

Protecting housing rights for IDPs in Sri Lanka

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The return and relocation of IDPs in the East of Sri Lanka offer lessons on the critical issues that must be addressed if the housing rights of IDPs in the North are to be respected.

It is estimated that there are over 600,000 IDPs in Sri Lanka, of whom 270,000 have been displaced in the recent military campaign between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) in the Northern Province. Approximately 250,000 others were returned or relocated following the government's military control of the Eastern Province between 2007 and the present. All IDPs, both recent and long-term, must find durable solutions to displacement before lasting peace can be consolidated.

The end of military conflict does not spell the end of displacement and, if handled incorrectly, land disputes can quickly lead to renewed conflict. The political and socio-economic complexities associated with displacement require a well-defined policy and programme to effectively address the problems associated with displacement and ensure that vulnerable groups' human rights are respected and protected. Unfortunately, such a policy did not exist during the return phase in the East and it is uncertain whether one will be ready for implementation in the North.

The Sri Lankan government's Ministry of Resettlement and Disaster Relief was leading an initiative to establish an IDP resettlement policy based on consultation with IDPs and civil society. However, this open process was recently quietly cancelled in favour of a secretive 180-day plan which, unlike the previous initiative, has been closed to contributions by civil society and the UN, and has lacked consultations with IDPs.

Past resettlement initiatives have been ad hoc and lacking coherent policies to address protection gaps. To avoid repeating such mistakes the Government of Sri Lanka should

immediately reopen the current initiative to all stakeholders. This would allow the government to utilise the wealth of experience and data available to ensure that a policy is adopted and implemented that protects and promotes the housing, land and property (HLP) rights of IDPs. It would also allow civil society and UN agencies the time and knowledge necessary to develop operational plans to assist in the return and restitution process.

Recent announcements by the government indicate that plans are underway to return as many IDPs as possible by the end of 2009. Speed, however, should not be the primary consideration in any return phase and an adequate HLP rights framework must be incorporated into any return and resettlement programme. Without the protection of HLP rights, IDPs can become more vulnerable to other forms of human rights abuses, including gender-based violence, discrimination, inadequate housing, restrictions on freedom of movement, and inadequate water and sanitation, among others. They can also become a burden to the communities they return to.

Based on extensive surveys by the Centre on Housing Rights and Evictions (COHRE) in the East with IDPs and returnees, and in line with Sri Lanka's international human rights obligations, the Government of Sri Lanka and international aid agencies should prioritise the following key areas in order to ensure and protect the HLP rights of IDPs in the North during and after return to their homes and lands:

Return and restitution

After the cessation of hostilities national authorities have the primary duty and responsibility to facilitate the rebuilding of the

lives of those displaced. Authorities must allow for the voluntary return of IDPs by providing them with accurate information about their areas of residence and making sure that those areas are safe for return (e.g. clear of landmines). IDPs should never be forced to leave transitional camps if they feel the environment will be unsafe or if there are inadequate housing options. However, IDPs should not be forcibly confined to camps; all current IDPs should have their right to freedom of movement restored.

Providing the conditions for a safe and dignified return also requires restitution. Restitution includes (among other things) just and equitable compensation for the rebuilding of damaged homes, enabling the displaced to re-establish their previous livelihoods (e.g. rehabilitating business assets and agricultural land) and providing training for new forms of income generation. Return without restitution can never provide a complete durable solution to displacement.

In the East, many families agreed to return on condition that they would receive a permanent house but have been waiting in temporary shelters for over a year; many are unable to access their traditional forms of livelihoods. Government officials in the area acknowledged that there was not sufficient funding secured for rebuilding houses before returns were initiated and that they were still seeking such funds.

Lessons:

- Confusion and mistrust can spread quickly due to misinformation and the lack of transparency.
- Independent monitors should be present during all returns and relocations, and IDPs should be provided with official documentation confirming timelines and benefits.

- Compensation schemes should be fully funded before displaced persons return so that returnees are not subject to further housing and food insecurity.
- Compensation schemes should adhere to realistic implementation schedules.

Participation, consultation and non-discrimination

Special efforts must be made to ensure the full participation of displaced persons in the planning and management of their own return and restitution. Participatory, transparent and accountable structures should be developed to ensure that former residents, and especially the poorer residents, benefit from the rebuilding of homes and that their lands are not seized illegally by others. This would include complaint committees and regular stakeholder meetings. Residents should be provided with contact information for the responsible government agents and any relevant laws and policies involved. At the same time, the whole community should be consulted and infrastructure repairs and upgrades should benefit everyone to avoid creating inequities which can lead to or exacerbate inter-communal tensions.

In the East there were many reported instances of IDPs agreeing to return based on incorrect information regarding timelines for rebuilding their destroyed homes. In other isolated cases IDPs were forced to return even if they wanted to remain in the IDP camp, and in other cases were forcefully relocated to new transition camps. In certain other cases, IDPs have been prevented from returning to their former lands now designated as high security zones (HSZ) as well as because of planned development projects.

Lessons:

- IDPs should be kept informed of timelines.
- All HSZs should be formally announced in writing, approved by the President's Office, officially gazetted and posted publicly for affected families.
- Adequate compensation and alternative housing should be

provided for all affected persons.

- HSZs should be of limited duration and permanent land acquisition should follow established processes in accordance with the National Involuntary Resettlement Policy, the Land Acquisition Act and other national laws.
- Affected persons should have clear access to judicial remedies and land and property must be returned to original owners as quickly as possible.
- No development projects should be planned in HSZs; all development projects should comply fully with all domestic laws.

Right to adequate housing and security of tenure

Conflict situations almost always destabilise housing and living conditions. Affected families should be provided access to adequate and affordable housing as expeditiously as possible. If a damaged house is uninhabitable, affected persons should be provided with adequate temporary shelter until repairs can be completed.

Security of tenure should be provided for all affected people, including vulnerable groups such as those from informal settlements who may not have title to the land they occupied. Attempts to resist the return of displaced persons to informal settlements or to declare the areas uninhabitable would constitute a constructive forced eviction, which is illegal under international human rights law.

In the East, and after the Indian Ocean tsunami, many families were left with no documented assurance that they would receive a house, or be able to remain on land for which they had no official documentation. Beneficiary lists were kept with the Grama Niladaris (lowest level government officials) and the District Secretaries, with no provision for security of tenure



included in the agreement between aid agencies – who were building the houses – and local government officials, who would release the houses to the beneficiaries. Thus many families to whom permanent housing had been promised have still not received deeds and titles.

Lessons:

- All beneficiaries should receive a certified letter detailing their entitlements and where their names are indicated on the beneficiary list.
- All beneficiary lists should be made public.
- Those without title to land should be prioritised.

Women's and children's rights

Women and children require special attention and protection during displacement and after return due to their higher vulnerability to sexual and gender-based violence, and greater need for health care and reproductive health services. Women and children are also vulnerable to the loss of property rights either through exploitation or policies that favour males.

Consultation and participation should be accessible to and include women and children at all levels. Government agents should establish clearly who holds title to the land and property before financial compensation is given and should ensure that beneficiary lists match ownership records. After the tsunami many women lost the rights to their properties as state-allocated

IDP camp in Vellor village, north of Trincomalee in eastern Sri Lanka, housing people fleeing the war in the north and those left homeless by the 2004 tsunami.

land only allows for one signature. Special care should be taken not to use the term 'head of household' on any legally binding forms as the tendency is for the husband to sign even in instances where the wife is the original title holder.

Many children also lost their rightful inheritances after the tsunami, as policies and procedures focused on adult ownership and compensation without developing systems to identify orphaned children and prioritise their housing and land rights.

Lessons:

- The term 'head of household' should not be used on compensation forms, beneficiary lists or any other forms that could inadvertently dispossess women of their legal property.
- Where ownership titles do not exist, both husband and wife should be given the opportunity to share the compensation equally (or jointly own a new house).
- Special procedures should be developed to identify, consult and advise orphaned children on their housing, land and property rights.

Documentation and property issues

Lack of documents can lead to the denial of property rights, health-care access, education and other essential public services. Authorities should ensure the prompt registration of any lost documentation. In cases where residents may not have formal evidence of land ownership, or documents have been destroyed, authorities must establish easy-to-access mechanisms – such as access to legal aid and prompt follow-up on replacement documentation – that ensure no-one is rendered homeless. IDPs should not be taken off the IDP registration list until it is confirmed they have returned to their original place of residence, not just returned to their home village. All IDPs should be given points of contact in the local government administration in case they face barriers to their full return to their lands.

In the East, and especially after the tsunami, many people are yet to receive official grants and permits for

state-allocated lands. Some families have been waiting for over a year to receive replacement documents for their private property titles. The delay has ignited fears of land grabbing and distrust of government structures and intentions.

In other instances owners of 'tsunami houses' have sold their houses in contravention of conditions of 'ownership'. The new owners are often unaware of these restrictions and that legally they are not entitled to the house.

Lessons:

- Mobile legal aid units should be created by the Legal Aid Commission to handle property claims, with access to legal remedies provided when necessary or forwarded to relevant offices as warranted. Follow-up consultations should be established after each meeting.
- Special care should be made to educate beneficiaries on their legal position with regards to state land permits and grants and the nature of their entitlement to take possession of and occupy the relevant lands.

Secondary occupation

Secondary occupants are those who take up residence in a home or on land after the legitimate owners or users have fled. Secondary occupation is common to all post-conflict situations and care must be taken not only to protect the rights of the original inhabitants but also to protect secondary occupants against homelessness, unreasonable eviction or any other human rights violation.

In the East, many instances of secondary occupation are due to the occupation of houses and public buildings by the security forces. As effective measures are yet to be taken in the East to remedy secondary occupation (by either civilians or the security forces) the following lessons are drawn from international best practices.¹

Lessons:

- An independent and impartial land council should be established to hear cases of secondary occupation, with the power (and budget) to take decisions regarding

principal ownership of lands as well as to compensate secondary occupants so that they do not become homeless. Secondary occupation of housing and land by the security forces should end as soon as the immediate security need for it has ceased to exist.

- Instances of current secondary occupation by the military should be based on demonstrated necessity, recorded by the Government Agent and the military. The owner(s) of the house or land should be able to claim a fair rent for the use of the premises until they are allowed to return. Alternative adequate housing and livelihoods should be provided, without prejudice to the owner's right to return and restitution.

Conclusion

Housing, land and property rights are often overlooked due to their complexity and the tendency to focus on immediate humanitarian needs. However, HLP rights are fundamental to ensuring a successful and sustainable recovery process and the prevention of renewed conflict. Without a stable family unit with access to adequate housing, recovery will not be possible in the long run as insecurity will prevail and returnees will be vulnerable to a host of other human rights abuses.

The government has an obligation – with the assistance of NGOs and international agencies – to ensure that return and restitution programmes address key human rights concerns. The Government of Sri Lanka faces an enormous task in finding durable housing solutions for its current displaced population. A coherent policy and plan for return and restitution are urgently needed to address the complex socio-economic issues facing almost 3% of Sri Lanka's population and to help build and consolidate peace.

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1. See, for example, Principle 17 of the Pinheiro Principles <http://tinyurl.com/COHREPineiro>