

THE INTERNALLY DISPLACED IN SRI LANKA

DISCUSSION PAPER ON EQUITY

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Participating agencies: CARE International, Christian Aid, Jaffna Social Action Centre, Oxfam, Norwegian Refugee Council, Zoa Refugee CARE, UNDP, OCHA, UNHCR.

INTRODUCTION

On 26 December 2005, a tsunami struck the Northern, Eastern, and Southern coasts of Sri Lanka. The level of death and destruction was unprecedented: more than 31,200 persons perished, 23,100 were injured, over half a million people were displaced and over 4,000 were reported as missing.¹

For Sri Lanka, the timing of this disaster was particularly unfortunate, as the country is still bearing the consequences of years of civil conflict, including mass displacement. The conflict, which has lasted more than two decades, has resulted in more than 60,000 dead, 11,000 unaccounted for² and – at the height of hostilities – more than 1 million displaced.

Since the signing of the ceasefire agreement, more than 50 % of the internally displaced had returned home and were, at the time of the tsunami, in the process of re-establishing their livelihoods and rebuilding their lives. Some had returned to their villages by the coast and were therefore displaced – yet again – by the tsunami. In December 2005, on the day the tsunami struck, 352,000 were already displaced by the conflict. Of the displaced, 72,800 were living in welfare centers, with the majority hosted in the district of Puttalam. The rest were living with families and friends, still unable, or unwilling, to return to their original homes.

The combined displacement caused by the conflict and the tsunami resulted in a total of more than 900,000 displaced persons in a country with about 18 million inhabitants. It also meant that only 2 divisions in the entire country (Nuwara Eliya and Moneragala) managed to completely escape the experience of displacement.

In order to protect and assist the displaced, many agencies, both international and national, offered their expertise to the Government of Sri Lanka. The unprecedented generosity of the public played a vital role in furnishing these agencies with funding, most of it strictly earmarked for tsunami relief.

The generous funding received for those affected by the tsunami is needed and welcomed. However, the fact that those displaced by the tsunami received assistance while the conflict displaced were left behind, could lead to a situation of potential tension and conflict, especially in areas where they were living side by side. Experience shows that natural disasters often “strike unequally” and affect different sections of society in different ways.

However, it is reasonable to expect that aid delivered to the affected society be distributed based on identified needs. While equitable assistance may not be required, or even desired, all beneficiaries have the same rights to adequate housing, livelihood, health, education etc. While part of the generosity shown for victims of natural disasters may be contributed to the fact that they are seen as totally innocent- as is the Government

¹ Official figures from the Government of Sri Lanka. See maps annexed to this report.

² ICRC figures collected from 1990 onwards, ICRC Annual Report 2004.

and other actors – it is the responsibility of those of us implementing programs in the field to highlight the plight of “forgotten conflicts” and victims that are not highlighted by the media.

Some donors, notable those who have been in the country for a long period, have continued to provide funds for conflict-affected IDPs. In fact, the World Bank in 2005 provided more funding to conflict-affected than to tsunami-affected IDPs. Together with UN agencies and NGOs, the World Bank has over the years provided much needed assistance in the form of housing, livelihood assistance, health and education to the conflict affected areas. These efforts highlight the need for other donors, especially those new to the context in Sri Lanka to adopt a conflict sensitive approach to the situation in Sri Lanka

This discussion paper was drafted on the initiative of the IDP Working Group in Sri Lanka, chaired by UNHCR. The group involved in drafting this paper consisted of: CARE International, Christian Aid, Jaffna Social Action Centre, Oxfam (GB), Norwegian Refugee Council, ZOA Refugee CARE, OCHA, UNDP and UNHCR. This discussion paper aims to explore principles of equity and non-discrimination in international and national law, assess the post-tsunami assistance situation for all displaced persons in Sri Lanka through case studies, and formulate strategies for future efforts to assist displaced persons to find durable solutions.

KEY PRINCIPLES

One of the most quoted principles in international development assistance is the “**Do No Harm**” Principle. The essence of this principle is to pay attention to the surroundings, listen to the beneficiaries, and make sure that no intervention, however well-meaning, causes additional problems for the beneficiaries and the surrounding society. A situation of - real or perceived - unequal treatment is in itself harmful, and can be used by various groups to destabilize the area and cause further conflict.

This “Do No Harm” principle was incorporated into the Guiding Principles for the Tsunami Recovery, which were endorsed by the Government, LTTE and donors. These provided: “The allocation of resources both domestic and international should be strictly guided by the identified needs and local priorities, without discrimination on the basis of political, religious, ethnic or gender considerations. The recovery strategy should take into account the extent of progress in Sri Lanka since the signing of the Cease Fire Agreement (CFA), after a long period of conflict, and seek to strengthen the peace process. Reconstruction interventions should be done in such a way as to build confidence between different actors in the process. Reconstruction should similarly be sensitive to the impact on neighboring but unaffected communities.”

The principle of non-discrimination is one of the cornerstones of international human rights law. It is enshrined in each of the core human rights conventions to which Sri Lanka is a state party, for instance the International Covenant on Civil and Political Rights (Art 2 and 26) and the International Covenant on Economic, Social and Cultural

Rights (Art 2). It is also at the heart of the Universal Declaration of Human Rights (Art 2). The principles of equality and non-discrimination are also enshrined in the Constitution of Sri Lanka. According to Article 12 of the Fundamental Rights chapter of the Constitution: “(1) All persons are equal before the law and are entitled to equal protection of the law. (2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.”

The **Guiding Principles on Internal Displacement** (GPID) reconfirm existing international law and specify that the principle of non-discrimination is equally valid in relation to internally displaced persons. Not only should IDPs be treated equally to other nationals of the country, the GPID specifically state that IDPs should be treated equally, regardless of the cause of the displacement. These principles are to be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. This means that the responsibility to uphold these principles rests both with the Government, and with *any authority*, which controls any part of the population or territory. These principles should also guide the work of donors, NGOs and multilateral agencies working in an IDP context.

In regards to equity, the **Secretary-General’s Special Representative on the Human Rights of Internally Displaced Persons**, Mr Walter Kalin, observed during his visit to Sri Lanka in February 2005:

“There is a need to safeguard against discrimination among different groups of IDPs, for instance, where assistance is provided to IDPs uprooted by a natural disaster but not to those displaced by conflict, or is provided only to IDPs in camps or government-run relocation centers while denied to IDPs staying with host families who also are in need. Such inequities in aid distribution not only violate the principles of impartiality and non-discrimination, they also risk creating resentment and tensions among communities, which can complicate the rehabilitation and reintegration of IDPs and threaten their security. Instead, opportunities should be seized to counter pre-existing patterns of discrimination by ensuring an inclusive response, and thereby promote national reconciliation.”

The UN Human Rights Committee, which oversees implementation of the ICCPR, has made a General Comment providing an authoritative interpretation of non-discrimination in terms of Article 2 of the ICCPR:³ While the ICCPR does not define ‘discrimination’, the Committee held that it “*should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.*”

The Committee has observed that the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance, “if the criteria for such

³ Human Rights Committee, General Comment 18 (1989).

differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.” Importantly, however, the Committee has pointed out that “the principle of equality sometimes requires State parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population.”

The Supreme Court of Sri Lanka has also interpreted the non-discrimination provisions in Article 12 of the Constitution very broadly in relation to arbitrary administrative decisions. The Supreme Court has also upheld affirmative action measures in relation to university admissions from underprivileged parts of the country. The country thus has a tradition of non-discrimination as well as affirmative action, and special programs for the underprivileged would therefore be in line with the present jurisprudence.

Applied to the context of Sri Lanka post-tsunami, these principles imply several important considerations:

- All displaced persons, whether conflict or tsunami-displaced, enjoy the same fundamental rights – to adequate housing, livelihood, education, health and other services.
- There should be no discrimination in the treatment of internally displaced persons either along ethnic, religious, social or political lines.
- Displaced persons may be given differential treatment provided this is based on reasonable and objective criteria and helps to realize these rights. For instance, tsunami IDPs may be given a particular allowance or housing entitlement, provided this is provided to all displaced, regardless of their place of residence or ethnic origin.
- Disadvantaged groups amongst the displaced persons, for instance conflict IDPs, may be entitled to affirmative action in order to realize their rights and to eliminate conditions that cause or help to perpetuate discrimination. For instance, should conflict IDPs be worse off than tsunami IDPs, they could be given enhanced benefits or special programmes to prevent a discriminatory situation from arising.
- Preferential treatment should be given only in line with the principles of affirmative action, i.e. to realize the rights - or raise the standard - of those IDPs who are living in the worst conditions.

The issue, therefore, is not over what rights and entitlements tsunami-displaced persons may have, but what are the commensurate rights and entitlements of conflict-displaced persons.

While there is always a risk that rights based approaches will be considered out of touch with the realities, it is nevertheless important that assistance activities be based on

fundamental and agreed principles. Though, donor preferences always play a role, this should not be the only consideration in implementation of humanitarian programmes.

SUMMARY OF CASE STUDIES

The case studies that were undertaken for this paper, and that are presented in the annex indicate that the experience of IDPs differs according to the cause of their displacement, both in terms of access to assistance and in terms of the timeline for achieving a durable solution to their displacement.

The research for Case Study 1 was undertaken amongst tsunami-affected IDPs currently living in Tangalle Children's Park in Kotuwegoda, Hambantota District. The Park comprises 17 single family transitional shelters. Almost all of the families were involved in the fish trade either as fishermen or as fish sellers. Most of the residents were homeowners within the buffer zone and have therefore been promised new permanent homes by the Government. The situation is less clear for three of the families who rented their houses within the buffer zone, and who will not receive any permanent housing assistance from the Government.

The Case Study indicates that while the tsunami-displaced continue to face difficulties, particularly in terms of access to livelihoods, these IDPs who are not living with host families appear to have received a fair amount of assistance to date, including housing assistance and land grants. They have access to medical and educational facilities and have received some replacement documentation. The population surveyed was also close to achieving a durable solution as land had been allocated, a donor identified, and construction had begun on their permanent homes.

Research for Case Study 2 was carried out in Saltern One Welfare Centre in Puttalam. The study focuses on conflict-affected IDPs who were displaced from Jaffna in October 1990. They have been living in the welfare centre since 1991. There are 110 families living in 90 houses predominantly made of cadjan walls and roofs over concrete floors. The welfare centre is located on land that is currently the subject of a multi-party ownership dispute in the courts.

The Case Study indicates that some communities of conflict-displaced IDPs continue to live in unsatisfactory temporary shelters, some 15 years after their displacement. While they have access to medical and educational facilities, they lack access to adequate water and sanitation facilities and do not have secure title to the land where they have been relocated. Despite the difficult circumstances in which they live, the surveyed IDP population's preferred durable solution is to remain in their current location since the long duration of their displacement has resulted in the de facto integration of these IDPs and their families. The population has identified establishing secure tenure as a potential solution to many of the difficulties they face.

Case Study 3 surveys conflict and tsunami-affected IDPs living in Manalkadu Welfare Centre in Jaffna. The area was affected by both the conflict and the tsunami and many of the IDPs have been displaced more than once, by the conflict and the tsunami. Manalkadu town was almost completely destroyed by the tsunami, and most of the houses are at least partially damaged. There are currently 210 families living in the transitional accommodation site.

This Case Study indicates that some of the “double affected” by both the conflict and tsunami face poor living conditions in the crowded, exposed and hot environment of the welfare centre. While they have access to medical and educational facilities, there is little community life and very little livelihood assistance. This is contributing to the feelings of dislocation and depression in the transitional accommodation site. While they have been given temporary shelter, the conditions are not ideal, and they have yet to receive either the housing reconstruction assistance or new permanent shelters promised by the Government. They are still searching for a durable solution.

The research for Case Study 4 was carried out in Periyaneelavanai village in Ampara, with people living with host families. Many of the people in this area have been affected by both the tsunami and the conflict, and were most recently displaced as a result of the tsunami. The village consists of farmers, fishermen, casual labourers and small traders.

Case Study 4 indicates that IDPs living with host families (in some cases affected by both the tsunami and the conflict) have been largely neglected in terms of assistance programmes. The surveyed population lacked adequate access to medical and educational facilities, they fail to benefit from the same assistance programmes as more visible IDPs (i.e. IDPs living in welfare centres or transitional settlements), and most importantly, they have yet to receive any meaningful housing or livelihood assistance. This lack of assistance is most pronounced in those communities affected by the tsunami in the East where there is scarcity of land for relocation.

While not a representative sample, these case studies indicate that IDP populations in Sri Lanka have not been treated uniformly or equitably. Areas with striking differences include access to water and sanitation facilities, access to secure tenure and timelines for achieving durable solutions. The factors influencing the differential treatment of these IDP communities appear to be cause of displacement, availability of relocation options and presence in transitional settlements. While it is understandable that the tsunami disaster necessitated an immediate and urgent response, the ongoing issues of displacement arising from the conflict should continue to be a principal focus of Government and civil society. Displacement caused by the tsunami and by the conflict should be treated with equal urgency and diligence.

RECOMMENDATIONS

The case studies put forward in this paper highlight the experiences of the agencies who have been working in Sri Lanka for a number of years. While the sample size is small, it was carefully chosen to cover the maximum amount of beneficiaries, both geographically and in numbers. It is clear from the discussions with the beneficiaries that what is uppermost in their minds at this time is not necessarily the level and speed of the assistance, but the search to identify a durable solution.

Experience has shown that the most successful relocation schemes are those where the beneficiaries are able to return to their original place of origin. However, in the present context there are many reasons why return may not be possible, due to reasons beyond the control of the IDPs (the proposed buffer zone, high security zones, protection concerns or other security considerations). In line with international and national legal norms, the responsibility to find alternative solutions rests with the Government.

The tsunami disaster can – at best – be used to encourage a broader vision of recovery. In the words of the UN Special Envoy, Mr. Bill Clinton “ The tsunami has provided the affected governments with the chance to “build back better ” by going beyond the simple repair of facilities destroyed by the tsunami... many donors have agreed to define broadly the category of eligible beneficiaries, so that assistance to the affected populations does not exacerbate inequities. For example, a broader vision of recovery in Sri Lanka and Aceh must take account of the needs of persons displaced by conflict.”

Based on the key principles outlined above and on the findings from this short study, below are recommendations to all actors. It should be emphasized that the same rights should be afforded to all IDPs, regardless of the cause of displacement, and regardless of in which geographic district they reside.

To Government

- The Government and all other authorities should adopt a holistic approach that takes the needs of all IDPs into account, with a focus of finding long-term solutions to end their displacement.
- Where return is not possible, the Government should allocate land in an equal and fair manner to all IDPs, regardless of the cause of displacement. The allocation of land should take into consideration the wishes of the beneficiaries, the possibility of maintaining livelihoods, and access to services such as health and education. The process of land allocation should also be simplified with one central focal point, such as the UDA.
- Beneficiaries should be provided with mechanisms to put forward grievances to the National Human Rights Commission as well as local courts, regarding distribution of assistance and, in case of discrimination, they should remedially be given equal assistance or otherwise compensated.

- The “hidden IDPs” living in host families should be surveyed as a part of a comprehensive registration of all IDPs and successful examples of assistance to host families should be replicated in all districts.
- Special assistance packages, such as rental subsidy or interest free loans, should be given to those left homeless by the tsunami, but who do not fall into the eligibility criteria for the Governments housing assistance (people in rented accommodation, large families).

To the UN Country Team

- The UNCT/RC should raise the issue of inequitable treatment with the Government and with other stakeholders, as a matter of priority, and extend its own assistance programmes to all displaced in the country.
- The UNHCR should develop a coordinated area-based approach for each of the conflict affected districts to ensure that durable solutions for these IDPs are found and implemented in a timely and effective manner.
- The OCHA office should ensure that the Tsunami Appeal, which the implementing agencies are due to report on “One year after” clearly states that any money not utilized and therefore carried over, will be spent on programs that benefit conflict and tsunami IDPs equally. Should any donor object to this, they should state so in writing to the UNCT.
- The IDP working group should ensure that core, minimum standards for all sectors be extended to all existing welfare centers and temporary or transitional shelters sites. Monitoring and reporting of compliance with standards should be undertaken. This will alert the Government, donors and implementing agencies to the existing and potential future needs in the field. The newly developed Transitional Shelter Site Tracking System could be adapted for this purpose.

To Donors through the Steering Committee

- Donors are responsible for how their funds are used, and should ensure that funds are distributed in an equitable and conflict-sensitive manner. Donors and the Government have a shared responsibility to ensure that eligibility requirements are inclusive and equitable and that assistance programmes are administered in an equitable, conflict-sensitive and transparent manner.
- The fact that some donors have already extended their tsunami funding to all displaced persons in the tsunami affected areas is applauded; other donors are encouraged to follow suit, and to extend this assistance to all those displaced.
- Donors should extend assistance to all IDPs, both tsunami and conflict IDPs, in line with existing national and international legal principles; best practices and the development principle of “do no harm”.
- If tsunami funding cannot be extended to all displaced, donors may establish a special fund or “Equity Initiative” for conflict displaced IDPs to refocus the

assistance and ensure that the principles of equity and “do no harm” are respected.

- The International Funding Institutions, such as ADB and the World Bank should continue to assist the Government in addressing the needs of the “hidden IDPs” through assistance packages focusing on durable solutions, including reintegration, in line with return assistance given to conflict IDPs in the past.
- In order to address the discrepancies in funding and therefore in assistance programmes delivered to conflict affected IDPs, donors could explore modalities for utilizing funds for reconstruction and development.

ANNEX 1 CASE STUDIES

Case Study 1- Tsunami-affected IDPs: Tangalle Children's Park, Kotuwegoda, Hambantota District (Oxfam GB Sri Lanka Programme)

Tangalle Children's Park has swings, a slide, a climbing frame and a roundabout where children are entertained for hours. It also has 5 latrines, 4 bathhouses, as well as 17 Oxfam GB transitional shelters all painted white with verandas, arranged in orderly rows. Most of the families who live here were involved in the fish trade either as fishermen or as fish sellers. All have been affected by the tsunami. Whereas some families lost all or most of their personal belongings, some had just the clothes on their backs – some lost even these. It's ironic that such an innocent place can also be home for so many people distressed by the tsunami, or perhaps apt that their new homes - where their recovery has begun in earnest - are in such colourful surroundings.

Families here had homes as close as 20 m to the sea. Most were homeowners and so have been promised new permanent houses by the Government. There are 3 families in the camp who rented their homes on the beach, and although they too now have nothing to their name, they will not receive a new home from the Government, while their landlords have reportedly already been compensated for the loss of their property. The fallout from the tsunami is complicated. These families do not know what the future holds and are particularly vulnerable as time goes on and camps like the Park shut down as the majority of families move into their new permanent homes. Women head 2 households in the camp; they lost their husbands before the tsunami.

For two months after the tsunami, the families of the park were shunted from temple to church and back to the temple. In February, Oxfam GB came to discuss transitional shelters with them in the grounds of the temple where they were being sheltered. They recall that Oxfam came 5 times to show them some shelter plans and designs; the families say they did not engage in much discussion on the design of the shelter because their primary objective was to get a safe, decent roof over their heads; this was what Oxfam promised. Looking back 8 months after the tsunami, although the families note that they cannot compare these shelters to their previous cement and brick homes, they proudly compare them with others given by the Government and other NGOs, they state that they think theirs are the best quality and best designed.

The families say they did not want to be a burden to Oxfam, and tried to help themselves wherever they could. They knew the local area while Oxfam was new to the district, so they went to the Government themselves to ask for suitable land on which to construct their new shelters; once the Park had been located, the families moved to it as soon as they received tents.

The shelters are 320 sq feet with a main room (192 sq ft), kitchen (48 sq ft) and veranda (80 sq ft). They have cement floors, long lasting plywood walls that won't get woodworm, and tin sheet roofs with ply under-ceilings that prevent the shelters from heating up in the sultry heat of Sri Lanka. There are windows and doors just like any

other house. Many families have divided the large living space inside with a cloth partition to create a separate living and sleeping area. Oxfam negotiated free electrical connection for the shelters; all have two light bulbs and one three-pin socket. The families were involved in the construction of the shelters and, as part payment, were able to construct the walls of their kitchens. The men were paid 500 LKR per day, while women received 550; this, they say, was because Oxfam told them the women should be rewarded more as their burden of work and therefore their pressure is greater than that of the men.

The families moved into the shelters around April this year, but had to wait a further 1 ½ months for drinking water and electricity. Until then, the families relied on the murky well in the park for washing and bathing, and the men went to collect 2 cans of water a day from a tank ½ km away. The families lobbied their local authorities for water but the pumps could not be started until they had electricity. Eight months on and the families are all camp proud. They say they were managing camp waste themselves; although Oxfam staff came and also gave them advice and support.

After the shelters were completed, Oxfam staff came every day for weeks to ensure the families didn't have any problems. Although the families now own their transitional houses, Oxfam staff still visit regularly. There is a sub office very close to the park where Oxfam staff report that up to 15 *new* people not from the camp come to speak to them looking for advice, help and support.

The Park is still close to the sea – the deep blue waves are visible as a rhythmic line in the horizon over a swampy green lagoon sprouting magenta water lilies. When the second Tsunami warning came in March, one fisherman described how they all did “nighttime running” to higher ground. The families are however pleased with the location of the site as those who can find work in the fisheries sector are close to the source of their livelihoods. The Government has issued IOUs for new boats and nets; the promise was given some months ago but is as yet unfulfilled. Those who are lucky and have friends with boats work with them; others with swollen eyes report that they are still unemployed 8 months after the Tsunami and 5 months after the Government promises were given. The families say this is ironic since various NGOs offered them boats but the local authority felt it was a matter of principle that they be responsible for providing for their own fishing community.

A young mother living in the camp estimates that 6 or 7 families actually lost everything they owned; she sits in her transitional shelter with her wedding photos and a few other personal belongings she managed to save. She feels that many families reported that they lost everything out of desperate need for immediate assistance, although in actual fact most families in this area were able to salvage some of their belongings.

While she was in the camp, the local authority provided a mobile service to support families who had lost personal documentation. She reported her marriage, birth and education certificates lost along with her national identity card (NIC). She is most worried about her pension documents. The authorities issued her with a new NIC quickly

– although no other documentation has been re-issued and she has had no further contact with the documentation service. To her knowledge, only a few families lost documentation. With access to the same mobile service, they are likely to have recovered at least their NICs as well.

The District Secretariat, the head of the local authority, collected information from affected families shortly after the Tsunami. Following the collection of this information, a one-person family received 2,500 LKR per month for 3 months; if there were more than 3 people in a family, they received 5,000 LKR in 3 instalments. She reports that everyone in the camp received this compensation. There were no forms to fill in; names were just checked against the electoral register - the system was said to be effective and efficient.

The camp is close to the centre of town. There are schools nearby which most of the 31 children living in the park attend. Of those under the age of 18, 5 go to a Montessori nursery, 18 go to primary and secondary school and 2 were unable to complete their GCSE's after the tsunami and have since failed. Children were able to go back to school just one month after the tsunami. While they did not have the standard white uniforms that they used to wear to school, they were given permission to attend in casual clothes. A local Church and other private individuals donated the uniforms, shoes and schoolbooks.

One family does not send their 12 year old daughter and 14 year old son to school for three days a week when both parents are out of the camp. Nearly one year after the tsunami, this is apparently so that someone is always at the shelter should an NGO make distributions.

There is a large well-serviced town hospital with 25 doctors a few minutes walk away from the Park; everyone in the camp has access. No doctor comes into the camp although medicines were distributed in the camp in the early months after the tsunami. Psychosocial help came in the form of volunteers as well as trained individuals who came to the camp in the first few months, which was said to be very helpful. Various volunteers also came to the camp to play with the children. There are some people in the camp who are still said to be traumatised and depressed following the tsunami; one man receives formal treatment at a nearby hospital twice a week; he has to travel to Galle District every month to buy his medicines.

The lack of employment is said to cause depression and boredom for some in the Park, particularly amongst the men. 5 families are said to have at least one family member looking but unable to find regular work. 7 men have found work with Oxfam working as masons and labourers on construction sites (e.g., latrine construction) for other transitional shelters in the district.

Families do not want to return to their land in the buffer zone – for some it is too distressing, for others just too risky; as long as they are able to earn a living from the sea, the families will be pleased. They have been allocated land for permanent shelter already and Plan International is constructing their new homes. Two shelters in the Park are no longer occupied as the owners have already received their permanent homes.

For the young mother, she has made a profit of 3,000 LKR from fish drying after Oxfam GB gave her a 22,000 LKR Cash Grant. With this money, she purchased 100 kilos of fish that she dried in the sun for 20 days. Her husband, who was a fisherman and has yet to receive his boat from the Government, is helping her to dry fish while he waits to restore his income to pre-tsunami levels. She will re-invest this money again next month. She also works as a field worker for the Government collecting data and information. She says she knows how the financial assistance Oxfam received from around the world came to support her with her shelter and her cash grant when she needed help most and she wishes to thank them.

Case Study 2 – Conflict-affected IDPs: Saltern One Welfare Centre, Puttalam (Norwegian Refugee Council)

The Saltern One Welfare Centre is located along the Mannar Road, 2 km north of Puttalam town. The settlement was founded in early 1991 on land provided by local authorities and has been continuously occupied by a community of IDPs forcibly displaced from the Moor Street neighborhood of Jaffna in October 1990. The site occupies 2.4 hectares of land adjacent to the Puttalam Salterns and is currently the subject of a multi-party ownership dispute in the courts. The dispute turns partly on efforts of the IDPs, with the support of local authorities, to secure tenure to the land they occupy. The population of the community is as follows:

Age	0-4	5-17	18-59	60+	Total
Female	30	62	100	9	201
Male	25	61	93	2	188
Total	55	130	193	11	389

110 families occupy 90 houses. Housing conditions are generally inadequate with 85 houses consisting of 1 or 2 rooms, built of cadjan walls and roofs over cement floors. Only 5 houses are built of wood or brick with sound roofs. The community is dependent upon a rationed supply of water from a single tank connected to the municipal water system – water is available from 06:30 to 08:30 each day. The community shares 10 toilets. The housing standards and water and sanitation statistics are set forth in the following tables:

Housing Standards

Number of Families:	110
Number of Houses:	90
Average Size:	35m ²
Persons/House	Average = 4.3 persons Typical = 5 persons Max. = 10 persons
Standards:	Predominantly cadjan construction over concrete floor; limited privacy; only 5 houses in the settlement are constructed of wood or brick; approximately 15 houses have electricity; an RDF project to regularly supply cadjan for roofs and walls was suspended in 1999; some households have recently received assistance from UNHCR in the form of roofing sheets. It is evident from the conditions of houses at Saltern One that they have received very little assistance to improve the adequacy of their housing.

Water and Sanitation

Number of Toilets:	10 toilets; 11 families/toilet
Drinking Water:	Available from 06:30 to 08:30 from a tank connected to the municipal water system; inadequate quantities; two original water wells are dry; third well belonging to the Mosque is salty.
WatSan Facilities:	The ADB has laid water pipes to each residence, but these have not yet been connected to a new water supply currently under construction several kilometers up the Mannar Road. There is a common bathing area outside of the settlement that provides adequate facilities for the entire community.

The lack of water and sanitation and the lack of secure tenure are cited by Saltern One residents as the most important concerns. Despite the obviously difficult circumstances in which they live, residents interviewed for this survey voiced a strong preference to remain in Puttalam at their current location. They cited a complete lack of confidence that they would be secure if they returned to Jaffna and emphasized that they and their children have become increasingly integrated, both socially and economically, in Puttalam. They believe that if they were able to secure tenure to the land they currently occupy, their living conditions would improve as residents and local authorities would more readily invest in their homes and in services.

Residents of Saltern One indicated that acquiring and/or re-acquiring personal documentation is not a serious concern. They possess birth certificates, National Identification Cards, ration cards and other kinds of documents and are aware of procedures for obtaining them. Most families also possessed deeds or permits for land in Jaffna. According to the camp officer, the Puttalam Kachcheri has been very helpful to all residents seeking documents over the years; their close proximity to Puttalam town enables easy access to the local authorities responsible for issuing documents.

According to the camp officer, all households at Saltern One receive dry rations. They have received no other forms of compensation or entitlements since their displacement.

Most children (98%) at Saltern One attend school. Only 6 of the 185 school aged children do not attend school – disabilities and/or behaviour issues were cited as the reason these 6 children do not attend school. Children at Saltern One attend Zahira College (boys) and Fatima College (girls) located in Puttalam town. These schools, which serve non-IDP as well as IDP students, provide comprehensive education at primary to secondary levels. The facilities and quality of education are generally rated by parents and students as adequate. Zahira College operates a special educational unit for children with disabilities, but no equivalent programme exists at Fatima. When girls with disabilities reach 13 years of age, they are forced to withdraw from school.

Saltern One is located 5 km from the Puttalam Base Hospital and 3 km from several clinics and dispensaries. Residents indicated that they have easy access to medical care.

Approximately, 50 people are employed in stable, full-time work as mechanics, shop assistants, masons, electricians, etc., while others engage irregularly in day labour. About 5 women work as day labourers in the agricultural sector.

There is no psycho-social /trauma care programming at Saltern One. FORUT operates a Temporary Recovery Centre for victims of SGBV through which people can access psycho-social care, but this service has not been used by residents of Saltern One.

There have been no reported cases of SGBV at Saltern One. The referral network in Puttalam functions reasonably well, with FORUT serving as the focal point for outreach, education, victim identification and supportive counseling; NRC provides legal aid services for victim-witnesses. FORUT receives SGBV cases referred by other organizations. A standard intake form is used by FORUT for initial intake and for intake for the purpose of legal assistance. Women in Need is expected to establish a permanent full-time psycho-social counseling presence in Puttalam by December of 2005. FORUT presents a regular series of SGBV street dramas to raise awareness about SGBV.

The durable solution to their displacement preferred by the residents of Saltern is permanent relocation and integration in Puttalam – they have no desire to return to Jaffna. The long duration of their displacement has resulted in the de facto integration of these IDPs and their families. As discussed earlier, their prime concern is securing tenure to the land they occupy. They believe that establishing secure tenure would result, progressively, in the resolution of the difficulties they face, particularly with respect to the adequacy of their housing and water and sanitation facilities. Ownership, they say, would provide an incentive to improve their houses and give them access to housing assistance schemes that are pre-conditioned on proving secure tenure. The residents of Saltern One have actively pursued the regularization of their tenure individually, collectively and with support from local authorities and other concerned individuals in Puttalam. NRC has recently become involved in a case concerning the sale and ownership of a parcel of land within the welfare centre. However, despite all efforts, they

have no secure tenure and their homes are substandard compared to those rapidly constructed for the tsunami displaced.

Case Study 3 – Conflict and Tsunami Affected IDPs: Manalkadu welfare centre, Jaffna (Jaffna Social Action Centre)

Manalkadu Welfare Centre is located in an area of the Jaffna peninsula that was affected by both the conflict and the tsunami. Only a short drive down the road from the transitional shelter site, Manalkadu was shockingly ravaged by the tsunami. Buildings have been razed to the ground, almost without exception. School books and old clothes are scattered listlessly around, the detritus of a horrific disaster. Even though several months have passed since the tsunami struck, people are slow to begin rebuilding their coastal homes. The feelings of fear and trepidation in Manalkadu's broken community are still very raw. The tsunami resulted in 46 houses being partially damaged and 186 houses being completely damaged. The affected population was relocated to a temporary shelters in a welfare centre situated on privately owned land leased for one year.

Kamala, 25, one of the residents of the Manalkadu welfare centre, has faced more than her fair share of hardship. In 1991, as she played with school friends at home, a grenade came crashing down close by, the resultant explosion blowing away her legs; another tragic victim of Sri Lanka's civil war. Displaced by the conflict on three occasions and again by the tsunami, Kamala is currently living in a UNHCR transitional shelter just a kilometre down the road from her home in Manalkadu town.

Kamala's family is one of 210 living in the new transitional accommodation site. Built by UNHCR, the Manalkadu transitional shelters were among the first to be constructed in Sri Lanka after the tsunami. With the collaboration of the Government of Sri Lanka, World Vision, ACF (Action Contre la Faim) and FORUT (Campaign for Development and Solidarity), all transitional shelters are now complete and complimented by a strong infrastructure, including latrines and wells. Additional funding for the project was received from ECHO (Humanitarian Aid Department of the European Commission), NORAD (Norwegian Agency for Development Cooperation) and several other donors.

Now living 2 km inland, Kamala believes it will be some time before her community can return home. 'People here are still traumatized by the sea,' Kamala says, adding, 'Many have lost family and friends in the disaster and find it very difficult to return.' Manalkadu saw 75 of its residents killed by the tsunami, 45 of whom were children.

Kamala, however, carries on with the same level of stoicism that has characterized her whole life. A keen seamstress, Kamala hopes to earn a living from tailoring, just as soon as her old Singer sewing machine is repaired after being damaged in the tsunami. 'I don't want to be a burden to my family,' she states.

The conditions in the welfare centre are not ideal, with crowding and exposure to the elements and the heat common complaints. Moreover, residents report that there is little

to do in the welfare centre, with the result that community spirit is very low and some of the men have become dependent upon alcohol. Moreover, given the lack of access to media and other forms of information, the residents are increasingly cut off from the larger community.

The residents are being housed in transitional shelters of 500 sq ft, all of which are equipped with individual cooking facilities that the residents have constructed themselves. Some residents have also constructed their own verandas. There are 2 toilets (1 male and 1 female) for every 10 families. There are separate bathing and toilet facilities for men and women to prevent privacy and safety becoming major issues in the welfare centre. Donors have provided a number of wells for the residents, and although some have run dry, residents report that there is sufficient water and no queues.

Some of the residents who owned houses within the proposed buffer zone are entitled to housing reconstruction assistance from the Government (250,000 LKR for completely damaged homes; 100,000 LKR for partially damaged homes). None of the residents have actually received any payments and they are unsure when the payments will be made. They have received little information, and what information they have received has come from the Grama Sevaka and the Church priest. They also do not know where land can be found given the buffer zone and the fact that some of them own land in the high security zone.

The village's educational facilities were affected by the tsunami, but 242 of the community's children continue to go to school, instructed by 12 teachers. There are only 5 children from the village studying for their A Levels, and the Church has established a youth committee to motivate the community's children to attend school and to partake in evening study classes. Residents have access to medical care at the Monthihal Government Hospital 15 km away from the welfare centre, there are weekly visits from both the Sri Lanka Red Cross Association and the Holy Cross. Two psychosocial counsellors are available to residents, and special programmes have been established to assist traumatised children. There are SGBV support services provided by DCPC, WHC and JSAC; only 2 cases have been reported.

Many of the residents of Manalkadu were involved in the fishing industry, either as fishermen or sellers of fish products. Due to the damage caused by the tsunami, there is a lack of boats and fishing nets to enable people to return to the seas. Residents of Manalkadu welfare centre have received some livelihood assistance in the form of projects to dry fish and some residents are receiving livelihoods training, including tailoring classes. Two people from the welfare centre have also opened small shops to cater to the other residents.

Currently, the residents of the Manalkadu welfare centre do not wish to return to their homes by the sea largely due to fear. While they prefer to stay in their current relocation site, they want to be permanently resettled soon, but have received no information regarding either where or when this will happen.

Case Study 4 –IDPs Living With Host Families: Village Of Periyaneelavanai, Ampara (ZOA Ampara)

Ampara District is situated in eastern Sri Lanka, about 300 km from Colombo. Ampara has a population of 589,344 persons (295,319 males and 294,025 females). The population is 39% Buddhist, 17% Hindu, 41% Muslim and 3% Christian. Ampara District was one of the worst affected by the tsunami.

Periyaneelavanai is a village situated in the North Kalmunai Divisional Secretariat that includes the following Grama Sevaka divisions:

GS division	Families	Male	Female	Total
Periyaneelavanai 1	298	506	640	1146
Periyaneelavanai 1A	251	570	251	821
Periyaneelavanai 1B	371	674	817	1491
Periyaneelavanai 2	291	660	485	1145
TOTAL	1211	2410	2193	4603

The village consists of farmers, fishermen, casual labourers and small traders. The people from the village were displaced in 1990 due to the war and were again displaced as a result of the tsunami.

Previously, there were 998 latrines available in the area; 402 were affected by the tsunami. Various agencies are building toilets for the affected families; the goal is to provide one toilet for each family. 124 toilets are currently in progress.

The devastation of the village resulted in the contamination of the water wells. Even after the efforts of various agencies to clean the wells, they cannot be used for drinking water. As there are a limited number of agencies involved in providing water, people have to wait for hours to obtain clean drinking water. Because some of the families do not like the taste of the water, they walk to the village of Maruthamunai to collect their drinking water.

Nearly all residents, 98% of the people living in the village of Periyaneelavanai have lost their legal documents, including national identity cards, marriage and death certificates. 95% of the families submitted applications for replacement documentation; 55% of them have already obtained their documents through the help of various NGOs and the Government's mobile documentation service.

One of the two schools (330 students and 33 teachers) situated in the village was completely destroyed by the tsunami. The maternity hospital in the area was also completely damaged by the tsunami; it is currently functioning in a private house in the village.

Ilaiyathambi Valliammai, age 49, is a resident of the area whose husband died of natural causes in 1994. She kept her home fires burning by running a small shop in the village and providing cooked food to other villagers. She was also the primary caregiver for her sister's 5 children since her sister obtained overseas after she was deserted by her husband.

The family was displaced by the tsunami, moved in with a host family, and now faces a number of problems in their new residence. They lost all of their belongings, including all of their legal documentation. Their living arrangements afforded them little privacy due to space restrictions in their host family's home, and this constrained the ability of both the host family and Valliammai's family to carry on their normal daily activities. The space constraints and lack of privacy were compounded for the women in the house who had difficulty bathing, dressing and sleeping. Because the cooking is done in a common kitchen, the different families must stagger their food preparation; the children were sometimes compelled to skip meals due to overcrowding of the cooking facilities. The sole latrine in the house was damaged in the tsunami, resulting in further difficulties. The family also faces the same water shortage as the rest of the village and is compelled to wait in long lines for water.

In terms of financial assistance, Valliammai's family received a one-time grant of 4,000 LKR, and while they have been selected for the housing benefit planned by the Government, they have yet to receive any housing assistance from the Government authorities. Valliammai claims to have lost confidence in ever receiving the benefits promised by the Government. Since the tsunami, she has been ill more frequently, and feels physically weakened by the problems and challenges she has had to face since the tsunami. They have to travel 30 km in order to reach health facilities and there are no regular transport services available in the village. As a result, she has been unable to become involved in any income-generating activities. Currently, she is only provided with wheat flour rations; rice is not included in the ration items even though it is the staple food of the area's population. Her sister's children have become a burden to her as the money she receives from her sister is insufficient to settle the family's outstanding loan.

Valliammai complains that being with a host family has resulted in her receiving less assistance following the tsunami. She feels that people who were accommodated temples and schools and later relocated to welfare centres or transitional accommodation sites were more easily accessible to humanitarian agencies and therefore received greater assistance than those in host families, and in some cases, received excessive amounts of humanitarian assistance. She feels that people staying with host families should be given equal opportunity to access assistance programmes following a disaster such as the tsunami.

SELECTED MEASURABLE INDICATORS

Type of Settlement	Shelter Standard	Sanitation	Water	Electricity
Tsunami IDPs Tangalle Children's Park 78 persons	1 shelter per family material: concrete, wood, tin sheets, glass Size: 36 m2	3 families per toilet Separate bath house for females	Adequate Pipe borne water to shelters 2 X 200 L storage tank.	All have electricity
Conflict IDPs Puttalam Saltern I 389 persons	90 huts, 110 families material: mostly concrete foundation, cajan walls and roof size: 35 m2	11 families per toilet	Inadequate Available from tank 06:30-08:30 Waiting time measured in minutes.	20 % have electricity
Tsunami /Conflict Jaffna Manalkadu Camp 1,800 persons	1 shelter per family Material: concrete floor, plastic sheeting, tin sheets. Size: 50 m2	5 families per toilet Separate bathing facilities	Adequate Drinking water: 1 well per 60 pers. No waiting time.	One generator provided by NGO
IDPs with Host families Ampara	N/A	1 families per toilet (being built)	Inadequate Wells damaged by tsunami, waiting time measured in hours	Adequate

Type of Settlement	Access to health	Access to education	Durable solutions	Remarks
Tsunami IDPs Tangalle	25 meters to hospital	Yes	Land allocated, reconstruction on permanent houses has started. Timeframe : 6 months. Compensation awarded to 3 families.	Only those who owned houses are provided with new land and homes. Families living on rent have no solutions beyond the temporary shelters
Conflict IDPs Puttalam	5 km to hospital	Yes	No secure tenure, no land allocated. No timeframe. No compensation.	Displacement has lasted over 15 years
Tsunami and Conflict IDPs Jaffna	15 km to hospital NGO mobile health visits 2 X week	Yes	Allowed to stay on land for 1 year. No land allocated. No time frame. Compensation promised, but not awarded-	Most families displaced several times.
IDPs with Host families Ampara	Varies. Health care facilities damaged by tsunami	Yes	No land allocated. No time frame. No compensation.	Many families displaced twice. Infant mortality rate reported as 30 %

Non-discrimination in international law

The principle on non-discrimination is one of the cornerstones of international human rights law. It is enshrined in each of the core human rights conventions to which Sri Lanka is a state party:

- **Universal Declaration of Human Rights (Art 2):** “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- **International Covenant on Civil and Political Rights (Art 2):** “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- **International Covenant on Civil and Political Rights (Art 26):** “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- **International Covenant on Economic, Social and Cultural Rights (Art 2):** “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- The prohibition on discrimination is reinforced in **the Convention for the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child** etc.

The Human Rights Committee, which oversees implementation of the ICCPR, has made a General Comment providing an authoritative interpretation of non-discrimination in terms of Article 2:⁴

- While the ICCPR does not define ‘discrimination’, the Committee held that it *“should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the*

⁴ Human Rights Committee, General Comment 18 (1989).

recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”

- Article 26 (equality before the law) should be regarded as an autonomous right and is not limited to the rights provided for in the ICCPR. *“It prohibits discrimination in law or in fact in any field regulated and protected by public authorities.”*
- While states may derogate from some fundamental rights in times of public emergency (e.g. tsunami), such measures must not *“involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”*
- The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. The Committee observed that *“not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”*
- The Committee also pointed out that *“the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.”*

Non-discrimination and IDPs

The **Guiding Principles on Internal Displacement** uphold the principle of non-discrimination in relation to internally displaced persons:

- **Principle 1:** *“Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.”*
- **Principle 2:** *“These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction.”*
- **Principle 4:** *“These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.”*

This prohibition on discrimination has recently been reinforced in the **Principles on Housing and Property Restitution for Refugees and Displaced Persons** adopted by the UN Sub-Commission on Human Rights on 2 May 2005:

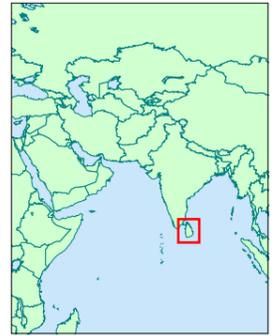
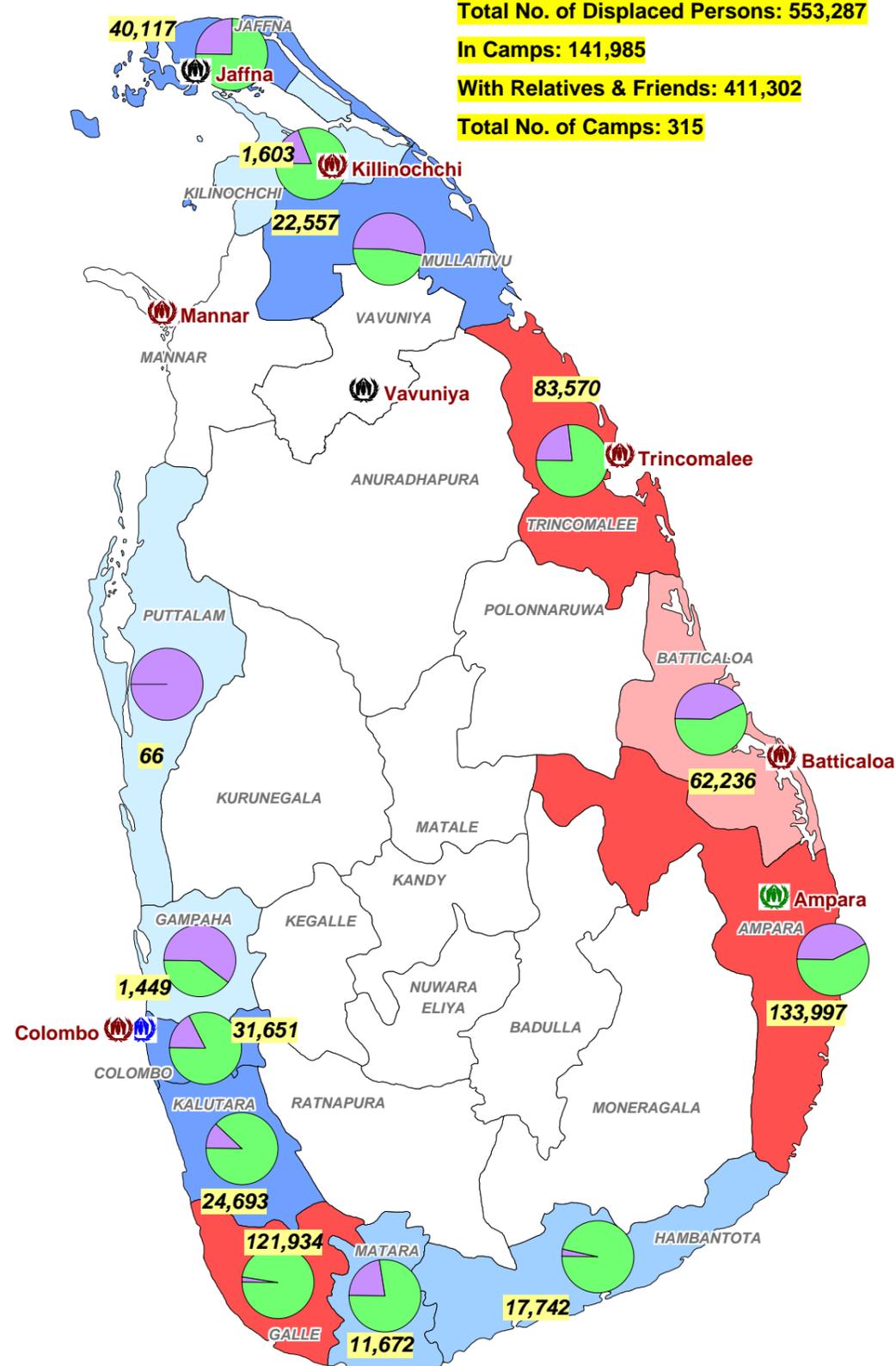
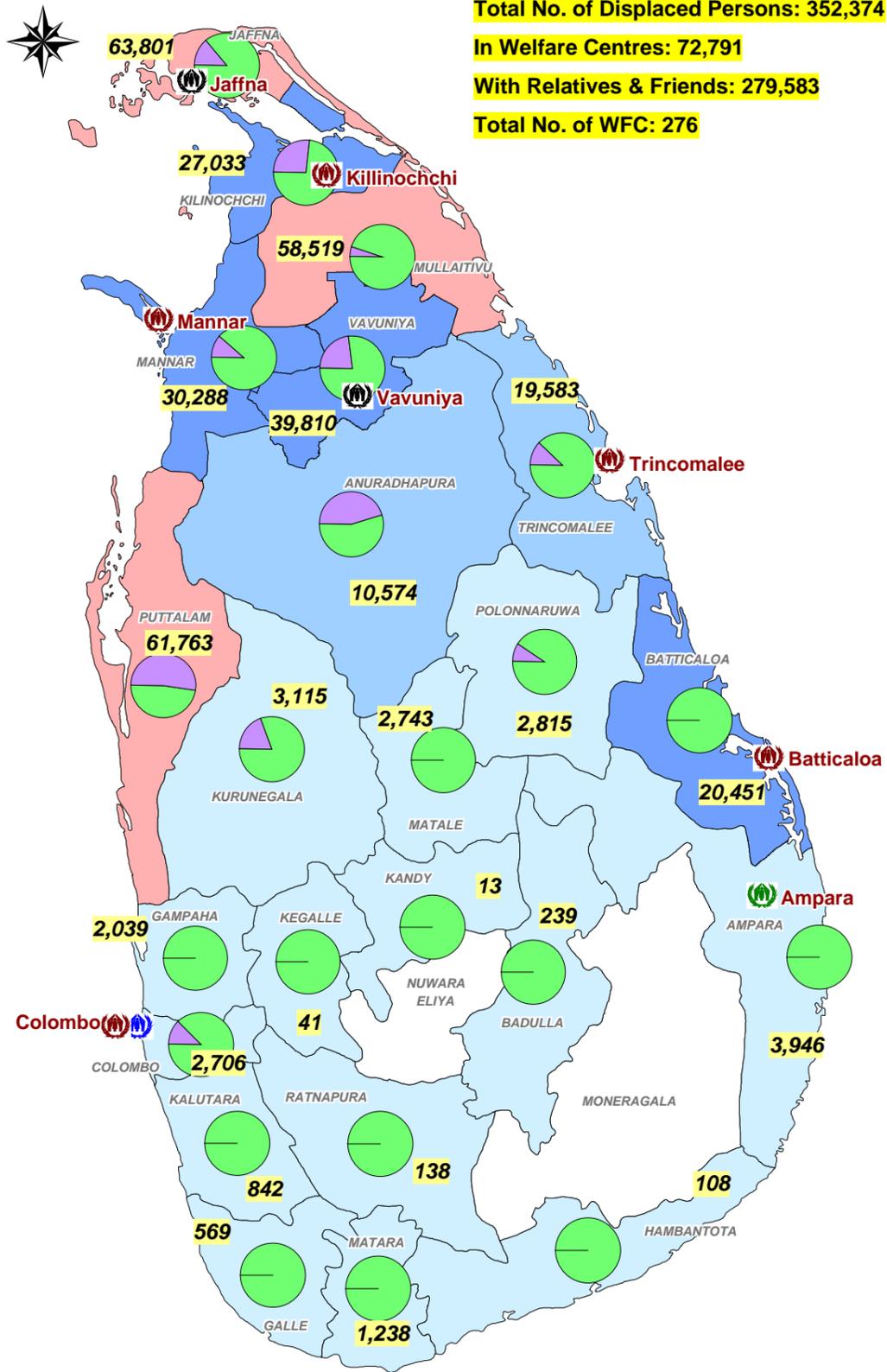
- “Everyone has the right to non-discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.
- States shall ensure that *de facto* and *de jure* discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.”

Displaced by Ethnic Conflict (as at 31 Dec 2004)

Total No. of Displaced Persons: 352,374
In Welfare Centres: 72,791
With Relatives & Friends: 279,583
Total No. of WFC: 276

Displaced by Tsunami (as at 01 Feb 2005)

Total No. of Displaced Persons: 553,287
In Camps: 141,985
With Relatives & Friends: 411,302
Total No. of Camps: 315



LEGEND

- UNHCR Representation
- UNHCR Sub Office
- UNHCR Field Office
- UNHCR Satellite Office

DISTRICT

Number of Displaced (Persons)

- 64,000 to 121,934
- 58,000 to 64,000
- 20,000 to 50,000
- 11,000 to 20,000
- 1 to 9,000

Displaced

- In WFC / Camps
- With Friends & Relatives

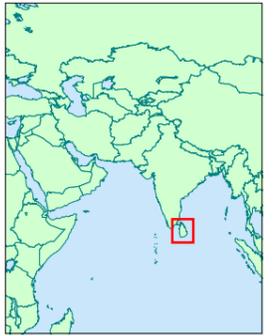
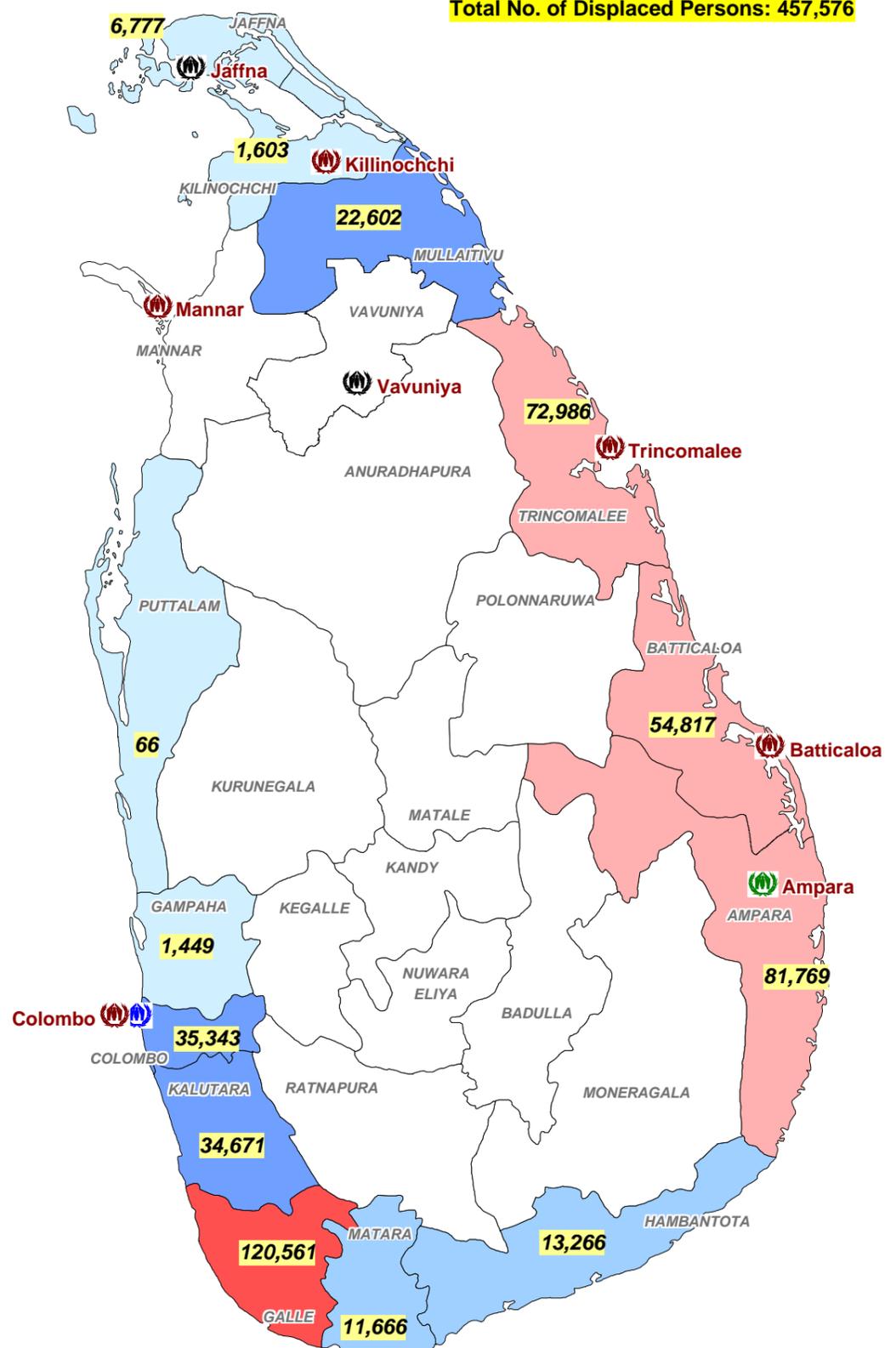
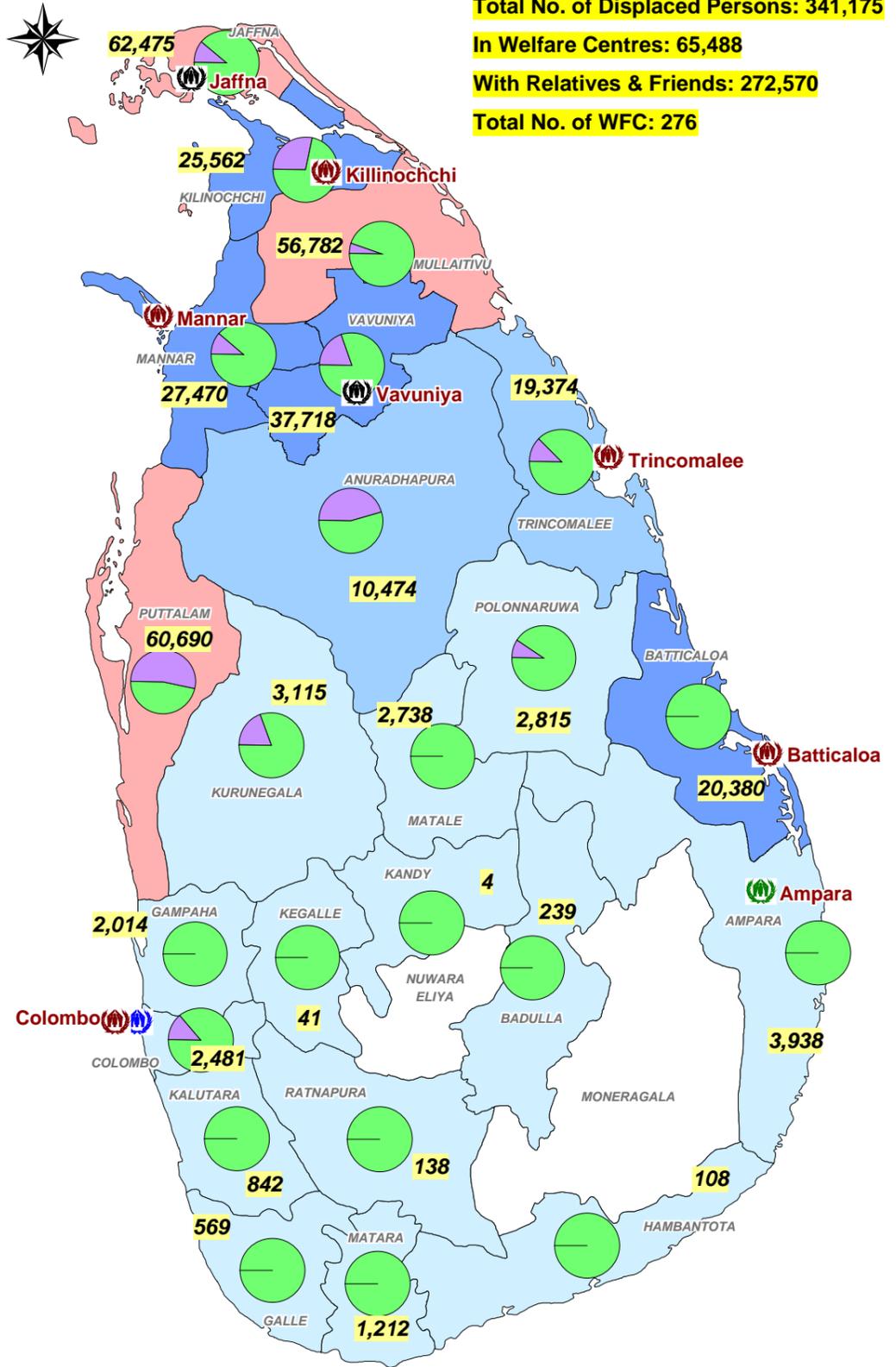
Note:
Tsunami displaced may include some of those displaced by ethnic conflict (Information not yet available)

Displaced by Ethnic Conflict (as at 31 Aug 2005)

Total No. of Displaced Persons: 341,175
In Welfare Centres: 65,488
With Relatives & Friends: 272,570
Total No. of WFC: 276

Displaced by Tsunami (as at 07 July 2005)

Total No. of Displaced Persons: 457,576



LEGEND

- UNHCR Representation
- UNHCR Sub Office
- UNHCR Field Office
- UNHCR Satellite Office

DISTRICT

Number of Displaced (Persons)

- 120,561
- 54,000 to 82,000
- 20,000 to 42,000
- 10,000 to 20,000
- 1 to 10,000

In WFC
 With Friends / Relatives

Note:
 Tsunami displaced may include some of those displaced by ethnic conflict
 (Information not yet available)