

Conflict-Related Internal Displacement in Sri Lanka:

**A study on Forced Displacement, Freedom of
Movement, Return and Relocation**

April 2006 – April 2007

and

Addendum covering April – July 2007

The Inter-Agency Standing Committee (IASC)

Established in June 1992 in response to United Nations General Assembly Resolution 46/182 on the strengthening of humanitarian assistance, the Inter-Agency Standing Committee (IASC) is an inter-agency forum for coordination, policy development and decision-making. The IASC consists of 8 agencies as full member (OCHA, UNHCR, UNICEF, WFP, UNDP, UNFPA, FAO, WHO) and an extensive number of standing invitees including UN agencies (OHCHR, Office of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons), international organizations and NGO consortia (ICRC, IFRC, IOM, ICVA, InterAction, SCHR) and the WorldBank.

Under the leadership of the Emergency Relief Coordinator, the IASC develops humanitarian policies, agrees on a clear division of responsibility for the various aspects of humanitarian assistance, identifies and addresses gaps in response, and advocates for effective application of humanitarian principles.

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This study was commissioned by the IASC and prepared by a Taskforce comprised of members and invitees of the IASC Sri Lanka complemented by a number of civil society groups. The paper was adopted and is presented by the IASC in Sri Lanka, July 2007.

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1. Executive Summary

1.1 Introduction

As the conflict in Sri Lanka has escalated over the past year, there has been increasing concern about the rights and safety of civilian populations, including internally displaced persons (IDPs).¹ In response to this concern the IASC commissioned a report to analyse how certain rights of IDPs – the right to be protected against forced displacement, the right to freedom of movement, and the right to be protected against forced return and forced relocation - have been affected over the past year. In particular the report is intended to assist the Government of Sri Lanka – as the primary duty bearer – as well as other parties to the conflict, in adhering to internationally accepted protection standards. The report makes specific recommendations for the consideration of the Government of Sri Lanka, the LTTE, the international community and humanitarian agencies to improve the overall protection environment for IDPs.

The report was written using case studies gathered and verified by UN agencies and NGOs working in the field and it analyses how the actions of all parties to the conflict have affected population movements and displacement. In some cases, IDPs have fled their homes following warnings of imminent attacks; in other cases they have been prevented from seeking safety in other parts of the country. IDPs have been caught in the midst of hostilities and prevented by parties to the conflict from leaving displacement sites where they feel unsafe. In addition, there have been documented incidents where IDPs have been forced to either return to their places of origin, or relocate to alternative sites, against their will. IDPs' freedom of movement, like that of all civilians, has been curtailed by closure of the Forward Defence Lines (FDLs), road closures, security checks, curfews and travel restrictions.

The report initially covered the period of April 2006 to April 2007. In order to update the information because of delays in issuing the report and in order to reflect significant changes in Government policy towards the return process, an addendum covering the period April to July 2007 has been added to the report.

1.2 International Legal Framework

IDPs share the same rights and freedoms as other people in their country. In times of armed conflict, both international humanitarian law (IHL) and human rights law apply, and both bodies of law must be consulted. While not a binding instrument *per se*, the *Guiding Principles on Internal Displacement* reflect and are consistent with both human rights law and IHL. As such, they are an essential reference for all actors working with internally displaced persons.

IDPs enjoy fundamental rights to freedom of movement and freedom to choose their place of residence. International humanitarian law strictly prohibits the forced displacement of civilian populations during a conflict, unless it is necessary either to safeguard their security or for imperative military reasons. The *Guiding Principles* also stipulate that civilians should be protected from arbitrary displacement from their homes in situations of armed conflict, except where there are compelling security or military reasons.

IDPs enjoy the right to seek safety in other parts of the country. As civilians, they are entitled to protection under international humanitarian law at all times, so long as they do not directly participate in hostilities. This includes protection from direct attack, from the effects of

¹ An internally displaced person (IDP) is one who has "been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border." *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2/Annex, introductory para. 2 ("*Guiding Principles*").

indiscriminate attack, and from use as “human shields” to insulate military objectives or geographic areas from attack.

IDPs also have a right to voluntary return, in safety and dignity, to their original places of residence, and it is the responsibility of the competent authorities to establish the conditions, and provide the means to enable such voluntary return. Under no circumstances may return be forced. In limited circumstances a party may have reasons to evacuate or resettle IDPs from an existing location, although it is never legitimate to return IDPs to their original communities where risks to health, safety, or security remain.

1.3 National Legal Framework

The fundamental rights to freedom of movement, as well as the freedom to choose one’s place of residence, are safeguarded in the Constitution of Sri Lanka. The right to freedom of movement is not subject to any geographical limitations within Sri Lanka. Nevertheless, these rights can be restricted if such restriction is set forth in law and is in the interest of national security, public order and the protection of public health or morality.

Restrictions on freedom of movement can be invoked under the Public Security Ordinance (PSO), which empowers the President to declare a State of Emergency and adopt Emergency Regulations if s/he believes they are necessary “in the interests of public security and the preservation of public order”. A State of Emergency was declared in Sri Lanka in August 2005 following the assassination of Foreign Minister Lakshman Kadirgamar. Emergency Regulations were brought into force at that time and have been renewed on a monthly basis ever since. Several provisions of the Emergency Regulations allow for restrictions on freedom of movement.

The Supreme Court has ruled that although the Constitution allows for *permissible restrictions* to be imposed on the right to freedom of movement and freedom to choose one’s place of residence they cannot be imposed with the result of *denying these rights*. Moreover, there is no express power in the law relating to public security, including Emergency Regulations, to control *group* freedom of movement, other than imposing curfews and the power to restrict access to areas where essential services are being carried out.

1.4 Definitions and Scope of Report

As indicated above, the present report focuses on three key violations of fundamental rights of civilians by all parties to the conflict, namely incidents of forced displacement, restrictions on freedom of movement, and forced return or relocation.

Consistent with the *Guiding Principles*, forced displacement includes instances where civilians have been forced or obliged to flee their homes due to the effects of hostilities or actions by parties to the conflict, including violations of human rights or international humanitarian law. Incidents have been documented where IDPs have been forced to flee from areas due to warnings of imminent attacks or threats to civilians’ safety issued by parties to the conflict.²

In relation to freedom of movement, the report discusses incidents where IDPs have been prevented from fleeing their place of origin to seek safety elsewhere in the country, as well as incidents where IDPs have been prevented from leaving areas of displacement where their lives and safety are threatened. However, it also considers the more general impact on freedom of movement as a result of the conflict, including the closure of FDLs, curfews and travel restrictions.

The concept of “forced returns” used in this report encompasses all forms of coercion intended to make IDPs return to their place of origin or relocate to alternative sites. Forced return is not

² Incidents of displacement due to the indiscriminate effects of hostilities, while constituting forced displacement, are not generally included in the report due to limitations of space.

limited to the actual use of physical force, but also includes threats to cut food, water, electricity and other essential assistance and services if IDPs fail to return; closing sites where IDPs are sheltering; preventing or deterring humanitarian agencies from providing assistance to IDPs beyond deadlines for return. The reduction, or withdrawal, of assistance and basic services may render living conditions in places of displacement so unacceptable or unsafe that IDPs feel forced to return.

Threats by Government authorities and security forces that they will no longer be responsible for IDPs' safety and security if they fail to return also constitute elements of a forced return. Furthermore, the heavy presence of armed police and security forces at IDP sites prior to and during return movements creates an environment where IDPs are unable to make free and informed choices about whether or not to return.

In addition to these threats, both direct and indirect, incidents have been documented where IDPs have decided to return, based on inaccurate or incomplete information about conditions in their places of origin or in relocation sites. Given the poor conditions in many displacement sites, IDPs have often consented to return, despite very real fears for their safety and security.

1.5 Trends and Analysis

The analysis of the case studies concludes that there has been a marked increase in incidents of forced displacement, restrictions on IDPs' freedom of movement, as well as forced return and relocation, over the past year.

a) Forced Displacement

A key trend over the reporting period has been the displacement of civilians by parties to the conflict. Most commonly, involuntary displacement has followed warnings, often issued by the LTTE, or groups claiming to be affiliated with the LTTE, telling civilians to flee an area due to an imminent attack. Such incidents occurred in Muttur Town, Trincomalee District, in May and September 2006; in Allaipiddy, Jaffna District, in May 2006; and in coastal areas southeast of Jaffna Town in August 2006. Whether such warnings were legitimate attempts to alert civilians of imminent attacks with a view to preventing civilian casualties, or whether they constituted prohibited forced displacement, is often hard to assess.

b) Restrictions on Freedom of Movement

Since the escalation of the hostilities, there have been restrictions by all parties to the conflict which have prevented IDPs from fleeing places of origin, or places of displacement, where they feel unsafe. In August, the Sri Lankan Navy (SLN), tried to prevent IDPs from fleeing Allaipiddy to Jaffna Town. The Sri Lankan Army (SLA) and the SLN also prevented IDPs from fleeing Muttur Town in late September, shortly after the mass returns, by erecting road and sea blockades.

In late 2006, the LTTE also reportedly prevented civilians, both residents and IDPs, from fleeing LTTE controlled parts of Vakarai. Some 31,900³ IDPs, most of them from Trincomalee District, were trapped for several months in LTTE controlled parts of Vakarai DS division between September and December 2006, and prevented from leaving the area by the LTTE, despite very poor humanitarian and security conditions. In one specific incident, 2,000 IDPs were reportedly prevented from fleeing by the LTTE following the shelling of Kathiravelly School by the SLA on 8 November, where over 6,000 IDPs were sheltering. In January 2007, the LTTE reportedly also prevented the first wave of IDPs from leaving LTTE-controlled parts of western Batticaloa District. Furthermore, in February and March 2007, families were prevented from seeking shelter in Madhu Church, Mannar District, despite fearing shelling and forced recruitment by the LTTE in their villages.

³ All statistics in this report are based on figures obtained from the various Government Agents responsible for the District.

c) *Forced Returns and Relocations*

The case studies indicate that there has been an increasing disregard by all parties to the conflict for the rights of IDPs to choose their place of residence and to freedom of movement, and a failure to properly consult with IDPs about where they feel safe and where they wish to stay.

The return of 35,000 Muslims to Muttur Town, Trincomalee District in early September 2006, marked the start of this trend. Although some of these returns were voluntary, others were not. The methods used to coerce IDPs to return included pressure from senior Government and military officials, heavy military presence at IDP sites, the issuance of deadlines beyond which public transport and assistance would no longer be provided, and threats to close down IDP sites and withdraw essential assistance and services. These methods were also used to force Muslim IDPs in Puttalam and Anuradhapura to return at the same time, and again later in September when a second wave of Muslim IDPs fled after a leaflet was distributed warning of imminent LTTE attacks to re-capture Muttur Town.

The same methods were used in September 2006, to persuade Tamil IDPs in Trincomalee Town & Gravets to return to Muttur DS Division. In December 2006, the security forces started to use more aggressive harassment and intimidation to coerce Tamil IDPs to leave. Armed military personnel visited IDP sites in the middle of the night, searched the premises, the IDPs and their belongings and took photographs of them. Despite this, relatively small numbers of Tamil IDPs in Trincomalee Town actually returned or relocated during this period.

Around the same time as IDPs were forced to return to Muttur, pressure was applied on IDPs in Jaffna Town to return to their coastal villages of origin in highly militarized areas southeast of Jaffna Town. The security forces forced the first group of over 5,000 IDPs at two displacement sites to return in September 2006. A second wave of forced returns occurred in October 2006, when the principals of schools and the priests at churches being used as IDP sites told IDPs that they had to leave or face repercussions from the SLA.

In Anuradhapura District, four hundred Sinhalese IDPs from “border villages” who had fled to displacement sites within the district following the bombing of a civilian bus in Kebithigollewa in June 2006, were also forced to return to their villages in September 2006, despite fears for their security in their villages.

In March 2007, an intensification of coercion in return movements, including in some cases the use of physical force, was witnessed in Batticaloa District. In February and March 2007, Government officials and the security forces started returning some 13,000 IDPs from government controlled areas of Batticaloa District to their places of origin in Vakarai (Koralai Pattu North DS division) and Trincomalee District. Although the initial returns to Vakarai were voluntary, nearly all the returns of IDPs to Trincomalee District, and some of the subsequent returns to Vakarai were forced. During all the return movements there was a very heavy presence of Sri Lankan Army (SLA), Special Task Force (STF), and in some cases armed and unarmed TMVP cadres, at IDP sites. Armed police and army personnel accompanied the IDPs on the return convoys, and in one instance a convoy was also accompanied by an armoured STF vehicle. Local officials told IDPs that their assistance would be withdrawn and said that they could no longer be responsible for IDPs’ security if they remained in Batticaloa District. For the first time, there were documented reports of the security forces in the Chenkalady sites using physical force and issuing violent threats to force IDPs to leave.

The LTTE used similar methods to force IDPs to relocate. On 23 March, the LTTE started a campaign to remove IDPs from Madhu Church in Mannar District, where some 8,000 IDPs were sheltering, and move them to other parts of Manthai West DS division and Kilinochchi District. The LTTE organized buses to transport the IDPs and armed LTTE cadres used loudspeakers to issue deadlines to the IDPs to vacate the church, ordering them to leave their belongings behind. IDPs who were reluctant to leave were beaten with wooden sticks by LTTE cadres. By 7 April, there were only 38 families remaining in the church.

In preparation for the returns to Batticaloa West which started in May 2007, UNHCR held a series of consultations with the Minister for Disaster Management and Human Rights, the Minister for Resettlement and other high level Government Officials to improve the resettlement process. These discussions were fruitful and resulted in significant improvements in the resettlement to Vellavelly, Paddipalai and Vavunatheevu in Batticaloa West, and to Verugal in Trincomalee district. In particular, the movements were largely voluntary, the logistical process was much better organized, information notices were distributed to IDPs during the return process, pre-return assessments were undertaken by the UN, return packages were enhanced, Ministry of Resettlement staff were deployed to oversee the process, and security screening was conducted in a more transparent and orderly manner, with the exception of the screening at the Verugal ferry crossing point which was conducted by masked men.

At the same time, the UN continues to work with the Government to strengthen other aspects of the return process including working towards further reducing the military's involvement in the resettlement process, ensuring that low-risk mine certificates are issued prior to return taking place, providing more timely information to the IDPs about the return process to allow them to make a truly informed choice about resettlement, ensuring the continued provision of assistance to those IDPs who do not wish to return, and enhancing the preparation of the resettlement areas particularly with regard to shelter and services before IDPs return. All these measures, including a Government recovery plan for the resettled areas and the implementation of Confidence Building and Stabilization Measures (CBSM) will further ensure the sustainability of these returns.⁴

1.6 Advocacy Interventions and Government Response

The UN and other humanitarian agencies have made a number of advocacy interventions to both the Government and the LTTE on the issues contained in this report.⁵ UNHCR has issued specific policy guidelines on return and relocation which it has shared with the Government, and has sought to engage with the Government on this issue on a number of occasions. In response to the returns from Batticaloa District in March 2007, the Inter-Agency Standing Committee also distributed a leaflet to IDPs in Batticaloa District informing them of their rights to voluntary return in safety and dignity and their right not to be forcibly returned.

The Government of Sri Lanka's main coordination function with regard to IDP issues lies with the Minister of Disaster Management and Human Rights. In early 2006 the Minister for Disaster Management and Human Rights established an IDP coordination forum which meets on a monthly basis and which provides an important mechanism for humanitarian agencies to raise issues, including protection concerns, with the Government. Many of the issues raised in this report have been reported at the IDP Coordination Meetings and the Hon. Minister Mahinda Samarasinghe has endeavoured to find solutions to these issues.

The Consultative Committee on Humanitarian Assistance (CCHA) which includes the Commissioner General of Essential Services, the Secretary to the Ministry of Foreign Affairs and the Secretary of Defense, as well as the UN and a number of key Ambassadors has proven to be a very useful mechanism to raise issues and ensure immediate follow up and commitments by Government. At the same time, it has been observed that there is often a significant time lag between commitments at the CCHA level and implementation of those decisions on the ground.

The increased leadership of the Minister of Resettlement in improving the resettlement process in Eastern Sri Lanka since April 2007 has also allowed for more constructive dialogue on issues relating to the return process and there is continued scope for enhancing the process as well as ensuring the sustainability of the returns and the longer-term development of the resettlement areas.

⁴ See the Addendum to this report for a summary of events from April to July 2007

⁵ See Annex 5 for chronology of advocacy interventions

1.7 Conclusion

The report makes a series of recommendations to the Government of Sri Lanka, the LTTE, humanitarian organizations and the international community for future action. In particular, it calls on both the Government and the LTTE to abide by their obligations under international humanitarian law and to refrain from the forced displacement and forced return of IDPs, and from restricting IDPs' freedom of movement. It calls on all parties to refrain from indiscriminate attacks and deliberate targeting of civilians, which may result in mass forced displacement. It also calls on all parties to respect the strictly civilian and humanitarian character of IDP camps and settlements and to refrain from positioning armed military personnel in and around IDP sites.

Further recommendations are made to the Government on the establishment of conditions for voluntary and sustainable return in safety and dignity. Means of ensuring that IDPs can make free and informed decisions should be established, including objective information campaigns and "Go and See Visits". It is also recommended that IDPs are provided with effective return packages, including shelter and livelihood assistance.

As discussed in the report, the incidents documented indicate a trend for the disregard for the rights of IDPs, but also contravene fundamental principles of international humanitarian and human rights law. In addition, the report illustrates some of the challenges faced by the UN and other agencies working with IDPs in the North and East of Sri Lanka. Indeed, whilst interventions and advocacy efforts have been made with all parties, and some improvements have been noted over the past three months particularly with regard to the resettlement process in the East, further strengthening of the protection environment for displaced men, women and children in Sri Lanka is required.

The aim of this report is not only to document forced movements over the past year. As the report highlights, some 300,000 people have been internally displaced since the resurgence of the conflict in April 2006. A sustainable, durable solution must be found for these civilians, but one which respects their fundamental rights, including the right to be fully involved, and the right to make a free and informed decision. Within this context it is hoped that the recommendations will shape future action and ensure that the rights of those affected and displaced by the conflict are respected and upheld at all times.

2. Recommendations

a) To All Parties to the Conflict:

- Take all necessary measures to ensure that civilians are not forcibly displaced during the conflict, unless to safeguard their security or for imperative military reasons, as defined under international humanitarian law.
- Comply with all obligations under international humanitarian law. In particular refrain from putting civilians in harm's way by positioning military installations in populated areas, engaging in indiscriminate shelling and attacks, or deliberately targeting civilians in the course of the conflict.
- Respect the civilian and humanitarian character of IDP settlements.
- Where displacement/ evacuation during a conflict is unavoidable, ensure that it is carried out in conditions of safety and family members are not separated. Civilians should, where possible, be given advance notice and relocation should take place during reasonable hours of day. Evacuation should only continue as long as conditions require, and the basic needs of relocated civilians must be met.
- Ensure that IDPs are able to make free and fully informed decisions about return or relocation and can return voluntarily, in safety and dignity.
- Protect IDPs from forced return to areas where their life, safety, liberty and/ or health would be at risk.
- Consult fully with IDPs prior to any return or relocation movement to ascertain their views and concerns and to ensure that return is voluntary.
- Respect and uphold IDPs' rights to freedom of movement, in particular their rights to flee places where their lives or safety are in danger and to seek safety in other parts of the country.

b) To the Government of Sri Lanka:

- Comply with its obligations under international human rights law, in particular relating to freedom of movement, freedom to choose place of residence and voluntary return in safety and dignity.
- Uphold the fundamental right of all citizens to freedom of movement, as articulated in the Constitution of Sri Lanka. Ensure that emergency measures under the Public Security Ordinance are only applied on an individual, case-by-case basis and introduce tests of proportionality, necessity and reasonableness to ensure that measures taken to secure public security and public order do not deny civilians their fundamental rights to freedom of movement and freedom to choose place of residence.
- Ensure that all administrative measures imposing restrictions upon fundamental rights are subject to judicial review.
- Prevent armed groups from entering in or operating around IDPs settlements and from harassing, physically assaulting, abducting and forcibly recruiting IDPs, including minors, and threatening NGOs working in IDP sites. Ensure that those forcibly recruited by armed groups, including underage recruits, are released.
- Strengthen the capacity of the National Human Rights Commission to serve as a redress mechanism where IDPs can bring grievances about infringements of their freedom of movement and to investigate such grievances.
- Articulate and disseminate a clear and equitable policy on return packages and ensure that it is implemented in a prompt and transparent manner. Assist in the restitution of

property and possessions of returnees, or provide appropriate forms of compensation or other forms of reparation, where IDPs so choose.

- Organize information campaigns in displacement sites to provide IDPs with information about conditions in places of return. This should include regular “Go and See Visits” to areas of origin once the security situation is deemed to be safe and basic infrastructure is in place to enable IDPs to visit their homes and help them reach decisions about return.
- Respect IDPs’ decision not to return or relocate if they fear for their safety and continue to provide adequate food, shelter, assistance and security in places of displacement.
- Allow UN agencies and NGOs free and unhindered access to monitor displacement sites and return areas and provide assistance and protection as necessary
- Make necessary preparations to ensure that areas of return are safe, these include clearance of all mines and UXO; ensuring that return sites are not near military installations, high security zones, or areas of current or future shelling and fighting; or areas where armed groups are active. Take steps to prevent armed groups from operating in areas of return.
- Make necessary preparations to ensure that basic infrastructure is in place to ensure a sustainable and dignified return. This includes provision/ restoration of basic shelter and housing reconstruction, food, water and sanitation, medical services, education facilities, public transport, places of worship and civil administration offices and access to viable livelihood activities.
- Assist IDPs and returnees to replace lost personal identity documents which would facilitate their freedom of movement and provide them greater protection.
- Ensure that security measures implemented under the State of Emergency, such as closure of the FDLs, road closures, curfews, security force registrations, “IDP cards”, security checks and travel restrictions, do not deny IDPs’ fundamental rights to freedom of movement or their rights to flee areas where their lives or safety are in danger.
- Implement the Guidelines on Confidence Building and Stabilization Measures (CBSM) adopted by the Interministerial Committee on Human Rights in October 2006.
- Continue to implement the decisions of the Consultative Committee on Humanitarian Assistance (CCHA) in a timely and effective manner on the ground.

c) To the LTTE:

- Allow civilians freedom of movement, including allowing them to leave areas under LTTE control without restrictions. Abolish the pass system which restricts civilians’ freedom of movement out of LTTE controlled areas.
- Do not hold IDPs in harm’s way by preventing them from leaving a place where their lives, safety and liberty is at risk.
- Refrain from forcible recruitment, including underage recruitment, of civilians including IDPs. Release all individuals forcibly recruited, including all individuals who were under 18 years of age at the time of recruitment.
- Refrain from positioning political and military personnel in and around IDP sites and from allowing armed cadres to enter IDP settlements, including to encourage return.
- Do not use threats of withdrawal, or actual withdrawal, of essential assistance, shelter, services and protection, as a means to encourage return or relocation to places where IDPs would be at risk.
- Respect IDPs’ decision not to return or relocate if they fear for their safety and continue to provide adequate food, shelter, assistance and security in places of displacement.

- Facilitate free and unhindered access for UN agencies and INGOs to displacement sites and areas of return to monitor and provide assistance and protection as necessary
- Provide UN agencies and INGOs with detailed prior information regarding plans for the return, relocation or movement of IDPs.

d) To the International Community:

- Initiate bilateral interventions when violations of IDPs' freedom of movement and incidents of forced returns occur.
- Consider Government's respect for international human rights and humanitarian law, in particular in regards to IDPs' rights to freedom of movement, freedom to choose place of residence, and their right not to be forcibly returned when making policy decisions about bi- and multilateral cooperation.

e) To Humanitarian Agencies (UN agencies and NGOs):

- Issue information leaflets regarding rights to freedom of movement, freedom to choose place of residence and voluntary return to all IDPs
- Maintain protection through presence in IDP sites and continue to monitor and observe incidents of forced return and restrictions on IDPs' freedom of movement
- Continue to monitor and observe conditions in areas of return and provide assistance and protection as required
- Adopt a joint UN/NGO approach to monitoring, reporting, collation and dissemination of information
- Report all cases of restrictions of freedom of movement, forcible displacement and forced returns and relocations to UNHCR
- Inform the international community when violations of IDPs' rights occur and urge it to make prompt public and bilateral interventions
- Inform the international community when humanitarian agencies are denied access to IDPs.

f) To UNHCR:

- Raise all incidents of forced displacement, forced return and restrictions on IDPs' freedom of movement with the relevant local and central Government authorities, police and military and follow up as necessary.

3. Introduction

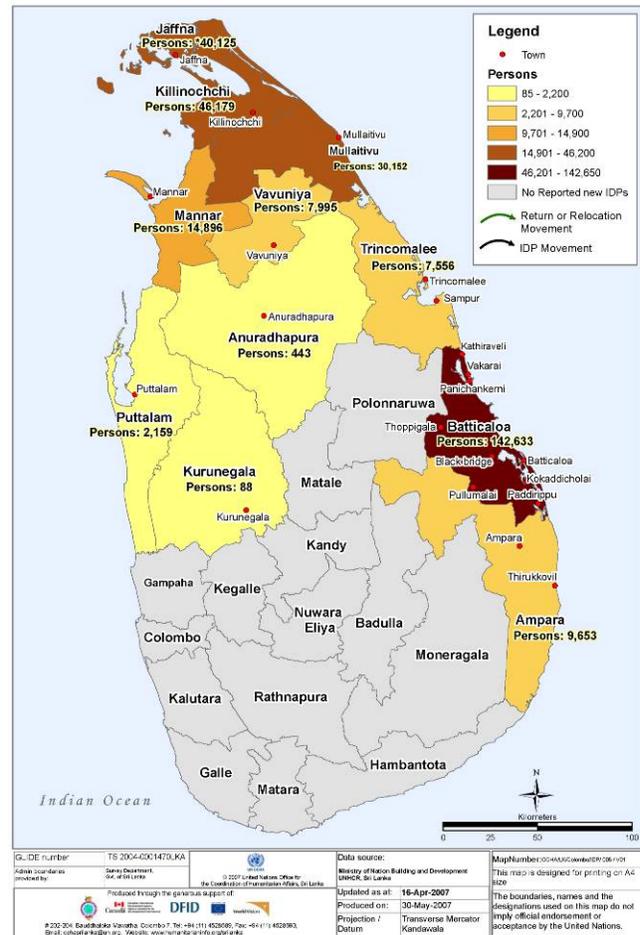
The security situation in Sri Lanka has deteriorated dramatically since April 2006, with the peace process effectively stalled and the resurgence of conflict and violence throughout the North and East of the country. The impact on civilians has been severe. Thousands of civilians have been killed and many more have been wounded. Hundreds of thousands of people have been once again uprooted from their homes and forced to flee.

As of April 2007, more than half a million people are internally displaced in Sri Lanka. Of these, some 312,712 people were previously displaced as a result of armed conflict and violence and since April 2006 an estimated 301,879 people have been newly displaced⁶. Many people have been displaced multiple times, not only over the past decades of conflict, but also within the past year.

This report analyses how the conflict has affected the freedom of movement and safety of these internally displaced persons (IDPs). Drawing on specific case studies it documents how the actions of the parties to the conflict have affected population movements over the past year. On many occasions, IDPs' rights to freedom of movement and freedom to choose their place of residence have been violated. In some cases, IDPs have fled areas after receiving threats or warnings to leave. Elsewhere, IDPs have been caught in the midst of hostilities and prevented from leaving areas which the IDPs consider unsafe. Significant numbers of IDPs have been forced to either return to their places of origin, or relocate to alternative sites, against their will.

The report examines the case studies in the context of the national and international legal framework pertaining to IDPs. Specifically, it analyses the extent to which fundamental principles, particularly freedom of movement and freedom to choose one's place of residence, have been upheld. In this context, the report identifies a number of trends and patterns over the past year, of increased incidents of forced displacement of IDPs; forced returns and relocations; and restrictions on IDPs' freedom of movement, in particular preventing IDPs from seeking safety in another part of the country. The report also describes international organisations' public advocacy interventions to the Government and LTTE in an effort to stop such violations, and remedial actions taken by all parties.

The report makes a number of recommendations to all relevant actors to ensure that IDPs are protected against forced displacement, forced return and violations of freedom of movement; that IDPs' fundamental rights to freedom of movement and freedom to choose their place of residence are respected; and that principles of voluntary and sustainable return, in safety and dignity, are fully observed in practice.



⁶ All statistics in this report are based on figures obtained from the various Government Agents responsible for the Districts. These statistics are consolidated in statistical reports issued by the Ministry for Nationbuilding and Estae Infrastructure and Development and UNHCR.

4. National and International Legal Framework

4.1 International Legal Framework

IDPs share the same rights and freedoms as other people in their country. In times of armed conflict, both international humanitarian law (IHL) and human rights law apply. Human rights law, which is binding on States, permits some limitation of movement-related rights under carefully prescribed circumstances.⁷ IHL is binding upon all parties to the conflict and can not be subject to derogation or limitation. It provides more precise guidance on the application of certain human rights during times of armed conflict, and protects all civilians not directly participating in hostilities, including IDPs. While not a binding instrument *per se*, the *Guiding Principles on Internal Displacement* reflect and are consistent with both human rights law and IHL.⁸ The *Guiding Principles* are the primary text identifying the rights and guarantees of international law as they relate to the specific protection and assistance needs of IDPs. As such, they are an essential reference for all actors working with internally displaced persons.

In particular, IDPs enjoy fundamental rights to freedom of movement⁹ and freedom to choose their place of residence¹⁰. International humanitarian law strictly prohibits the forced displacement of civilian populations during a conflict, unless it is necessary either to safeguard their security or for imperative military reasons.¹¹ The *Guiding Principles* also stipulate that civilians should be protected from arbitrary displacement from their homes in situations of armed conflict, unless there are compelling security or military reasons to do so.¹²

IDPs also enjoy the right to seek safety in other parts of the country.¹³ As civilians, they are entitled to protection under international humanitarian law at all times, so long as they do not directly participate in hostilities. This includes protection from direct attack, from the effects of indiscriminate attack, and from use as “human shields” to insulate military objectives or geographic areas from attack.

IDPs also have a right to voluntary return, in safety and dignity, to their original places of residence, and it is the responsibility of competent authorities to establish the conditions and provide the means to enable such voluntary return.¹⁴ Under no circumstances may return be forced.¹⁵ In limited circumstances a party may have reasons to evacuate or resettle IDPs from an existing location, although it is never legitimate to return IDPs to their original communities where risks to health, safety, or security remain.¹⁶

⁷ Limitations should be “provided by law, . . . necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and consistent with the other rights recognized in the present Covenant”. ICCPR, Art. 12(3). Limitations are provided for within the terms of the right itself, as opposed to derogations, which are made pursuant to Art. 4.

⁸ *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2/Annex. The *Guiding Principles* are available in Tamil and Sinhala at www.brookings.edu/idp.

⁹ ICCPR, Art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”) See also Universal Declaration of Human Rights (UDHR), Art. 13(1) (“Everyone has the right to freedom of movement and residence within the borders of each State.”)

¹⁰ ICCPR, Art. 12 (2)

¹¹ See Article 49 of the Fourth Geneva Convention and Article 13 of Additional Protocol II to the Geneva Conventions.

¹² Guiding Principle 6. GP 6.2 (b) is directly derived from International Humanitarian Law (see footnote 7 above).

¹³ See Guiding Principles 15 (a). Freedom of movement under international human rights law “means the right to move freely about the entire territory of a State Party” (Nowak, ICCPR Commentary, Article 12, para.11). Thus if a person’s safety is at risk in one part of their country, the right to freedom of movement affords internally displaced persons the right to move and seek refuge in another part of the country. (See *Guiding Principles on Internal Displacement: Annotations*, Walter Kalin, Studies in Transnational Legal Policy, No. 32, American Society of International Law & Brookings Institution Project on Internal Displacement).

¹⁴ Guiding Principle 28 (1)

¹⁵ Guiding Principle 15 (d) states that IDPs should be protected against “forcible return to or resettlement in any place where their life, safety, liberty and/ or health would be at risk.”

¹⁶ See Annex for more detailed analysis of international legal standards.

4.2 National Legal Framework

Fundamental rights to freedom of movement and freedom to choose one's place of residence are safeguarded in the Constitution of Sri Lanka.¹⁷ The right to freedom of movement is not subject to any geographical limitations within Sri Lanka. Nevertheless, these rights can be restricted if such restriction is set forth in law and is in the interest of national security, public order and the protection of public health or morality.¹⁸

Restrictions on freedom of movement can be invoked under the Public Security Ordinance (PSO)¹⁹, which empowers the President to declare a State of Emergency and adopt Emergency Regulations if s/he believes they are necessary "in the interests of public security and the preservation of public order".²⁰ A State of Emergency was declared in Sri Lanka in August 2005 following the assassination of Foreign Minister Lakshman Kadirgamar. Emergency Regulations were brought into force at that time and have been renewed on a monthly basis ever since. Several provisions of the Emergency Regulations allow for restrictions on freedom of movement. Emergency Regulation 18, for example, is broadly formulated and could be argued to fail the requirements of necessity and proportionality provided for under the ICCPR.²¹ Section 7 of the PSO provides for the legal supremacy of the Emergency Regulations over any other law.

In addition to constitutionally prescribed restrictions that may be brought into force under the PSO, the Prevention of Terrorism Act (PTA), No. 48 of 1979 also allows for restrictions on freedom of movement. However, these restrictions apply to specific offences prescribed by this law and to individuals who commit these offences. Any further restrictions of freedom of movement, i.e. done through regulations under the Act would not fall within the definition of "law" relating to public security as envisaged by the Constitution, and as such do not constitute permissible restrictions on freedom of movement.²²

In clause 2.12 of the Ceasefire Agreement between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam signed on 22 February 2002, the parties agreed that search operations and arrests under the PTA should cease and that arrests should be conducted under due process of law in accordance with the Criminal Procedure Code. The Emergency Regulations introduced after the assassination of Lakshman Kadirgamar in August 2005 give wide powers to the armed forces to execute arrests and detentions outside the scope of the Criminal Procedure Code. In addition, both the President and the Prime Minister made statements in public that the PTA was to be reintroduced when the government introduced new Emergency Regulations in December 2006. The Sri Lanka Monitoring Mission no longer regularly receive complaints related to clause 2.12.

It is important to note, however, that although the Constitution allows for *permissible restrictions* to be imposed on the fundamental right to freedom of movement and freedom to choose place of residence, the Supreme Court has held that they can not be imposed with the result of *denying these rights*.²³ Moreover, there is no express power in the law relating to public security, including Emergency Regulations, to control *group* freedom of movement, other than imposing curfews and the power to restrict access to areas where essential services are being carried out. Infringements of fundamental rights, including the right to freedom of movement, may only be challenged by application to the Supreme Court.²⁴

¹⁷ The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), Article 14 (1) (h) and (i),

¹⁸ Article 15 (7) of the Constitution

¹⁹ The Constitution identifies the PSO as the law dealing with public security in the event of a state of emergency or an imminent state of public emergency

²⁰ Public Security Ordinance No. 25 of 1947, Section 5 (1) states that the President may impose Emergency Regulations "as appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of community."

²¹ Article 4 (1), International Covenant on Civil and Political Rights (ICCPR). See also ICCPR General Comment No. 29: States of Emergency (article 4), 31 August 2001, CCPR/C/21/Rev.1/Add.11,

²² See *Thavaneethan v. Dayananda Dissanayake Commissioner of Elections and others*, SLR 2003 (1), pgs. 74 to 107, pgs 97 - 98

²³ *Sunil Kumara Rodrigo vs. R.K. Chandrananda de Silva*, SC F.R. 478/97

²⁴ See Annex for more detailed analysis on national legal standards.

5. Government Coordination and response mechanisms

The Government of Sri Lanka's main coordination function with regard to humanitarian and human rights issues relating to IDP lies with the Minister of Disaster Management and Human Rights. In early 2006 the Minister of Disaster Management and Human Rights established an IDP coordination forum which meets on a monthly basis and which provides an important mechanism for humanitarian agencies to raise issues, including protection concerns, with the Government. Many of the issues raised in this report have been reported at the IDP Coordination Meetings and the Hon. Minister Mahinda Samarasinghe has endeavoured to resolve these issues.

In response to a proposal by the Co-Chairs to set up a high-level coordinating and policy-making forum, the Minister of Disaster Management and Human Rights set up the Consultative Committee on Humanitarian Assistance (CCHA) which includes the Commissioner General of Essential Services, the Secretary to the Ministry of Foreign Affairs, the Secretary of Defense, the UN and a number of key Ambassadors. This forum, chaired by the Hon. Minister Mahinda Samarasinghe has proven to be a very useful mechanism to raise issues and ensure immediate follow up and commitments by Government. At the same time, it has been observed that there is often a significant time lag between commitments at the CCHA level and implementation of those decisions on the ground.

Most recently in April 2007, five sub-committees have been established in order to facilitate the work of the CCHA²⁵. The sub-committees, which are co-chaired by a representative of the Government and a UN agency, discuss and resolve operational issues that fall within their respective area and forward policy recommendations to the CCHA. The sub-committees have also been given the mandate to address post-resettlement challenges. The refinement of the coordination and decision-making mechanisms dealing with IDP issues has been an important development in the humanitarian agencies' interaction with the Government on protection issues.

In April 2006, the Ministry of Disaster Management & Human Rights, with the support of UNHCR, drafted detailed guidelines on confidence building and stabilisation measures (CBSM) for IDPs in the North and East, which were approved by the Inter-Ministerial Committee on Human Rights in October 2006. Based on these guidelines three workshops were held out of which recommendations on five thematic issues were made: Civil-Military Liaison Committees, Human Rights, Community Involvement in Implementing the CBSM Guidelines, Reconstruction and Assistance, and Compensation and Effective Communication Policy. Most recently three independent consultants prepared an action plan for implementation of the CBSM guidelines. The activities in the action plan are intended to contribute to protection from displacement, protection during displacement, humanitarian assistance, and return, resettlement and reintegration of the displaced. Whilst the process has so far been limited to policy dialogue at Colombo level, it is hoped that the Government will implement the activities proposed under the action plan to address some of the concerns raised in this report.

The increased leadership of the Minister of Resettlement in improving the resettlement process in Eastern Sri Lanka since April 2007 has also allowed for more constructive dialogue on issues relating to the return process and there is continued scope for enhancing the process as well as ensuring the sustainability of the returns and the longer-term development of the resettlement areas.

²⁵ The five sub-committees address the areas of logistics and essential services, resettlement and welfare of IDPs, livelihoods, health, and education.

6. Trends and Analysis²⁶

Analysis of the case studies indicates that over the past year, a number of fundamental rights and freedoms pertaining to IDPs have been violated both by the Government and the LTTE. Whilst there are instances where remedial action has been taken, more needs to be done to ensure that the displaced's rights to be protected from forced displacement, to exercise their right to freedom of movement and to be protected from forced return and relocation are respected.

6.1 Forced Displacement of IDPs

6.1.1 International Legal Standards

International humanitarian law prohibits the forced displacement of civilian populations for reasons related to a conflict, unless such displacement is necessary to safeguard their security or for imperative military reasons.²⁷ Violation of this rule has been recognized as a war crime.²⁸ Indeed, pursuant to the *Guiding Principles* "Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence,"²⁹ including displacement in situations of armed conflict "unless the security of the civilians involved or imperative military reasons so demand."³⁰

International humanitarian law thus reflects the fact that there may be times during an armed conflict when displacement is unavoidable. Indeed, parties to a conflict have a duty to evacuate civilians from a combat zone and to take precautionary measures to spare civilians in the conduct of military operations.³¹ When evacuation is required, however, it should continue only so long as conditions require. Displacement should be carried out in conditions of safety and family members should not be separated.³² Where possible, civilians should be given advance notice, and the relocation should take place during reasonable hours of the day. The parties to the conflict must ensure that the basic needs of relocated civilians are fully met, including shelter, hygiene, health, safety and nutrition.

In order to assess the legality of forced displacement in situations of armed conflict, it is therefore necessary to determine whether or not there was a military imperative for such actions³³ or whether such actions were necessary to safeguard civilians and evacuate them from areas of combat. In the absence of a military or humanitarian imperative, where displacement of civilians is part of a broader political or demographic strategy, for example, such actions would be a violation of international humanitarian law.

6.1.2 Incidents of forced displacement

There have been several incidents over the past year where IDPs have been forced to flee from areas due to warnings of imminent attacks or threats to civilians' safety issued by parties to the conflict. In some cases civilians have been given notice (of a matter of hours or days) to leave the area and warned that they will face repercussions if they do not leave. Many IDPs have indicated that they took such warnings seriously and heeded the direction to leave.³⁴

²⁶ See Annex for full case studies.

²⁷ See Article 49 of the Fourth Geneva Convention and Article 13 of Additional Protocol II to the Geneva Conventions.

²⁸ See e.g., Rome Statute of the International Criminal Court, Art. 8 (2) (viii). Sri Lanka is not a party to this Treaty and therefore is not subject to the jurisdiction of the International Criminal Court.

²⁹ Guiding Principle 6.

³⁰ Guiding Principle 6.2 (b). This is directly derived from International Humanitarian Law (see footnote 21 above).

³¹ Customary International Humanitarian Law, Rules 15, 22 & 24

³² Guiding Principle 7(2); Customary International Humanitarian Law, Rule 131.

³³ Under IHL the exception for "imperative military reasons" is strictly construed and requires a high burden of proof. The commentary of the International Committee of the Red Cross indicates that while the concept of "military necessity" as a ground for action requires "the most meticulous assessment," the addition of the qualifier "imperative" "reduces to a minimum [those] cases in which displacement may be ordered." It expressly prohibits political motivations, such as displacement "in order to exercise more effective control over a dissident ethnic group." This would equally preclude the use of a civilian population to consolidate control over a piece of land or territory.

³⁴ Incidents of displacement due to the indiscriminate effects of hostilities, while constituting forced displacement, are not generally included in the report due to limitations of space.

a) Muttur, Trincomalee District: May 2006

On 29 May, handbills circulated in Muttur, Trincomalee District demanded that the Muslim community vacate the area within 72 hours.³⁵ The handbills were issued under the name of a group called *Tamil Eelam Motherland Retrieval Force*, and stated that Muslims should leave the area to enable the LTTE to regain Muttur. They condemned alleged collusion between the Muslim community and the security forces and paramilitary groups. The LTTE denied that it was responsible for issuing the handbills, but did not condemn the expulsion notice or take steps to avert an exodus. In the event, however, the Muslim community decided not to flee the area and there were no immediate hostilities.

b) Allaipiddy, Jaffna District: May 2006

On 19 May 2006, in Allaipiddy, Jaffna, following a series of serious security incidents, including the murder of 13 Tamil civilians on 13 May, a hand-written notice appeared telling villagers that this was the “last warning” to leave the area within three days. The notice implied that military offensives were imminent, and warned that “we are expecting heavy losses to the army in Allaipiddy”. The poster was supposedly distributed by a group called “*Makkal Padai*” (People’s Force), which was believed to be affiliated with the LTTE. Fearing violent consequences if they stayed, nearly all the villagers fled in the following days and most of them took refuge in churches in Jaffna Town.

c) Jaffna Coastal Areas: August 2006

On the evening of 11 August 2006, when hostilities resumed in the Jaffna peninsula, the Voice of Tigers (the official LTTE radio station) issued an announcement warning residents of Gurunagar, Passaiyoor, St Rocks and Columbuturai, all highly militarized coastal areas south east of Jaffna Town, of imminent attacks and telling them to vacate the area immediately. Fearing that they may be caught in fighting between the SLA and LTTE, nearly all the villagers left the area the following morning (12 August) and sought refuge in schools and churches in Jaffna Town. The LTTE launched a seaborne attack on Allaipiddy on 11 August and there was exchange of fire between the LTTE and a SLA camp close to the areas from where residents had fled. There was, however, no direct LTTE attack on these coastal villages.

d) Muttur Town, Trincomalee District: September 2006

On 22 September 2006, following the mass return of Muslim IDPs after the fall of Sampoor to SLA forces in early September, a leaflet was distributed warning of imminent LTTE attacks to recapture Muttur Town from the SLA. The leaflet, entitled “A request to Muslims Living in Muttur” urged all Muslims to leave Muttur Town immediately to avoid being used as “human shields” by the security forces when the LTTE began its offensive. The leaflet was signed by an organization called *Liberation of Tamil Eelam Homeland*, and was initially attributed to the LTTE, although the LTTE subsequently denied any involvement. As a result, Muslim families began fleeing back to Kinniya, Kantale and Trincomalee Town. In the event, the LTTE did not launch a counter-attack and there was no resumption of hostilities in Muttur.

It is unclear whether these alerts were legitimate warnings to the civilian population to leave an area of potential hostilities, or part of a broader military, political or demographic strategy. The official Voice of Tigers announcement to residents of coastal areas of Jaffna on 11 August, for example, may have been a legitimate attempt by the LTTE to prevent civilian casualties by providing warnings of an imminent attack. At the same time, it could also have been part of the LTTE’s military strategy to clear civilians from the area in order to more freely attack SLA bases.

In the case of the other three incidents in Allaipiddy and Muttur, there was no immediate resumption of hostilities after the warnings. Moreover, the source of the notices was disputed giving rise to questions about their legitimacy. These warnings may therefore have been attempts to instill fears in the population and induce displacement.

³⁵ The population of central Muttur Town is more than 95% Muslim; although some outlying suburb GN divisions are predominantly Tamil.

6.2 Restrictions on IDPs' Freedom of Movement

6.2.1 National and International Legal Standards

All parties to the conflict have impeded and restricted IDPs' freedom of movement and freedom to choose their place of residence over the past year in violation of international human rights and humanitarian law. This is also a violation of civilians' fundamental rights to freedom of movement as safeguarded in the Constitution of Sri Lanka.³⁶

In particular, IDPs have been prevented from fleeing their place of origin to seek safety elsewhere in the country. The *Guiding Principles* uphold the right of IDPs to seek safety in another part of the country, a right that is implicitly guaranteed by international human rights law.³⁷ In addition, IDPs have been prevented from leaving areas of displacement where their lives and safety are in danger. This runs counter to provisions of International Humanitarian Law which protect civilians from direct attacks and the effects of hostilities.

More general conditions related to the security situation in the country have restricted IDPs' freedom of movement and at times impeded their ability to flee an area where their lives are in danger. These include closure of the FDLs, road blockades, security checkpoints and curfews.

6.2.2 Incidents of IDPs prevented from fleeing place of origin

Several examples have been documented whereby IDPs have been prevented from fleeing their places of origin even though they fear for their lives.

a) Allaipiddy, August 2006

On 11 August, when hostilities resumed in Jaffna, the LTTE engaged in a seaborne landing in Allaipiddy. Shelling into the area continued for 48 hours. The Philip Neri Church, where villagers were sheltering, was hit during the shelling and 33 civilians were killed and 10 civilians injured. As a result, villagers sought to flee Allaipiddy on 12 August, but were prevented from doing so by the SLN who were regrouped at the Allaipiddy – Kayts junction. Again, on 13 August, villagers tried to leave Allaipiddy but were stopped at the Allaipiddy/Kayts checkpoint and were prevented from going to Jaffna Town. The SLN, instead, allowed them to go to Kayts where they stayed until 23 August. On 23 August, the IDPs were allowed to move to IDP sites in Jaffna Town.

b) Muttur, September 2006

Following the distribution of a leaflet on 22 September warning of an imminent LTTE attack to recapture Muttur Town, Muslim families tried to flee back to Trincomalee Town, Kinniya and Kantale. The IDPs took the leaflet seriously and feared for their lives. The Muslim IDPs claimed that the fact that Tamil IDPs in Trincomalee Town had not returned to Muttur was evidence that the LTTE was planning a counter-attack. After the first groups of IDPs left by boat and bus, the Sri Lankan Army and Sri Lankan Navy prevented others from leaving, with road and sea blockades. These actions undermined IDPs' rights to freedom of movement and to seek safety in another part of the country, as stipulated in the *Guiding Principles*³⁸ and in the Constitution of Sri Lanka

Advocacy Interventions

UNHCR raised its concerns about security forces preventing IDPs from fleeing Muttur in a meeting with the Minister of Disaster Management and Human Rights, Hon. Mahinda Samarasinghe, on 3 October 2006.

³⁶ The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), Article 14 (1) (h) and (i).

³⁷ See Guiding Principles 15 (a). Freedom of movement under international human rights law "means the right to move freely about the entire territory of a State Party" (Nowak, ICCPR Commentary, Article 12, para.11). Thus if a person's safety is at risk in one part of their country, the right to freedom of movement affords internally displaced persons the right to move and seek refuge in another part of the country. (See *Guiding Principles on Internal Displacement: Annotations*, Walter Kalin, Studies in Transnational Legal Policy, No. 32, American Society of International Law & Brookings Institution Project on Internal Displacement

³⁸ See Guiding Principles 15 (a)

c) Batticaloa District: January - March 2007

Between the end of January and the end of February, over 80,000 IDPs fled from LTTE controlled parts of Batticaloa District into Government controlled areas. The initial movements of IDPs on 26 January were from Vavunativu (Manmunai West), Kiran (Koralai Pattu South) and Chenkalady (Eravur Pattu) DS divisions, due to SLA shelling into these areas in the preceding days. Many people fled by boat across the lagoon, and were then either transported by IOM, or walked across the paddy fields to several different IDP sites. Although the IDPs reported that more people would be leaving on 27 January, this did not in fact materialize. There were reports that the SLA had blocked the main road from Vavunativu to Manmunai North and that the LTTE had prevented people from leaving by boat and with their belongings. Those who had fled had taken a sudden opportunity to come by boat, but others in their village had been stopped by the LTTE.

6.2.3 Incidents of IDPs prevented from fleeing places of displacement

Incidents have been documented over the past year where IDPs have been prevented from leaving their area of displacement, despite serious concerns for their safety and security.

a) Vakarai, September – December 2006

In LTTE controlled Vakarai (Koralai Pattu North DS division), Batticaloa District, more than 31,900³⁹ IDPs were trapped for several months, many of them prevented from leaving the area by the LTTE, despite very poor humanitarian and security conditions in the area. The IDPs were mostly originally from Trincomalee District,⁴⁰ and had fled their homes following military actions in April and August 2006. They had been pushed southwards as the lines of battle shifted, and had entered Vakarai in September 2006.

Many IDPs tried to flee the poor humanitarian and security conditions in Vakarai during October 2006, but were reportedly prevented from doing so by the LTTE. A small number managed to escape through the jungle at night and reach Government controlled areas, but the route was difficult and dangerous. On 8 November, the SLA shelled Vakarai, hitting Kathiraveli School where over 6,000 IDPs were sheltering. 49 people were killed and 125 injured. Some two thousand people reportedly tried to leave Vakarai via Panichchankerni following the shelling, but were prevented from doing so by the LTTE.

In December 2006, the security situation deteriorated further with regular shelling by the SLA into LTTE controlled areas of Vakarai. On 14 December, following a temporary lull in hostilities, large numbers of people left LTTE-controlled Vakarai via the jungle and arrived at Ridithena, a 12 hour walk. One group of IDPs explained that the LTTE had shot over their heads two days before to prevent them from leaving. While this group had managed to flee into the jungle, they said that the group of IDPs behind them did not follow. IDPs said that they believed that the LTTE was preventing them from leaving because their presence would deter the army from shelling the LTTE controlled areas. Other IDPs confirmed that the LTTE was trying to stop people from leaving.

By the end of December, a total of 25,000 IDPs had fled from LTTE controlled Vakarai into Government controlled areas of Batticaloa District. A further 10,000 IDPs arrived in early January 2007 and reported that everyone had left. The IDPs included previously displaced persons who had fled from Trincomalee District in August 2006, as well as residents of LTTE controlled Vakarai itself.

Advocacy Interventions

On 1 September 2006, UNHCR issued a formal *demarche* to the Government expressing its concerns about lack of humanitarian access to Vakarai and restrictions on civilians' freedom of movement due to cessation of public bus services and the closure of army checkpoints. On 12

³⁹ GA Batticaloa figures as at November 2006

⁴⁰ LTTE-controlled areas of eastern Muttur DS division and Eachchalampattai, as well as some from western Muttur DS division and Seruwila, and a few from Town & Gravets.

December, the Office of the United Nations Resident and Humanitarian Coordinator in Colombo issued a public statement raising concerns about deteriorating conditions for civilians in Vakarai due to ongoing indiscriminate shelling into civilian residential areas. The statement called for civilian populations to be granted “full and unhindered freedom of movement away from military operations.” Throughout the months of September, October and November the SLA allowed sporadic, on average once a month access for UN and ICRC convoys to allow for essential humanitarian assistance to reach IDPs and residents in Vakarai.

6.2.4 General restrictions on freedom of movement due to conflict

Whilst freedom of movement across the whole of the North and East has been affected by, *inter alia*, curfews, security checks and road closures the situation in the North has been particularly severe. The closure of the FDLs following the escalation of hostilities in August 2006 has had a significant impact on the freedom of movement, as well as the livelihoods and general humanitarian situation of IDPs and the civilian population as a whole.

a) Jaffna

The permanent closure of the FDLs at Muhamalai since 11 August severely limited civilians’ freedom of movement in and out of the district. The civilian population became increasingly desperate to leave the peninsula due to daily shelling, a grave increase in human rights violations including abductions, disappearances and killings, acute shortages of food, medicines and other supplies and the threat of a further escalation of the conflict. Travel out of Jaffna remains possible only by boat or air, however. The clearance procedure and the limited seats available have meant that people have sometimes had to wait for several weeks for completion of departure formalities.

The imposition of a strict 24 hour curfew in Jaffna on 11 August severely restricted civilians’ freedom of movement within the peninsula and prevented people from leaving dangerous areas. Residents of outlying islands, such as Kayts, Allaipiddy, Velanai, Karainagar and Mandaitivu, were particularly affected by such restrictions as the Government security forces feared LTTE infiltration amongst the civilian population. Residents of Mandaitivu Island, for example, were only permitted to leave the island on 23 August after hostilities began on 11 August, despite reports of massive displacement and heavy fighting between the LTTE and SLN on the island.⁴¹

Advocacy Interventions

The UN and humanitarian agencies have made a number of interventions with the Sri Lankan Government regarding the situation in the Jaffna District. On 1 September 2006, UNHCR issued a formal *demarche* to the Sri Lankan Government expressing its concerns about the situation since the imposition of the 24 hour curfew. UNHCR requested the authorities to allow humanitarian access to Jaffna by road through LTTE controlled areas, as soon as the security situation permitted. It expressed concern that civilians were unable to leave potentially dangerous areas or carry out livelihood activities as a result of extended curfews and restrictions on freedom of movement.

b) Vanni

Movement into and out of the Vanni has also been restricted since August 2006. Limited access is permitted across the FDL at Omanthai for civilians, but is subject to a pass system implemented by the LTTE. This requires that when families are traveling, one family member always stays behind and stands surety that the others will return. The pass is issued only on the day of travel and consequently makes traveling out of Kilinochchi difficult and time-consuming for ordinary civilians.

Transportation of essential supplies across the FDL, including food, medicine and fuel has been severely restricted since August 2006, affecting the operation of many UN and other humanitarian

⁴¹ A curfew remains in place in Jaffna, typically between the hours of 19:00 and 04:00.

agencies working in the Vanni. In a formal *demarche* to the Government on 1 September 2006, UNHCR expressed concerns about the closure of the FDL and the effects on the delivery of humanitarian assistance.

6.2.5 Specific incidents of freedom of movement restricted by closure of FDLs

a) Jaffna

The sudden closure of the FDLs caused many civilians to be trapped. In Jaffna, a group of over 250 people from different parts of the country were stranded at Jaffna railway station after the Nallur Temple festival because of the closure of the A9 road. Although the pilgrims received security clearance from the SLA to leave Jaffna, in January 2007 they were still waiting to leave by boat. In mid-January, the SLA issued a deadline to vacate the railway station by 22 January 2007, but no alternative accommodation option was offered. On 24 January, the group was relocated to Tellipalai transit centre and they were able to leave on 30 January 2007.

b) Madhu Shrine, Mannar

In Mannar, hundreds of Catholic pilgrims who had traveled to Madhu Church for an annual religious festival in August became stranded when the LTTE refused to allow them to return to Jaffna due to the closure of the Madhu and Uyilankulam FDL checkpoints.⁴² On 16 August, the ICRC negotiated for the checkpoint at Madhu to be opened for several hours to allow about 300 pilgrims, mainly from the south, to leave. However, the LTTE did not allow 750 pilgrims, most of them from Jaffna, to leave via the Madhu checkpoint as they had entered Madhu with passes from the Muhamalai checkpoint. The pilgrims were stranded until 10 November, despite the fact that the checkpoints at Uyilankulam and Omanthai had been opened intermittently for public movement. On 10 November, the pilgrims were able to cross the Uyilankulam FDL checkpoint and subsequently returned to Jaffna.

c) Vavuniya

Some 2,000 people, including separated children and unaccompanied minors, most of them from Jaffna and some from LTTE controlled areas, were stranded in Vavuniya due to the closure of the A9 road and the FDLs. At the end of September 2006, buses transported stranded Jaffna residents from Vavuniya to Trincomalee, where they were able to board two boats for Jaffna. A further 400 IDPs from Jaffna who were stranded in Vavuniya, 63 of whom were sheltered in Poonthoddam WC, returned to Jaffna by ship in October 2006.

6.3 Forced Returns and Relocations of IDPs

In the North and East of the country, IDPs have been exposed to varying levels of coercion or intimidation in order to encourage return, or relocation to alternative sites. In most cases, such coercion has been carried out by Government officials and security forces. However, the LTTE also forcibly relocated IDPs from Madhu Church, Mannar District in March 2007.

It is clear that the vast majority of IDPs do wish to return to their communities – the question they face is when to do so. Many IDPs forced to return or relocate fear for their safety and security. Some fear that the fighting, inter-communal violence and human rights abuses which they originally fled have not ceased. Others fear that they may be subject to retaliatory attacks by Government Security Forces if there is a security incident in the return areas. Still others fear forced recruitment by armed groups if they return. They are also concerned about the presence of landmines and unexploded ordnance (UXO). Moreover, in many areas, IDPs are concerned about the lack of public infrastructure and services to support their return. In some communities, homes, hospitals, schools and other facilities have been damaged or destroyed in the fighting.

UNHCR has raised its concerns on numerous occasions with the Government of Sri Lanka, and more recently with the LTTE, regarding the forced return of IDPs. UNHCR has also issued

⁴² Madhu is in an LTTE controlled part of Mannar District

several policies and guidelines on return to assist the Government in planning return and relocation movements. UNHCR has stressed that returns should be voluntary, in safety and with dignity, and must also be sustainable. IDPs should be fully involved in planning for return and protected against forced return to any place where their life, safety, liberty and/ or health would be at risk. UNHCR has also urged that adequate assistance should be provided in displacement sites for those IDPs who choose not to return. UNHCR and WFP have undertaken joint advocacy to raise the issue of non-provision of food as a way of coercing IDPs into premature or involuntary return. The non-provision of assistance should not be used as a method to encourage return, nor should threats to withhold assistance if IDPs choose to remain be used.

In preparation for the returns to Batticaloa West which started in May 2007, UNHCR held a series of consultations with the Minister of Disaster Management and Human Rights, the Minister of Resettlement and other high level Government Officials to learn lessons from the past and improve the resettlement process. These discussions were fruitful and resulted in significant improvements in the resettlement to Vellavelly, Paddipalai and Vavunatheevu in Batticaloa West, and to Verugal in Trincomalee district. In particular, the movements were largely voluntary, the logistical process was much better organized, information notices were distributed to IDPs during the return process, pre-return assessments were undertaken by the UN, return packages were enhanced, Ministry of Resettlement staff were deployed to oversee the process, and security screening was conducted in a more transparent and orderly manner, with the exception of the screening at the Verugal ferry crossing point which was conducted by masked men.⁴³

At the same time, the UN continues to work with the Government to strengthen other aspects of the return process including working towards further reducing the military's involvement in the resettlement process, ensuring that low-risk mine certificates are issued prior to return taking place, providing more timely information to the IDPs about the return process to allow them to make a truly informed choice about resettlement, ensuring the continued provision of assistance to those IDPs who do not wish to return, and enhancing the preparation of the resettlement areas particularly with regard to shelter and services before IDPs return. All these measures, including a Government recovery plan for the resettled areas and the implementation of Confidence Building and Stabilization Measures (CBSM) will further ensure the sustainability of these returns.

6.3.1 International Legal Standards

The *Guiding Principles* provide that internally displaced persons have “the right to be protected against forced return to or resettlement in any place where their life, safety, liberty and/ or health would be at risk.”⁴⁴ They also give specificity to the fundamental principles of voluntary return in safety and dignity, stating that “competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence”.⁴⁵

As part of their obligation to facilitate *voluntary* return, authorities should provide IDPs with full and objective information to enable them to decide freely where they want to live. IDPs may choose to integrate locally at the site of displacement, to return to their original communities, or to resettle in a third part of the country. Should IDPs wish to return, the authorities should facilitate “Go and See Visits” by IDPs prior to their actual return.

To support *sustainable* return, the authorities should ensure that IDPs feel safe and secure and free from harassment and intimidation. IDPs should be able to repossess their homes and properties and return to their lives as normally as possible. Thus they should have access to basic services, schools and livelihoods without discrimination.⁴⁶

⁴³ Details of developments during the period April – July 2007 are included in the addendum to this report.

⁴⁴ Guiding Principle 15 (d)

⁴⁵ Guiding Principle 28 (1)

⁴⁶ See the recently adopted United Nations IASC Operational Guidelines on Human Rights and Natural Disasters for a full discussion of “sustainable” conditions for return. Though developed in the context of disaster-induced displacement, these indicators would also apply to the return of IDPs displaced by conflict. IASC Operational Guidelines on Human Rights and Natural Disasters, June 2006, §D.2.2.

The right to return *in safety* imposes a duty on the Government to ensure the safety of a returning population, such as clearance of land mines and UXO. The right to return in *dignity* includes the provision of basic assistance such as shelter, food, water, medical care, agricultural tools, seeds and basic household items.

6.3.2 What is “forced return”?

The concept of “forced returns” used in this report encompasses all forms of coercion intended to make IDPs return to their place of origin or relocate to alternative sites in the absence of a voluntary and informed choice. Forced return is not limited to the actual use of physical force, but covers a whole spectrum of coercive methods. These include threats to cut food, water, electricity and other essential assistance and services if IDPs fail to return; closing sites where IDPs are sheltering; preventing or deterring humanitarian agencies from providing assistance to IDPs beyond deadlines for return; refusing to register IDPs or issue Family Cards and issuing deadlines for return beyond which public transport and assistance are no longer provided. The reduction, or withdrawal, of assistance and basic services makes living conditions so substandard in places of displacement, that IDPs feel forced to return.

Threats by Government authorities and security forces that they will no longer be responsible for IDPs’ safety and security if they fail to return or relocate have also induced IDPs to leave. In the current climate of serious protection problems for IDPs, including risks of abduction and killings, the threat to withdraw protection is taken seriously by the IDPs.

At times IDPs have been required to sign lists prepared by local Government officials indicating their names and places of origin. These lists have been used by the Government as proof that returns are voluntary and the IDPs have given their written consent to return. However, many IDPs claimed that they were not informed that by signing the lists they were giving their consent to return home.

The heavy presence of armed police, security forces and other armed groups at IDP sites prior to and during return movements creates an environment where IDPs are unable to make free and informed choices about whether or not to return. It can also undermine the civilian and humanitarian character of IDP camps and settlements. The presence of senior Government and military officials at displacement sites prior to and during returns has also been used to pressure IDPs to return. IDPs have indicated that they fear the repercussions if they do not return.

At the same time, IDPs have been given misleading, inaccurate or incomplete information about conditions in their places of origin or in relocation sites which prevents them from making free and fully informed decisions about return. In some cases, IDPs have been encouraged to return or relocate with promises of assistance, shelter, livelihoods, security and full compensation for their property and livelihoods lost as a result of displacement. For many IDPs, conditions are so poor in displacement sites they agree to return if they are promised better living conditions, despite very real fears for their safety and security. However, in many instances such assistance, security and compensation fail to materialize and IDPs regret their decision to return. While the Government has a responsibility to establish the conditions for a safe and sustainable return, this should not mean it ceases to provide safe and habitable conditions at sites of displacement.

Between April 2006 and March 2007, there were no documented incidents of physical force being used to compel IDPs to return to their place of origin, or resettle elsewhere. In March 2007, however, security forces used physical force in several instances to return IDPs from Batticaloa District to Trincomalee District. During the forced evacuation of Madhu Church, Mannar District, in March 2007, the LTTE also used physical force and the threat of force to move IDPs out of the church.

6.3.3 Incidents of forced return

Eight main episodes of forced return have occurred over the past year across the North and East of the country.

The first group of returns from Kantale to Muttur, (4 – 7 September), were voluntary. IDPs were keen to leave the poor living conditions in Kantale and eager to return home before Ramadan started (24 September) and to allow their children to go back to school. But from 7 – 11 September, those IDPs who had not returned in the previous days came under increasing pressure from the authorities to return (as described above). On 12 September 2006, UNHCR issued a formal *demarche* to the Government of Sri Lanka expressing its concerns about the non-voluntary nature of some returns of Muslim IDPs to Muttur. However, by 12 September all the Muslim IDP sites in Kantale, Town & Gravets, Kinniya and Thampalakamam were empty and 35,000 IDPs had returned to Muttur.

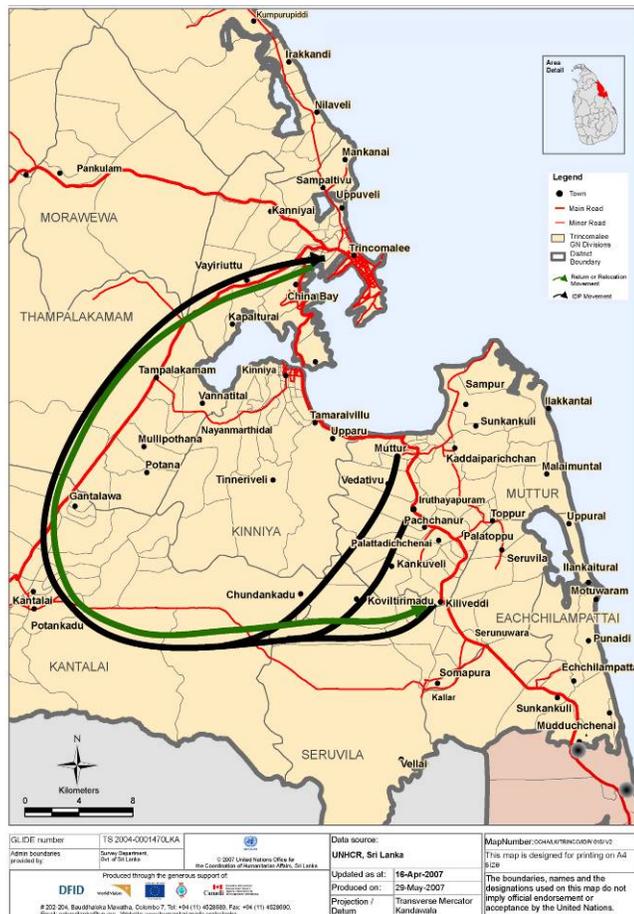
When over a thousand returnees fled for the second time to Trincomalee Town, Kinniya and Kantale on 22 September 2006, in response to a leaflet warning of imminent LTTE attacks to re-capture Muttur Town (discussed above), the Government authorities and security forces again forced them to return. The Government refused to provide any assistance or shelter to the IDPs and denied NGOs access to the sites. The authorities maintained that it was safe for the IDPs to return to Muttur. The IDPs, however, took the warning of imminent LTTE attacks seriously and were afraid to go back. The authorities prevailed and by the end of September, most of the IDPs had returned to Muttur. As before, government buses were provided to transport the IDPs and the police and security forces maintained a heavy presence at IDP sites during the returns. IDPs claimed that due to the lack of assistance and pressure from the authorities, they had no real choice but to return, although many of them still had doubts and fears. In the event, however, there was no LTTE counter-attack on Muttur Town.

Similar methods were used to force Muslim IDPs in Anuradhapura and Puttalam Districts to return to Muttur Town during September.

b) IDPs in Trincomalee Town: September – December 2006

The pattern of forced returns in Trincomalee District also affected Tamil IDPs. Tamil IDPs from western (Government controlled) and eastern (previously LTTE controlled) parts of Muttur DS division fled into Trincomalee town (Town & Gravets Division) and other areas following fighting in April and August 2006. At the same time as pressure was being exerted on Muslim IDPs to return to Muttur Town in September 2006, Tamil IDPs were under increasing pressure from the authorities to return to their places of origin in Muttur DS division.

Tamil IDPs were extremely fearful of returning to their homes due to continued shelling and the high military presence in their villages. They feared harassment by the security forces and possible retaliation from the majority Muslim population. In some instances, Tamils who returned voluntarily to their villages came back to displacement sites in Trincomalee after several days as they concluded that it was unsafe for them to return.



Forcible return of IDPs from Trincomalee Town and Gravets to Muttur DS from September to December 2006

Nevertheless, in September and again in December 2006, Government authorities and the security forces exerted pressure on Tamil IDPs in Trincomalee Town to return. In the first wave of returns, in September 2006, local Government officials and officers from the President's Office traveled round the IDP sites in Town & Gravets ensuring that IDPs were boarded on buses to return to Muttur DS division. NGOs working at these sites were instructed to stop providing assistance to IDPs unwilling to return. Despite these efforts, however, relatively few Tamil IDPs actually returned to Muttur DS division during this period.

In October 2006, the Government's approach changed somewhat. The Government identified a site in Killiveddi in Muttur DS division where it proposed to relocate Tamil IDPs staying in Trincomalee Town who were unable to return directly to their homes. The Governor of the Northern and Eastern Provinces and the GA of Trincomalee also approached UNHCR for its assistance in providing semi-permanent shelter for the relocation of between three and four thousand IDPs.

IDPs expressed serious concerns about potential security threats at the Killiveddi site, however, especially for young men. They indicated that any attacks on the security forces in the vicinity could result in severe reprisals against civilians and cited past incidents as evidence for their fears (e.g. the killing of 24 civilians in Kumarapuram, a village near Killiveddi, in February 1996, in reprisal for the deaths of two soldiers⁴⁷). They feared that if the situation deteriorated suddenly, the security forces would prevent them from leaving (as had been the case for Muslim IDPs who tried to flee in September following the leaflet warning). Those IDPs who went on "Go-and-See Visits" found that looting of their houses was widespread and some houses had been damaged by the fighting. They wanted assurances that assistance would be provided in formerly LTTE controlled areas if they returned.

At the end of November, UNHCR formally communicated its position on return and relocation to the Government. UNHCR stated that returns should be voluntary and directly to IDPs' homes, rather than to relocation sites. Moreover, UNHCR indicated that the relocation site in Killiveddi was not suitable due to the prevailing security situation (see below for more details).

Contrary not only to UNHCR's advice and the concerns expressed by other UN agencies and NGOs, but also to assurances from the Government itself that it would not forcibly return IDPs, the Government did relocate Tamil IDPs to Killiveddi in early December. From the end of November, security forces visited displacement sites in Trincomalee Town regularly at night, searching the premises, the IDPs themselves and their belongings. They checked the IDPs' identities and often photographed them. Military personnel told IDPs that they had to return to their villages and threatened an increase in round-ups, arrests and detentions, if the IDPs refused to return. The IDPs stated that they feared retaliation by the security forces if they failed to follow instructions and some IDPs claimed that the forces warned them against speaking to humanitarian agencies about these issues.

The largest return occurred on 2 December, when 66 families from the Cultural Hall site in Town & Gravets were returned on Government buses to Muttur. Some 50 security personnel and police accompanied their return. The majority of IDPs were from Killiveddi. Government authorities and security forces continued to put considerable pressure on IDPs in the other sites in Trincomalee Town to return, including coming to IDP sites at night and conducting searches and round-ups. As a result, by the end of December smaller numbers of IDPs had returned from these sites.

Although pressure on IDPs in Town & Gravets to return eased somewhat in January 2007, it increased again in February and March at the same time as returns from Batticaloa District were taking place. Local government officials visited many of the Town & Gravets sites to persuade the IDPs to relocate to Killiveddi and threatened that their assistance would be withdrawn if they

⁴⁷ In May 2006, following an attack on an army patrol in May 2006, soldiers reportedly threatened civilians in the area that they would repeat the Kumarapuram massacre should there be another attack by the LTTE

did not return. However, no deadlines for return were given and there were no direct threats of closing the IDPs sites. The IDPs did not want to be relocated to Killiveddi, for security reasons and because of reports that the transit site lacked basic facilities. They said they wanted to return directly to their homes in eastern Muttur as soon as possible.

Advocacy Interventions

In early November 2006, UNHCR met with the Governor of the Northern and Eastern Provinces and the Minister of Disaster Management and Human Rights to raise concerns about the planned relocation of 150 families to Killiveddi. At this meeting, the Governor and Minister agreed to postpone the relocation until December.

On 29 November 2006, UNHCR formally communicated its position on return and relocation and the proposed Killiveddi relocation site to the Minister of Disaster Management and Human Rights, the Hon. Mahinda Samarasinghe. UNHCR said that it would assist the Government in facilitating the return of IDPs in Trincomalee Town who were displaced from Killiveddi if it was assured that returns were truly voluntary. UNHCR said that it believed return should be directly to IDPs' homes, rather than to a relocation site. UNHCR's involvement in relocation would be dependent on voluntariness and considered on a case by case basis. UNHCR also said that the site identified by the Government in Killiveddi was unsuitable due to the prevailing security situation in the area. In addition to the letter, UNHCR also issued a note to the Government outlining the basis for its involvement in any return or relocation exercise.

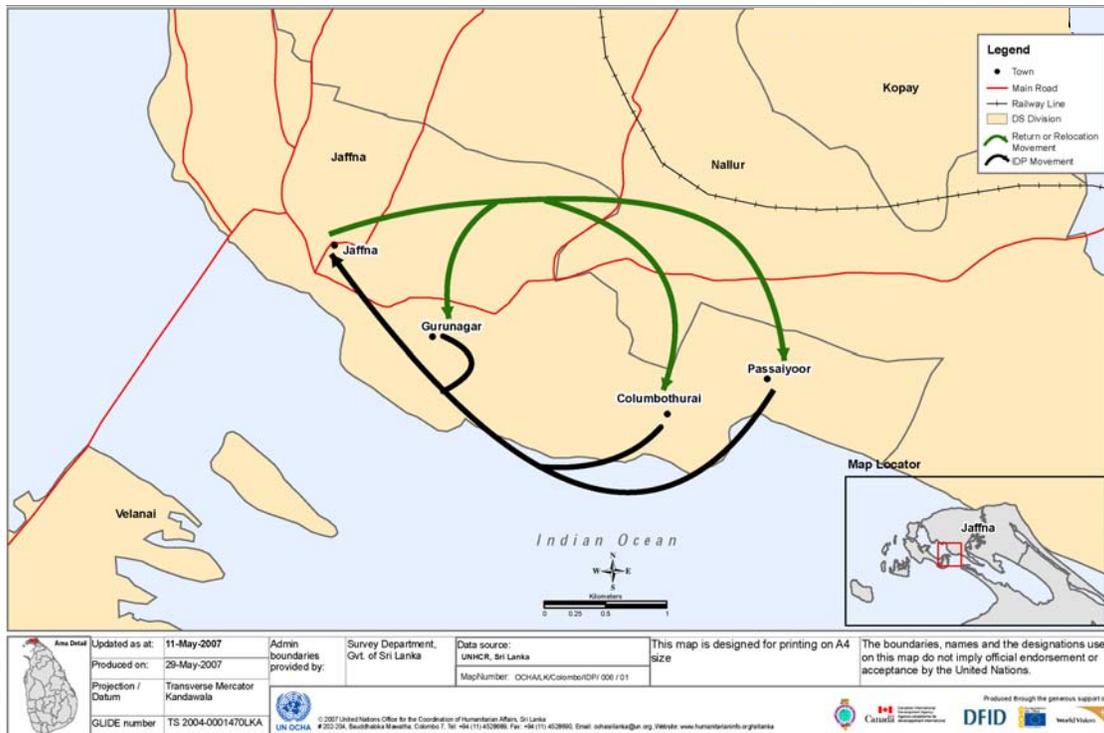
On 5 December 2006, UNHCR issued a formal *demarche* to the Government of Sri Lanka on the forced returns of five busloads of Tamil IDPs to western Muttur DS division on 2 December. UNHCR expressed concerns about the military and police entering displacement sites in Town & Gravets at night and threatening IDPs and reiterated that IDPs in these sites had consistently said they did not feel it was safe to return. There are still serious concerns relating to the conditions in the displacement sites and the non-provision of food to these IDPs.

c) Jaffna Town: September & October 2006

At the same time as IDPs were being forced to return to Muttur Division in September 2006, IDPs from militarized coastal areas bordering the high security zone (HSZ) south east of Jaffna Town, (such as Gurunagar, Passaiyoor, St Rocks and Columbuthurai) were also under pressure to return to their villages of origin.

The IDPs had fled their villages on 12 August after the Voice of Tigers issued a warning of imminent attacks in the area and told residents to leave. The IDPs sought refuge in Temporary Accommodation Centres (TACs) in schools, colleges and churches in Jaffna Town, but many of them returned to their homes during the day time to continue with daily livelihood activities.

The IDPs were afraid to remain in their homes during the nights because of the ongoing shelling and fighting between the SLA and LTTE. They feared that the night-time curfew throughout the Jaffna peninsula, which was imposed on 11 August, would prevent their escape if an attack took place at night. They were also afraid of the ongoing cordon and search operations and the high incidence of 'white van' abductions and disappearances during curfew hours. Some people had experienced harassment by the SLA when they had tried to return to their villages on previous occasions; others wanted guarantees from the LTTE that they would not attack the coastal areas after the Voice of Tigers warning on 11 August.



Forcible return of IDPs from Jaffna town in September and October 2006

Forced returns from Jaffna Town occurred in two stages. The first wave took place on 22 September when the SLA rounded up over 1,000 IDP families (5,440 individuals) at St. Patrick's College and St. Charles' College TACs and instructed them to return to their villages. The men were separated and taken outside into the school ground. Twelve men from both sites were arrested and released the following day without charges. The SLA maintained a heavy presence at both sites and prevented UN agencies and other humanitarian organizations from entering the premises. By the end of the month the TAC had closed and all the IDPs had returned to their homes, despite representations made by UN agencies to the local security forces.

The second wave of returns from took place in early October 2006. This time the principals of schools and the priests at churches in Jaffna Town being used as TACs issued an ultimatum to the IDPs to leave, on the grounds that school classes must resume. The school principals and priests indicated that they were under pressure from the authorities to persuade the IDPs to go home and told IDPs that they would face problems with the SLA if they remained.

During follow-up visits to the places of return, UN agencies found that most families were too afraid to stay in their homes at night and continued to stay elsewhere, either with host families or in empty houses. Those families who returned to their homes were living in fear, with their bags packed ready to leave quickly if necessary.

It is clear that there was a Government policy to return IDPs back to their homes in coastal areas. This may have been to "normalize" the situation in Jaffna Town. It may also be because of pressure on the schools for classes to resume and concern amongst school principals and priests about damage to public buildings caused by the IDPs. There have also been allegations that the SLA may have forced IDPs back to the highly militarized coastal zones to deter further LTTE attacks. Such actions could potentially have placed civilians in harm's way.

Advocacy Interventions

Interventions were made on this issue by the UN, and in a meeting with the Minister of Disaster Management and Human Rights, Hon. Mahinda Samarasinghe, on 3 October 2006, UNHCR raised concerns about the forced returns of some 5,400 IDPs from Jaffna Town to their places of origin in coastal villages against their will. No further forced returns were witnessed in Jaffna but there are reports of pressure being exerted on IDPs from Allaipiddi to return prematurely.

d) Anuradhapura: September 2006

At the end of September 2006, some 400 Sinhalese IDPs from “border villages” in Kebithigollewa, Anuradhapura District, who had fled following the bus bomb in June 2006, were forced back to their villages. The authorities gave IDPs a week to vacate the camps before food, water and electricity supplies would be cut. IDPs were told by the authorities that if they left before 1 October buses would be provided, after that time they would have to find their own transport. Police, army personnel and home guards assisted the IDPs to dismantle their shelters and pack up their belongings. Many of the IDPs said that they did not feel safe returning to their places of origin, but they felt they had no option but to leave. By the end of September, the IDPs sites were empty.

Although the SLA had built bunkers for the returnees and fortified the area, many returnees said they did not feel safe returning to their homes and had found alternative places to live. They feared LTTE infiltration and were too afraid to go out to work or send their children to school. Many of them lacked viable livelihood opportunities and their food rations were cut once they returned.

The return of the IDPs to Kebithigollewa may have been part of a national effort to restore a semblance of normalcy. It may also have served to re-populate the Sinhalese border villages to prevent LTTE attacks.

Advocacy Interventions

In a meeting with the Minister of Disaster Management and Human Rights, Hon. Mahinda Samarasinghe, on 3 October 2006, UNHCR raised concerns about the forced return of Sinhalese IDPs to Kebithigollewa.

e) IDPs from Seruvila, Trincomalee District, January 2007

In early January 2007, over 4,000 Sinhalese IDPs, who had fled LTTE shelling in early December and were staying in IDPs sites in Kantale, came under pressure from the local Government authorities and police to return to their homes in Seruvila. Government buses were provided to take IDPs back and most of the IDPs seemed happy to return. A few IDPs, most of them from Kallar and Somapura where the shells had landed, remained behind as they had serious concerns about return and wanted better security assurances from the government.

On 6 and 9 January, however, following renewed heavy LTTE shelling into Seruvila, many of the people who had returned fled back to Kantale. IDPs confirmed that there had been intensive shelling and the SLA had told them to leave. Following the fall of Vakarai to Government forces on 19 January, the authorities started once again to plan for the return of the IDPs. Most of the IDPs said that they would be happy to return to Seruvila if the SLA said that it was safe to return. Some IDPs were still concerned about their safety, as well as damage to their homes and properties and the infrastructure due to shelling. By the end of January, UNHCR reported that all temporary IDP sites in Kantale were empty and the IDPs had returned.

f) Returns from Batticaloa District to Trincomalee District: March 2007

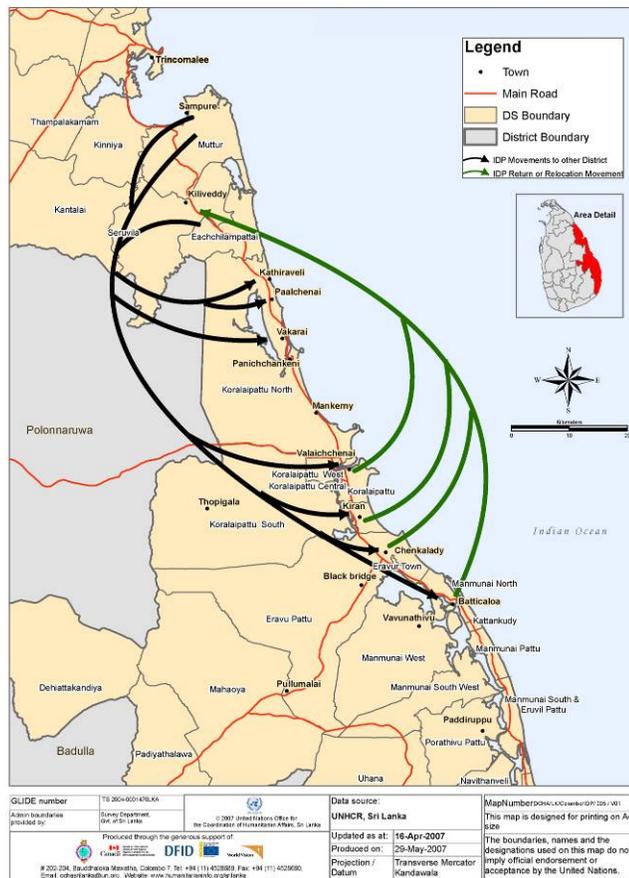
In February and March 2007, following the capture of Vakarai by Government forces, there was a further effort by the Government and security forces to remove IDPs from Government controlled areas of Batticaloa District and return them to their areas of origin in Trincomalee District and Vakarai DS division. These returns took place in the context of a mass influx of over 80,000 IDPs who fled from LTTE controlled parts of western Batticaloa District into government controlled

areas from January onwards and put enormous pressure on services and resources in the district. The security situation in many of the IDP sites also deteriorated significantly during this period.

Over 25,000 IDPs in Batticaloa District were from Trincomalee District. They were mostly from formerly LTTE-controlled eastern Muttur and Eachchalampattai divisions, as well as from Government controlled western Muttur and Seruvila DS division. Many of the IDPs had initially fled to Vakarai following the escalation of hostilities in Trincomalee, but were displaced from Vakarai in December 2006 and January 2007 to other areas of Batticaloa District. Many of them had been displaced multiple times prior to this.

Go and See Visits

In February 2007, the Government Agents of Batticaloa and Trincomalee District organized "Go and See Visits" (GSVs) for IDPs from Trincomalee District staying in Batticaloa District to nine GN divisions in the western part of Muttur DS division. Out of over 2,800 IDPs whose homes were in Muttur West DS division, 23 participated in the GSVs. No other GSVs were organized and IDPs had very little information on which to base decisions about return.



Forcible return and relocation of IDPs from Batticaloa District to killveddi and Muttur West in March 2007

Planned Return

The plan for the return of IDPs to Trincomalee District, agreed to by the Government, UNHCR and other UN agencies in February 2007, entailed an initial staggered return back to western parts of Muttur DS division. UNHCR had sought assurances from the Government that return would be voluntary, in safety and dignity, and based on free and informed decisions by the IDPs. UNHCR also sought assurances that the military would not be involved. It was agreed that return directly to IDPs' homes and places of origin was preferable to relocation to an intermediate site. Return to eastern Muttur DS division and Eachchalampattai was not envisaged until conditions were safe and conducive for return.

Forced Returns from Batticaloa

This plan was not adhered to when the return movements started on 12 March. Armed police, the SLA, STF, and on some occasions armed and unarmed TMVP members, were heavily involved in the returns and IDPs reported feeling considerable pressure to return.

By 21 March, 3,021 IDPs (938 families) had been returned to Trincomalee District from Batticaloa. Of these, 1,866 IDPs (588 families) were still at Killiveddi transit site on 21 March (the majority of them from eastern Muttur, as well as 517 persons (145 families) from Eachchalampattai and 112 persons from Seruvila⁴⁸) and the remainder had either returned to their homes or were staying with host families.

⁴⁸ While Seruvila DS division is almost entirely Government controlled, there is a small eastern area (Uppural) which was previously LTTE-controlled.

12 March Returns

Returns to the nine GN divisions in western Muttur and Seruvila DS division, where GSVs had taken place, were scheduled for 12 March from collection points in six DS divisions in Batticaloa Town. Notice was given to IDPs and humanitarian agencies that IDPs would return to their homes after spending several days at the Killiveddi transit sites.

On 12 March, 920 IDPs (out of the 2,800 IDPs included in the Government's resettlement plan) returned on approximately 21 buses to Killiveddi in Trincomalee District. Joint UN/NGO teams monitored the departures in Batticaloa and reported that virtually none of the returns were voluntary or based on free and informed decisions by the IDPs.

Government officials and security forces threatened IDPs that assistance would be cut if they refused to leave and that their Family Cards, which entitled them to free rations, would be confiscated. Local authorities told IDPs that they could no longer be responsible for their security if they remained in Batticaloa District. At the same time, the authorities promised IDPs assistance and compensation in full for lost or damaged property if they returned.

There were no Government surveys to ascertain IDPs' views about return and no proper system for collecting consent forms from IDPs indicating that their return was voluntary. On the contrary, many IDPs signed letters expressing their wish not to return and delivered them to their local DS offices.⁴⁹ Return lists were not systematic and did not include all the IDPs from one area. In some cases, extended family members were on different lists, adding further confusion, and exacerbating IDPs' fears about return.

STF and SLA security forces maintained a heavy presence around IDP sites in the days preceding and during returns. Furthermore, armed police and SLA personnel accompanied IDPs on buses. At Zahira College in Manmunai North DS division, for example, an armored STF vehicle, a busload of armed police officers, and a jeep carrying police officers were present at the IDP site and accompanied the convoy of buses on 12 March. Not only was the heavy presence of SLA and STF forces at IDP sites and on return convoys an intimidating factor, IDPs also feared for their physical security because they felt it increased the likelihood of the convoy becoming a potential target for attack.

15 – 17 March

On 15 March, a well planned operation to return IDPs from sites in Batticaloa District commenced. The returns were carried out primarily by armed police, the SLA and STF, as well as armed and unarmed TMVP cadres in some sites, and there were numerous accounts of intimidation, threats and coercion. No advance warning was given and IDPs were told to pack up their belongings immediately and leave. Several families were reported to have been separated as a result as children were at school and the men at work.

In the Chenkalady sites, for the first time IDPs reported that the security forces were using physical force to make people return. In Palachcholaï IDP site, on 15 March, IDPs said that the army had made serious threats of violence, including killings and beatings, if they did not return. There were also reports on 15 and 16 March of IDPs being beaten with sticks by SLA personnel to force them onto buses at Palachcholaï IDP site. In Savukkody IDP site, on 15 March, STF personnel reportedly beat IDPs and members of the TMVP threatened IDPs with violence if they did not return.

IDPs' Views about Return

Virtually all of the IDPs with whom the joint UN/NGO monitoring teams spoke during this period said that they did not wish to return. In particular they said that they feared for their security in Trincomalee District, particularly for the safety of young men in their families. They were afraid of harassment, abductions, forced recruitment by armed groups, round-ups and arrests by the SLA

⁴⁹ 207 IDPs in Manmunai North signed letters saying that they did not want to return

and other armed groups and of reprisal killings by the SLA in the event of any security incidents. They were also afraid of inter-communal violence and reprisal attacks from neighbouring Muslim and Sinhalese communities. IDPs also had serious concerns about the state of their houses, many of which had suffered considerable damage from the conflict, weather and looting, and the lack of sustainable infrastructure and services in areas of return.

IASC Leaflet

In response to concerns that IDPs lacked information about their rights regarding return, the Inter-Agency Standing Committee in Sri Lanka drafted a leaflet to be distributed to IDPs in both Tamil and Sinhala. The leaflet informed IDPs that they had a choice whether to return or stay; that they should be able to return in safety and dignity; and that they should be protected against forced return. The leaflet was distributed in IDP sites across Batticaloa District from 20 March.

Conditions in Trincomalee: Killiveddi

Upon arrival in Killiveddi, the IDPs again faced pressure from the authorities to return directly to their homes or stay with host families. Despite a prior agreement with UNHCR and other humanitarian agencies, the local authorities failed to inform the first group of IDPs on 12 March that they could stay in the temporary shelters at the transit site in Killiveddi.⁵⁰ As a result, many IDPs spent the night sleeping in the open air or with host families.

Return to villages of origin

In subsequent days, IDPs at Killiveddi transit site were put under heavy pressure to return to their villages of origin in western parts of Muttur and Seruvila DS divisions. IDPs were told that assistance would *only* be provided in their villages of origin, which prompted them to return, although some IDPs subsequently claimed that they did not receive the one week dry food ration which they had been promised upon return. By 17 March, all IDPs from western Muttur DS division had returned to their places of origin.

In some cases, IDPs were moved to yet another temporary site as they were not allowed to return to their villages of origin. IDPs from Ariyamankerni, an area bordering LTTE controlled areas where the SLA now has a heavy presence and is occupying several houses, were moved from Killiveddi to Lingapura (a neighbouring village), for security reasons. The local authorities had no information about when IDPs would be able to return to their homes in Ariyamankerni.

Security Concerns

Several security incidents occurred after the IDPs returned, including the arrest of two men by the SLA in Mengamam (Muttur DS Division) on 15 March; the beating of one returnee by two soldiers in Lingapura on 16 March; and reports that a returnee was shot and killed, allegedly by SLA soldiers, on the evening of 18 March in Sivapuram. IDPs who returned to Barathipuram village in Muttur DS division reported that the military had visited the village several times a day since their return on 12 March and had threatened and harassed the women, searched the returnees' belongings, advised them "not to talk to anybody" and threatened that they would be shot if any incident took place in the area. Overall, IDP returnees reported that they felt very insecure and often stayed together in one house at night because of fears for their safety.

Relocation of IDPs from eastern Muttur DS division and Eachchalampattai

Despite pledges by the Government that returns would only be to western Muttur DS division, from 15 March the authorities commenced the return of *all* IDPs from Trincomalee, including those from eastern Muttur and Eachchalampattai. IDPs from eastern Muttur and Eachchalampattai were relocated to the transit camps in Killiveddi, although some had been informed that they would be returned directly to their homes.

In the IDP sites in Chenkalady (Batticaloa District), the STA and STF threatened IDPs from Sampoor that they would be killed if they did not return to Sampoor. The IDPs were forced onto buses on 15 and 16 March and those who remained expressed serious fears for their safety.

⁵⁰ UNHCR and partner agencies were in the process of constructing temporary transit shelters at Killiveddi for IDPs to stay for a maximum of two weeks while they assessed conditions in the villages and made preparations for return to their homes.

Advocacy Interventions

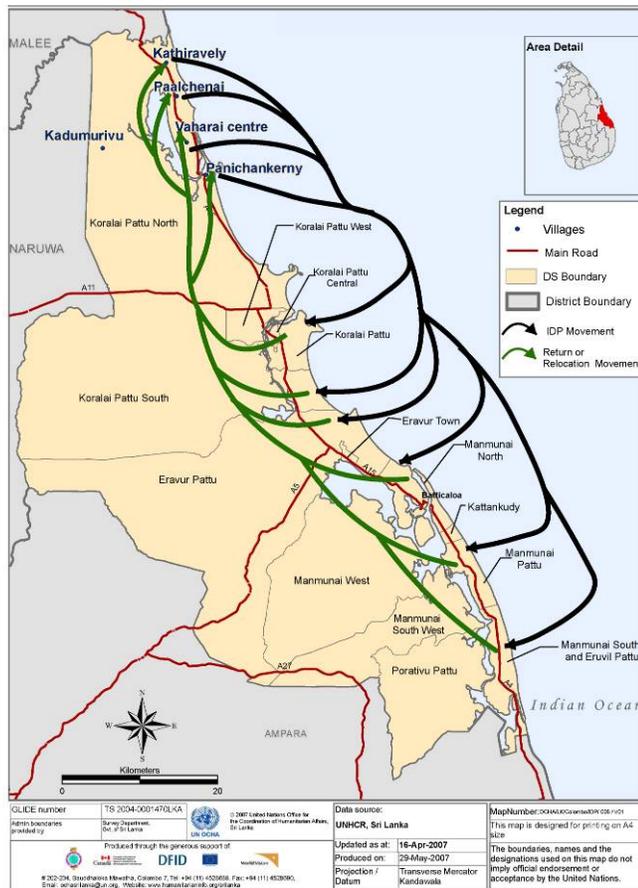
On 14 March 2007, UNHCR wrote to the Minister of Disaster Management and Human Rights, the Hon. Mahinda Samarasinghe, expressing UNHCR's serious concerns about the forced return of IDPs from Batticaloa District to Trincomalee District on 12 March. UNHCR cited concerns that the local authorities had issued threats to withdraw assistance and protection from those IDPs who did not return. Moreover, the presence of armed police and SLA officers at displacement sites was perceived as an intimidating factor. UNHCR attached a short note on specific incidents of forced return. UNHCR also expressed concerns that the IDPs who arrived in Killiveddi on 12 March were not told that they could stay in the transit shelters and spent the night in the open.

On 14 and 16 March 2007, UNHCR issued public press statements expressing concerns about the forced returns of IDPs from Batticaloa District to their places of origin in Trincomalee District and Vakarai.⁵¹ The Government subsequently halted all relocation to Killiveddi.

g) Returns to Vakarai, Batticaloa District: March 2007

By February, pressure was growing on IDPs originally from Vakarai (some 16,000 IDPs) who had fled into the Government controlled areas of Batticaloa District in December 2006 and January 2007 to return to their homes. At the beginning of February, the Minister of Disaster Relief Services announced the Government's plan to resettle all Vakarai IDPs in a three-phased approach, dependent on the progress of the SLA's de-mining activities. Returns to 9 GN divisions, from where 80 – 90% of the IDP population originated, were due to begin by the end of February 2007.

In response to the Minister's statement, UNHCR presented a "Road Map" detailing a plan of action to prepare for and facilitate the return of the IDPs in safety and dignity (see below). Unfortunately, none of the conditions outlined in the Road Map had been fully met by the time returns to Vakarai started on 7 March. The UN had been unable to carry out a comprehensive security or humanitarian assessment of conditions in Vakarai due to the unstable security situation, mine and UXO clearance had not been completed, basic infrastructure was not in place and humanitarian agencies did not have full access to monitor return.



Forcible return of IDPs from Batticaloa District to Vakarai in March 2007

Only one "Go and See Visit" (GSV) to Uriyankadu was organized by the Government, on 6 March. Some 100 IDPs were reported to have participated in the GSV. The IDPs were informed by the DS Vakarai that return would start the following day and that those people whose houses were damaged would receive tents and food. IDPs who participated in the GSV said that the

⁵¹ See <http://www.unhcr.org/news/NEWS/45fa98254.html> and <http://www.unhcr.org/news/NEWS/45f6bb704.html>

immediate needs in Vakarai included drinking water, reconstruction of some houses and a functioning school and hospital. No formal meeting with the other IDPs was organized after the GSV and there was little time for de-briefing before the returns to Vakarai commenced on 7 March.

During the first days of return (7 – 8 March), many IDPs indicated that they were happy to return. They were keen to return to their homes and properties and eager to leave the IDP sites in Batticaloa where conditions were poor. A joint UN humanitarian assessment mission to Vakarai on 12 March, however, found that some of the IDPs who had returned voluntarily regretted their decision. The IDPs said that if they had been properly informed about conditions in Vakarai they would not have returned. In particular, they were concerned about the considerable damage and destruction to their houses, many of which appeared to have been looted; the loss of household items from their houses; insufficient water, food and infrastructure (schools, medical services etc.) and lack of livelihoods; threats to their security due to the heavy presence of SLA and TMVP armed cadres; and fears of renewed fighting between the SLA and LTTE.

In the subsequent days, pressure on those IDPs from Vakarai who were remaining was increased considerably. There was a heavy presence of armed police, SLA and STF forces at the IDP sites both before and during return movements, as well as armed TMVP cadres at some of the sites. Some IDPs were threatened that their assistance and security would be withdrawn if they refused to return. At the same time, they were promised food and assistance in Vakarai.

Many IDPs did not have full access to accurate and objective information about conditions in Vakarai on which to base decisions about return. Some IDPs had heard that their houses were being looted and were keen to return to protect their property before others claimed it. Others, having witnessed what happened to the IDPs from Trincomalee District, feared repercussions from the security forces if they refused to return.

Some IDPs expressed a strong wish not to return to Vakarai as they feared for their safety and had heard that there had been widespread damage and destruction to their homes and the infrastructure. In one site, IDPs implored humanitarian agencies not to leave as they were afraid of being forced to return to Vakarai. One IDP threatened to douse himself with petrol and set himself alight if he was forced to return. Young women were particularly concerned about the threat of sexual assault by the armed forces after hearing unconfirmed reports of young girls in Kathiravelly being raped by the armed forces. IDPs were also concerned by rumours that the SLA was occupying houses amongst civilian dwellings in Vakarai and that the armed forces would prevent them from leaving again if fighting resumed or their security was threatened.

By 25 March 2007, over 13,000 IDPs had returned to Vakarai.

Advocacy Interventions

On 19 February 2007, UNHCR wrote to the Minister of Disaster Management and Human Rights, the Hon. Mahinda Samarasinghe, outlining some of its concerns regarding both the deteriorating security situation for IDPs in camps in Batticaloa District, as well as plans for the return of IDPs to Vakarai and Trincomalee District. UNHCR once again shared its position paper on return and relocation (of 29 November) and also a "Road Map" detailing a plan of action to prepare for and facilitate the voluntary return of IDPs in safety and dignity.⁵²

⁵² There have been significant improvements in the return process in the East since April 2007 and these have been documented in the Addendum to this report.

h) Forced returns from Madhu Church, Mannar: March – April 2007

The LTTE has also been responsible for the forced relocation of IDPs. Madhu Church in the LTTE controlled area of Madhu Division, Mannar District, has traditionally been a place of refuge for IDPs. IDPs from Manthai West and Madhu DS divisions started to move to Madhu church in late 2006 as a precautionary measure due to the deteriorating security situation. IDPs stayed at the church at night and returned to their homes during the daytime to carry out daily activities. They received food, water and other assistance from UN agencies and NGOs.

In January and February 2007, larger numbers of people started to take refuge in Madhu Church due to a series of security incidents, including the bombing of Padaguthurai village and an intensification in forced, and often violent, recruitment by the LTTE. By the 19 March, there were 10,197 IDPs displaced in Madhu, over 8,000 of whom were staying in and around Madhu Church and a further 2,000 IDPs were displaced along the Palampitty Road.

The LTTE had a tacit agreement with the church authorities that they would not - recruit from within the church grounds. However, with over 1,000 men and women of “fighting age” amongst the IDPs sheltering at the church, the LTTE started to put increasing pressure on the church authorities to allow unarmed, plain clothes LTTE cadres access to the church to speak to the families about recruitment. By the beginning of March, LTTE cadres were entering the church premises on a regular basis for this purpose.

At the same time, the LTTE announced that it would prevent any more displaced families from entering Madhu Church to seek temporary shelter and that it would ask IDP families currently inside Madhu Church to relocate to alternative displacement sites. The LTTE also claimed that it could not guarantee the safety of humanitarian agency staff traveling on the road to Madhu Church which meant that humanitarian organizations were unable to access the area.

On 23 March, reports were received that the LTTE had ordered IDPs to leave Madhu Church and head north towards Vellankulam, allegedly for security reasons. It was also alleged that the LTTE was using the movement of IDPs from the church as a recruitment opportunity. On the evening of 23 March, the LTTE brought trucks to the church and started to force the remaining IDPs to leave. The LTTE cadres were allegedly armed and they used wooden sticks to force the most reluctant IDPs to get into the trucks. By 25 March, more than 5,000 IDPs (75% of the IDP population) were forced to leave the church. The LTTE cadres told the IDPs that they would be able to return after three days to collect their belongings, but the IDPs were not allowed to do so and their belongings were taken by thieves. The IDPs moved to Andakulam, Adampan and Vaddakandal in LTTE controlled areas of Mannar District.



Forcible return and relocation of IDPs from Madhu Church February – April 2007

During the following days (25 – 28 March), the forced relocation of IDPs continued. Armed LTTE cadres entered the church and used loudspeakers announcing that all IDPs should leave Madhu Church by 16:00 hrs and warning that those that did not leave would be treated as traitors. Some 1,500 IDPs were still in the church on 28 March. However, the LTTE had stopped all supplies to the church and all shops in the vicinity were closed, which was perceived as a further tactic to pressurize remaining IDPs to leave.

On 2 April the LTTE informed UNHCR that all IDPs had left Madhu Church, and had moved to Manthai West Division (Periyamadhu, Aththimodai, Vellankulam and Kovilkulam), as well as to locations in Kilinochchi District (Jeyapuram, Mulankavil and Kilinochchi). At the same time, local officials reported that less than 100 IDP families (300-350 individuals) remained in Madhu Church, although they too were under pressure from the LTTE to move to Manthai West. By 7 April, there were only 38 families in the church.

On 4 April, UNHCR met with representatives from the LTTE in Mannar and raised its concerns about reports of forced movement of IDPs from Madhu Church to Manthai West.⁵³ The LTTE representatives explained that the Madhu Church area had been under heavy shelling by the SLA and as a result the IDPs had spontaneously and voluntarily fled the area. The LTTE denied allegations that they had forced the IDPs to leave Madhu Church.

As UN agencies and NGOs had no access to Madhu Church in March and April 2007 due to the prevailing security situation, they were unable to verify the information provided by local sources. UNHCR is trying to organize a joint needs assessment in Madhu once the security situation permits. Such an assessment would provide an opportunity to verify the above information.

Advocacy Interventions

On 14 March 2007, UNHCR wrote to the Head of the LTTE Political Wing, Mr. Tamilselvan, outlining its concerns about the IDPs in Madhu Church. UNHCR stressed the urgent need for humanitarian assistance for IDPs and asked the LTTE to allow humanitarian agencies unimpeded access to the Church and to guarantee the safety of humanitarian agency staff on the access roads. UNHCR requested the LTTE to observe the strictly civilian and humanitarian character of the IDP site and not to enter the Church grounds. In addition, UNHCR requested the LTTE to refrain from forced and under-age recruitment of IDPs from displacement sites. These concerns were reiterated in a UNHCR press statement on 14 March.

The issue was also raised by the UN Resident Coordinator in a meeting with the LTTE Political Wing leader, Mr. Tamilchelvan, on 20 April.

⁵³ UNHCR met with representatives from the LTTE Mannar Planning and Development Secretariat, the Political Wing and the Administrative Officer.

7. Conclusion

The deterioration in the security situation, and the dramatic escalation of the conflict in the North and East of Sri Lanka over the past year, has had a significant impact on the population across the region. Hundreds of thousands of civilians have been forced to flee their homes, and many have been displaced several times because of renewed violence.

As this report has highlighted, one of the most significant trends observed since the resurgence of the conflict has been an increasing disregard for the rights of civilians, particularly IDPs, by all parties to the conflict. As discussed, during times of armed conflict, whilst some restrictions on freedom of movement may be permissible in specific circumstances, IDPs have a fundamental right to be protected against forced displacement, forced return and forced relocation. However, the incidents observed and documented by UN and other agencies since April 2006 confirm that many violations of these rights have taken place in locations across the North and East.

The forced movements which have been analyzed in this report are contrary to both international human rights and humanitarian law. One significant trend has been the increase in forced returns and forced relocation of IDPs. The case studies have illustrated how coercive methods have been used both by the Government and the LTTE to force IDPs to return prematurely to their places of origin, or to relocate to alternative sites against their will. Direct threats, and on occasion, physical force, have been documented, as well as threats to withhold assistance, services and protection for IDPs refusing to leave. The heavy presence of armed security and law enforcement personnel has created an intimidating environment for IDPs, preventing them from making a free and informed decision about return. Furthermore, IDPs have often lacked information on their places of origin which would facilitate them to make such a decision.

In addition, the case studies and analysis illustrate some of the challenges faced by the UN and other agencies working with IDPs in the North and East of Sri Lanka. Indeed, whilst interventions and advocacy efforts have been made with all parties, and some improvements have been noted over the past three months particularly with regard to the resettlement process in the East⁵⁴, further strengthening of the protection environment for displaced men, women and children in Sri Lanka is required.

It is within this context that the detailed recommendations to the parties have been made. These are based on fundamental legal principles applicable in the situation of internal conflict, and establish minimum standards for the treatment of civilians, particularly those in displacement. The recommendations urge the parties to respect the rights of the displaced to freedom of movement, and in particular to ensure that IDPs are able to make free and fully informed decisions about return and relocation.

As this report has highlighted, some 300,000 persons have been displaced since the escalation of hostilities in April 2006. As the conflict continues, these numbers may increase further. However, this should not mean that those in displacement are forced or encouraged to return prematurely to their places of origin. Solutions to the increased displacement must be found which are durable and sustainable, and it is hoped that the recommendations in this report will assist in shaping the future responses to internal displacement.

Overall, therefore, this report represents more than a documentation of forced movements over the past year. It is a request to all parties to work in collaboration with humanitarian agencies, and to translate the recommendations into concrete action, thus ensuring that the fundamental rights of those displaced by the conflict, are upheld.

⁵⁴ Developments since April 2007 are covered in the addendum to this report.

ANNEX 1

CASE STUDIES

The following case studies were collated by humanitarian agencies operating in conflict areas of the North and East of Sri Lanka over a one year period from April 2006 to April 2007. The information included in the case studies is based on primary data collected by field staff during routine assistance and protection activities with IDPs, local government officials, the security forces and other humanitarian organizations assisting IDPs. Where secondary data is used, the reports have been verified by agency field staff. Secondary reports are well documented and based on at least two independent sources.

The case studies are presented geographically, rather than chronologically. They reflect the themes of the report, which include: the forcible displacement of IDPs (including secondary displacement); restrictions on IDPs' freedom of movement, and the forced return of IDPs. All names and identifying information of both the interviewees and the organizations responsible for collecting the information is withheld to protect the confidentiality of witnesses.

A. JAFFNA DISTRICT

1. Allaipiddy, Jaffna

a) Forced Displacement

A series of events resulted in the displacement of civilians in Allaipiddy. On 30 April, the Sri Lankan Navy (SLN) began conducting house-to-house searches following a claymore attack that allegedly targeted the SLN. A 74 year old man was shot by the SLN during the searches and he later died from his injuries. These incidents prompted more than 60 people to leave their homes and stay in Philip Neri Catholic Church overnight for their own safety.

On May 13, 2006, unidentified gunmen killed 13 Tamil civilians, including a four month old baby, a four year old boy and their parents, in their home in Allaipiddy. Following the massacre, more families took shelter at the Church, bringing the total number to about 200 families (out of 380 families in the town).

On 20 May, just one week after the massacre, unknown persons pasted a poster near the Allaipiddy junction. The poster warned villagers to vacate their homes and leave the area within three days or face the consequences. A group called "*Makkal Pada*" (People's Force), and known to be affiliated with the LTTE, claimed responsibility for the poster. A similar notice from this organization had been pasted a week earlier (on 11 May) instructing all shops to close for three days. The owners of two shops who ignored the instruction and kept their shops open were subsequently killed during the 13 May massacre.

Afraid of the consequences if they stayed, almost all the villagers left Allaipiddy after the second notice was posted and only 10 families stayed behind. Some of them fled to the Vanni and Mannar, but most of them went to Our Lady of Refuge (OLR) Church, St. Nicholas Church in Navanthurei and Jaffna Town. Some families returned to the village to check on their property during the day and returned to spend the night either in a camp in Jaffna town or with families living in Jaffna.

b) First Wave of Returns to Allaipiddy

By June 2006, the IDPs in Jaffna Town were coming under pressure from the local government authorities and security forces to return to Allaipiddy. The local authorities as well as the EPDP promised improved living conditions in the town if the IDPs returned immediately. These included supplying electricity to the town, repairs to old homes, dry rations and improving security for the people of Allaipiddy. IDPs also reported harassment by the SLA, and furthermore, they had been told that if they did not return government assistance would be cut.

After a series of community consultations between the IDPs and the government authorities and security forces, as well as UN agencies and NGOs, the IDPs who were staying at OLR Church and St. Nicholas Church in Navanthurai and in Jaffna Town, decided to return to Allaipiddy. The government and humanitarian agencies agreed to provide assistance and the SLA gave assurances that the safety of the IDPs would be guaranteed. On 12 and 13 June, the government authorities organized lorries to take IDPs staying in the churches back to Allaipiddy.

In discussions with the IDPs they said that they had no option but to leave. They were already the victims of harassment and feared further violence and harsh consequences if they stayed. They also said that the harsh living conditions and the threat of reductions in assistance were key factors which influenced their return.

In discussions with the GA, he said that he was unwilling to provide alternative temporary solutions for Allaipiddy IDPs or improve conditions in the existing displacement site. He explained that the IDPs should return as soon as possible and said that they themselves had expressed this wish in writing.

c) Restrictions on freedom of movement during flight

On 11 August, two months after the return of the IDPs, the LTTE engaged in a seaborne landing in Allaipiddy. Shelling into the area continued for 48 hours. The Philip Neri Church, where villagers were sheltering, was hit during the shelling and 14 civilians were injured (four of whom later died from their injuries). A total of 29 civilians died during the shelling. As a result, the villagers decided once again to flee Allaipiddy. The villagers first tried to leave on 12 August, but were prevented from doing so by the SLN who were regrouped at the Allaipiddy – Kayts junction. Again, on 13 August, villagers started to leave Allaipiddy en masse. They were stopped again at the Allaipiddy/Kayts checkpoint and were prevented from going to Jaffna Town. The SLN, instead, allowed them to go to Kayts where they stayed until 23 August.

On 23 August, the IDPs were allowed to move to Jaffna Town to OLR Church and St. Nicholas and St. Anthony's Church in Navanthurai.

d) Second Wave of Returns

In mid January 2007, the authorities issued a deadline of just a few days for IDPs from Allaipiddy staying at OLR Church and St Nicholas Church and School, to return to their homes, despite the prevailing security situation and lack of basic services. While some IDPs expressed an interest in returning to their homes, UN agencies were concerned that the security and living conditions in Allaipiddy were not conducive for return. By February, 20 families had returned voluntarily to Allaipiddy, all of them to Ward 1. A letter dated 6 February was received from the DS in Velanai requesting UNHCR to assist with shelters for the relocation of 32 families from the three IDP sites in Jaffna town back to Allaipiddy. However, when UNHCR met with the IDPs in these sites, none of them were willing to return, mainly due to security reasons.

2. Coastal Areas South East of Jaffna Town

a) Forced Displacement

On 11 August 2006, when hostilities resumed in the Jaffna peninsula, the Voice of Tigers (official LTTE radio station) issued an announcement advising residents of Gurunagar, Passaiyoor, St Rocks and Columbuturai to vacate the area.⁵⁵ Residents were warned of imminent attacks and told to move at least 1km away from the coastal areas and SLA checkpoints and facilities.

Residents took the LTTE's warnings seriously as similar warnings had been issued in 2000, and people who had returned to their villages then found themselves caught in the middle of fighting between the SLA and LTTE. Moreover, residents were fearful after the incident in Allaipiddy on 11 August 2006, where villagers had returned following assurances from the SLA/ SLN of their

⁵⁵ These are all militarized coastal areas bordering the high security zone (HSZ) south east of Jaffna Town

safety, but had then been caught in the middle of fierce fighting during which at least 20 civilians were killed.

As a result, most people left the coastal villages early the following day (12 August) and sought refuge in schools and churches in Jaffna Town. Many of them returned during the day time to continue with daily livelihood activities.

b) Forced Returns

In mid-September 2006, the SLA started to put pressure on the IDPs to vacate the Temporary Accommodation Centres (TACs) in schools, colleges and churches in Jaffna Town and return to their villages. IDPs were reluctant to return, however, unless their safety could be guaranteed by both the SLA and LTTE. Many IDPs were fearful of returning to their homes at night due to the ongoing shelling and fighting, and there were concerns that the strictly enforced curfew would prevent them from fleeing if there was an attack during the night. They were also afraid of the ongoing cordon and search operations and the high occurrence of 'white van' disappearances at night. Some people had experienced harassment by the SLA when they had tried to return to their villages on previous occasions and had consequently returned to the TACs; others wanted guarantees from the LTTE that they would not attack the coastal areas after the warning issued on 11 August.

c) First wave of returns

The first wave of returns took place on 22 September 2006 from St. Patrick's College and St. Charles College TACs.⁵⁶ Security forces arrived early in the morning and used loudspeakers to instruct IDPs to leave. It was reported that in St Patrick's College, SLA forces took videos of IDPs inside the TAC, and patrolled the premises, preventing anyone from entering. The SLA remained on the premises until all IDPs had left. During the operation, nine men were arrested at St. Patrick's College, and three from St Charles' College; all men were released the following day without charge.

By the end of September, the TAC had closed and all the IDPs had returned to their homes, despite interventions by UN agencies at the nearby army camp protesting the returns.

d) Second Wave of Returns

In the second wave of returns IDPs were given an ultimatum to leave schools or churches which were being used as TACs. Government authorities and security forces had applied pressure on school authorities and religious leaders to encourage IDPs to leave their premises.

Documented incidents include the following:

Holy Family Convent (HFC): In mid-September, 120 IDP families remaining at the TAC were informed by school authorities that they should leave the premises; on 1 October, they were told that they would have to leave that same day. 70 – 80 families left without protest, but 40 – 50 families requested to stay at the school at least during the nights. This request was refused by school authorities, who advised that the IDPs would face problems if they stayed.

St. Mary's Cathedral: 37 IDP families, who were living in quarters at the back of St. Mary's Cathedral, were asked to leave by church leaders before an ordination ceremony on 4 October. These families told UNHCR that they decided to leave the church as they didn't want to disrupt the normal religious functioning of the Cathedral. They claimed that they did not feel forced to leave.

St. James' Church: 1,700 families were living at St. James' church, most of them were night-time displaced. Some of the families were staying in the school buildings in the Church compound. IDPs were asked to leave by religious leaders to enable the resumption of normal religious

⁵⁶ 5000 individuals (1000 families) were staying in St Patrick's College, the largest TAC in Jaffna Town; 440 individuals (100 families) in St Charles' College.

activities. Some families left immediately after the request, while others stayed at the Church. However, on the evening of 29 September, the IDPs found the school building was locked upon their arrival; and again on 1 October, the IDPs found the church building locked and their belongings moved outside the church. IDPs were advised by the religious leaders that they would face problems with the SLA if they continued to stay at the Church.

e) Conditions in places of return

UN staff subsequently visited the IDPs' villages of origin in Gurunagar, Passaiyoor and Columbuturai. Many families were afraid to stay in their homes at night and had moved elsewhere to empty houses or to stay with host families. With the closure of the TAC's, however, some families had no other options of places to stay at night. Those families living closest to the coastline, which is a restricted military area, were the most afraid. In addition, since leaving the TAC they had been stripped of their IDP benefits and were no longer eligible for free dry rations. Many lived in a state of fear with their bags packed and ready to leave if necessary.

3. Mandaitivu and Islands: Restrictions on Freedom of Movement

The imposition of a strict 24 hour curfew in Jaffna on 11 August severely restricted civilians' freedom of movement, preventing people from leaving areas where their security was threatened. Residents of Mandaitivu Island, for example, were only permitted to leave the island on 21 August, despite reports of massive displacement on the island and danger to their physical security due to heavy fighting between the LTTE and SLN. When civilians were eventually allowed to leave, the Government security forces only allowed them to take one piece of hand luggage, a policy which was strictly enforced, and which prompted many residents to remain on Mandaitivu as they were unwilling to leave behind their belongings. Movement out of the islands was restricted by the Government security forces due to their fear of LTTE infiltration. Similar restrictions on freedom of movement for residents of other outlying islands, including Kayts, Allaipiddy, Velani and Karainagar, applied.

In January 2007, a group of 23 IDP families from Mandaitivu were unable to return to their homes as they had not received clearance by the SLA/ SLN, possibly due to male family members having suspected affiliation with the LTTE. The rest of the IDPs returned voluntarily to Mandaitivu.

TRINCOMALEE DISTRICT

Muttur

In July 2006, the LTTE closed the sluice gates at Maavil Aru, in Serunuwara area, Trincomalee District, thus cutting off access to water, preventing irrigation of agricultural land and affecting the lives of tens of thousands of villagers from all ethnic communities (the majority were Sinhalese), living downstream. The LTTE claimed that they were acting in response to government blockades on supplies into the LTTE controlled areas of Muttur East since the suicide attack on the Army Commander, General Fonseka, in April 2006, which had resulted in severe food shortages. The government launched an offensive against the LTTE in response to the closure of the sluice gates and the LTTE launched a counter offensive, seizing control over parts of Muttur. As the fighting for control over Muttur Town escalated into August, thousands of Muslims fled from Muttur to Kantale town, (and from there some proceeded to sites in Thampalakamam, Kinniya and Town & Gravets divisions), and Tamils fled from western and eastern Muttur into Trincomalee town. By the end of August, nearly 50,000 people were displaced in Trincomalee District. Smaller numbers of Muslim and Tamil IDPs also fled from Muttur to Batticaloa, Ampara, Anurhadapura and Puttalam Districts.

1) Muslim IDPs

a) Forced Displacement of Muslims, May 2006

Handbills were circulated in Muttur, Trincomalee District, on 29 May, demanding that the Muslim community vacate the area within 72 hours. The handbills were issued under the name of a group called *Tamil Eela Tayaham Meetpu Padai (Tamil Eelam Motherland Retrieval Force)*. They stated that Muslims should leave the area to enable the LTTE to regain Muttur in the first phase of the fourth Eelam War. The handbills condemned what they claimed to be the Muslim community's collusion with the security forces and paramilitary groups. The handbills were not seen as a precautionary measure to warn Muslim civilians of an impending attack, but rather were interpreted as part of a broader ethno-political strategy to expel Muslims from the area. Although the LTTE claimed that it was not responsible for issuing the handbills, it did not condemn the expulsion notice or take steps to avert a crisis. In the event, however, increased police and military presence allayed the fears of the Muslim community and few people decided to flee the area.

b) Restrictions on Freedom of Movement: Muslim IDPs prevented from fleeing by LTTE, August 2006

On 3 August, about 45,000 civilians, Muslims and Tamils, fled the shelling in the Muttur area and headed by foot towards Killiveddi town. On the way (between the 3rd milepost and Iruthayapuram), they were stopped by the LTTE who claimed that the road ahead was mined, and were directed east towards Kiranthmunai in LTTE-controlled territory. At a point where the path narrowed and created a bottleneck, LTTE cadres separated the men from the women and children and forced them to walk past two masked informants. At least 32 mostly young men, virtually all of them Muslims, were taken aside, tied up with their hands behind their backs and pushed to the ground. After an altercation, during which an LTTE cadre shot and killed one of the civilians, the army was alerted to the LTTE presence and immediately began to shell the area, killing civilians as well as LTTE cadres, and causing everyone to flee. In the panic that ensued, families were separated, including children from their parents. Most of the displaced persons eventually reached camps in Kantale. The fate of the men taken away by the LTTE is unknown.⁵⁷

c) Forced Returns of Muslim IDPs to Muttur from Trincomalee, September 2006

Following fierce fighting between the Government and LTTE forces in August, the Government forces took control of Sampoor on 4 September 2006. This triggered pressure by Government officials, security forces and Muslim politicians and community leaders to return IDPs within days, despite the fact that shelling had just stopped.

A joint UN fact finding mission to Muttur on 25 August had concluded that conditions were not safe for return to Muttur. The mission found that the front lines were not stable and there were high risks of fighting resuming and a LTTE counter-attack. Moreover, the presence of landmines and UXOs in some areas was a major threat to IDPs' physical security. In addition, the homes and properties of IDPs had been damaged or destroyed during the fighting and many returnees would have to stay in temporary sites without adequate water, sanitation, food and other basic assistance. This was not considered to be a sustainable return.

In the first days after the fall of Sampoor (4 – 7 September) significant numbers of Muslim IDPs returned voluntarily from Kantale to Muttur. They cited poor living conditions in Kantale, recent heavy rains, the desire to return to their homes before the start of Ramadan (24 September), and the wish to resume their children's education at schools in Muttur as reasons for their return.

In the following days, 7 – 11 September, the remaining IDPs in Kantale, Kinniya and Thampalakamam came under heavy pressure from government officials, the security forces and

⁵⁷ Sources: University Teachers for Human Rights (Jaffna): *Hubris and Humanitarian Catastrophe*, Special Report No. 222, 23 August 2006; Amnesty International *Sri Lanka: Call for urgent action to protect civilians, and investigation into human rights violations*, 18 August 2006; Human Rights Watch *Improving Civilian Protection in Sri Lanka: Recommendations for the Government and the LTTE*, September 2006; INFORM/IMADR *Report on Field Visit to Kantalai and Serunuwara: Trincomalee District, Eastern Province, Sri Lanka* 25 August 2006

community leaders to return to Muttur. A major repatriation drive was launched on 7 September, after a group of Muslim Ministers came from Colombo to visit the displacement sites and encourage the mass return of IDPs. By 11 September, most displacement sites in Kantale, Kinniya and Thampalakamam were empty and by 12 September, 38,000 IDPs (out of a total of 41,985) had returned.

Government officials, the police and security forces, and Muslim leaders maintained a heavy presence at IDP sites over these days. Loudspeaker announcements gave deadlines for return and the provision of government buses. IDPs were warned that food and assistance would be stopped and water and electricity supplies cut if they remained. In some cases, NGOs were instructed to discontinue assistance to IDP sites. Although many IDPs returned voluntarily, others felt coerced into leaving due to such threats and expressed fears for their safety in their places of origin. Many IDPs felt that they were unable to make free and informed decisions and had no choice but to return.

Documented incidents of forced return of Muslim IDPs to Muttur include:

Kantale

Peace Refugee Site – 7 September

Only 45 families remained at this site. Police, home guards and army officers were present to witness the departure of IDPs. IDPs said they felt coerced to leave as they were informed that water and food would not be provided.

Al Rauf Camp – 7 September

170 families (out of 214) remained at this site. Those families remaining were from Thoppur and were afraid to return due to the security situation. Some IDPs mentioned that the SLA was occupying people's homes and had set up their artillery in their village. A group of local Government officials came to the site and asked 60 IDPs to sign forms – they did not know what they were signing. The next day (7 September), these 60 families were asked to leave – and 40 left. Instructions were given to cease food distribution on Friday 8 September.

Ikram Camp – 7 September

Police and local authorities visited the site and told people to leave before Friday 8 September when food rations would be stopped.

Watukachchi Camp – 8 September

60 IDP families remained at this site. Many of them were from Thoppur and were afraid to return. On 8 September, Government officials visited the site to inform IDPs that assistance would not be provided if they remain. The police also came to the site and told IDPs they should leave. As a result, most of the IDPs felt coerced to leave.

Pottan Kadu Camp – 8 September: 320 Muslim families remained in this site. The remaining IDPs were mainly from Thoppur and refused to return due to security concerns. Some IDPs had returned to Thoppur and found that the army was occupying their homes. On Friday 8 September, the IDPs were informed by Government officials that assistance and transportation would not be provided if they remained. They were told that they would have to pay for own food and water if they did not return before 9 September.

Kandala Camp – 8 - 9 September: At the end of August/ beginning of September, SLA, police and local Government officials repeatedly visited Kandala camp instructing IDPs to leave the camp and return to their homes in Muttur Division. The IDPs were told that they could not stay in Kantale and would no longer receive any assistance. They were promised, however, that if they returned they would receive food rations for six months, and Rs. 25,000 as resettlement assistance. IDPs were eventually returned to Muttur Town on 9 September, after being informed the evening before by local authorities that they could no longer stay in the site and that transport had been arranged for their departure. The promised aid was never provided apart from 20 kg of spoilt flour.

Kinniya

On 8 September international organizations were informed by local authorities that 10 buses would be provided to transport IDPs back to Muttur from 7 – 8 September, after which IDPs would have to arrange their own transport. No assistance would be provided after Tuesday 12 September, including food and water, but two weeks ration would be provided to IDPs who returned.

Thampalakamam

Al Hiqma M.V (Camp 98) – 7 & 8 September: On Thursday 8 September, 72 families at *Al Hikma* site, run by Rural Development Foundation, were told to leave for Muttur on the following morning and that access to food, water and other relief would otherwise be stopped. On Friday, 8 September, 24 families decided to return to Muttur in buses provided by the government. The remaining 48 families stayed behind, reluctant to leave because of the security situation in their villages. Later that day, police and Government officials entered the site and ordered the IDPs to leave. There were reports that families who refused to leave were physically dragged onto buses and their possessions thrown onto the street. Three families stayed behind and sought shelter with host families.

H4: Siraj Nagar: Water to the camp was cut on Thursday 7 September. A police officer came to the camp on Friday 8 September and informed IDPs they had to leave by Monday and if they did not, they would get no government compensation for their losses and no free transport.

e) Forced Displacement of Muslim IDPs, September 2006

Following the mass return of Muslim IDPs to Muttur in early September 2006, after the fall of Sampoor to SLA forces, a leaflet was distributed on 22 September warning of imminent LTTE attacks to re-capture Muttur from the SLA. The leaflet urged all Muslims to leave Muttur immediately and not risk being held as human shields by the security forces. It warned that those Muslims who stayed would have to face the consequences. The leaflet was reportedly signed by an organization called *Liberation of Tamil Eelam Homeland*, and was initially attributed to the LTTE, although the LTTE subsequently denied any involvement.

f) Restrictions on freedom of movement: Muslim IDPs prevented from fleeing by SLA/SLN, September 2006

As a result of the leaflet, Muslim families began leaving Muttur for Trincomalee Town, Kinniya and Kantale. However, many were prevented from leaving by the Sri Lankan Army and Sri Lankan Navy, who imposed road and sea blockades.

The first batch of some 200 IDPs arrived by boat at Town & Gravets in Trincomalee early in the morning on 23 September. 21 boats managed to depart from Muttur that morning, but Navy gun ships prevented any more from leaving. The authorities subsequently checked all passengers trying to leave Muttur and only allowed those coming to Trincomalee for work or medical treatment to leave.

A further batch of IDPs arrived in Kinniya on 30 boats the same day. Following their arrival, the Navy prevented any more boats from reaching Kinniya and boats that had brought IDPs to Kinniya were prevented from returning.

The third group of some 200 families came by bus to Kantale on 23 September. After their departure, the army started to prevent people from leaving at the military checkpoint at 58th – 59th mile post.

g) Second Wave of Forced Returns: 22 – 30 September:

Out of those Muslims who managed to leave Muttur Town on 23 September, around 200 families were reported to be staying with host families in Kantale and roughly 1,400 IDPs stayed at two displacement sites – Al Aksha and Al Hijram schools – in Kinniya. No Government assistance was provided to new arrivals and conditions in the sites were extremely poor, with no food or

water. Furthermore, NGOs were prevented from providing essential assistance. The local authorities held the position that conditions were safe in Muttur and the IDPs should return.

The IDPs, however, were adamant that they did not want to return, and that they took the leaflets about imminent LTTE attacks very seriously, given past experience. They claimed that the SLA had occupied houses in residential areas of Muttur town, thus creating additional security risks for themselves. They also claimed that they would not return unless Tamil IDPs did too, and felt that the Tamil IDPs might have some knowledge about the LTTE's intentions.

By 25 September, police were maintaining a heavy presence at both sites. Over the next few days the IDPs came under increasing pressure from the police, security forces and government authorities to return to Muttur. Buses were provided for IDPs to return, but IDPs refused to board them. At Al Aksha police became aggressive and threatened to fire on IDPs if they were attacked. Fearing arrest or possible injury, most of the IDPs (250 families) had dispersed to host families.

By the end of September most of the IDPs had returned to Muttur, although an estimated 250 families remained with host families in Kinniya and Kantale. Those who returned claimed that they had no other option due to lack of assistance, very difficult living conditions, especially as most of them were observing Ramadan, and pressure from the authorities.

2) Tamil IDPs in Muttur

a) Forced returns of Tamil IDPs in Trincomalee to Muttur: September – December 2006

Following the July 2006 offensive in Muttur, several thousand Tamils from Muttur West (government controlled) and Muttur East (previously LTTE controlled) fled into Trincomalee town (Town & Gravets Division), which still contained some Tamil IDPs from the April 2006 displacement. At the same time as pressure was being exerted on Muslim IDPs to return to Muttur in September 2006, Tamil IDPs were also under increasing pressure from the authorities to return to their places of origin in western and eastern Muttur.

Tamil IDPs were extremely fearful of returning to their homes, however, due to continued shelling between government and LTTE forces and the high military presence in their villages. They feared harassment by the security forces and possible retaliation from the majority Muslim population. In some instances, Tamils who returned voluntarily to their villages came back to displacement sites in Trincomalee because of security concerns.

b) First Wave of Forced Returns, September 2006

St Mary's College: 9 - 11 September: From the end of August, Tamil IDP families from Muttur came under increasing pressure from local authorities to return to Muttur. They were repeatedly told they could no longer stay at the site. As a result, on 9 September 2006, 15 families finally agreed to go back and a bus was sent to take them to Muttur. The IDPs confirmed that they were very concerned about their security once back in Muttur. On the same day, there was a killing in Muttur town and most of the 15 families decided to return to Trincomalee Town immediately. Some of these families went to Alles Garden IDP Camp, others found shelter with friends.

Cultural Hall – 8 September: 25 armed SLA soldiers, 4 body guards in civilian clothing and a Government official were present at the site to oversee return. The official told IDPs that they would all have to return from Town and Gravets that day, and stated that 80 families had registered to return to Muttur from this site. However, the IDPs protested that they had been forced to register and they did not want to go. They said they felt they had no option but to leave. The officials said they would return later that morning to check that all the IDPs had left. UN observers at the site found the atmosphere intimidating and threatening and chose to leave.

St. Joseph's College – 8 September: Local Government officials came to the site and told people to register and return to Muttur. Many of the Tamil IDPs were not willing to return. Those IDPs

from Lingupuram village in Muttur Division decided it was safe to return and 30 families registered for return.

Konalingam MV – Linganagar (T-3) – 8 September: Local Government officials visited the site to tell IDPs to return according to instructions from central authorities. Some of the IDPs were from Kanguveli, where two days previously someone had been shot in the arm after returning. The SLA came to this site on 6 September to check the background of young Tamil males. Two young men were questioned.

c) Relocation to Killiveddi, October – November 2006

On 17 October, UNHCR was requested by local Government authorities to assist in the relocation of 3,000 – 4,000 Tamil IDPs in Town & Gravets to land in Killiveddi, Muttur Division. UNHCR was requested to provide semi-permanent shelters and latrines in Killiveddi where relocated IDPs could stay before returning to their homes. According to the authorities many of the IDPs were traveling to Killiveddi during the day and returning to spend nights in Trincomalee. The Government hoped that repairs to their houses could take place while they were staying in the temporary site to enable them to move back to their homes. There were some assurances that IDPs who did not wish to relocate could remain in Trincomalee Town, although the camps would be consolidated and IDP sites in public buildings would be closed down.

On 2 November, UNHCR learnt that the Government proposed to move 150 families on 4 November to Killiveddi. IDPs had expressed concerns about relocation due to security reasons. Some IDPs explained that they were not willing to return to Muttur as the security forces would prevent them from displacing if the security situation deteriorated (as was the case for the Muslim IDPs who tried to leave Muttur in September following the distribution of the leaflet (described above)). They feared becoming trapped if they returned. IDPs from LTTE controlled areas said that they were only willing to return if the government blockade on humanitarian assistance was lifted. Some IDPs had carried out “go-and-see visits” and found that looting of their houses was widespread and some houses had been damaged by the fighting. In some areas the security forces were preventing “go-and-see visits”, and in one instance a woman was threatened in Muttur Town by an armed civilian.

Many IDPs were afraid that if there were any attacks on the security forces, there would be severe reprisals against civilians. In this regard they cited an incident which had occurred in February 1996 in Kumarapuram (a village in Killiveddi), when two soldiers had been killed and 24 civilians were killed in reprisal attacks. Furthermore, after a young homeguard was killed in Dehiwatte, soldiers had reportedly visited the neighbouring village of Menkamam and threatened people with a repeat of the Kumarapuram massacre should there be any further security incidents. On 5 August, a man was dragged from the IDP camp at Killiveddi school and executed on the road in front of the school. The army then refused to allow the villagers to take the body. As a result, there was considerable fear of the SLA amongst the Tamil population.

Following interventions from UNHCR on 3 November, the Government agreed that the proposed relocation of IDPs from Trincomalee Town would be postponed until December, in order to give due consideration to arrangements that would instill confidence in such a move.

On 29 November, following a review of the relocation proposal, UNHCR formally communicated its position on return and relocation and the Killiveddi site to the Government. UNHCR confirmed that it would be prepared to assist the Government in facilitating the voluntary return of persons in Trincomalee Town who were displaced from Killiveddi and who expressed a desire to return to their homes. This would be contingent on having free and unhindered access to ascertain the voluntary nature of the decision. UNHCR strongly believed that return should be directly to their homes in Killiveddi and not to a relocation site. Moreover, UNHCR felt that the particular relocation site selected by the Government in Killiveddi was not advisable given the security and protection concerns of the IDPs and the prevailing security situation in the area, particularly recent incidents of killings and abductions of civilians in Seruvila and Muttur Divisions and fears of inter-communal conflict.

d) Second Wave of Forced Returns, November/ December 2006:

Despite UNHCR's intervention and assurances from the Government that it would not forcibly return Tamil IDPs to Killiveddi and other parts of Muttur, IDPs in Town & Gravets, Trincomalee Town, came under increasing pressure from Government authorities to return. At the end of November, security forces and TMVP members visited displacement sites in Trincomalee Town at night, searched the premises, checked the identities of IDPs against a list and put pressure on IDPs from certain areas of Muttur to return.

In a typical operation, military personnel would ask IDPs to gather their belongings in the middle of their sleeping quarters and then would proceed to search them thoroughly. They demanded that the IDPs returned to their villages of origin and asserted that they would be harmed if they refused. Military personnel threatened IDPs that members of the TMVP would "handle" them if they refused to follow these orders. IDPs were often photographed by the military during these visits and threats were made that young men would be targeted if they remained or that the military would plant weapons and explosives in IDPs' so that they would be arrested and removed from the site.

IDPs feared retaliation by the security forces if they failed to do as they were told; some IDPs claimed that the forces had told them not to speak to agencies about these issues. Most of the IDPs stated that they were not willing to return because of the security situation in their villages of origin.

On 2 December, 66 families from the Cultural Hall site in Town & Gravets were returned on government buses to Muttur. The majority of IDPs were from Killiveddi, with others from Thanga Nagar, Maligiathivu, Iruthayapuram and Manalchenai. Considerable pressure continued to be put on IDPs in the other sites in Trincomalee Town to return and by the end of December smaller numbers of IDPs had returned from these sites. The site identified by the Government in Killiveddi was not ready when the returns took place in early December, so instead IDPs were moved to Killiveddi school.

During monitoring visits to Killiveddi in early December, several returnees from Town & Gravets maintained that pressure had been exerted on them to return by the security forces. Many families, particularly those with young male members, reported that they felt much safer in Trincomalee Town than in Killiveddi, and some confirmed that they were considering returning to Trincomalee and renting accommodation. Widespread looting of homes had taken place in the IDPs' absence, and assistance for house repair was identified by returnees as a priority. Returnees also lacked food, as only one week's dry ration had been supplied upon their return.

Documented incidents of forced return of Tamil IDPs during this period include:

Cultural Hall, Trincomalee Town

Security forces visited the Cultural Hall site, with an IDP population of 296 IDPs (107 families), on several occasions between 16 and 25 November. On 25 November, about 50 security forces entered the Cultural Hall IDP site in Trincomalee Town at 1am and checked IDPs' distribution cards as well as searching their belongings. The forces had reportedly informed the IDPs that it was safe to return to Malligathivu, Killiveddi and Thanga Nagar and that if IDPs failed to return then they would intensify the round ups and would arrest and/or detain those who remained without good reason. IDPs were informed that buses would be provided for up to 160 persons on 3 December (or 1 December) and that dry rations for 6 days would be provided.

The majority of IDPs maintained that they were not willing to return, but that they feared reprisals, including arrest by the security forces, if they remained in Trincomalee..

On 2 December, 66 families from the Cultural Hall site were returned on government buses to Muttur. Some 50 security force personnel and police accompanied their return. The majority of IDPs were from Killiveddi, with others from Thanga Nagar, Maligiathivu, Iruthayapuram and

Manalchenai. UNHCR decided not to monitor the return of IDPs from Cultural Hall and was not present at the site on 2 December. In response to subsequent concerns raised by UNHCR about the returns, Government officials maintained that Killiveddi was safe, and that all returns had been voluntary. Officials highlighted the fact that IDPs had signed a “form” confirming they were returning of their own free will. In most cases, however, the IDPs were required to tick on a list against their names indicating whether or not they wished to return – there were no standard “forms” as such.

St Joseph’s College, Trincomalee Town

This site housed 255 IDPs (98 families). Security forces came to the site at 11pm on 26 November and told IDPs from Kanguveli, Kumarapuram, Killiveddi, Palathidichenai, Palatoppur and Lingapuram (around 43 families in total) that they would be transported back on 1 December. They were further informed that if they refused there would be further round-ups and arrests. IDPs expressed their unwillingness to return and cited recent shooting incidents in Muttur as evidence that it was not safe.

A second round-up of IDPs occurred during the night of 6 December when the police and armed security forces entered the camp, rounded up the IDPs and told them that they should leave by 10 December or face problems if they stayed. Following the round-ups a list was drawn up of 29 families who signed an agreement to go back to their villages.

On 23 December, 38 individuals (18 families) moved from St Joseph’s College, Town & Gravets, to Killiveddi School. The return was organized by local authorities and observed by UNHCR. IDPs maintained that they were returning voluntarily, and that no pressure had been exerted on them to return. Persons remaining at the site had chosen not to return for security reasons and/or concerns over lack of shelter/livelihoods, as they had not visited places of origin since August.

Vigneswaran School

178 IDPs (64 families) were staying at this site. Security forces came to the site on 18 November at around 9pm. They separated male IDPs from females and searched their luggage. IDPs from Killiveddi, Thanga Nagar, LB3, Manalchenai and Menkamam (seven families in total) were told that they had to leave on 1 December. IDPs informed local authorities that they were unwilling to return, but were told to comply with the security forces.

Shanmugam School

193 IDPs (63 families) were staying at this site. Security forces visited the site on 23 November and told IDPs from various areas of Muttur West (Pachanur, Menkamam, Manachenai, Palatidichenai, Killiveddi, Kanguveli, Barathipuram and Malligathivu) that they would be returning on 1 December. IDPs indicated that there were no direct threats. They were told that one month’s dry ration would apparently be provided.

Loorthu Matha Church, Palayutu

In early November 2006, two groups of IDPs were staying at Loorthu Matha (Our Lady of Lourdes) Church IDP site, Palayutu, Trincomalee Town. One group from the Muttur area received food rations, while the other group from Sangaman received no support. They were not registered by the authorities as IDPs and according to one INGO, local Government officials had prohibited support to this group. In early September, an SLA official had visited the camp and spoke to the IDPs. He informed them that it was safe to go back and that it was not an option to stay at the camp.

Thanga Nagar, Seruvila Division

In August 2006, 130 Tamil IDPs (41 families) from Thanga Nagar fled their homes following skirmishes between the SLA and LTTE, and sought refuge at the Thanga Nagar primary school⁵⁸. The IDPs received assistance from the Government and an INGO.

⁵⁸ On 31 May 1985, 37 people were killed by the SLA in Thanganagar village.

On 20 November 2006 IDPs local authorities informed IDPs that it was safe for them to return, as Thanga Nagar was inhabited and surrounded by safe villages. The supply of dry rations was subsequently reduced, and authorities refused to repair the school's leaking roof.

From the beginning of December, IDPs reported a frequent presence of the SLA in the camps, particularly at night, who repeatedly informed IDPs that they should return. On 25 December, IDPs were told by the SLA that they had to leave the same day, and that there would be repercussions for those who refused. One of the reasons given was that the school had to be re-opened soon as the new term was about to begin. Consequently, all IDPs returned that day.

e) Third wave of forced returns: January – March 2007

Although pressure on IDPs in Town & Gravets to return eased somewhat in January 2007, it was stepped up again in February and March. Most of the IDPs remaining in Town & Gravets in March 2007 were from Muttur East. As IDP numbers reduced, the authorities attempted to consolidate sites and many IDPs were moved to Cultural Hall site where conditions were poor. IDPs faced food shortages as some humanitarian agencies cut assistance due to lack of funds, or were instructed by the Government to cease providing assistance to sites. An increase in the number of cordon and search operations in Tamil residential areas also put pressure on the IDPs.

As returns from Batticaloa District to Trincomalee District took place in March 2007 (see below), local authorities visited the Town & Gravets sites to persuade the IDPs to return to Killiveddi and threatened that their assistance would be withdrawn. No deadlines for return were given and no direct threats of closing the IDPs sites. The IDPs were reluctant to return to Killiveddi because they feared for their security, many of them had heard about the killing of a returnee on 18 March (see account below), and they had heard about water shortages and lack of facilities at the transit sites. The IDPs did not want to be relocated to Killiveddi but expressed a desire to return to their homes in Muttur East as soon as possible.

Documented incidents of forced returns during this period include:

Konalingam School

IDPs, mainly from Muttur East (31 families), were informed in mid March by local authorities that they should move to either Palaiyutu IDP site, Cultural Hall IDPs site, or return to Killiveddi. However, they were reluctant to move as their children were enrolled at school in Konalingham school. They also feared round-ups at Palaiyutu and security checks at Cultural Hall sites; and were afraid to return to Killiveddi as they had heard of a shooting there on 18 March and of water shortages. The NGO providing food assistance was reportedly instructed to cease providing assistance to the IDPs at this site.

Cultural Hall

IDPs (all from Muttur East; 61 families) were also informed by local authorities in mid March that they should volunteer to return to Killiveddi or their assistance would be withdrawn. However, they were not specifically told that the site would be closed or that buses would be sent on a given date. IDPs informed agencies that they feared being forcibly returned, as had occurred from Batticaloa District to Killiveddi transit sites, and had also heard about the killing and water shortages at Killiveddi transit sites and were reluctant to be relocated there.

f) Forced returns of Tamil IDPs from Batticaloa District to Trincomalee District: March 2007

In February and March 2007, the Government and security forces undertook a significant effort to remove IDPs from Government controlled areas of Batticaloa District and return them to their areas of origin in Trincomalee District and Vakarai. Over 30,000 IDPs in Batticaloa District were from Trincomalee District, most of them from formerly LTTE controlled Muttur East and Eachchilampattai divisions, as well as Government controlled Muttur West and Seruvila divisions. The IDPs had fled to other areas of Batticaloa District after they were displaced from Vakarai in December 2006 and January 2007. Many of them had been displaced multiple times prior to this.

Returns to Trincomalee occurred in two phases. The first group of returns took place on 12 March. IDPs, who were mainly from Muttur West and Seruvila, were notified on Saturday 10 March by lists posted in the camps that they were to return to their places of origin. However, agencies monitoring the returns observed that many were not voluntary, or in conditions of safety and dignity, and IDPs had not been able to make a free and informed decision on whether to return. Armed police, the SLA and STF were present in many of the sites, pressurizing IDPs to return. From 15 March, however, the returns were even more problematic, and many IDPs were subjected to severe intimidation, threats, harassment and, in some cases, physical force, to persuade them to return. The Government also abandoned plans to return IDPs only to Muttur West and started to return IDPs from Trincomalee regardless of their place of origin. Most of the IDPs from Muttur East and Eachchilampattai were relocated to the transit camps in Killiveddi, although some of them had been told they would be returned directly to their homes.

By 21 March, 3,021 IDPs (938 families) had been returned to Trincomalee District from Batticaloa. Of these, 1,866 IDPs (588 families) were still at Killiveddi transit site on 21 March (the majority of them from Muttur East, as well as 517 persons (145 families) from Eachchilampattai and 112 persons from Seruvila), and the remainder had either returned to their homes or were staying with host families.

12 March Returns

Returns to the nine GN divisions where Go and See Visits had taken place were scheduled for 12 March from collection points in six DS divisions in Batticaloa Town. On 12 March, 920 IDPs (out of the 2,800 IDPs included in the Government's resettlement plan) returned on approximately 21 buses to Killiveddi in Trincomalee District. Joint UN/NGO teams monitored the departures in Batticaloa and reported that very few of the returns were voluntary or based on free and informed decisions by the IDPs.

Some documented incidents of forced returns during this period include:

Valachchenai Collection Points: Vinayagapuram & CPM Church IDP Sites

304 families were due to return from this collection point, out of whom only 91 families ultimately boarded the buses.

Two armed SLA soldiers were present at CPM Church site, together with local Government officials, obtaining numbers of returnees and persons over 18 years of age. The IDPs informed agencies that they did not wish to return to Trincomalee at this time due to security concerns. People from Thanga Nagar were particularly concerned about the proximity of their village to Sinhalese and Muslim villages and feared they would be killed in retaliatory attacks. The IDPs had informed the local authorities that they did not want to return, but were told that if they did not their Family Cards would be withdrawn and they would not be assisted if they faced security problems. IDPs from Killiveddi told agencies that although they were concerned for their safety in their home villages, fearing SLA round-ups and retaliatory attacks by Sinhalese and Muslim communities, they wanted to return for livelihood/ income reasons.

Chenkalady Collection Point

82 families were due to return, of whom 16 families boarded two buses. One family from Iyankerny Camp was observed disembarking from the bus at this collection point, citing security concerns and fears for the safety of young adolescent family members. There was some confusion at the site, as not all the IDPs from the return locations were on the list provided to the local authorities. This led to cases of extended families being split up.

According to IDPs at Arumukathan Kudiyiruppu Kalimahl Vidyalayam they had been informed by local Government authorities in a meeting two days earlier that their assistance would be cut if they did not board the buses and that the authorities would not assist if they faced security problems. The IDPs were very reluctant to return due to security fears and concerns about the state of their property.

Kiran Collection Points

65 families were due to return, of whom 45 families boarded 3 buses. Agencies reported that one family from Muttur East was included on the list. IDPs at the Fuel Station site maintained that they were unwilling to return due to the lack of security, fears for the safety of their adolescent children, and fears of round-ups by the SLA. The IDPs had also been informed of the return two days earlier, and had been told that their assistance would be cut and their Family Cards seized if they remained in Kiran. Several armed police officers arrived at the site and the IDPs then boarded the bus. No physical force was used and the armed police remained on the bus as it left the site.

Manmunai North Collection Points

Out of 297 families due to return, only 38 families returned. At Zahira College, an armored STF vehicle, a busload of armed police officers (approximately 20), and a jeep carrying five police officers were present at the IDP site and accompanied the convoy of buses. IDPs again informed agencies that they were unwilling to return, but were afraid that their assistance would be cut and they would be unable to stay at the site. After intervention by some of the agencies, a meeting was held with the IDPs and local authorities, who explained to the IDPs that they were free to decide whether or not to return. However, they indicated that assistance might be cut if the IDPs did not return. Some of the IDPs disembarked from the buses after the meeting. IDPs were extremely concerned about the presence of armoured vehicles in the convoy of buses and feared it could make the convoy a potential military target.

207 families in Manmunai North signed letters stating their refusal to return which they delivered to local Government officials.

Kaluwanchikudy Collection Points: Kurukalmadam Kalaivani

After being informed that they had been selected to return, a group of IDPs approached the local authorities to voice their protest. During the meeting, however, they were informed that if they did not return to their homes, their Family Cards would be taken away, their assistance would be withdrawn and they would not be assisted by the authorities if there were any security problems. They were also told that they would receive assistance in their places of origin. Some of the IDPs returning to Trincomalee from this site were from Muttur East, they did not know if they would be taken directly to their homes or to Killiveddi as it was still not safe for them to return to their villages. IDPs at the site said that they were very afraid to return to their homes and feared for their security, including SLA round-ups and forced recruitment by the LTTE.

15 – 17 March Returns

Pressure on the IDPs to return intensified after 12 March, with reports of the security forces using physical force to coerce IDPs to leave. On 15 March, there was a major, well planned operation to return IDPs from sites in Batticaloa District. The returns were carried out primarily by armed police, the SLA and STF, and also armed and unarmed TMVP cadres in some sites. Dozens of buses departed with IDPs and there were numerous accounts of intimidation, threats and coercion. No advance warning was given and IDPs were told to pack up their belongings immediately and leave.

Documented incidents of forced returns during this period include:

Chenkalady Sites

In the Chenkalady sites, for the first time, IDPs reported that the security forces were using physical force to make people return.

Palacholai Site

There was a heavy armed police and SLA presence at Palacholai IDP site on 15 March. IDPs told the joint UN/NGO monitoring team that they were not given advance information about the return. The SLA soldiers told the IDPs to get in the buses or they would set their tents on fire, throw a grenade in their midst and kill them. As no advance warning had been given, several families were reported to have been separated as the children were at school and the men were

at work. All the IDPs spoken to said that they did not want to return as they feared they would be used as human shields in their places of origin. Some IDPs who did not want to return were prevented from getting off the buses by the SLA officers. Agencies received reports that the SLA had beaten two IDPs with sticks at Palacholai to force them onto buses.

Iyankerny Site

There was a heavy armed SLA presence at Iyankerny site. The IDPs reported that 96 families were forced to return to Sampoor against their will on 15 March. The families had protested, but the authorities told them that their assistance would be withdrawn if they stayed. The remaining families were due to leave for Sampoor on 16 March and the joint UN/NGO monitoring teams witnessed this return. One busload of IDPs was ready to depart and there was a heavy presence of armed SLA personnel next to a second bus and surrounding a group of IDPs. The monitoring team was approached by a group of young men who were visibly distressed and claimed that armed SLA personnel had forced the IDPs onto the first bus against their will, threatening to kill them if they did not leave. The IDPs onboard the first bus confirmed that they did not want to leave but had been threatened and intimidated by the SLA. The monitoring team spoke again to the group of young men who had not boarded the bus. They were extremely afraid of the repercussions if they stayed behind, but were also afraid for their safety if they returned to Sampoor.

Kaluwankerny

On 15 March, SLA forces arrived in various vehicles, including an armoured personnel vehicle, and surrounded the IDP site. The IDPs had been given no prior information, but they were told to pack their bags and leave immediately. The IDPs were not told where they were being taken. Although no physical force was used, the security forces were aggressive and shouted at the IDPs in an intimidating manner.

On 16 March, two buses were at the site and IDPs were seen boarding with their possessions. There was a heavy SLA presence checking the names of IDPs against a list. The IDPs were all from Sampoor. The SLA Major at the site confirmed that all the returns would be directly to people's homes, not to Killiveddi. The IDPs spoken to said that they wanted to return directly to their homes, but they did not want to go to Killiveddi. They were also worried that Sampoor was not safe.

Savukady Site

There was a heavy armed SLF and TMVP group presence at Savukady site on 15 and 16 March. The STF reportedly beat people with canes and members of the TMVP group threatened IDPs with violence if they did not return. One IDP from Sampoor had been told that if he stayed behind in the site and was stopped by the SLA or STF carrying an ID card from Trincomalee he would be shot on sight. A middle-aged woman reported that she had been chased around the camp by armed personnel.

Conditions in Trincomalee

Upon arrival in Killiveddi, the IDPs again faced pressure from the authorities to return directly to their homes or stay with host families. The local authorities failed to inform the first group of IDPs on 12 March that they could stay in the temporary shelters at the transit site in Killiveddi. As a result, many IDPs spent the night sleeping in the open air or with host families.

In subsequent days, IDPs at Killiveddi transit site were put under heavy pressure to return to their villages of origin in Muttur West and Seruvila divisions. By 17 March, all IDPs from these areas had been returned to their places of origin. Most of the IDPs were reluctant to go back to their homes as they feared for their safety and had concerns about their houses and the levels of assistance available. However, IDPs were told that assistance would *only* be provided in their villages of origin, which prompted them to return. Some IDPs claim that they did not receive the one week dry food ration to which they were entitled. In some cases, IDPs were moved to yet another temporary site as they were not allowed to return to their villages of origin.

Documented incidents of IDPs being pressured to return to their villages of origin, being relocated to another temporary site, and facing security problem after their return include:

Lingapuram

27 families were moved from Killiveddi IDP site to Lingapuram on 14 March. These families were from Ariyamankerny, an area bordering LTTE controlled areas, with a history of LTTE infiltration, where the SLA now has a heavy presence and is occupying several houses. The SLA and local Government authorities told the IDPs that they could return to their village due to security reasons. However, they had no information about when IDPs would be able to return to their homes in Ariyamankerny. The IDPs said that they did not want to move to Lingapuram as they felt Killiveddi was safer, but they had been told by the authorities that they must relocate as the Killiveddi site was only for people from Muttur, not for those from Seruvila. The IDPs were also told that assistance would be provided in Lingapuram. However, it was reported that the pre-school site in Lingapuram lacked sufficient shelter, water and sanitation.

On the morning of 16 March, one young returnee in Lingapuram was stopped by two persons whom he identified as SLA soldiers, and questioned about the whereabouts of another individual. When the young man replied that he did not know, the soldiers dragged him in front of the pre-school and beat him on the back with their guns. The other returnees ran to the scene screaming, and the soldiers stopped beating him. The young man sustained minor injuries as a result of the beating.

Kanguveli

16 families were brought to Kanguveli from Killiveddi on 13 March. Some returned to their houses and others were staying with relatives. None of the IDPs felt safe to stay at their homes during the night and reported that they would often sleep in the local school or together in one house. The IDPs cited the location of their village next to the Niapola army base, between neighbouring Sinhalese villages and next to two new check points as the main reason for their security concerns. There have been several shooting incidents in the area.

Thanga Nagar

IDPs from Thanga Nagar, in Seruvila Division, just south of Killiveddi, reported that they were particularly afraid to return to their homes. They feared retaliatory attacks and killings due to the proximity of their village to Sinhalese and Muslim communities and cited a large number of killings in their village since April 2006. UN monitoring teams spoke with IDPs from Thanga Nagar on 15 March who had been told that they had to leave Killiveddi that day and return to Thanga Nagar. The IDPs said that they were unable to return to their homes as the houses had been damaged by the weather and looting, and that they feared for their security. According to IDPs the authorities had been forcing them to return by threatening to withdraw humanitarian assistance, threatening to call the military into the camp, and informing them that the shelters in Killiveddi were not built for them. Some people said they had been asked to sign a "letter" stating that they were going home voluntarily; however, they were not sure about the content of the letter as it was written in Sinhala.

Barathipuram, Muttur DS Division

48 families returned to Barathipuram on 12 March. The families were registered at Killiveddi and then moved directly to their home village. A UN monitoring team which met with some of the returnees on 15 March reported that the returnees were extremely concerned for their security in Barathipuram. The villagers reported that the military had visited the village one to three times a day over the past three days. Women in the village were harassed and threatened by the military. The military searched their belongings and threatened that they would be shot if any incident took place in the area.

On 16 March, the returnees reported that the previous day the SLA had driven through the village announcing over a loudspeaker that "if anything happens, they would all be killed".

Aalimchenai (Alimnager)

15 families returned to this isolated village which is surrounded by Muslim villages. They all reported that they felt unsafe in their village, especially at night when gangs from neighbouring Muslim villages harassed them verbally, particularly the women. The returnees were too afraid to sleep in their own homes at night, and instead would gather in one house in the village.

BATTICALOA DISTRICT

Vakarai

By November 2006, there were some 31,900 IDPs in Vakarai, Batticaloa District, most of which is in LTTE controlled area. The majority of the IDPs were Tamils from LTTE-controlled areas of Muttur East and Eachchalampattai in Trincomalee District, as well as some from Seruvila and Muttur West and a few from Town & Gravets. The IDPs fled southwards in April 2006 following the aerial and artillery attacks on these areas by Government forces after the suicide attack on the Army Commandr, Sarath Fonseka, in Colombo. They fled further south again in August 2006 when fighting resumed following the Maavil Aru incident. Eventually, nearly all the IDPs arrived in Vakarai in the north of Batticaloa district.

Humanitarian access to Vakarai between September and November 2006 was extremely restricted and limited only to ICRC and UN agencies. During this time, all convoys to Vakarai had to seek endorsement from local Government authorities and security clearance from the SLA. A joint UN humanitarian convoy into Vakarai was able to enter the area on 29 November 2006. Following this, however, no humanitarian agencies were able to access to the area, apart from very limited access for the ICRC to evacuate the wounded and sick and bring in some basic medical equipment.

a) Restrictions on Freedom of Movement by the LTTE and SLA

More than 31,900 IDPs were trapped in Vakarai while heavy fighting and shelling between the LTTE and SLA continued throughout September to December 2006. It was reported that IDPs who tried to leave LTTE controlled areas were prevented from doing so by the LTTE. A few families managed to escape through the jungle into government controlled parts of Batticaloa District, but most remained in Vakarai. Similarly, IDPs who managed to escape from LTTE controlled areas were intercepted by the SLA and taken to IDP camps in Valachchenai. Some IDPs were unable to move to their place of choice, and some expressed fears about moving to Valachchenai due to the heavy .TMVP and SLA presence in this area. Some IDPs were relocated to areas close to the front lines in Mankerni where they also did not feel safe.

3 November: Thirty IDPs from camps in Vakarai, Kathiraveli and Panichchankerni areas who were originally displaced from Muttur Division came to Valachchenai to buy food and were prevented by the Sri Lankan Army (SLA) from returning to the Vakarai IDP camps on 3 November. The SLA claimed that fighting and continuous shelling was ongoing in the Vakarai area and as a result access to the area was restricted. The IDPs were forced to remain in Valachchenai against their will. Some of them had left their children and elderly relatives behind in Vakarai. They were accommodated in the Vinayagapuram School IDP camp in Valachchenai.

8 November: On 8 November, the SLA shelled Vakarai, hitting Kathiraveli School where over 6,000 IDPs were sheltering. 49 people were killed and 125 injured. 2,000 people reportedly tried to leave Vakarai via Panichchankerni following the shelling, but were prevented from doing so by the LTTE. The ICRC assisted in bringing out wounded from the area to the hospital in Valaichchnai and Batticaloa.

28 November: As a result of shelling by the SLA and fighting between the LTTE and the TMVP, villagers from Akuranai and Mimunathaveli villages, Kiran Division, decided that they could no longer remain where they were living. They left early in the morning on 28 November 2006 and walked for over four hours to reach Government controlled areas. The first group was stopped by

the SLA at Ridithena and taken to a school, from where they were transported in buses organized by the SLA, to Vinayagapuram IDP site in Valachchenai. The IDPs expressed concerns for their security as the camp is located in an area known to be a heavy presence of TMVP cadres. Nevertheless, they reported that they were relieved to have escaped the shelling and to be in camps where they could receive regular assistance and where they were relatively free to move around.

29 November: On 29 November, a group of families (approximately 75 people) attempted to leave Vakaraï. Approximately 50 people managed reach the government controlled areas by walking through the jungle at night. These IDPs stated that the others were prevented from leaving by the LTTE. The IDPs came with very few personal belongings and left most of their possessions behind. They arrived in government controlled areas the next morning where they were met by the SLA. The families in the groups wanted to go to different locations including Trincomalee, Batticaloa and Valachchenai, but they were all transported by the SLA to an IDP camp in Valachchenai.

14 December 2006: Shelling and exchange of fire between the LTTE and SLA on the northern, southern and western fronts of Vakaraï intensified significantly from the beginning of December. In several incidents, SLA artillery shelling hit IDP camps (some of them in schools), killing and wounding IDP civilians.

On 14 December, following a temporary lull in hostilities, large numbers of people left LTTE-controlled Vakaraï via the jungle at Ridithena, a 12 hour walk. Some IDPs reported having to cross a deep river on the way. Several IDPs reported paying a "broker" to show groups of them the way through the forest. One group of IDPs explained that the LTTE had shot over their heads two days before to prevent them from leaving and they had fled into the jungle, the group behind them did not follow. They said that they believed that the LTTE was preventing them from leaving because their presence would deter the army from shelling the LTTE controlled areas. Other IDPs confirmed that the LTTE was trying to stop people from leaving.

At Ridithena, the SLA recorded the basic details of all those arriving and their possessions were searched thoroughly. IDPs were also questioned by military intelligence. From Ridithena the IDPs were transported by the SLA to a transit site at Vinyagapuram (Valachchenai), and then onwards to emergency sites identified by the GA Batticaloa.

An estimated 90% of IDPs were reported to have lost their NICs when fleeing Vakaraï, contributing to restrictions on freedom of movement as IDPs did not feel safe to leave sites without documentation. Following interventions by UNHCR it was agreed by the Minister of Disaster Relief Services on 23 December that the SLA would issue IDPs with identity cards, to enable them to freely leave the sites.

By the end of December, a total of 25,000 IDPs had fled from Vakaraï into Government controlled areas of Batticaloa District. A further 10,000 IDPs fled into Government controlled areas in mid January 2007 and reported that everyone had left. The IDPs included those people who had fled from Trincomalee District in August 2006, as well as residents of LTTE controlled Vakaraï itself. IDPs leaving during the final departure on 19 and 20 January reported that as they were leaving Vakaraï the SLA directed those driving tractors towards Welikanda and pedestrians towards Mankerny.

b) Returns to Vakaraï, Batticaloa District: March 2007

By February, pressure was growing on IDPs originally from Vakaraï (some 16,000 IDPs) who had fled into the Government controlled areas of Batticaloa District in December 2006 and January 2007 to return to their homes. At the beginning of February, the Minister of Disaster Relief Services announced the Government's plan to resettle all Vakaraï IDPs in a three-phased approach, dependent on the progress of the SLA's de-mining activities. Returns to 9 GN divisions, from where 80 – 90% of the IDP population originated, started on 7 March.

The initial returns, on 7 – 8 March, were largely voluntary. Although the IDPs had not been given much information about conditions in Vakaraï, or sufficient time to prepare to leave, many IDPs indicated that they were keen to return to their homes. They were eager to leave the IDP sites in Batticaloa where conditions were very poor.

In the subsequent days, however, pressure on the IDPs to return to Vakaraï was increased and although some IDPs were still eager to return, there were also some incidents of forced returns.

Kaluwanchikudy: Kurukalmadam Kalaivani

On 12 March, a joint UN/NGO monitoring team met with IDPs from Vakaraï at this site. The IDPs reported that authorities from Vakaraï had visited the previous week and told them they would be returning on 28/ 29 March. They had been informed that if they did not return their assistance would be stopped and their security would not be guaranteed. The IDPs were concerned about their security in Vakaraï and mass round-ups and arrests which they had experienced in the past.

On 17 March, a joint UN/NGO team visited Kurukalmadam site again. The IDPs reported that Vakaraï officials had visited the site the day before and told them that 600 IDP families from three other IDP sites had already returned to Vakaraï, and if they did not return themselves they would find that the others had taken their belongings. Many of the IDPs had relatives at other sites and were confused about whether they should return. They had received no information about conditions in Vakaraï upon which to base their decisions. The IDPs told the official that they were not ready and the men were out working and told the bus to come back an hour later. However, when the bus came back the IDPs were eating lunch and the official left and did not return. The IDPs told the agencies that a group of them would be willing to go back to Vakaraï on a Go and See Visit so they could make an informed decision about whether or not to return. Local authorities later arrived at the site and expressed concern about the safety of those IDPs who had not agreed to return to Vakaraï, both once they did eventually return and if the STF came to forcibly return them.

Kaluwanchikudy: Cheddipalayam

23 families from Kathiravelly and Palchenai in Vakaraï DS division staying at this site were informed on the morning of 16 March that they would be transported back to Vakaraï by bus that day. Of the 23 families, only five families registered their willingness to return. The IDPs told the joint UN/NGO monitoring team that they had been told their assistance would be cut if they did not leave. The five families who had agreed to return said that the only reason they wanted to go back was to retrieve their belongings. One O-Level student said that she had been prevented from sitting her exams that day.

Valachchenai: Vinayapuram

Armed SLA personnel were present at this site on 14 March. Two buses were present to take IDPs back to Vakaraï. Most of the IDPs spoken to said that they wanted to return to their homes, but they were apprehensive about the situation in their areas of origin, both in terms of security and the state of their houses, which they had heard had been badly damaged and looted. They had only been informed about the return the day before.

Valachchenai: CPM Church Site

60 families were due to return to Vakaraï from this site on 15 March. Although the families were keen to return, they all lacked information about conditions in their home villages and the state of their houses. They felt compelled to leave as they lacked livelihood opportunities in the IDP camps and felt they had no long-term future there.

Kiran: Kirimuddi Farm Site

During a site visit on 15 March, the joint UN/NGO monitoring team spoke to IDPs onboard buses ready to depart for Vakaraï. The IDPs were only informed the previous night about the return movement. The IDPs confirmed that they were willing to return but said that they had little or no information about their home villages and the condition of their houses. Many of the IDPs felt

they should return to protect their properties from others who had already returned or were planning to return.

Kiran: Parankiyamadu Site

IDPs in this site had also only been told the night before (14 March) that they would be departing the next day. Although they were willing to return, they lacked sufficient information about conditions in their home villages.

Arayampathy: Vedarkudiyirupu – Thalankadu

20 families from Kathiraveli, Vakarai, were informed by local authorities on the evening of 15 March that they should leave the site the following day. The joint UN/NGO monitoring team spoke to the IDPs on 16 March when they were waiting to leave. None of the IDPs from Vakarai at this site wanted to return, and some were visibly distressed. However, the authorities had told them that their assistance would be cut if they did not agree to leave, and that if they did not return at this point they would not find their houses intact at a later date.

A local government official who arrived at the site informed IDPs that they could not stay in the camp if they refused to go back to Vakarai, and the camp would be closed down. The IDPs would be taken to Mankerny in ordinary buses and handed over to the SLA. If the IDPs refused, STF buses would come later and take them by force. The official said that the army would take photos of all the IDPs when they arrived at Mankerny and ensure that the same people arrived in their home villages.

The local government official also informed the IDPs that conditions were very bad in Kathiraveli and the armed forces were pushing IDPs to return to there. According to unconfirmed reports, some young girls had been raped by the armed forces and the armed forces were occupying every fifth civilian house. The official also warned that once IDPs returned they wouldn't be able to leave again, either by land or sea, as the army would stop them.

IDPs at this site implored agencies not to leave as they were scared of being forced to return to Vakarai. One IDP threatened to douse himself with petrol and set himself alight if he was forced to return. A group of young women begged the agencies not to leave as they were afraid of being forced to return to Vakarai where they believed they would be subjected to sexual assault by the armed forces. A number of other people said they would prefer to die at the site, rather than be forced to return.

UN Joint Humanitarian Assessment Mission to Vakarai

A joint UN humanitarian assessment mission to Vakarai on 12 March found that some of the IDPs who had returned voluntarily in the first days of return regretted their decision. The IDPs said that if they had been properly informed about conditions in Vakarai they would not have returned. In particular, they were concerned about the considerable damage and destruction to their houses, many of which appeared to have been looted; the loss of household items from their houses; insufficient water, food and infrastructure (schools, medical services etc.) and lack of livelihoods; threats to their security due to the heavy presence of SLA and TMVP armed cadres; and fears of renewed fighting between the SLA and LTTE.

ANURADHAPURA DISTRICT

a) Return of Muslim IDPs to Muttur, September 2006:

As in Trincomalee District, during September 2006 there was a trend of returns of Muslim IDPs to Muttur from Anuradhapura District. The IDPs had fled Muttur in April 2006, and were staying in Muslim communities including Kekirawa and Medawachchiya. On 19 September, 56 families were returned on to Muttur on government buses. Twenty-eight families refused to return out of fears for their security and remained with host families.

Thirty-nine of the families left from Madatugama where they had been staying in tents erected in the playground of a local Muslim school, without any basic facilities. Although it appeared that these IDPs had left voluntarily as they wanted to return to safeguard their homes and properties in Muttur, it was also clear that the lack of basic assistance, food, shelter, water and sanitation in the displacement site had been a major push factor in encouraging the IDPs to return. No incidents of physical force were reported, but instead threats of withdrawal of food rations, cutting water and electricity supply and deadlines for government transportation back to areas of origin, all put considerable pressure on IDPs to return.

The remaining families were housed by host families in Madatugama. All families, apart from one, returned to Muttur peacefully in early November.

b) Returns of IDPs in Kebithigollewa, Anuradhapura

At the end of September 2006, some 400 Sinhalese IDPs from “border villages” in Kebithigollewa, Anuradhapura District, who had fled following the bus bomb in June 2006, were forced to return to their villages. IDPs were given a week by the authorities to vacate camps before their food, water and electricity would be cut. During this time, the Government agreed to provide labourers to help with their move.

During a monitoring visit to the sites on 29 September, police, army personnel and home guards were observed assisting IDPs to dismantle the shelters. Nearly all of the IDPs informed monitors that they did not feel safe enough to return to their places of origin, but that they felt they had no alternative but to leave. A Government official had informed them the previous day that their place of origin was safe and that they would be assisted with their departure only if they left before 1 October. After this time they would have to organise their own transport. They were also told that the electricity in the camp would be turned off and those who refused to return would not be given dry rations or water. Both sites visited were vacant a few days later.

Local Government authorities later informed claimed that the return was voluntary, and that assistance would not be denied to those IDPs who remained. However, they informed that the places of origin were safe for return and that it was better for people to return, despite their fears.

Many returnees subsequently reported that they were afraid to return to their homes and had found alternative places to live, citing fears of LTTE infiltration. They informed that they were afraid to go to work or to send their children to school. Many lacked viable livelihood opportunities and had not received food rations.

PUTTALAM DISTRICT

a) Tamil IDPs from Muttur, May 2006

On 26 May 2006, all recently displaced families (29 families, 117 persons) in Selvapuram/Udappu were invited to a meeting by local authorities and instructed to return to their place of origin in Trincomalee District. The IDPs were told that Government buses and trucks were scheduled to come to Selvapuram the following day to transport them to Trincomalee. However, the IDPs had serious misgivings about returning to their homes due to the security situation and were worried that the authorities would force them to go back. Following interventions by UNHCR with central Government the orders were reversed.

On 27 May 2006 IDPs were informed by local police that the Government had decided to suspend the returns temporarily. However, they were told that the Government was concerned about the security situation in Selvapuram/Udappu, and that it was suspected that there were LTTE infiltrators among the IDPs. IDPs were told that they would be observed very closely by the security forces. The police maintained that the security situation in Trincomalee was satisfactory and that the government would protect the IDPs when they returned. Despite these assurances, the IDPs were still unwilling to return due to fear for their physical security in Trincomalee.

However, between September and November, a lack of Government food assistance gradually compelled IDPs (321 persons, 74 families) residing in villages in Puttalam⁵⁹ to return. Aside from one month's supply of emergency rations in May 2006, plus one small distribution by the SLA in November, the Government provided no other assistance to the IDPs.

b) Muslim IDPs from Muttur, September 2006:

Following the offensive in Muttur in April 2006, 74 Muslim families fled to Muslim communities in parts of Puttalam District, including, Sembukulam (37 families), Thiladiya (15 families), Rahmath Nagar (12 families), Kandakuliya (6 families), Vepamadu (2 families), Manal Kundu (1 family) and Palavi (1 family) in Puttalam District. Most of the IDPs were from Muttur and Thoppur.

As in Trincomalee District, a similar trend of forced returns of Muslim IDPs back to Muttur occurred in Puttalam District in September 2006. Although no known physical force was used, threats of withdrawal of food rations, cutting water and electricity supply and deadlines for government transportation back to areas of origin, all put considerable pressure on IDPs to return.

MANNAR DISTRICT

a) Restrictions on Freedom of Movement by LTTE

The FDL checkpoints at Uyilankulam and Madhu were closed on the 11 August 2006 following the resumption of hostilities on the Jaffna peninsula. Prior to the closing of the FDL, thousands of Catholic pilgrims had travelled to Madhu Church, situated in the LTTE controlled area of Mannar, to attend the annual religious festival. When the festival was over, the pilgrims were not allowed to cross the checkpoints at Uyilankulam or Madhu.

On 16 August the checkpoint at Madhu was opened for about two hours to allow about 300 pilgrims, mainly from the south, to leave. The crossing was negotiated by ICRC. However, some 750 pilgrims, mainly from Jaffna, were not allowed to leave via the Madhu checkpoint. The pilgrims from Jaffna had entered Madhu after obtaining a pass from the Muhamalai checkpoint, but the LTTE would not allow them to exit via the Madhu checkpoint with a Muhamalai pass. The pilgrims were trapped as IDPs within the Madhu Shrine area until 10 November, despite the fact that the checkpoints at Uyilankulam and Omanthai had been opened for public movement intermittently.

The IDPs made various attempts to obtain permission from the LTTE to exit the LTTE controlled area. During the third week of November, about 100 of the IDPs from Jaffna went to Kilinochchi to request the LTTE administration to grant permission to exit the LTTE controlled area. The LTTE initially indicated that they would provide a reply to the IDPs after 10 days, but failed to do so. The LTTE also informed the IDPs that they would make a decision once they had screened the IDPs and registered all those between the ages of 16-30.

The LTTE claimed that they would not allow the pilgrims to leave in case they encountered problems with the SLA on reaching Jaffna, having spent a considerable period of time in an LTTE controlled area.

On 10 November 666 IDPs, were able to cross the Uyilankulam FDL checkpoint. 440 of these IDPs were registered initially at St. Sebastian's church, Mannar and 339 were accommodated in Pesalai. On 18 November 300 of those accommodated in Pesalai were transported by bus to Trincomalee and on 19 November by ship to Jaffna. On 21 November a further group of 287 IDPs were transported to Trincomalee and on 22 November onwards to Jaffna.

⁵⁹ Sembukulam (37 Families), in Thilady (15 Families), in Rahmath nagar (12 Families), in Kandakuli (6 Families), in Vepamadu (2 Families), in Manal kundru (1 Family), in Palavi (1 Family).

b) IDPs from Pesalai, Mannar Island

During the months of April and May, several thousand people moved from Trincomalee to Talaimannar and Pesalai in Mannar district in an attempt to leave to India. The IDPs feared for their safety in Trincomalee and did not believe that they could find safety anywhere in Sri Lanka, they claimed that they were fleeing to India as a last resort.

By 22 May, a total of 297 IDPs had been identified by Mannar authorities, with 41 staying at St. Laurens Church in Thalaimannar Church and 256 at Our Lady of Victories Church in Pesalai. Smaller numbers were staying with friends and relatives in the villages around Mannar. The number of IDPs fluctuated due to the untraceable arrivals and secretive departures. On 31 May, there were a total of 546 people stranded in Mannar.

The SLN intensified its presence on the beaches around the church grounds and used helicopters to force outgoing boats in Sri Lankan waters back to shore. Those on board were detained at the navy camp during the night and handed over to the Talaimannar police station the next morning.

The Talaimannar police station was not equipped to keep such large numbers of “detainees”, and women and children especially suffered from the lack of toilets and shelter. After formal registration at the police station, the “detainees” were produced before the courts without charges. Most were released after paying a fine of Rs 500.

Clashes between the SLN and the Sea Tigers and an increase in tensions in May, resulted in larger numbers of local people seeking sanctuary in the Church of Our Lady of Victories in Pesalai during the nights. By the end of May the church authorities in both Talaimannar and Pesalai indicated that they did not have the capacity to host such large numbers of IDPs. The churches requested the Government to provide an alternative location for the IDPs as tensions were heightening between the host community and the IDP population.

The Government indicated that they wanted to avoid turning Pesalai and Talaimannar into unofficial transit camps to India. As an interim measure, the IDPs were placed in schools in the surrounding areas. Patrolling by the navy and army around the school buildings intensified during this period, in an effort to control the exodus to India.

On 26 May, local authorities were instructed by the SLA that all IDPs from Trincomalee should be sent home. When requested to assist with the return of IDPs to Trincomalee, UNHCR Mannar reiterated its position that IDPs should not be compelled to return if they do not feel it is safe and that any return should be voluntary and in safety and dignity. In the end, the plan to return all the IDPs to Trincomalee was halted and no returns took place.

During the first two weeks of June 2006 confrontations between the LTTE and SLA/ SLN intensified, with a number of attacks on civilians and civilian properties. A significant portion of the host population displaced at night, either at the church or at friends' and relatives' homes. On the 15 June 2006 several houses were burned and damaged by the SLN after a confrontation with the LTTE.

On 17 June, in the early morning, there was a clash between the Sea Tigers and the SLN. Fishermen, who returned from sea, brought the news to the shore and around 3,000 individuals, mostly from Pesalai village, sought refuge in Our Lady of Victories Church in Pesalai. The same day, eyewitnesses reported that a number of men whom they thought to be Navy personnel, began firing at the side of the wall of the church, and also threw grenades. One grenade hit a window and fell back, while the second one rolled in the church killing a 75 year old woman and injuring 5 children. Reportedly 42 members of the community received injuries, either as result of the firing inside and/or outside the church or due to the grenade. After the incident the attackers burned houses as they fled. Following the incident, it was reported that IDPs either managed to travel to India or returned to Trincomalee on their own initiative.

c) Forced returns from Madhu Church, Mannar: February – April 2007

The LTTE has also been responsible for the forced relocation of IDPs. Madhu Church in the LTTE controlled area of Madhu Division, Mannar District, has traditionally been a place of refuge for IDPs. IDPs from Manthai West and Madhu DS divisions started to move to Madhu church in late 2006 as a precautionary measure due to the deteriorating security situation. IDPs moved freely, staying at the church at night and returning to their homes during the daytime to carry out daily activities. IDPs received food, water and other assistance from UN agencies and NGOs.

In January and February 2007, larger numbers of people started to take refuge in Madhu Church due to a series of security incidents, including the bombing of Padaghuthurai village and an intensification in forced, and often violent, recruitment by the LTTE. By 19 March, 10,197 persons were displaced in Madhu, over 8,000 of whom were staying in and around Madhu Church and a further 2,000 IDPs (some 375 families) were displaced along the Palampitty Road.

The LTTE had a tacit agreement with the church authorities that they would not recruit from within the church grounds. However, the LTTE's lack of access to the church was proving a barrier to its recruitment activities, especially given the presence of over 1,000 men and women of "fighting age" amongst the IDPs sheltering at the church by the end of February.

As a result, the LTTE started to put increasing pressure on the church authorities to allow unarmed, plain clothes LTTE cadres access to the church to speak to the families about recruitment. By the beginning of March, LTTE cadres were entering the church premises on a regular basis for this purpose. At the same time, the LTTE announced that it would prevent any more displaced families from entering Madhu Church to seek temporary shelter and that it would ask IDP families currently inside Madhu Church to relocate to alternative displacement sites. The LTTE also said that it would not allow any international agencies to provide assistance inside the church grounds. In March, the LTTE claimed that it could not guarantee the safety of humanitarian agency staff traveling on the road to Madhu Church, and humanitarian organizations were thus unable to access the area.

On 23 March, reports were received that the LTTE had ordered IDPs to leave Madhu Church and head north towards Vellankulam, allegedly for security reasons. It was also alleged that the LTTE was using the movement of IDPs from the church as a recruitment opportunity. On the evening of 23 March the LTTE brought trucks to the church and started to force the remaining IDPs to leave. The LTTE cadres were allegedly armed and used wooden sticks to force the most resistant IDPs to get into the trucks. By 25 March, more than 5,000 IDPs (75% of the IDP population) had been forced to leave the church and were not allowed to take any of their belongings with them. The LTTE cadres told the IDPs that they would be able to return after three days to collect their belongings, but the IDPs were not allowed to do so and all their belongings were stolen by thieves. The IDPs moved to Andankulam, Adampan and Vattakandal in LTTE controlled areas of Mannar District.

During the following days (25 – 28 March), the forced relocation of IDPs continued. Armed LTTE cadres entered the church and used loudspeakers announcing that all IDPs should leave, warning that those that did not leave would be treated as betrayers. IDPs that left during these days were allowed to take all their belongings. Some 1,500 IDPs were still in the church on 28 March. However, the LTTE had stopped all supplies to the church and all shops in the vicinity were closed, which was perceived as a further tactic to pressurize remaining IDPs to leave.

On 2 April the LTTE informed UNHCR that all IDPs had left Madhu Church, and had moved to Manthai West Division (Periyamadhu, Athimoddai, Vellankulam and Kovilkulani), as well as to locations in Kilinochchi District (Jeyapuram, Mulankavil and Kilinochchi). At the same time, local officials reported that less than 100 IDP families (300-350 individuals) remained in Madhu Church, although they too were under pressure from the LTTE to move to Manthai West. By 7 April, there were only 38 families in the church.

As UN agencies and NGOs had no access to Madhu Church in March and April 2007 due to the prevailing security situation, they were unable to verify the information provided by local sources. The information can only be verified when humanitarian agencies are able to speak to the IDPs themselves directly.

ANNEX 2

The International Legal Framework on Forced Displacement, Freedom of Movement and Voluntary Return

More than half a million people are internally displaced in Sri Lanka today.⁶⁰ The internationally accepted definition of an internally displaced person (IDP) is one who has “been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who has not crossed an internationally recognized state border.”⁶¹ Since the escalation of hostilities in 2006 IDPs have been (1) caught in the midst of hostilities and unable to move, (2) prevented by parties to the conflict from leaving areas they consider unsafe, and (3) coerced in various ways to return to their places of origin. In addition, there have been allegations that groups of IDPs have been used as “human shields” in the conduct of hostilities. These actions all violate international law, under which IDPs retain in full equality the same rights and freedoms as other people in their country.⁶²

In particular, IDPs retain their right to freedom of movement, including the right to seek safety elsewhere. As civilians, they are entitled at all times to protection under international humanitarian law if they are not directly participating in hostilities. This includes protection from direct attack, from the effects of indiscriminate attack, and from use as “human shields” to insulate military objectives or geographic areas from further attack. IDPs also have a right to voluntary return, in safety and dignity, to their original places of residence. Under no circumstances may return be coerced: where possible, it should be carried out only after IDPs have full information about prevailing conditions, such as through “go and see” visits *before* they make a decision to return. In limited circumstances a party may have reasons to move (resettle) IDPs from an existing location, although it is never legitimate to return IDPs to their original communities where risks to health, safety, or security remain. The basis of these rights and the duties they impose upon authorities and other actors are discussed below.

I. Sources of International Law Applicable in Sri Lanka

In times of armed conflict, both international humanitarian law (IHL) and human rights law apply, and both bodies of law must be consulted. Two differences in their application and limitation must be borne in mind. First, human rights law traditionally binds only States, and generally only those States that have ratified the relevant treaties from which the rights are derived. Non-State armed groups have occasionally made unilateral and voluntary obligations to observe human rights law. In contrast, IHL is binding upon all parties to a conflict, and customary international humanitarian law applies regardless of the status of treaty ratification (namely, the Geneva Conventions and their two Additional Protocols).

Second, human rights law permits limitation of or derogation from certain rights, including movement-related rights, under limited and carefully prescribed circumstances.⁶³ Derogation may occur only in times of a formally declared public emergency, such as Sri Lanka has observed since August 2005, and it must be “of an exceptional and temporary nature.”⁶⁴ In addition,

⁶⁰ Refer to main report; 312,712 people were previously displaced by the conflict; since April 2006 some 301,879 people have been newly displaced (as at 16 April 2007).

⁶¹ Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2/Annex, introductory para. 2 (“*Guiding Principles*”). The Guiding Principles are available in Tamil and Sinhala at www.brookings.edu/idp.

⁶² Guiding Principle 1(1).

⁶³ International Covenant on Civil and Political Rights (ICCPR), Art. 4. The Covenant also specifies a list of rights that remain non-derogable at all times.

⁶⁴ General Comment No. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11 (2001) ¶ 2. Moreover, the “public emergency” must reach the level that it “constitutes a threat to the life of the nation.” *Id.*

limitations or derogations from movement-related rights are subject to strict procedural protections. Measures of derogation are limited “to the extent strictly required by the exigencies of the situation.”⁶⁵ These limitations relate to the duration, geographical coverage and substantive scope of the derogation. Under the principle of proportionality, measures of derogation must be carefully tailored to meet the exigencies of the emergency, and they must not be broader than necessary. Moreover, the derogation may not be inconsistent with other obligations of international law (such as international humanitarian law). Nor may it discriminate by rule (*de jure*) or in application (*de facto*).⁶⁶ Finally, the fact of the derogation itself must be formally notified and justified to other States Parties to the Covenant through the Secretary-General of the United Nations.⁶⁷

IHL provides more precise guidance concerning the application of certain human rights during armed conflict, and it addresses some issues not covered by human rights law. It allows neither derogation nor limitation, and it further protects all civilians not directly participating in hostilities, including IDPs, vis-à-vis both the State and armed groups. During their displacement, IDPs receive the same protections from the effects of hostilities and the same entitlements to relief as the rest of the civilian population. Although Sri Lanka is not party to Additional Protocol II to the Geneva Conventions (concerning non-international armed conflicts), the rules discussed here are part of customary international law and thus are binding upon all parties to the conflict in Sri Lanka.

The rules of IHL which aim to spare civilians from the effects of hostilities play an important role in the *prevention* of displacement. These rules include:

- the prohibition on attacking civilians or civilian property, and of indiscriminate attacks;
- the prohibition on the starvation of the civilian population as a method of warfare, and of the destruction of objects indispensable to its survival;
- the prohibition on reprisals against the civilian population;
- the rules requiring parties to a conflict to allow the unhindered passage of relief supplies and assistance necessary for the survival of the civilian population.

While not a binding instrument *per se*, the *Guiding Principles* reflect and are consistent with both human rights and IHL. As mentioned above, IDPs do not lose, as a consequence of their displacement, the rights of the population at large. Yet they have specific needs that are distinct from the population at large and which must be addressed by specific measures of protection and assistance. The *Guiding Principles* is the primary text identifying the rights and guarantees of international law as they pertain in the context of internal displacement.⁶⁸ As such, the *Guiding Principles* are an essential reference for all actors working with the internally displaced, and many governments have either incorporated the *Guiding Principles* into domestic law or adopted national policies based upon them.

II. International Law Governing Displacement, Freedom of Movement and Return

Civilians have the right not to be arbitrarily displaced.

The *Guiding Principles* provide that “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”⁶⁹ This

⁶⁵ ICCPR, Art. 4(1).

⁶⁶ General Comment No. 29 ¶8.

⁶⁷ ICCPR, Art. 4(2). Proclamation of a state of emergency prior to the derogation is essential to satisfy the principles of legality and rule of law. In addition, it must be consistent with the constitutional and statutory authority which governs the exercise of emergency powers. Sri Lanka has not notified the United Nations of any existing derogation.

⁶⁸ The *Guiding Principles* are recognized globally and have been endorsed by regional organizations, United Nations bodies, and humanitarian actors. Recently, the Heads of State and Government, gathered at the sixtieth session of the General Assembly, resolved to “recognize the Guiding Principles as an important normative framework for the protection of internally displaced persons and . . . to take effective measures to increase the protection of internally displaced persons.” UN Doc. A/60/1.

⁶⁹ Guiding Principle 6.

right carries a corresponding duty: “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.”⁷⁰ This restatement of the right to be protected against arbitrary displacement is based in the right to liberty of movement,⁷¹ the freedom to choose one’s residence,⁷² and the right to protection from arbitrary or unlawful interference with one’s home.⁷³ The primary source of these rights is the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka ratified in 1980.

Importantly, the existence of an armed conflict does not abrogate the prohibition of forced displacement. Customary international humanitarian law provides that “Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.”⁷⁴ Violation of this rule has been recognized as a war crime.⁷⁵ Importantly, those who have already been displaced retain this right against further (secondary) displacement.

The *Guiding Principles* reflect the fact that under both IHL and human rights law, the prohibition of forced displacement is not absolute. Guiding Principle 6.2(b) provides: “The prohibition of arbitrary displacement includes displacement: . . . (b) In situations of armed conflict, *unless the security of the civilians involved or imperative military reasons so demand.*” This language is drawn directly from international humanitarian law. In human rights law, the prohibition of forced displacement is based in the right to liberty of movement,⁷⁶ the freedom to choose one’s residence,⁷⁷ and the right to protection from arbitrary or unlawful interference with one’s home.⁷⁸ Yet the rights to liberty of movement and to freely choose one’s residence may be limited if such limitation is “provided in law, . . . [is] necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and [is] consistent with the other rights recognized in the present Covenant.”⁷⁹

This wording leaves no doubt that restrictions upon freedom of movement and choice of residence are to be used cautiously, and only in exceptional circumstances. Under human rights law, restrictions cannot be applied on a general basis; rather, their legitimacy must be assessed in each instance. Moreover, it is not sufficient that the restrictions serve the permissible purposes identified above -- they must be *necessary* in order to protect these purposes. In other words, restrictive measures should be appropriate to achieve their protective function; use the least

⁷⁰ Guiding Principle 5. This language establishes that a duty to undertake measures to prevent and avoid conditions that might lead to displacement of civilians is inherent in the prohibition of arbitrary displacement.

⁷¹ ICCPR, Art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”) See also Universal Declaration of Human Rights (UDHR), Art. 13(1) (“Everyone has the right to freedom of movement and residence within the borders of each State.”)

⁷² ICCPR, Art. 12(1).

⁷³ ICCPR, Art. 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his . . . home”); ICCPR, Art. 17(2) (“Everyone has the right to protection of the law against such interference [with one’s home]”). See also UDHR, Art. 12.

⁷⁴ Henckaerts, Jean-Marie, and Louise Doswold-Beck, *Customary International Humanitarian Law*, (International Committee of the Red Cross and Cambridge University Press, Cambridge 2005) (customary international humanitarian law), Vol. 1, Rule 128. This rule is derived from Article 49 of the Fourth Geneva Convention and Article 17 of Additional Protocol II to the Geneva Conventions.

⁷⁵ See, e.g., Rome Statute of the International Criminal Court, Art. 8(2)(e)(viii). Sri Lanka is not a party to this treaty, and is therefore not subject to the jurisdiction of the International Criminal Court.

⁷⁶ ICCPR, Art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”) See also Universal Declaration of Human Rights (UDHR), Art. 13(1) (“Everyone has the right to freedom of movement and residence within the borders of each State.”)

⁷⁷ ICCPR, Art. 12(1).

⁷⁸ ICCPR, Art. 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his . . . home”); ICCPR, Art. 17(2) (“Everyone has the right to protection of the law against such interference [with one’s home]”). See also UDHR, Art. 12.

⁷⁹ ICCPR, Art. 12(3). Limitations are provided for within the terms of the right itself, as opposed to derogations, which are made pursuant to Art. 4.

intrusive or restrictive means of achieving their purpose: and be proportionate to the interest to be protected.⁸⁰

Under IHL, the exception to the prohibition of forced displacement for “imperative military reasons” is even more strictly construed. The formulation “imperative military reasons” – and not simply “military necessity” -- indicates a high burden of proof. The commentary of the International Committee of the Red Cross indicates that while the concept of “military necessity” as a ground for action requires “the most meticulous assessment,” the addition of the qualifier “imperative” “reduces to a minimum [those] cases in which displacement may be ordered.”⁸¹ It expressly prohibits political motivations, such as displacement “in order to exercise more effective control over a dissident ethnic group.”⁸² This would equally preclude the use of a civilian population to consolidate control over a piece of land or territory.⁸³

Nonetheless, international law reflects the reality that there may be times during armed conflict when displacement is unavoidable. Accordingly, the second exception to the general prohibition is when “the security of the civilians involved . . . so demand[s].” The operative principle here is that the decision to evacuate the population is taken in the interests of the civilians themselves. Customary international humanitarian law requires that in the conduct of their military operations, parties must take constant care to spare the civilian population, including the taking of “[a]ll feasible precautions . . . to avoid . . . incidental loss of civilian life [or] injury to civilians.”⁸⁴ Evacuation (or forced displacement) of the population for its own safety may be one such precautionary measure.⁸⁵ Thus, the commentary to the conventional prohibition of forced displacement indicates: “If . . . an area is in danger as a result of military operations or is liable to be subjected to intense bombing, the [relevant party to the conflict] has the right and . . . [possible] duty of evacuating [the population] partially or wholly, by placing the inhabitants in places of refuge.”⁸⁶ Evacuation or forced displacement of the population under the “security” exception, however, should not be undertaken for mere convenience of the parties. As with the exception for “military necessity”, displacement should be both exceptional and imperative. “[I]f it is not imperative, evacuation ceases to be legitimate.”⁸⁷

Thus, for example, it may be necessary to evacuate a civilian population from a combat zone where hostilities are already underway or when a conflict has unavoidably spilled into a civilian area. Equally, an offensive military operation directed against a military objective that is in the vicinity of a civilian village might justify an evacuation. On the other hand, the targeting of civilians -- including segments of populations, such as ethnic or religious minorities -- remains prohibited and can never justify evacuation or displacement.⁸⁸ By respecting and ensuring respect of both human rights and international humanitarian law, parties may avoid the illegal creation of conditions that would result in the displacement of civilian populations.⁸⁹

Under these exceptions, when evacuation is required, it should continue only so long as conditions require. To ensure the safety of the civilians during armed conflict, the authorities undertaking the displacement must make all practicable efforts to ensure that the displacement is carried out in conditions of safety and that family members are not separated.⁹⁰ For example, civilians should, if possible, be given advance notice, and the relocation should be carried out during

⁸⁰ Human Rights Committee, General Comment No. 27: Freedom of movement, 2 November 1999. UN doc. CCPR/C/21/Rev. 1/Add 9, ¶ 14.

⁸¹ ICRC Commentary to Additional Protocol II, Art. 17, 1473 (para. 4853). This article is one basis for the formulation of the customary rule; hence, its interpretation provides useful guidance.

⁸² *Id.* At 1473 (para. 4853).

⁸³ See discussion below on prohibition of use of human shields.

⁸⁴ Customary International Humanitarian Law, Rule 15.

⁸⁵ Customary International Humanitarian Law, Rule 24 (“Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.”)

⁸⁶ ICRC Commentary to Geneva Convention IV, Art. 49, 280.

⁸⁷ ICRC Commentary to Geneva Convention IV, Art. 49, 280.

⁸⁸ Indeed, Article 17 to additional Protocol II was developed as a response to “the forced movement of ethnic and national groups opposed to the central government” during World War II. ICRC Commentary to Additional Protocol II, Art. 17, 1471 (para. 4849).

⁸⁹ Guiding Principle 5.

⁹⁰ Guiding Principle 7(2); Customary International Humanitarian Law, Rule 131.

reasonable hours of the day. Further, the parties to the conflict must take all possible measures in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.⁹¹

Independent of the prohibition of forced displacement, international humanitarian law imposes a distinct duty on all parties to “give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.”⁹² Importantly, the provision of advance warning cannot be used to excuse the subsequent specific targeting of a civilian population. The duty to distinguish between civilians and combatants still applies. Likewise, given the prohibition of forced displacement, it follows that the requirement of advance notice cannot itself be used to justify clearing an area of all civilians.

IDPs should not be returned to their places of origin absent an informed and voluntary choice.

The right to voluntary return and to protection against involuntary return.

A natural corollary of the right of IDPs to voluntary return, in safety and dignity,⁹³ is the right of IDPs *not* to be forcibly returned or resettled in any place where their lives or health would be in danger.⁹⁴ The *Guiding Principles* addressing voluntary and forced return are derived from the rights to freedom of movement⁹⁵ and to choose one’s place of residence.⁹⁶ The prohibition on forced return to conditions of danger was originally drawn by analogy to the principle of *non-refoulement* existing within refugee law.

With regard to return, responsible authorities have two primary duties: first, to establish the conditions and means allowing for voluntary and sustainable return,⁹⁷ and second, to protect IDPs against forced return. As part of their obligation to facilitate *voluntary* return, authorities should provide the necessary information to allow IDPs to exercise their right to decide freely where they want to live. That decision may be to return home, although it equally may be to integrate locally or to resettle to another part of the country. With regard to *sustainability*, the recently adopted United Nations Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters indicates that conditions will be considered “sustainable” if:

- (i) people feel safe and secure, free from harassment and intimidation;
- (ii) people have been able to repossess their properties or homes, and these have been adequately reconstructed or rehabilitated;
- (iii) people can return to their lives as normally as possible, with access to services, schools, livelihoods, employment, markets, etc. without discrimination.⁹⁸

Though developed in the context of disaster-induced displacement, these indicators equally apply to the return of IDPs displaced by conflict.

The right to return *in safety* imposes a duty on the government to take affirmative measures to ensure the safety of a returning population, such as clearance of land mines and unexploded

⁹¹ Customary International Humanitarian Law, Rule 131.

⁹² Customary International Humanitarian Law, Rule 20.

⁹³ Guiding Principle 28.

⁹⁴ Principle 15(d) (“Internally displaced persons have . . . the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.”)

⁹⁵ ICCPR, Art. 12(1). See also UDHR, Art. 13(1).

⁹⁶ ICCPR, Art. 12(1).

⁹⁷ Guiding Principle 28(1).

⁹⁸ Inter-Agency Standing Committee, IASC Operational Guidelines on Human Rights and Natural Disasters, June 2006, §D.2.2.

ordnance. Other measures might include the provision of basic assistance relating to shelter, food and water; resumption of medical services; and the provision of agricultural tools, seeds and basic household items. To satisfy their responsibility to establish conditions conducive for return – voluntariness, sustainability, and safety – authorities should facilitate and support assessment visits (“go and see” visits) by IDPs prior to actual return.

Under international humanitarian law, the forced return of IDPs to their places of origin is contrary to the customary rule that “displaced persons have a right to *voluntary* return in safety . . . as soon as the reasons for their displacement cease to exist.”⁹⁹ Thus, a violation of this right occurs when IDPs are unreasonably *prevented* from returning, when that is their choice, as well as when IDPs are *forced* to return against their will. Consistent with the discussion above, however, civilians might be prevented from voluntary return when “security of the civilians or imperative military reasons so demand.” The prohibition on forced return, however, is absolute. Return to areas where civilians fear for their safety, or to an area that is known to contain anti-personnel mines or unexploded ordnance, would clearly violate this rule as it runs directly counter to the exception allowing for displacement when “security of the civilians” so requires.

It should be noted that the concept of “forced return” encompasses all forms of coercion intended to make IDPs return in the absence of a voluntary and informed choice. A clear example of forced return would involve the use of physical force or the presence of armed military to escort IDPs onto transport buses. Coercion can also result from violations of other rights, such as the right to liberty and security of person (e.g., failure to ensure the humanitarian and civilian character of camps, whether by posting intimidating or hostile military forces near or in IDP settlements or by failing to secure the camp from intrusion by armed groups). Alternatively, coercion may result from denial of the right to food and humanitarian assistance¹⁰⁰ (e.g., through an indication that assistance will be terminated as of a certain date and provided only in the place of return).

IDPs must not be used to “shield” areas from attack or to favor or impede military operations.¹⁰¹

A fundamental tenant of international humanitarian law requires all parties to (1) distinguish between civilians and combatants (and between military objectives and civilian objects), and (2) protect all civilians from direct attack, as well as from the consequences of hostilities. In this regard, it is prohibited to use any civilians, including IDPs, as a “human shield” to deter an attack against a military objective.¹⁰² Similarly, it is prohibited to restrict IDPs’ freedom of movement in a particular area in order to prevent military operations there. Guiding Principle 10(2)(c) provides in relevant part: “Attacks or other acts of violence against internally displaced persons are prohibited . . . in all circumstances. Internally displaced persons shall be protected, in particular, against: their use to shield military objectives from attack or to shield, favor or impede military operations.”

The prohibition on the use of human shields is recognized as customary law. Use of civilian shields involves the “intentional co-location of military objectives and civilians . . . with the specific intent of trying to prevent the targeting of those military objectives.” Military objectives have been defined as “objects which, by their nature, location, purpose or use make an effective contribution to military action or whose total or partial destruction, capture or neutralization . . . offers a definite military advantage.”¹⁰³ Because combatants have the right to attack military objectives, international humanitarian law defines them precisely and narrowly. Classic examples cited are

⁹⁹ Customary International Humanitarian Law, Rule 132 (emphasis added).

¹⁰⁰ See Guiding Principles 18(1) & (2) and 24, in conjunction with Guiding Principle 15.

¹⁰¹ Guiding Principle 10(2)(c).

¹⁰² Regardless of where they are, IDPs must always be protected against attacks or acts of violence. This includes being protected against use as shields intended to forestall military operations for control of their home areas. Guiding Principle 10(2)(a) & (c).

¹⁰³ Additional Protocol I, Art. 52(2).

munitions bunkers, radar sites, communications centres, military units, strategic sites (a bridge or sole mountain pass) and military defense points.

As discussed above, the forced return of IDPs to their original communities in order to insulate the area from attack by an adverse party could never be justified as an “imperative military reason.” Rather, it would be an attempt to exploit the principle of distinction and the duty to take precautionary measures. Given that the principle of distinction, which is customary, provides that attacks may only be directed against combatants and must never be directed against civilians, a party enforcing return for these purposes would be misusing the principles and intentionally putting civilians in harms way. Such actions on the part of the State also would violate the non-derogable human right not to be arbitrarily deprived of one’s life.

IDPs retain their right to liberty of movement.

The *Guiding Principles* reflect that IDPs retain their right to liberty and security of person,¹⁰⁴ their right to liberty of movement,¹⁰⁵ and their right to seek safety in another part of the country.¹⁰⁶ Under human rights law, the right to liberty of movement may be limited if such limitation is “provided in law, . . . [is] necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and [is] consistent with the other rights recognized in the present Covenant.”¹⁰⁷ As discussed above, this limitations clause is to be narrowly construed and exceptionally applied.¹⁰⁸ Moreover, any restriction upon liberty of movement must satisfy the principles of necessity and proportionality, and must not be so restrictive as to effectively negate the right.¹⁰⁹ Finally, the application of restrictions on liberty of movement must be based on strict criteria and “may not confer unfettered discretion on those charged with their execution.”¹¹⁰

The Human Rights Committee of the United Nations has indicated that administrative and bureaucratic measures affecting liberty of movement – such as the requirement to obtain a travel permit -- also must satisfy the principle of proportionality.¹¹¹ Nor should liberty of movement be denied to an IDP due to the loss of his or her identity card. Indeed, the *Guiding Principles* specify that authorities shall issue to IDPs “all documents necessary for the enjoyment and exercise of their legal rights,”¹¹² including the issuance of replacements for documents lost in the course of displacement.

Like the prohibition of forced displacement, the right to liberty of movement under international humanitarian law is subject to exception for imperative military reasons and security of the civilian population. The commentary to the conventional rule advises that in the case of either exception, “real necessity must exist; the measures taken must not be merely an arbitrary infliction or intended simply to serve in some way the interests [of the relevant authority].”¹¹³

¹⁰⁴ Guiding Principle 12(1).

¹⁰⁵ Guiding Principle 14.

¹⁰⁶ Guiding Principle 15(1)

¹⁰⁷ ICCPR, Art. 12(3).

¹⁰⁸ Human Rights Committee, General Comment No. 27: Freedom of movement, 2 November 1999. UN doc. CCPR/C/21/Rev. 1/Add 9, para. 11.

¹⁰⁹ *Id.*, ¶¶ 2, 13.

¹¹⁰ *Id.*, ¶ 13

¹¹¹ *Id.*, ¶ 15.

¹¹² Guiding Principle 20(2).

¹¹³ ICRC Commentary to Geneva Convention IV, Art. 49, 283.

ANNEX 3

The national legal framework relating to the right to freedom of movement in Sri Lanka and restrictions on the freedom of movement

1. Introduction

The right to freedom of movement and the freedom to choose one's residence are fundamental rights endorsed by the Constitution of Sri Lanka. These fundamental rights are central to other rights that are recognised as relevant to IDPs. They include the right to return (to one's original place of residence) in safety and in dignity, the right to be protected from forced displacement, and the right to housing and property restitution. The ongoing conflict in Sri Lanka has resulted in the forced displacement of thousands of persons in the North and East and the imposition of restrictions on their movement within the country. More recently IDPs have been forced to return to their homes despite security concerns of return and the unsustainability of conditions of return. All these instances have implications for the realization of the right to freedom of movement within Sri Lanka. Outlined below is the national legal framework which is relevant to issues affecting freedom of movement.

2. The Constitution of Sri Lanka 1978

2.1 The right to freedom of movement as expressed in the Constitution of Sri Lanka

Freedom of movement is protected by the Constitution of 1978 as a fundamental right. According to Article 14 (1) (h) and (i), every citizen is entitled to

*“the freedom of movement and of choosing his residence within Sri Lanka; and¹¹⁴
the freedom to return to Sri Lanka.”¹¹⁵*

The right to freedom of movement is not subject to any geographical limitations. It is the right of every citizen to be able to travel anywhere and establish residence in any location of one's choosing within Sri Lanka. There has been a tendency in litigation to subsume this right in cases that deal with other fundamental rights articulated in the Constitution, such as the right to freedom from arbitrary arrest, detention and punishment. The right to movement however, must be understood as an independent right which is violated by the arbitrary and unlawful denial of movement or undue coercion or duress resulting in movement, or similar actions affecting the ability of a citizen to travel freely within the country and to choose his/her residence.

This right may not be subject to any restriction other than to those which are prescribed by the Constitution itself. These are referred to as 'permissible restrictions'.

2.2 Permissible restrictions

Article 15 of the Constitution lays down the conditions under which restrictions on fundamental rights may be made by other laws. Article 15 (6) allows for restrictions of Article 14 (1) (h) in the interests of national economy, whereas Article 15 (7) states that

“The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13 (1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph “law” includes regulations made under the law for the time being relating to public security.”

¹¹⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), Article 14(1)(h)

¹¹⁵ Ibid, Article 14(1)(i)

The Constitution thus allows for restrictions on the freedom of movement on condition that such restrictions are prescribed by law and that their purpose is to protect one of the interests mentioned in article 15(7).¹¹⁶ The term restrictions *as may be prescribed by law* include restrictions on the freedom of movement as prescribed by *regulations* made under the law relating to *public security*.

2.3 The Public Security Ordinance 1947 and emergency regulations

2.3.1 The Public Securities Ordinance 1947

Chapter XVIII of the Constitution deals with public security and draws attention to the Public Security Ordinance (the PSO),¹¹⁷ as the law dealing with public security in the event of a state of emergency or an imminent state of public emergency. The PSO enables the President to adopt emergency regulations or other measures “*in the interest of the public security and the preservation of public order*”. Part I of the PSO empowers the President to declare a state of emergency and thereby making Part II of the ordinance, which governs the nature of the emergency regulations, effective.

According to section 5 (1) of the PSO, the President may make such regulations

“...as appear to him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of community.”

Article 155 of the Constitution specifies that regulations enacted under Part II of this Ordinance have the legal effect of ‘*over – riding, amending or suspending the operation of any law, except for the provisions of the Constitution*’ (emphasis added).

Thus the capacity of Government representatives to override, amend or suspend the operation of any law on the basis of permissible restrictions enacted by public security laws and emergency regulations, cannot amount to a violation of the Constitutionally endorsed fundamental right to freedom of movement. Emergency regulations do not have the effect of obscuring the fundamental rights contained in the Constitution. While they may override, amend or suspend a particular law, they can only impose certain *restrictions* on fundamental rights. *Restrictions on the operation and exercise of fundamental rights cannot be imposed to a point of denying these rights.*¹¹⁸

2.3.2 Emergency regulations and the ‘test of reasonableness’

The PSO does not in itself include any provisions limiting the freedom of movement. However, when read together with the provisions of the Constitution, the powers given to the President are far-reaching, as they enable the President to bypass the normal legislative process and restrict the fundamental rights protected by the Constitution, under a state of emergency for reasons related to national security. However, such powers are subject to constitutional controls and limitations as referred to in the case of *Thavaneethan v. Dayananda Dissanayake Commissioner of Elections and Others*.¹¹⁹

¹¹⁶ In the case of *Thavaneethan v. Dayananda Dissanayake Commissioner of Elections and others*, [SLR 2003 \(1\), pgs. 74 to 107](#) at pg. 97, the Supreme Court emphasized that when article 15 (7) authorizes restrictions prescribed by “law”, in accordance with article 170 this means Acts of Parliament and laws enacted by any previous legislature and Orders-in-Council, and held that “Article 15 does not permit restrictions on fundamental rights other than by plenary legislation - which is subject to pre-enactment review for constitutionality. It does not permit restrictions by executive action (i.e. by regulations), the sole exception permitted by Article 15(1) and 15(7) being emergency regulations under the Public Security Ordinance because those are subject to constitutional controls and limitations, in particular because the power to make such regulations arise only upon a Proclamation of emergency, because such Proclamations are subject to almost immediate Parliamentary review, and because Article 43 provides that the President shall be responsible to Parliament for the due exercise of powers under the law relating to public security.”

¹¹⁷ Public Security Ordinance No. 25 of 1947, [Legislative Enactments Vol. III](#) pg.107

¹¹⁸ *Sunil Kumara Rodrigo vs. R.K. Chandrananda de Silva*, SC F.R. 478/97

¹¹⁹ Supra note 3

A state of emergency was declared following the assassination of Foreign Minister Lakshman Kadirgamar. The emergency regulations that were brought into force thereafter in August 2005¹²⁰ contain several provisions impacting on the freedom of movement of persons, such as regulation 12 (1) which enables the authorities prohibit the entry of unauthorized persons into “*any area, place or premises wholly or mainly occupied or used for the maintenance of essential services*”. Regulation 14 (1) gives the President the power to impose curfews. These regulations authorize restrictions which are limited and appear to satisfy the criteria both of the Constitution, article 15 (7) and of the ICCPR, article 12 (3).

However, it is pertinent to note that regulation 18, which empowers the Secretary of Defence to restrict the movement or activities of any particular person as a preventive measure, has much in common with section 11 of the Prevention of Terrorism Act (see below). Incorporating the provisions of another law into emergency regulations in effect makes these provisions permissible restrictions that may be applied to curtail one’s fundamental rights in times of emergency.

The grounds on which orders may be issued under Regulation 18 are broadly formulated, and to this extent at least, extend beyond legitimate security concerns. There is no requirement that the person is suspected of having committed an unlawful act, it is enough that the Defence Secretary “*is of the opinion that [...] it is necessary*” to restrict a person’s freedom of movement in order to prevent him or her from acting in a manner prejudicial to national security or the maintenance of essential services.

For instance, where it is necessary, the Secretary may by order prohibit a person from -

“...leaving his residence without the permission of such authority or person as may be specified in that order, and prohibiting any other person from entering or leaving such residence except in such circumstances as may be specified in that order or be determined by such authority or person as may be specified in that order...”

All this leaves a wide discretion to the Defence Secretary, which brings into question the means by which such discretion may be tested. The Sri Lankan Constitution does not contain a ‘test of reasonableness’ as does the many other Constitutions of South Asia, including the Indian Constitution.¹²¹ While public security laws and especially emergency regulations may be applied to a broad range of subjects – including persons, property and land – they need to be reasonably applied in proportion to the purposes of maintaining public security. The formulation of emergency regulations in broad terminology that allows for a wide discretion lacks specificity, in terms of whether these provisions are ‘reasonable and necessary’ for security concerns at a given time.

Another concern is that the regulation sets no time limit for the period that such an order may remain in effect, which implies that it can last indefinitely. There is also no possibility of judicial review by the courts or any other independent body, apart from a fundamental rights application to the Supreme Court¹²² (see below in remedies).

3. Remedies for any undue restriction on the right to freedom of movement

It follows from Article 17 of the Constitution that a person who claims to be the victim of an infringement of a fundamental right by executive or administrative action, can apply to the Supreme Court for remedy. Article 126 (1) sets out a very strict time limit for filing such action, as the application must be addressed to the Supreme Court within one month after the alleged infringement.

Given this time limit, instituting a fundamental rights action may not be practically feasible for many of those aggrieved by restrictions on their freedom of movement in the context of the

¹²⁰ Gazette Notification of the Democratic Socialist Republic of Sri Lanka, No. 1405/14, Saturday, August 13, 2005

¹²¹ The Constitution of India, Article 19(2)

¹²² Section 7 of the Public Security Ordinance provides for the legal supremacy of the emergency regulations over any other law. Under section 8 “no emergency regulation, and no order, rule or direction made or given there under shall be called in question in any court.” Section 9 protects any person acting under an emergency regulation from criminal and civil prosecution, subject to revocation by the Attorney General. Case law, however, holds that the PSO does not affect the jurisdiction of the Supreme Court. The power to make Emergency Regulations does not include the power to make regulations overriding the provisions of the Constitution [see, Wickremebandu v Herath and others, SLR (1990) Vol.2, p348; Siriwardena and others v Liyanage and others, SLR (1983) Vol.2, p164 and Visuvalingam and others v Liyanage and others SLR (1984) Vol.2, p123]

conflict. Application is by way of a petition made in writing and instituted within one month of its breach.¹²³ Thus potential claimants must be able to establish a clear link between the breach of their rights and an entity with executive and administrative authority; and have the resources and the capacity to file a petition in the Supreme Court situated in the capital, within a short duration of one month.

While not offering an effective remedy to violations of fundamental rights, The Human Rights Commission Act¹²⁴ provides a more flexible approach to safeguarding against the infringement or the imminent infringement of fundamental rights. The Human Rights Commission of Sri Lanka is vested with the authority to investigate alleged violations of fundamental rights. However, the authority of the Commission is limited to advise and assist the government in formulating legislation and administrative directives and procedures, to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards and to make recommendations to the Government on the need to subscribe or accede to treaties and other International instruments in the field of human rights. In individual cases, the Commission may, after a process of mediation between the parties, only make recommendations regarding monetary compensation for violations of fundamental rights and cannot recommend or order reinstatement to prior status, for instance in land and property matters.

4. Conclusion

There is a substantial recognition by the fundamental rights jurisprudence of Sri Lanka of the inviolability of constitutionally recognised fundamental rights, which includes the right to freedom of movement and the right to choose one's residence. This right may not be curtailed other than by permissible restrictions prescribed by the Constitution for reasons of national security. On an analysis of relevant case law, restrictions on fundamental rights are not legitimate unless there is a clear link, between a restriction imposed by a law relating to public security (including emergency regulations) and an incident of restricted or forced movement. Ad hoc administrative or executive decisions that induce forced movement or unduly restrict the movement of persons may amount to a violation of this right.

As noted above, the Sri Lankan Constitution does not contain any proportionality requirement, and in this respects it differs from most international human rights instruments as well as other SAARC country constitutions, except for the cases of the Maldives and Afghanistan, which similarly do not require limitations on freedom of movement to be reasonable. The Indian Constitution in this regard requires that all restraints on free movement must satisfy a test of reasonableness¹²⁵ in order to safeguard the fundamental character of the right to freedom of movement.¹²⁶ In the Sri Lankan context such a test would require, among other things, the formulation of standards to assess whether measures taken to secure public security and public order have the effect of restricting the liberty and movement of persons to an unreasonable degree. That is, standards to assess whether methods of restraint and coercion employed go beyond the purposes of public security and violate the right to freedom of movement and one's choice of residence.¹²⁷

The mechanism outlined in the Constitution for redressing violations of the right to freedom of movement however, is often not accessible within the stipulated time frame. Accessibility may be further denied by resource constraints and the lack of capacity on the part of many of the IDPs. An effective legal mechanism at the grassroot level that can implement the thinking of the Supreme Court is necessary for the effective realization of this right. Such a mechanism needs to take into account access for vulnerable populations and have the capacity to address violations of this right in the immediate term, as they occur.

¹²³ Supra note 1, Article 126(2)

¹²⁴ Human Rights Commission Act of Sri Lanka, Act No. 21 of 1996, section 14

¹²⁵ The Constitution of India, Article 19(2)

¹²⁶ Similarly, the Constitutions of Pakistan, Bangladesh and Nepal recognize that every restriction of the freedom of movement must be reasonable.

¹²⁷ There is no explicit provision that allows such a test however, there is implicit recognition by the Supreme Court of the requirement for proportionality and reasonableness in the imposition of restrictions on the freedom of movement (e.g. case of *Vadivelu v. the Sithambarapuram Regional Camp Police Post*, [SLR 2003\(3\)](#)).

ANNEX 4

Chronology of displacement events: April 2006 – April 2007

April 2006

- Suicide bomb attack on Army Commander Lt. General Fonseka in Colombo (25 April)
- Retaliatory air and artillery attacks in the North and East
- Air strikes on Sampur cause mass displacement. About 20,000 people flee south towards Eachchilampattai in Trincomalee District.

May 2006

- Allaipiddy Jaffna District: posters distributed by a group called *Makkal Padai* warning villages to leave the area or face the consequences (20 May) cause displacement of nearly entire village to Jaffna Town.
- Muttur Town, Trincomalee District: handbills distributed by group called *Tamil Eelam Motherland Retrieval Force* warning Muslims to leave the area (29 May)

June 2006

- Bomb explodes on civilian bus in Kebitigollewa, Anuradhapura District, killing 64 Sinhalese passengers, including many children (15 June)
- 400 Sinhalese villagers in volatile “border” villages flee to IDP sites in Anuradhapura District
- The GoSL launches retaliatory land, air and sea attacks in the North and East, resulting in dozens of deaths and more displacement.
- 12 & 13 June, government authorities organize buses to take IDPs staying in churches in Jaffna Town back to Allaipiddy.

July 2006

- LTTE closes sluice gates at Maavil Aru, Serunuwara area, Trincomalee District
- GoSL launches an offensive against LTTE positions in Trincomalee District.
- Fierce fighting between the GoSL and LTTE over control of Muttur Town.

August 2006

- Fighting in Muttur escalates and tens of thousands of Muslims and Tamils flee from Muttur Town and surrounding areas to Kantale, Thampalakam, Kinniya and Town & Gravets divisions, Trincomalee District. By end of August, 50,000 IDPs displaced in Trincomalee District.
- On 11 August, LTTE launches an artillery and seaborne attack on Jaffna Peninsula. The GoSL immediately orders a 24 hour curfew, which continues for several weeks, and the closure of the A9 Road into Jaffna District. Civilians' freedom of movement, both within and in and out of Jaffna, is severely restricted.
- The LTTE launches a seaborne invasion on Allaipiddy on 11 August. Shelling into the area causes hundreds of families to flee and results in the deaths of 29 civilians and injury to 14 others. More than 11,000 civilians displaced due to both incidents.
- Hundreds of civilians attending annual religious festival at Madhu Church, Mannar District, are trapped due to closure of FDLs at Uylankulam and Madhu and refusal of LTTE to let them leave.

September 2006

- GoSL forces capture Sampoor town, triggering pressure from high level Government officials, the security forces and Muslim community leaders to return the Muslim IDPs to Muttur Town (4 September)
- Although initially Muslim IDPs return voluntarily (4 – 7 September), subsequent returns (7 – 11 September) are not voluntary and IDPs are forced to return.

- By 12 September, 35,000 Muslim IDPs have returned to Muttur and the Muslim IDP sites are empty.
- From 8 September, Tamil IDPs in Town & Gravets also come under pressure to return to villages of origin in eastern and western Muttur.
- Leaflet distributed in Muttur Town by group called *Liberation of Tamil Eelam Homeland* telling Muslim residents to leave immediately and warning of imminent LTTE attacks to re-capture Muttur Town. LTTE denies responsibility (22 September).
- Over 5,000 IDPs rounded up in Jaffna Town and forced back to their villages in militarized coastal areas south east of Jaffna Town against their will (Gurunagar, Pasiyoor, St. Rocks, Columbothurai) (22 September)
- 400 Sinhalese IDPs who fled Kebitigollewa following June bus bomb attack are forced back to their villages against their will.

November 2006

- GoSL forces shell Vakarai hitting Kathiraveli School, where over 6,000 IDPs are sheltering. 49 civilians killed and 125 injured. 2,000 IDPs try to flee Vakarai and are prevented from doing so by the LTTE (8 November).
- IDPs from Jaffna trapped at Madhu Church since August, are finally allowed by the LTTE to cross the Uyilankulam FDL checkpoint. IDPs are then transported to Trincomalee by bus and on to Jaffna by boat (10 November & 21 November).

December 2006

- Government authorities and security forces launch a campaign of intimidation to force Tamil IDPs in Town & Gravets to return to Muttur. On 2 December, 66 families from Cultural Hall site, Town & Gravets, are forced to return to Muttur.
- Large numbers of IDPs start to flee LTTE controlled Vakarai via the jungle and walk into government controlled areas. By end of December, 30,000 IDPs had fled LTTE controlled Vakarai.
- Large numbers of Sinhalese IDPs flee to Kantale following LTTE shelling in Seruwila. By 12 December, over 4,000 IDPs are staying in 8 temporary IDPs sites in schools and temples in Kantale.

January 2007

- The GoSL announces that it has seized control of formerly LTTE controlled parts of Vakarai. The remaining IDPs and residents flee Vakarai in early January and report that no civilian residents are left.
- IDPs start to flee LTTE controlled parts of western Batticaloa District into government controlled areas to escape fierce fighting and shelling between the GoSL and LTTE forces. By end of February, over 80,000 IDPs have fled from LTTE controlled areas.
- In early January, Government authorities start to put pressure on over 4,000 Sinhalese IDPs in Kantale to return to their homes in Seruwila. Many of the IDPs who returned have to flee back to Kantale on 6 & 9 January following heavy shelling by the LTTE into Seruwila. The IDPs finally return to their homes on 19 January after the fall of Vakarai to Government forces.

February 2007

- Security conditions in IDP camps in Batticaloa District deteriorate dramatically with armed TMVP cadres maintaining a highly visible presence in IDP sites. IDPs are subjected to harassment, abductions, theft and physical assault.
- Government authorities in Batticaloa and Trincomalee Districts organize "Go and See Visits" (GSV) for IDPs in Batticaloa District to visit their homes in nine GN divisions of western Muttur DS division (20 – 22 February). 23 IDPs participate in the GSV.
- Large numbers of IDPs start to flee their homes in Madhu DS division, Mannar District, and seek refuge in Madhu Church. The IDPs are escaping a deterioration in the security situation and an intensification in forced recruitment by the LTTE.

March 2007

- A “Go and See Visit” is organized for IDPs in Batticaloa District to visit Uriyankadu, Vakarai DS division on 6 March. Over 100 IDPs participated in the GSV.
- Returns to Vakarai start on 7 March. The initial returns are voluntary and IDPs seem happy to return.
- Returns of IDPs in Batticaloa District to Trincomalee District start.
- 920 IDPs return in the first group to Muttur West on 12 March. Although this return has been planned, IDPs are subjected to high levels of coercion and intimidation by local authorities and security forces to return.
- Pressure on IDPs to return increases from 15 - 17 March. No advance warning is given and few returns are voluntary. There are several incidents of the security forces using physical to coerce IDPs to leave.
- By 21 March, over 3,000 IDPs have returned to Trincomalee District from Batticaloa.
- Pressure is also stepped up on returns to Vakarai. By 25 March, over 13,000 IDPs have returned to Vakarai. IDPs say that they lack proper information about conditions in areas of return. Some IDPs are subjected to threats and intimidation and there are some incidents of forced return.
- The IASC issues a leaflet on 20 March informing IDPs about their right to return voluntarily and in safety and dignity. The leaflets are distributed in IDPs sites in Batticaloa District.

ANNEX 5

Chronology of Advocacy Interventions: April 2006 – April 2007

2006

- 26 May: UN agencies and NGOs successfully intervene to prevent forced return of IDPs from Selvapuram, Puttalam District to Trincomalee District
- May: Successful intervention by UN agencies prevents the forced return of IDPs from Mannar District to Trincomalee District
- 1 September: UNHCR *demarche* to GoSL regarding humanitarian access to civilians in Jaffna and restrictions on freedom of movement
- 12 September: UNHCR *demarche* to GoSL regarding non-voluntary return of some Muslim IDPs to Muttur
- 3 October: In a meeting with the Minister of Disaster Management and Human Rights, Hon. Mahinda Samarasinghe, UNHCR raises concerns about the forced returns of IDPs from Jaffna Town to coastal villages; the forced return of Sinhalese IDPs of Sinhalese IDPs to Kebitigollewa; and restrictions on the freedom of movement of Muslim IDPs trying to flee Muttur
- 29 November: UNHCR communicates its position on return and relocation to Minister of Human Rights and Disaster Management in a letter and accompanying policy note
- 5 December: UNHCR *demarche* to GoSL regarding forced returns of Tamil IDPs from Town & Gravets to Muttur West
- 12 December: UN Sri Lanka statement on the protection of civilians in Vakarai, expressing concern about indiscriminate shelling of civilians residential areas and calling for humanitarian access and freedom of movement for civilians.

2007

- 19 February: UNHCR writes to Minister of Human Rights and Disaster Management regarding security conditions in IDP camps in Batticaloa District and plans for return of IDPs to Vakarai and Trincomalee District. UNHCR shares a “Road Map” detailing a plan of action for voluntary return of IDPs in safety and dignity, as well as a joint UN note on security incidents in IDP sites
- 14 March: UNHCR writes to Minister of Human Rights expressing concerns about forced returns of IDPs from Batticaloa District to Trincomalee District on 12 March
- 14 March: UNHCR writes to the Head of the LTTE Political Wing, Mr. Tamilselvan, outlining its concerns about the IDPs in Madhu Church
- 14 March: UNHCR issues press statements on the forced returns of IDPs from Batticaloa District to Trincomalee District and Vakarai and on the situation in Madhu Church
- 16 March: UNHCR issues press statements on the forced returns of IDPs from Batticaloa District to Trincomalee District and Vakarai
- 20 March: Statement by Walter Kälin, Representative of the Secretary General on the Human Rights of Internally Displaced Persons at the 4th session of the Human Rights Council, Geneva

ADDENDUM

Events from April 2007 to July 2007

Following advocacy interventions (refer to Annex 5 in particular) and regular coordination with the central and local government authorities, some positive developments in the return process as well as in the protection of IDPs' freedom of movement have been observed since April 2007. Continued forced displacements and limited IDP participation in the return process however remain serious concerns.

1. Forced Displacement

On 01 June 2007, the Deputy Inspector General of Police (DIG) for Colombo, Mr. Rohan Abeywardene, stated that Tamil people cannot remain in Colombo without a valid reason. His statement was followed on 07 June 2007 by removal of some Tamils from the capital. The operation reportedly commenced in the early hours of the morning when police and army officers visited various lodges occupied predominantly by Tamils in Colombo and forcibly removed Tamils from these guesthouses. It was reported that people were given less than half an hour to pack and board buses, resulting in many of those detained not being able to bring all their belongings. A total of 376 Tamils, including 85 women, deemed 'without valid reasons' to be in the capital were forced into buses which then proceeded to Vavuniya, Batticaloa and Trincomalee.

The DIG said the Tamils were being sent back to their villages for their own safety so that they would not be abducted, arrested or detained in Colombo but also to stop insurgents infiltrating the capital. These evictions of Tamils from Colombo constitute violations of the fundamental rights of those persons who were evicted, as guaranteed by Article 12 (1), 12(2), 13(1), 13(2) and 14(1)(h) of the Constitution. Article 12 provides that all persons are equal before the law and ensures that no citizen shall be discriminated against on grounds specified in the Constitution. Article 14(h) provides freedom of movement and the right to choose one's residence to citizens in Sri Lanka.

Amidst multiple protests, the Supreme Court of Sri Lanka issued an interim order on 8 June 2007 directed at the Inspector General of Police (IGP), Defense Secretary Gotabaya Rajapakse and eight other respondents preventing them from ordering the eviction of Tamil persons from Colombo. The interim order further stops the respondents from preventing Tamil persons from entering and/or staying in any part of Colombo.

The Supreme Court ruling has been welcomed by all international observers and human rights groups estimating that the evictions were discriminatory and an arbitrary restriction on the freedom of movement. The next court hearing is scheduled for July 26.

Among those removed from Colombo on June 07 were not only individuals recently arrived in the capital, but the group also included persons that had been living in Colombo for 15 years. Some of those removed were not staying in lodges, but in privately rented apartments or in accommodation provided by employers. Some individuals, who had lived in Colombo for more than 5 years, were registered as voters in Colombo.

While many of those removed on June 07 were returned to Colombo on the following day, agencies report that there was clear trepidation amongst the deported people about going back to Colombo, and that many expressed a fear of retribution should they return.

2. Restrictions on Freedom of Movement

a. Restrictions on People Leaving the Vanni

There are continued protection concerns related to violations of freedom of movement for the population in the Vanni. As of early July 2007 movements through the Forward Defense Line (FDL) at Omanthai has been reduced 3 times a week (Mondays, Wednesdays and Fridays).

These restrictions continue to psychologically impact on travelers who have to endure hours of intensive searches of their luggage, body and vehicles. In addition, there are frequent and unpredictable changes in LTTE and SLA requirements from travelers through the FDL.

b. Muttur (East) / Sampoor High Security Zone, Trincomalee

The designation of large parts of Muttur division (around 90 square kilometers) in the Eastern district of Trincomalee as a High Security Zone (HSZ)¹²⁸, by the Sri Lankan government has severely affected return prospects for more than 15,000 persons who are currently displaced in Batticaloa and Trincomalee districts. The new HSZ covers a vast area including Sampoor, Foul Point, Illankanthai, Uppural, Thoppur, Kattaiparichchan and Chenaiyour.

The gazette notification specifies that "No person shall enter the area comprising Muttur (East)/Sampoor High Security Zone in any boat or vessel or in any other manner, or having entered, remain within or ply any boat or vessel within the Muttur (East)/Sampoor High Security Zone except under the written authority of the Competent Authority"¹²⁹.

On 29 June 2007, the Centre for Policy Alternatives (CPA) filed a fundamental rights petition challenging the establishment of the High Security Zone (HSZ) and the subsequent prohibition on entering and residing there. In its petition, the CPA contended that Article 12 and Article 14 of the Constitution had been violated. Article 12 states that all persons are equal before the law and ensures that no citizen shall be discriminated against on grounds specified in the Constitution and Article 14 provides for the freedom of movement and the right to choose one's residence. On 17 July, the Chief Justice, sitting in the Supreme Court, dismissed the petition. Counsel for the Government reportedly indicated that resettlement of some areas affected by the HSZ would be permitted once de-mining has been completed.

IDPs affected by the declaration of the Muttur (East)/Sampoor High Security Zone consistently report that there has been no communication from national authorities regarding what concrete measures will be taken to compensate those losing their homes and livelihood through the creation of the HSZ. On a positive note, several GNs from the areas affected by the HSZ traveled to IDP sites in Batticaloa district on 20 June 2007, talking to their constituents and discussing the situation created by the declaration of the HSZ and what alternative solutions that could be viable.

3. Returns and Relocations

Efforts made by government authorities to ensure voluntary and informed returns have been observed since April 2007. Some steps were taken by the Government to strengthen and improve the process and to meet international protection standards. In preparation for the returns to Batticaloa West which started in May 2007, UNHCR held a series of consultations with the Minister of Disaster Management and Human Rights, the Minister of Resettlement and other high level Government Officials to learn lessons from the past and improve the resettlement process. These discussions were fruitful and resulted in significant improvements in the resettlement to Vellavelly, Paddipalai and Vavunatheevu in Batticaloa West, and to Verugal in Trincomalee district. In particular, the movements were largely voluntary, the logistical process was much better organized, information notices were distributed to IDPs during the return process except to those who returned to Eachchilampattu, pre-return assessments were undertaken by the UN, return packages were enhanced, Ministry of Resettlement staff were deployed to oversee the process, and security screening was conducted in a more transparent and orderly manner, with the exception of the screening at the Verugal ferry crossing point which was conducted by masked men.

¹²⁸ The HSZ was established by emergency regulations issued by President Mahinda Rajapaksa under Section 5 of the Public Security Ordinance published in the official gazette 1499/25 on May 30 2007.

¹²⁹ The Gazette identifies Major General Parakrama Pannipitiya, Commander of the Security Forces in the East as Competent Authority.

At the same time, the UN continues to work with the Government to strengthen other aspects of the return process including working towards further reducing the military's involvement in the resettlement process, ensuring that low-risk mine certificates are issued prior to return taking place, providing more timely information to the IDPs about the return process to allow them to make a truly informed choice about resettlement, ensuring the continued provision of assistance to those IDPs who do not wish to return, and enhancing the preparation of the resettlement areas particularly with regard to shelter and services before IDPs return. All these measures, including a Government recovery plan for the resettled areas and the implementation of Confidence Building and Stabilization Measures (CBSM) will further ensure the sustainability of these returns. Nevertheless a number of incidents where IDPs were or felt coerced to return have been reported as indicated below.

In terms of sustainability of the returns, steps are being taken to improve the post-resettlement programme. It was agreed at the 10th meeting of the Consultative Committee on Humanitarian Assistance (CCHA) held on 7th June 2007 and chaired by Hon. Mahinda Samarasinghe, Minister of Disaster Management and Human Rights, that, with the concurrence of Gotabhaya Rajapaksa, the Defence Secretary, I/NGOs will be given access to areas of return in Batticaloa to carry out livelihood and infrastructure development programmes. The Government of Sri Lanka through the GA of Batticaloa will facilitate access, a decision that has been welcomed by the humanitarian community. This decision, however, does not appear to have been communicated to the relevant authorities in the ground because as of mid July 2007 NGOs report that they have been granted little or no access to the areas of return in Batticaloa West.

In April 2007 a coordination mechanism at the national and district level for the CCHA Sub Committee on IDPs Resettlement and Welfare was established. Its goal is to improve coordination of the various government and non-government agencies involved in the distribution of assistance at the field level and to support the Government in fulfilling its responsibility to protect and provide humanitarian assistance to IDPs. Under this new coordination framework, the appointment and deployment of Resettlement Field Coordinators in June was a distinctly positive step.

a. Batticaloa West

On 14 May 2007, the Government began the resettlement in 3 phases of displaced persons from Porativu Pattu¹³⁰ and Manmunai South West¹³¹ (phase I), Manmunai West¹³² (phase II) and Eravur Pattu and Koralai Pattu South (Valachchenai) (phase III) DS Divisions in Batticaloa West. As at 09 July 2007, phases 1 and 2 of the resettlement were completed and phase 3 was still being planned for. Some 98,605 individuals / 30,381 families have been resettled within Batticaloa District and to Trincomalee District between May and early July 2007.

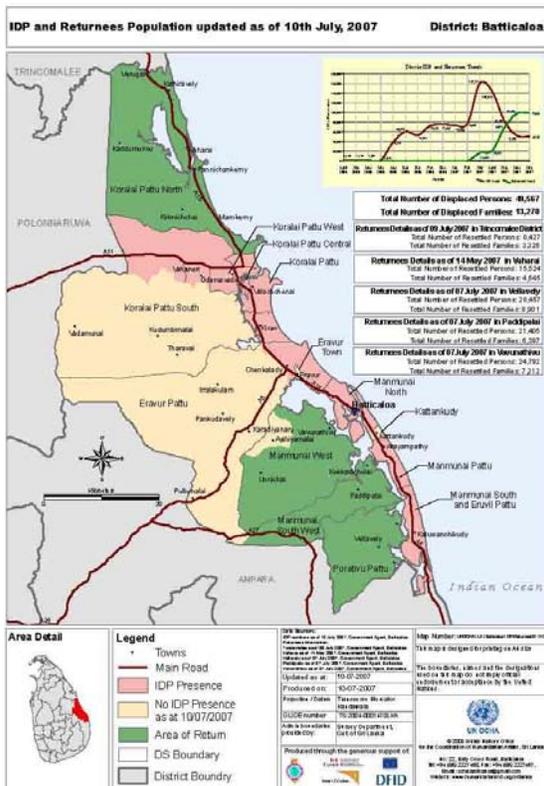
At the beginning of phase I, the majority of the people were eager to return home. UNHCR staff had access to the areas of return and monitored the process. They generally observed that conditions were conducive for return. No security incidents or arrests had been reported, IDPs and returnees' freedom of movement was respected, and consequently UNHCR found that the return process was in line with international protection standards.¹³³ In the first two weeks following the launch of the government's resettlement programme in West Batticaloa, some 30,000 displaced people had returned to their homes in the Porativu Pattu DS division.

¹³⁰ To and around Vellavelly.

¹³¹ To and around Paddipalai.

¹³² To and around Vavunathivu.

¹³³ See <http://www.unhcr.org/news/NEWS/4649ce3e4.html>



As phase II of the return process was about to start and building on observations made during the first phase of movement, UNHCR made some suggestions to the government on strengthening the process during the second phase¹³⁴. Among the recommendations made was that IDPs receive advance information about the return process (dates and return locations, procedure for return including registration and photographs, conditions in places of return, the principle of voluntariness and assistance to be provided to returnees). The issue was discussed with the Minister of Resettlement and Disaster Relief Services and the Minister of Disaster Management and Human Rights. The benefit of an information notice for IDPs was recognised by all, and the Ministry for Resettlement prepared a document which contained information about the scheduling of returns, the procedure at the transiting site and some basic information about assistance to be provided to returnees. The Ministry of Resettlement and local government officials started distributing the notice in IDP sites on 17 May. Another suggestion was for more, clearly identifiable, personnel from the

Ministry of Resettlement to be involved in the return process and the involvement of the military be reduced as far as possible. UNHCR also urged the government to provide clearance for a UN advance assessment team to have access to areas of return before the return takes place. Most of UNHCR's recommendations were taken into account and the government implemented changes that resulted in an overall improvement of the resettlement process.

During phase II, while many IDPs were happy to be returning, monitoring teams found that the majority of IDPs felt that they did not have a choice about return. Some IDPs also indicated that they did not feel empowered or safe to express unwillingness to return, particularly in those sites where the STF was involved in providing information about return schedules. At the beginning of the process very few IDPs had seen the Ministry of Resettlement information note, either in the camps or in the transit site but this improved over time. IDPs who had received it found the note quite helpful as it answered some of their questions. The involvement of the military in all aspects of the return process remained an issue of concern.

A number of returnees interviewed at transit sites and in IDP camps indicated that they were not happy to return at present and would prefer to remain in displacement sites for a longer period (particularly with increasing reports from returnees from 15-17 June, who had reported that many houses had been damaged and/or destroyed, either by shelling or by wild elephants), but feared that they would be targeted or forced to return by the STF or SLA if they decided to remain. They felt they had no choice but to comply with the instruction to go. At the same time, most IDPs were both happy and resigned to going home, particularly given the conditions in the camps.

There also appeared to be a collective decision to go back. The IDPs consistently asked whether the UN and the NGOs would be in the areas of return. They said they would feel more confident if there were international presence in their villages. Those individuals who expressed an unwillingness to return were unsure about what to do. If they had the courage to inform their GN, he/she was generally not supportive, telling them that they had no choice that their assistance would be cut, and in some instances they were told they would have to write a letter to explain why they did not wish to return. There were complaints from IDPs and GNs that the STF had

¹³⁴ See <http://www.unhcr.org/news/NEWS/465bf6452.html>

come to the camps at the end of the Vellavelly return process looking for those IDPs who had not returned. During Phase I and II, there was a welcome absence of armed TMVP cadres at the staging points.

On 19 June, UNHCR staff observed 4 SLA soldiers boarding a returnee bus at Palacholai I camp in Chenkalady in order to search their belongings and register the returnees. A similar incident reportedly took place in Kaluwankerny camp as well. Following intervention from UNHCR staff (explaining that the returnees would be searched, registered, photographed and screened by the STF at the transit site and that this additional registration would only delay the process), the SLA agreed to collect the returnee information from the GN. On 20 June, UNHCR's monitoring team observed that the SLA collected the information from the GN and did not board the buses.

Another major protection concern also relates to reports, recently received from agencies in Manmunai North including WFP, that IDPs who refused to return on their scheduled dates are no longer registered as IDPs and will therefore cease receiving assistance such as WFP-funded dry rations. This was confirmed by the DS Manmunai North, who indicated that these persons no longer qualified as IDPs. This effective de-registration is contrary to the Government's repeated assurances that those who elected not to return at present could remain in IDP sites and continue to receive assistance, and that withholding of assistance would not be used to influence IDPs' decision whether to return. When asked, on 25 June 07, the GA indicated that IDPs who elected not to return due to fear should be entitled to remain in sites and continue to receive dry rations. He agreed that the Government had given assurances that people should be able to decide for themselves whether to return and that assistance should not be used to influence them. These assurances were recently reaffirmed by the Minister of Resettlement and Disaster Relief Services during the CCHA's 4th Sub-Committee Meeting held on 10 July 2007. The Minister stated that IDPs who have decided not to return yet should not be de-registered and should continue to be assisted. He added that cases where IDPs were crossed off food aid lists or otherwise de-registered should be brought to the attention of the GA's office.

During the first two weeks of July, agencies in Batticaloa have increasingly come across IDPs who have re-displaced from the areas of return in the western parts of Batticaloa. Reasons given for re-displacement ranged from security and safety concerns, including numerous allegations of rape of young women, murder and abduction to lack of livelihoods and problems relating to education. While it is too early to say whether this trend will continue the fact that these individuals seem to be excluded from any Government or I/NGO assistance, and not considered as IDPs by the authorities is of concern to protection agencies.

b. Eachchilampattu Division, Trincomalee

The return process of IDPs from Batticaloa to Verugal and Eachchilampattu GS divisions appeared to be broadly voluntary and people were happy to be returning home although it was apparent that the returnees had received very little information prior to their return. It is clear that a main contributing factor to the willingness to return was that the returnees were taken directly to Eachchalampattu rather than through the transit sites in Killiveddy. Some IDPs indicated that they had elected to return due to fear that their homes would be looted by other returnees if they did not return; others reported that they believed they would be pressured into returning by the STF at a later date or accused of being LTTE supporters if they elected to remain in the IDP sites rather than returning. On the first day of return, none of the returnees indicated that they had received information notices explaining the return process and some indicated that they had received very little notice of the scheduled return. However, the process has improved over time and returnees interviewed on 09 July indicated that they had received more notice about movement dates.

On 28 June excessive and intimidating screening of the returnees by masked men in civilian clothes was reportedly taking place at the transit site on the south side of the Verugal ferry crossing and the matter was raised with the authorities by UNHCR. On 9 July masked "screeners" were again very active and it appeared that many of the male returnees were pointed out, registered and photographed separately and interviewed about LTTE involvement. Some women and, in one case, a whole family were also taken for screening. Although no detentions occurred, these additional screening practices left returnees feeling anxious about conditions in

their place of return and fearful that it is only a matter of time before they are rounded up from their homes as a result of being on the “LTTE suspect” list.

c. Muttur Division, Trincomalee

In Muttur where the security situation continues to be volatile with reported clashes between the LTTE and SLA, killings and abductions, the authorities are promoting returns to a number of areas, including Ralkuli village and Muttur Town, where IDPs have expressed security concerns in relation to returns. Similarly, a UNHCR field visit to Seruwila recently found that IDPs in Lingapuram have been facing pressure to return to the neighboring village of Ariyamankerny. On July 12th, around 200 IDPs were returned to Ralkuli from Kinniya, despite the fact that the IDPs had consistently expressed security concerns. Their decision to return seems to have been substantially influenced by the authorities' refusal from November 2006 onwards to provide WFP dry ration to the Kinniya IDP sites. On the other hand the government authorities, the Ministry of Resettlement and Disaster Relief Services in particular, have somewhat improved the overall resettlement operation within the western part of the Muttur Division by organizing some limited go-and-see visits and meetings with IDPs. However, IDPs from Muttur East are expressing considerable frustration over the almost complete absence of information and communications from the authorities in relation to the likely timescale for return and/or possible alternative land.

d. Chavakachcheri, Jaffna

Noteworthy in Jaffna is the fact that both military and civilian authorities have revealed their wish to see the number of IDPs reduced and this has resulted in the coerced relocation of some IDPs in Temporary Accommodation Centres, to areas deemed unsafe and lacking in provision of basic services. For instance, there have been concerns over the closure of the Allarai Temporary Accommodation Centre (TAC) which originally hosted 50 IDP families since the 11th of August 2006. Following the spontaneous voluntary return of 42 families in the past few months, the Pradeshiya Saba (local municipal authority) with the support of the GS and DS, had discontinued water supply and food distribution to the remaining 8 IDP families in April and May respectively.

On 23 May, the GS threatened the remaining IDP families in writing to leave, simultaneously promising them dry rations upon their compliance. Due to this coercion and the halting of water supplies, the IDPs felt compelled to leave the TAC the same day and to relocate to a vacant pre-school in Vellampokkaddy. The GA later agreed that decision was wrong and instructed the GS to solve the problem. The closure of Allarai TAC nevertheless resulted in the coerced relocation of 4 IDP families to an area which is barely accessible to humanitarian agencies, not deemed to be safe, and which does not ensure the provision of basic services to the population. Met after their forced relocation, these families did not report any issues/problems related to SLA but expressed their wish to relocate to the newly vacated TAC in Sri Murugan due to fear of shelling in Vellampokkaddy. Their relocation was expected to be facilitated by the GS.

The closure of two other TACs in Chavakachcheri, in Kadduvalavu Kanthasamy Kovil and in Paththiniyarvalavu respectively compelled 29 IDPs families to leave and to return to their areas of origin in Vellampokkaddy, Allarai and Kodikamam but there are concerns that these returns were premature and not voluntary.

e. Allaipiddy, Jaffna

On 20 June, the GA encouraged NGOs and UN agencies to facilitate the return of 23 IDP families to Allaipiddy by providing them with assistance. However, no organization has agreed to facilitate the return due to safety, security, lack of basic services, as well as concerns about the presence of mines/UXOs in the places of origin. Protection monitoring agencies advocated for a pre-return assessment to be conducted by various stakeholders to evaluate all aspects related to the physical, legal and material safety of the returnees including issues such as the risk of shelling and the presence of mines and UXOs in the area as well as a multisectoral assessment of the existence of basic services (water, sanitation, school and health facilities), access to land and livelihood opportunities. To date no go-and-see visit has been carried out and demining NGOs have so far been denied access to Allaipiddy to conduct a mine-survey of the area. On a positive note, the IDPs from Allaipiddy in OLR TAC are being relocated to alternative sites in Jaffna town

after the Church administration requested that IDPs vacate the Church premises. This has lessened the pressure on people to return prematurely.

