operation of a complex 'pass' system was also highlighted in the report. Those living in 'uncleared areas' or areas controlled by the LTTE had to obtain permission from both the LTTE and the government to travel south. Many were virtual prisoners in the Vanni as the LTTE imposed stringent restrictions on the movement of civilians in areas under its control. Compulsory training and forced recruitment into its ranks, including of children, was widely reported. Those who lived in the transit point of Vavuniya, which was technically under the control of the state, had to obtain clearance from the security forces to proceed further south. The lack of coordination among the different aid organizations in the distribution of food and other relief was also highlighted. Security concerns, including frequent arrests and abductions, contributed to the vulnerability that IDPs faced. The role of paramilitary groups that until recently officially assisted the Sri Lankan Army was highlighted and the study observed that both the Army and the paramilitary groups were responsible for an unacceptable number of arbitrary arrests, illegal detentions, torture, rape and 'disappearances.' Abduction and extortion of money by the LTTE were also highlighted.

The plight of the displaced was made worse by the then existing government policy regarding the provision of relief and other assistance. Only 50 percent of the dry food rations needed were reported to reach affected areas. Other food items to be sold in Multi Purpose Co-operative Society outlets were overpriced and in very short supply. The study noted that recurrent shortages, delays and sudden

blockades had given rise to the allegation that the Sri Lankan Army was using food as a method of combat. The LTTE was also accused of diverting food and other items meant for displaced populations. According to the study, malnutrition was reportedly very severe in the areas under LTTE control.

The embargo on so-called 'war related items' further affected the welfare of those populations. Restricted items reportedly included kerosene, fertilizers, fishing equipment, construction materials, batteries, books, maps and ink, among others. Medical equipment and medicines were also subject to embargoes as well as delays and shortages. Poor hospital and transport facilities further affected the health of civilians in those areas.

The study also issued findings with reference to the role of the regional network of the Human Rights Commission. One of the Commission's strengths is the existence of a broad network of regional centers. When the Commission first took over from the Human Rights Task Force it inherited a network of regional centers. There are currently 10 such centers headed by a Regional Coordinator. In some areas such as Jaffna, Vavuniya, Batticaloa, Ampara, Trincomalee and Anuradhapura, these officers are at the 'frontline' of the conflict and have the capacity to have close and regular contact with IDPs and many of them do. One dimension of the study was to consider how the Regional Offices were dealing with issues relating to IDPs and to look at strengthening their capacity for intervention.

The study concluded that the Commission's Regional Coordinators were not equipped to deal with the problems of IDPs. Their knowledge and awareness was inconsistent: while some had an understanding of the problems faced by IDPs, others did not consider issues pertaining to IDPs as part of their mandate. The Regional Coordinators also faced institutional constraints. Poor infrastructure, inadequate human resources and threats to their personal security prevented them from responding adequately to the concerns of IDPs.

The study also concluded that the Regional Coordinators had done little to forge links with local NGOs. Many NGOs had close links with the displaced and were in possession of information that could assist the Regional Coordinators in their work. Yet, interaction with NGOs was ad hoc and infrequent.

The lack of a special desk or unit in the Human Rights Commission's main office in Colombo was another factor highlighted in the report. IDP complaints were grouped with other complaints and until recently the Commission did not focus on IDPs as a distinct category. The study concluded that both the main office in Colombo and its regional offices did not possess the sensitivity or capacity to respond to IDP concerns effectively.

The study noted that the Guiding Principles on Internal Displacement were developed to enhance protection and assistance for more than 20 million IDPs worldwide. For the first time there is an authoritative statement of the rights of IDPs and the obligations of governments toward these populations. The study recommended the adoption of a coherent policy and legal framework based on the Guiding Principles as a matter of urgency.

Recommendations of the Study: What the Commission and Government should do with regard to the Internally Displaced

The study developed two sets of recommendations. The first set was addressed to the Human Rights Commission; the second set requested the Commission to make a series of recommendations to the government.

The recommendations to the Human Rights Commission were the following:

- As a matter of urgency the Commission should commence a program of action to protect and promote the rights of IDPs. It should recognize that IDPs constitute a segment of society that is particularly vulnerable by virtue of their displacement and subject to discrimination from a variety of actors.
- As a first step, the Commission should develop a policy on the role it intends to play with regard to IDPs. This policy should be disseminated among its staff, particularly its field offices, among the staff of government institutions, particularly those dealing with IDPs, among displaced populations and among the general public. In developing this policy the Commission should take into account the Guiding Principles on Internal Displacement. The policy should be developed in consultation with humanitarian and human rights groups working with IDPs.
- The Commission should inquire into and investigate all complaints of violations of fundamental rights received from IDPs, including violence against women. For this purpose, the Commission should strengthen the physical infrastructure and human resources of its offices, in particular staff security, insurance, vehicles, mobile communication facilities, and office infrastructure. In addition, new offices should be opened in places where the Commission is not currently present.
- The Commission should specifically develop a program of action to strengthen the capacity of its Regional Offices to respond to the rights and concerns of IDPs. It should provide regular training to its staff on relevant standards and expose field officers to the range of interventions

they can make. Regional Coordinators should be made familiar with the Guiding Principles and advocate widely for the application of these Principles.

- The Commission should establish a sub-committee, as contemplated by section 11B of the Human Rights Commission Act, or establish a separate desk at its Colombo office. The focus of the sub-committee or desk would be to develop a policy in relation to IDPs and then oversee its implementation by Commission staff, including Regional Coordinators, and NGOs. The activities of the sub-committee or desk could include:

- 1) Monitoring and documenting human rights violations of IDPs;
- 2) Developing programs of cooperation with NGOs and humanitarian organizations;
- 3) Channelling complaints from IDPs to the relevant authorities and departments;
- 4) Monitoring solutions and remedies;
- 5) Developing appropriate benchmarks for the supply of humanitarian assistance and then monitoring the delivery of this assistance to IDPs;
- 6) Facilitating communication between IDPs and provincial and national authorities;
- 7) Negotiating with military authorities when military activities prevent IDPs from having adequate access to food, health care, sanitation, shelter, clothing and education;
- 8) Promoting programs to help families to stay together and provide information on the location and circumstances of family members;
- 9) Developing programs of public education on the status of IDPs and the principles applicable to their situation.

- Where the Commission's recommendations have little or no impact, it should consider filing fundamental rights cases before the Supreme Court. In the case of the displaced, the Commission could file fundamental rights cases about freedom of movement and the

confinement of IDPs to camps as well as about the crucial issue of the statelessness of displaced persons of 'Up-country' Indian origin.³⁷

- The Commission should play a more proactive role by visiting Welfare Centers and IDP settlements, publicizing its presence, disseminating information on human rights and liaising with local NGOs working with IDPs.
- The Commission should research and publish the law and policy on registration with the police and the 'checkpoint policy.' Such a document should be disseminated and displayed prominently in all police stations and at all police and military checkpoints.
- The Commission should consolidate into a single document, as a matter of urgency, all the laws and regulations pertaining to arrest and detention. The Commission should then lobby with the government to amend national security laws and regulations and bring them into line with international human rights standards. This activity should be undertaken in consultation with human rights groups, academics and other individuals with expertise in the area.

The study further recommended, as a matter of urgency, that the Commission make the following recommendations to the government:

- The government should set up a central body on internal displacement. This body should have authority over all actors involved in the welfare of IDPs. Its responsibilities would include:
 - 1) framing a comprehensive policy on IDPs modelled on the Guiding Principles on Internal Displacement and the Sphere standards expounded in the UNHCR Handbook for Emergencies;
 - 2) monitoring the implementation of such a policy by the different ministries and departments responsible for the welfare of IDPs;
 - 3) monitoring all other policies and practices that affect IDPs, including those of the military forces;

³⁷ The 'Up-country' or 'Plantation' Tamils are the descendants of indentured labor brought by the British from India to work the tea plantations in central Sri Lanka.

- 4) integrating IDP concerns and rights into all aspects of government policy and ensuring that state agencies focus on the needs of IDPs when implementing policy; and
 - 5) receiving, forwarding or acting upon complaints from IDPs.
- The government should address the issue of the statelessness of Up-country Tamils of Indian origin with a view to granting these people citizenship and thus affording them the means of enjoying other fundamental rights.
 - The government should ensure that paramilitary groups are disarmed. If these parties require security, it should be provided by the regular Sri Lankan Army. If these parties and their members assist the military in providing security in conflict zones, then their powers and functions should be set forth in law. Their role should be made official (identity badges, license for arms, etc.) and they should be trained and come under the control and disciplinary procedures of the Sri Lankan Army.
 - Welfare Centers should be temporary and the government should implement voluntary relocation programs island-wide. The government and military should facilitate the voluntary return of IDPs to their areas of origin by vacating occupied property, clearing mines, speeding up reconstruction programs in 'cleared' areas and ensuring that all those affected and entitled receive a compensation package for resettlement.
 - Official authorities should obtain the full and informed consent of IDPs in relocation and resettlement programs. On no account should relocation take place in unsafe areas, in the vicinity of military installations or near the Forward Defense Line.
 - In relocation and resettlement programs, due consideration should be given to the livelihood issues of IDPs such as adequate land to farm. In the current 'crash' relocation program in Vavuniya and Mannar, the IDPs relocated were only given one quarter acre of land instead of the one half acre promised.
 - Humanitarian assistance to IDPs, including food, sanitation, shelter and health care, should be brought into line with the Sphere standards, in particular on caloric need, minimum space and health care.
 - The government should simplify the pass system in Vavuniya and Mannar. All residents of those areas should be given a local ID card and in the case of IDPs, the card should

state that they are temporary residents. This card, issued after speedy security clearance, should enable IDPs to move unfettered in all parts of the locality.

- IDPs in the north, after they have gone through warranted and speedy security checks, should be allowed to travel south of Vavuniya unfettered to seek employment, undergo training, attend university or undertake any other business.
- The discretionary powers of the security forces and the police with regard to embargoed items, transport of goods to 'uncleared areas,' places of detention, procedures of arrest, etc. should be brought within the purview of the law. For instance, if a Local Area Commander alters the gazetted list of embargoed items, such changes should be gazetted anew within a reasonable period of time. All detention centers should be gazetted.
- The allocation of dry food rations, foodstuffs, medicine, fertilizers, fishing gear and other items to 'uncleared areas' should reflect the actual population of those areas. Due regard should be given to the requests of government agents and international agencies working in those areas. In no case should delays and shortages in the goods sent to 'uncleared areas' be used as a weapon of war.
- The Ministry of Women's Affairs, the Women's Bureau and the National Committee on Women should be directed to address the pressing and hitherto unaddressed issues of concern to IDP women and girls such as rape, domestic violence, incest and prostitution. They should work in conjunction with women's groups and humanitarian organizations in responding to the specific concerns of IDP women and girls.
- The government should draft and adopt legislation based on the Guiding Principles on Internal Displacement that recognizes the rights of IDPs and provides an effective method of enforcement. Such legislation should be drafted in collaboration with NGOs and humanitarian organizations.
- The government should ratify Protocol II to the Geneva Conventions which deals with internal armed conflict.
- The government should ensure that the Torture Act is in accordance with international human rights norms.

- The government should make a declaration recognizing the competence of the UN Committee against Torture under Article 22 of the Torture Convention to receive and consider individual petitions from torture victims.
- The government should ensure that the Prevention of Terrorism Act and the Emergency Regulations are in accordance with international human rights law, especially the provisions contained in the International Covenant on Civil and Political Rights, to which Sri Lanka is a party.

Response to the Study

Over the past eight months (and since the release of the study) there has been an effort by the Human Rights Commission to respond to some of the recommendations contained in the study and to build a capacity within the institution to address the needs of IDPs. This process started initially with the recognition by the Commission that IDPs were a vulnerable group that required special intervention strategies.

In June 2001, just prior to the release of the study, an important development occurred which helped focus the attention of the Commission on the displaced. An initiative was undertaken by UNHCR, facilitated in its initial stages by the Asia Foundation, by which UNHCR field officers from different parts of the country commenced a dialogue with the Commission and its Regional Coordinators. This was the first time this occurred in a structured way. UNHCR field officers sat face to face with Commission Regional Coordinators at a one-day workshop to discuss how collaboration between these two important actors could be strengthened.

Subsequent to the publication of the study, UNHCR committed itself to help develop the capacity of the Commission to respond to IDPs. The first step it took was to invite two consultants to examine how the Commission could begin to address IDP concerns seriously. It then went a step further with the decision to support the establishment of a unit at the Commission's main office in Colombo and desks in select regional offices that have within their jurisdiction large numbers of IDPs.

This should help overcome the lack of capacity that had been one of the more formidable constraints confronting the Commission. Now, UNHCR is working with the Commission to develop such capacity and one of the first priorities will be to put in place the necessary human resources with the needed sensitivity and understanding of displacement in general and the complexities of displacement peculiar to Sri Lanka. The next step will no doubt be to help develop links with NGOs and international humanitarian organizations working in the field and to strengthen the level of interventions by the Commission. Both domestic and international groups can provide the

Commission with information, help train its staff, and also assist in facilitating concrete interventions when it decides to make interventions.

The NGOs that collaborated on the study have also begun to explore the possibility of specific projects aimed at the Commission. The Consortium of Humanitarian Agencies (CHA), which interviewed Regional Coordinators for this study, has been looking into the possibility of conducting regular training programs for Commission field office staff as well as developing programs of legal aid for the displaced. UNHCR and the Bar Association of Sri Lanka have also begun to look at developing a legal aid program aimed specifically at the displaced.

The recent ceasefire and the possibility of a negotiated solution to the ethnic conflict are likely to require additional responses and solutions. In the event that peace does return, displacement policy would need to shift from a focus on emergency relief and assistance to a focus on return, reintegration and resettlement. Other questions such as compensation for past abuses will also need to be addressed by the Commission unless another mechanism is set up as part of the peace settlement.

The Potential of National Human Rights Commissions

The Sri Lankan experience with IDPs is one that should be studied by other national human rights commissions. As earlier noted, national human rights commissions have been in existence since the 1940s. However, the past ten years has seen a massive rise in the number of these institutions in different parts of the world. The 'modern' commission is different from many of the older institutions set up in Canada, the UK and New Zealand. Many of the older institutions were 'complaints oriented' and tended to focus on issues of discrimination and equal opportunity. The modern human rights commission or national human rights institution tends to have a much broader mandate combining a complaints resolution function, an educational function, an advisory function and a law reform function. It also tends to interact more closely with NGOs than the older commissions.

An effective human rights commission should be able to call the attention of the state to violations of human rights perpetrated by state actors. Although a human rights commission is an institution set up by the state and funded by the state, it is supposed to possess autonomy from the state so as to enable it to investigate the conduct of the state. The commission should therefore have the power to monitor and scrutinize the state's performance in terms of human rights criteria and develop the capacity to challenge state actions when the situation so warrants.

Like any institution, including the judiciary, the efficacy of a human rights commission will depend to a large extent on those persons who sit on the commission and the quality and capacity of its staff. A recent Human Rights Watch survey of the commissions in Africa illustrates the impact that

personalities can have.³⁸ An ability to creatively interpret its mandate and a dynamic approach to its work are vital if a commission is to emerge as an effective institution in advancing human rights. However, like any institution, its relations with other actors will also determine how effective it will become. A closer partnership with human rights organizations is likely to boost its overall capacity. Human rights organizations can be used by commissions for a variety of purposes: to provide training to their staff; to undertake investigations; to conduct field surveys; to assist in public hearings; to help formulate policy and legislation; to network; and to assist in monitoring and documentation. A willingness to forge creative alliances with human rights organizations will therefore be a strong indicator of the overall impact the commission has. Human rights organizations, for their part, will need to interact closely with commissions and monitor their performance.

While the powers of national human rights commissions in different countries vary, there seems to be a 'core' concept emerging. One possible consequence of this 'globalization' of human rights commissions is the cross-fertilization of ideas and jurisprudence that may take place. Like courts, commissions will hopefully borrow from one another's jurisprudence and ideas. In the case of courts, they have increasingly started to use international norms in interpreting constitutions and legislation and in developing common law. There is at the moment a global dialogue taking place among the different courts of the world. This is happening through face-to-face interactions which judges are now increasingly having with each other. It is also happening through the increased citation of foreign jurisprudence, especially in the area of human rights.

International norms and influences have contributed strongly to the emergence of national institutions in different parts of the world and it is not too much to expect these institutions to borrow not only from each other's work but also from international human rights law and practice. This process of cross-fertilization and internationalization has the power to strengthen the work of all human rights commissions. It can open many new avenues of activity but more importantly it can strengthen the work of commissions where they are under threat from oppressive regimes. The integration of national institutions into regional and global networks will provide ways of internationalizing their work and provide some measure of protection from 'unfriendly' political regimes. The Asia-Pacific Forum, discussed below, provides an important example of a regional network.

This process of interaction and cross-fertilization becomes more important in an area like internal displacement where the experiences of domestic human rights commissions are few. International norms and practices and the few experiences of commissions that have worked with displaced persons can provide a source of inspiration and prove instructive to those commissions embarking on this area for the first time.

³⁸ See Human Rights Watch, 'Protectors or Pretenders,' sections on Ghana at pp. 39-41, 63-65 and 154-167.

Human rights commissions possess two distinct advantages. First, they have the potential, although not necessarily the capacity, to engage in a wide range of activities to protect a wide range of human rights. They can move beyond litigation and address a range of strategies that include monitoring, budget analysis, public inquiries, public education and engagement with state entities. They are not simply 'complaints oriented' entities like courts, and can engage in a number of initiatives on their own. In some cases the mandates of the commissions may be restrictive, but in most cases the mandates of the modern human rights commissions are broad. Even where the formal legal mandate is narrow, a determined and creative commission could interpret the mandate in a way that would enable it to pursue multiple strategies.

When they are located within a democratic framework, they have distinct advantages. Even in less supportive environments, human rights commissions can access information and documents that NGOs may not easily be able to obtain. Their position as a government entity allows them to engage with government officials more closely than NGOs would be able to do and to demand standards of accountability with more authority than NGOs. Their reports and recommendations are also likely to have a stronger impact within government than NGO reports. Their location within government also helps them to interact with other institutions and organizations such as gender commissions, ombudspersons, employers' organizations and chambers of commerce, and to coordinate their activities with the work of these institutions and organizations.

It is a combination of these factors which gives the human rights commission a unique place in society. They are part of government, yet they can criticize government and engage with government as a 'credible outsider.' National institutions combine the advantages of an 'official' entity, with the creativity and imagination of a non-governmental organization. Their 'semi official status' allows them to interact with government departments and state agencies closely, while the flexibility of the strategies they can potentially pursue makes them dynamic and proactive institutional players.

There is an additional factor that makes these commissions potentially exciting institutions. As noted earlier, state failure to protect human rights is sometimes related to a lack of capacity within state structures. It is in the areas of building a human rights capacity and enhancing sensitivity within governmental structures that human rights commissions can play an important role. Because of their public profile, their relationships with government and their ability to attract resources, they are able to make a contribution here, an idea examined in greater detail in the next section.

Of course, any discussion of the potential of national human rights commissions must also look at actual practice. Experience with the 'modern' human rights commission over the past ten years has often been disappointing. Some governments have set up human rights commissions more as a means to boost their international credibility than as a genuine effort to enhance human rights protection

domestically. Few commissions have been able to transcend this 'original intent' and evolve into dynamic and proactive institutions. Many commissions have had to function in political contexts in which the commitment to human rights is poor and the governments are sensitive to any criticism of their record. In some countries, commissions have been constrained by narrow mandates and precluded from examining sensitive areas of governmental action.

Other problems have also arisen. The creation of human rights commissions has generated great expectations on the part of the local human rights community. Because of their potential, at a theoretical level at least, the domestic human rights community has come to expect a lot from these institutions, which in most cases has not materialized.

At the same time, some commissions have taken effective steps, including, as in the case of Sri Lanka's Commission, innovatively extending its work to encompass internally displaced persons. Of course, there will need to be a compelling domestic reason for human rights commissions to address the rights and concerns of IDPs. In those societies where there are large populations of IDPs, this compelling reason exists. Surely human rights commissions should determine their priorities according to the existing human rights situation. Where the rights of large numbers of IDPs are under threat this clearly warrants priority attention from the human rights commission. Where the human rights context requires it and where NGO advocacy around the issue is strong, there will be pressure for the human rights commission to channel some of its existing resources into dealing with IDPs. There will also be pressure to look at ways of strengthening its capacity to respond to IDPs.

Economic and Social Rights

Internal displacement sharply exposes the false distinctions that are sometimes drawn between civil and political rights on the one hand and economic and social rights on the other. For many people in the developing world, rights violations are experienced not as a single type of violation but as clusters of violations straddling the major human rights categories. This is best borne out by the plight of internally displaced persons in Sri Lanka. As noted above, IDPs in Sri Lanka suffer a range of violations, including violations of their civil and political rights as well as violations of their economic, social and cultural rights. There are similar stories from other parts of the world where rights violations are experienced not as a single violation but as multiple violations encompassing the major categories of human rights.

In 1998 the UN Committee on Economic, Social and Cultural Rights adopted a General Comment on the role of national human rights commissions in the protection of economic and social rights that has

great relevance to those cases where commissions work with the internally displaced.³⁹ The Committee observed that Article 2(1) of the Covenant on Economic, Social and Cultural Rights required each state party to take steps with a view to achieving progressively the full realization of the rights in the Covenant by all appropriate means. One way through which important steps could be taken was the work of national institutions for the promotion and protection of human rights.⁴⁰

The Committee noted that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Therefore it was essential that full attention be given to economic and social rights in all the relevant activities of these institutions. The Committee then went on to list activities that national institutions could perform in relation to economic and social rights, all of which could have relevance for internally displaced persons:

1. The promotion of educational information programs designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labor movement.
2. The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights.
3. Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the request of public authorities and/or other appropriate agencies.
4. The identification of national level benchmarks against which the realization of Covenant obligations can be measured.
5. Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realized, either within the state as a whole or in part, or in relation to communities of particular vulnerability.
6. Monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to the public authorities and civil society.

³⁹ The role of national human rights institutions in the protection of economic, social and cultural rights, General Comment No. 10 of the Committee on Economic, Social and Cultural Rights, E/C.12/1998/25, adopted by the Committee at the 51st meeting (nineteenth session) in December 1998.

⁴⁰ See also Mario Gomez, 'Social Economic Rights and Human Rights Commissions,' (1995) 17 *Human Rights Quarterly* 155-169, and Mario Gomez, 'Delivering Economic Rights Through Courts and Commissions' (forthcoming).

7. Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the state.

To this list provided by the Committee may be added the following:

8. Monitoring government policy and budgets with a view to assessing their compliance with economic and social rights.
9. Issuing 'comments' (as the International Committee on Economic, Social and Cultural Rights does) on economic and social rights that will help develop a fuller understanding of these rights.
10. Submission of reports where the state is reporting under the International Covenant on Economic, Social and Cultural Rights, or under any other international treaty which has socio-economic dimensions.⁴¹
11. Conducting joint campaigns with national human rights commissions from other countries on themes of common interest.
12. Developing national plans of action for the promotion and protection of human rights.
13. Conducting public inquiries in cases where there is evidence to suggest a gross violation of human rights, or in cases of systemic violations.
14. Initiating litigation or intervening in ongoing litigation.
15. Monitoring judicial decisions as in the South African case of *Grootboom* where the national human rights commission was asked to monitor a decision about the right to access to adequate housing.⁴²

Building Human Rights Capacities

Human rights commissions are part of a larger global trend of 'institution building.' Globally, a variety of institutions have been set up to advance human rights and democracy. Human rights commissions, truth commissions, ombudspersons, women's commissions, election commissions,

⁴¹ The Equal Opportunities Commission (EOC) of Hong Kong submitted a 'shadow report' to the CEDAW Committee when Hong Kong's report was being considered by that Committee.

⁴² *Republic of South Africa v Grootboom*, Judgement of the Constitutional Court, 4th October 2000, reported in 2001 (1) SA 46 (CC). Here the Constitutional Court of South Africa requested the Human Rights Commission of South Africa to monitor a decision in respect of the right to have access to adequate housing. The Human Rights Commission was an intervener in that case. The High Court decision in the same case is reported as *Grootboom v Oostenberg Municipality* [2000] 3 Butterworths Constitutional Law Reports 277.

commissions to deal with corruption and entities dealing with the rights of children and the application of humanitarian law are part of this larger global trend. In one sense this process of global institution building is an attempt to occupy some of the space that courts have occupied. In many countries, although not in all, courts have occupied a peculiar space between state and civil society. While courts are part of the state, and are funded by the state, they must possess a capacity to investigate the state and confront the state when the occasion demands. This process of global institution building has been at least partly an attempt to create 'court like' institutions, but without many of the procedures and trappings that constrain courts. This process of global institution building has attempted to create independent and autonomous institutions with a procedural flexibility that will enable them to pursue multiple strategies in their methods of work.

In the case of human rights commissions, these institutions have drawn inspiration from NGOs in developing their methods of work. The ideal human rights commission would be an entity that is on a solid legal foundation, financially secure, independent of government and possessing a capacity to engage in strategies that NGOs frequently use.

Their location inside the government, yet independent of the government, places them in a position to help develop human rights capacities within the government. These capacity building initiatives could include structured training programs using academics and human rights activists and also informal and 'soft' engagements with government institutions on a regular basis. Human rights commissions are also well placed to distribute easily accessible human rights materials in a language which state employees understand. Their location within government gives them a reach that few other organizations have. However, as our experience with the Sri Lankan Commission shows, they first need to develop their own capacity, and in the short term this can best occur through productive alliances with NGOs and academic institutions.

National Human Rights Commissions and Internal Displacement

A recent report of an International Colloquy on the Guiding Principles on Internal Displacement noted that internal displacement was often a critical aspect of the human rights situations that fall within the mandates of human rights commissions and should be an essential part of their work. The report went on to state:

Considerable scope exists for making use of the Guiding Principles in the four areas of work typical to national commissions: investigating individual complaints; monitoring government compliance with treaty obligations; providing advice to government officials and legislators on draft legislation; and engaging in raising awareness and human rights education, especially among national and local

*authorities, the police and the military. Two general strategies were proposed for facilitating the inclusion of the Guiding Principles into these four areas, notably, mainstreaming the Guiding Principles into the work of national commissions, especially at the field level; and promoting their use in policy formulation and advocacy work, for example through their inclusion in draft laws and in dialogue with governments.*⁴³

The experience of the Sri Lankan Human Rights Commission with internally displaced persons raises several questions for human rights commissions worldwide. Do these commissions possess the potential to begin looking at the rights of IDPs in a sustained and systematic way? What comparative advantage do they have over other institutions? What particular acts may they best perform? If they do exhibit this potential how best may the human rights and humanitarian communities help to unleash this potential?

Their location within the state, their status as national institutions and their procedural flexibility suggests that they do have the potential to make a difference in the lives of internally displaced persons. Their comparative advantage lies in their location within government and the access this gives them to a wide range of actors who are either involved in the conflict or in providing relief and assistance to the displaced. It also comes from their ability to engage in a wide range of intervention strategies, both on their own and in combination with other actors. It comes from the support they can draw from other institutions worldwide and the regional networks of national institutions that are slowly beginning to emerge. The resources that human rights commissions are increasingly beginning to attract from donors gives them another strong advantage. Their stature as national institutions and the impact of their findings give them added strength.

Their location within government gives them the opportunity to use both strategies of shame and strategies of negotiation to advance the rights of the displaced. Their status as a national institution enables them to critique government policy and to go public with their findings. Their public pronouncements are likely to have more of an impact than the pronouncements of NGOs. Public criticism can change policy and actions as human rights groups well know, having frequently relied on the power of shame to change state behavior. Human rights commissions because of their status as national institutions also have the potential to negotiate and engage with both governmental and non-governmental actors to ensure that the rights of the displaced are respected.

⁴³ 'Report of the International Colloquy on the Guiding Principles on Internal Displacement,' Vienna, 21-23 September 2000 (Brookings Institution Project on Internal Displacement), p. 26.

With regard to internal displacement, there are a number of activities that human rights commissions are well positioned to do:

- Monitor access to the displaced and their ability to receive basic supplies such as food and medicine.
- Visit camps and other places where the displaced are located to obtain accurate assessments of the conditions under which they live.
- Conduct broader field surveys on a periodic basis, which would include gathering information on how the displaced populations are interacting with the local population, the state of basic services in those areas etc.
- Receive complaints and mediate or adjudicate them.
- Go to court where necessary to enforce recommendations, especially where the commission makes a finding that rights have been violated.
- Engage with the military to ensure that the civilian populations are spared the consequences of the conflict and that military imperatives do not prevent assistance from reaching IDPs.
- Engage with non-state actors where this is possible to minimize the consequences of the conflict on civilians. In some contexts, however, NGOs may have more credibility than commissions with non-state actors, especially where the commission is closely aligned with the government, or such a perception exists.
- Assist policymakers in framing policy that takes into account the rights and needs of the displaced.
- Develop legislation beneficial to the displaced, based on the Guiding Principles on Internal Displacement.
- Engage with the relevant government institutions responsible for providing assistance and protection to the displaced.
- Provide a conduit for displaced populations and humanitarian organizations to dialogue with governments and state institutions.

- Begin to develop a human rights capacity within state institutions, especially a capacity to respond to IDP rights and a sensitivity to their needs.
- Engage with multilateral donors such as the World Bank and the regional development banks to ensure that resources are channeled to the displaced.
- Undertake educational activities, especially for state institutions and the military, based on the standards contained in the Guiding Principles.

In order to undertake these activities, capacity will have to be developed, especially since commission staff may be unaware of the problems of IDPs and lack the skills to respond effectively. Capacity building should involve both domestic and international human rights and humanitarian organizations. It should include an exposure to the Guiding Principles on Internal Displacement, an exposure to the phenomenon of displacement, including its history as well as actual conditions in the country or countries concerned, and an analysis of strategies of intervention from different parts of the world.

Once capacity is developed, priorities will have to be set. While the list above presents a potential range of activities human rights commissions could undertake, it would be unrealistic to expect human rights commissions to carry out *all* of those activities from the outset. No doubt the particularities of each country will shape the priorities.

The location of human rights commissions within government should enable them to perform certain functions better than others. For example, their location positions them to initiate inquiries and studies into the conditions of the displaced and the rights violations experienced by them. This can take broadly two forms. The human rights commission could invite NGOs, university-affiliated centers, students or other independent consultants to undertake studies and submit recommendations. This would be similar to what the Sri Lankan Commission did in relation to IDPs. Alternatively, it could conduct hearings and invite IDPs, humanitarian groups and human rights groups to make representations at these hearings. The second type of inquiry is clearly more effective as it would enable the commission to gain a first hand account of the situation of the IDPs. It is also likely to generate recommendations that could have a durable impact. Hearings of this nature also enhance the credibility of the human rights commission and provide for opportunities for raising awareness to IDP rights. Public inquiries of this nature would benefit from media coverage and it would be

important for the human rights commission to forge links with the media before it commences an inquiry of this nature.⁴⁴

Commissions could also inquire into and resolve complaints brought by IDPs or groups on behalf of IDPs without having to expand existing resources substantially. This could be facilitated by having a regional or local office in close proximity to large populations of IDPs. When a commission holds public hearings, these are also likely to result in more complaints being made, especially where the commission shows a willingness to begin to address these claims. Taking unresolved complaints to court would be another function that the human rights commission could carry out without having to stretch existing resources too much.

The Sri Lankan Commission's study identified the lack of a coherent government policy on displacement as a major gap. Human rights commissions are well placed, using existing capacities, to promote the development of a coherent government policy on displacement and facilitate regular interaction amongst the different entities involved in humanitarian and relief operations. The Sri Lankan study also observed that modifying the national security laws so that they comply with international human rights norms was a task that the commission could undertake almost immediately, again without too many demands on existing resources.

In some contexts, its stature as a 'national institution' will enable human rights commissions to engage with the parties to the conflict: the state and the non-state actor or actors. This will depend to a large degree on the public credibility and stature of the commissioners. In the case of non-state actors, it will depend on whether the human rights commission is perceived as being independent or too close to the government. A perception of independence is likely to enhance its capacity to engage with the non-state actor. This engagement could take a variety of forms but will, in the main, be aimed at ensuring that the civilian population caught in the conflict has access to food, medicine, shelter and education, at the very minimum. It will also be directed towards ensuring that basic protection is provided and that civilians are spared the worst effects of the conflict.

In those countries where internal displacement is largely the result of development projects (as is often the case in Asia), human rights commissions could potentially engage with donors, multilateral or bilateral, to minimize the impact of projects on civilian populations and consider alternatives. Commission engagement will be aimed mainly at looking at alternatives, adequate compensation or minimizing the impact of the displacement.

⁴⁴ A few years ago the South African Human Rights Commission, in collaboration with the Commission for Gender Equality and a coalition of South African NGOs, held public hearings in 10 locations in South Africa on the obstacles to eradicating poverty, see Gomez, 'Delivering Economic Rights Through Courts and Commissions' (*forthcoming*).

At the normative level, the Guiding Principles on Internal Displacement should provide the framework to guide commissions in their actions. They constitute a valuable benchmark when commissions investigate complaints, government actions or acts of non-state actors. They also provide a benchmark when national human rights commissions seek to amend existing law or policy or introduce new law and policy. The educational and awareness raising work of commissions would be enhanced by integrating the Guiding Principles into their work.

One innovative regional initiative being undertaken to achieve the integration of internal displacement and the Guiding Principles into the work of national human rights commissions has been launched by the Asia Pacific Forum of National Human Rights Institutions. Composed of eight national commissions from Australia, Fiji, India, Indonesia, Nepal, New Zealand, the Philippines and Sri Lanka, the Forum, at its fifth annual meeting in August 2000, expressed support for a greater role for national commissions with the human rights concerns of the internally displaced. Indeed, it was in part this encouragement that led the Sri Lankan Commission to study the role it could play with IDPs. In September 2001 at the sixth annual meeting of the Asia Pacific Forum held in Sri Lanka, Forum members discussed the relevance of the Guiding Principles to their work and commended the Sri Lankan Commission for its study on IDPs. In their concluding statement, Forum members welcomed the opportunity to share their experiences on the internal displacement issue and requested the secretariat of the Forum to seek funds for national institutions that request assistance for their work on this issue.

The Forum could build on its actions to date by developing a specific program of support for those human rights commissions that are interested in looking at internal displacement. The program of support should ideally entail the provision of financial, human and technical resources with a view to building capacity in those commissions beginning to move into the area. For example, the Forum could help develop model laws and policies on internal displacement for commissions to promote. The Forum could also act as a conduit between its member commissions and the Office of the High Commissioner for Human Rights, where further technical and human resource support may be available. Where development-induced displacement is the concern, the Forum could provide specific support to local commissions to negotiate with the multilateral or bilateral donors supporting the 'displacement causing' project to ensure that standards are met.

Conclusion

A recent study on national human rights institutions pointed out that:

*A central rationale for national human rights institutions is that they provide an accessible, no-cost means of redress for the most vulnerable sections of society, who will have particular difficulty gaining access to conventional legal means of resolving their problems.*⁴⁵

Internally displaced persons clearly count among society's most vulnerable groups. Many studies, including those by the UN Secretary-General's Representative, have concluded that displacement affects people's lives profoundly. It jeopardizes their physical security and affects their potential for physical and emotional growth. Displacement affects in important ways the quality of education, health care, housing and water to which the displaced have access. Family and community life are often destroyed. Indeed, the vulnerability that ensues has made the displaced more prone to arrests, abductions, and disappearances. It has made displaced women more prone to rape and gender-related violence. In many cases, the national and ethnic identity of the displaced has been challenged, with some even arguing that their identity as a people is at risk. Little opportunity exists for cultural activity. Their capacity and ability to work has been affected. Often, they have little capacity and little opportunity for influencing the major actors in conflicts which profoundly shape their lives. And at a different but also important level, their ability to participate in and influence the political process may be restricted. In effect, a broad range of rights: civil, political, economic, social and cultural are infringed upon.

Yet despite the fact that displacement is a major human rights concern in many regions of the world, globally, few national commissions have sought to address the plight of the internally displaced.

Of course, one could question whether national human rights commissions will prove effective with internally displaced persons. Their overall performance to date has often left a good deal to be desired. While a few have made an impact, studies show that most have not realized a fraction of their potential. At a theoretical level they remain very exciting institutions. At a practical level they have a long way to go. Yet the few success stories do raise the possibility that commissions can emerge as effective institutions over a period of time with the support of the domestic and international human rights community. Our brief experience suggests that there are some things that commissions can do better than others and that commissions would do well to focus on these activities.

Our experience with human rights commissions over the past decade also suggests that in this area of institutional reform one can never predict outcomes. While governments may have been motivated by their own political agendas in setting up these institutions, the institutions have the potential to take on a life of their own depending on the social and political contexts, the personalities and staff that direct the institutions and the type of engagement that civil society actors have with these institutions.

As a recent Human Rights Watch study notes in relation to the commissions in Africa:

*As this report demonstrates, Africa's national human rights commissions are a mixed bag. Given the needs of their societies, to date the performance of most has been disappointing.... Despite this, the activities of the more promising commissions are proof that these state bodies have the potential to contribute positively to strengthening a human rights culture and obtaining greater protection against abuses.*⁴⁶

For the human rights activist it does mean that it may become possible to 'capture' these institutions and shape their activities in such a way that they may have a positive impact on the overall human rights culture. This would depend on a number of factors: the domestic political and social context, international pressures, the personalities who lead these institutions, the quality of the staff they direct, and the imagination and persistence of the activists. While governments may be motivated by extraneous factors and their own agendas in setting up these institutions – this does not preclude human rights activists from using them in ways that can have a positive impact on the human rights culture of a country.

As the Sri Lankan experience shows, national human rights commissions provide one way of responding to the concerns of internally displaced persons. Their location within government, their stature as a national institution, and the flexibility of the strategies they can potentially pursue, give them the possibility to make a difference in situations of internal displacement. As we have seen, their location within government enables them to interact with government entities on a variety of human rights themes in a way that few other institutions can do. Their status as a national institution positions them well to conduct inquiries into systematic violations and to publish reports and recommendations with regard to the displaced. These reports and recommendations have the potential to have impact, if the inquiries have been conducted transparently and in consultation with local constituencies. Their location also enables them to begin to build human rights capacity and sensitivity within government institutions, including government ministries and departments. This is

⁴⁵ International Council on Human Rights Policy, 'Performance & Legitimacy,' p. 87.

⁴⁶ Human Rights Watch, 'Protectors or Pretenders,' pp. 4-5.

essential to the commissions' ability to act effectively. Indeed, the creation of human rights commissions has generated expectations on the part of domestic human rights movements. Yet, most commissions lack the resources and capacity to respond to even half of what local activists expect of them. At the same time, in many societies, these institutions have not exploited their position to do what might be reasonably expected of them even within their limited capacities.

In the area of internal displacement, human rights commissions usefully could begin by integrating internal displacement into government policy and legal frameworks, conducting inquiries into serious violations of the rights of the displaced and by publishing reports and recommendations. For national human rights commissions, the challenge will be to generate the capacity within the institution to perform these tasks. If the commissions are willing to work with NGOs, local professional associations, the business sector and academics, it will be possible to generate this capacity. The commissions will then be able to move into the various activities identified by this paper. It is to be hoped that commissions will show the vision and leadership to do this.

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