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After The Tsunami: Human Rights of Vulnerable Populations

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Publication Date

2005-10-01

AFTER THE TSUNAMI
HUMAN RIGHTS OF VULNERABLE POPULATIONS

OCTOBER 2005

HUMAN RIGHTS CENTER
UNIVERSITY OF CALIFORNIA, BERKELEY

EAST-WEST CENTER

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Executive Summary

The tsunami of December 26, 2004 devastated thousands of communities along the coastline of the Indian Ocean. More than 240,000 people were killed. Tens of thousands went missing and are presumed dead, and more than a million people were displaced. Those most affected by the tsunami were the poor, including fisher folk, coastal workers with small retail or tourist businesses, workers in the tourism industry, migrants, and those who farmed close to coastal areas. The majority of those who died were women and children.

Immediately following the tsunami, international aid agencies feared that human traffickers might seize the opportunity to compel those most vulnerable (women, children, and migrant workers) into situations of forced labor. Fortunately, few incidents of trafficking were reported, although other human rights problems, including arbitrary arrests, recruitment of children into fighting forces, discrimination in aid distribution, enforced relocation, sexual and gender-based violence, loss of documentation, as well as issues of restitution, and land and property tenure soon emerged in certain tsunami-affected areas.

As we have seen in the aftermath of hurricane Katrina, which devastated coastal areas in the southern United States, natural disasters often catch national and local governments and relief agencies unprepared to deal with the massive exigencies of emergency relief and management, and can expose victims of these catastrophes to violations of human rights.

Victims of natural disasters are protected by a host of human rights treaties and agreements. Both the UN Guiding Principles on Internal Displacement and the Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response protect victims of natural disaster and guide relief efforts to ensure that those displaced receive access to adequate and essential relief—including food, shelter, and medical care. These guiding principles maintain that internally displaced persons (IDP) have the right to request and to receive protection and assistance from national authorities who, in turn, have the primary duty and responsibility to protect and assist populations within their jurisdiction.

Natural disasters can exacerbate pre-existing vulnerabilities of populations already at risk. Poverty-stricken groups living in substandard housing, on unstable ground, or in flood plains are usually the principal victims of these disasters. Often these groups have experienced ongoing discrimination because of their ethnicity, religion, class, or gender, which has left them living in fragile physical environments. Moreover, pre-existing civil war or a history of ongoing human rights abuses can complicate or interfere with aid relief and reconstruction.

In countries where corruption and bureaucratic incompetence are rife, certain individuals and groups may manipulate their political connections to receive or distribute aid at the expense of others. Still other groups may receive little or no aid because of their ethnicity, religion, gender, age, or social standing. These abuses can leave individuals and families at risk and prolong the time they have to stay in poorly built and even dangerous camps and shelters for internally displaced people.

Isolated in camps, the internally displaced often are sidelined as government officials in distant towns and cities formulate and implement resettlement and rebuilding programs, sometimes in favor of special interests. Uncoordinated relief efforts run the risk of exacerbating these problems, especially where there is weak government oversight of the activities of international agencies and aid organizations. A tension can develop between government appropriating all decision-making to itself or allowing nongovernmental organizations to carry out their missions as they see fit. Lack of a middle ground leaves survivors with no-one to turn to for assistance.

In March and April 2005, a little over two months after the tsunami struck, the Human Rights Center of the University of California, Berkeley, in partnership with the East-West Center, dispatched teams of researchers to five countries—India, Indonesia, the Maldives, Sri Lanka, and Thailand—affected by the disaster to interview hundreds of survivors and key informants.

The specific objectives of the survey were:

1. to assess the nature and extent of pre-existing human rights problems and their impact on vulnerable groups prior to the tsunami;
2. to investigate violations of human rights in the post-tsunami period;
3. to examine the response of governments and aid agencies to reports of human rights abuses; and
4. to identify human rights violations that likely may develop or persist during the reconstruction phase.

Researchers used a semi-structured questionnaire to interview tsunami survivors and key informants in the five countries under study. All participants gave verbal informed consent. In India, surveys were carried out along the coast of Tamil Nadu, the worst-hit state, in the districts of Cuddalore, Nagapattinam, Kanyakumari, and Kancheepuram. In Sri Lanka, interviews took place in three provinces, Northeastern (Batticaloa and Ampara), Southern (Galle and Matara), and Western (Colombo). In the Maldives, research was conducted in Male', Hulhumale' and Guraidhoo. In Thailand, interviewers worked in eighteen communities on the coasts of the Andaman Sea and the Gulf of Thailand. Finally, in Indonesia, field research was conducted in nine refugee areas, Banda Aceh, Aceh Besar, Sigli, Bireuen, Pidie, Lloksuemawe, Aceh Utara (all in Aceh), Medan and Deli Serdang (in North Sumatra).

Six themes emerged from the survey data that were common to all the countries surveyed:

1. **Exacerbation of pre-existing human rights violations.** The tsunami exposed groups already suffering from discrimination and other human rights abuses to greater harm. Examples include government use of humanitarian aid rationales to secure military goals, corruption threatening property rights, lack of migrant protection, and gender violence.
2. **Inequality in aid distribution.** A number of vulnerable populations, in particular women and members of certain ethnic or religious groups, did not receive equal assistance. The research revealed multiple causes for maldistribution of aid, including discrimination towards certain ethnic, religious, or marginalized subgroups such as castes; inequities based on political influence; bureaucratic inefficiencies; and exclusion of specific groups based on government definitions of victimhood.
3. **Impunity and lack of accountability.** There was virtually no accountability of governmental or other aid providers for the reported corruption, arbitrariness in aid distribution, and violations of international standards that protect the human rights of survivors of natural disasters. Contributing factors included the lack of state action in responding to tsunami victims, lack of independent redress mechanisms, lack of political will to investigate abuses, and lack of reporting of human rights violations by humanitarian aid agencies.
4. **Poor coordination of relief aid.** The sudden activity of large numbers of aid providers in tsunami-affected areas overwhelmed the capacity of states to effectively coordinate relief efforts. The efforts of multiple institutions and organizations providing relief were not harmonized because of a lack of coordination among humanitarian and aid agencies, different levels of government, competing agendas, and lack of NGO accountability.

5. **Low public confidence in coastal redevelopment.** There is a lack of clarity among some coastal communities about the conditions under which coastal areas will be rebuilt. Policy makers, in some cases, have responded to the environmental damage with policy recommendations that appear to marginalize or even disenfranchise the poor.
6. **Lack of community participation.** Government and relief officials often failed to consult survivors and their communities about decisions regarding aid distribution, resettlement, and reconstruction aid. In some cases, these officials discredited or ignored the views and opinions of local communities. Donors and aid agencies often prioritized timely outcomes over deliberative processes that allowed for community participation and discussion.

To address these concerns, we recommend that the following measures be taken:

1. **UN agencies and NGOs should take into account the prior human rights context of the particular country in their aid and reconstruction policies and programs.** Non-state actors carrying out relief and reconstruction work should take into account the pre-existing vulnerabilities of groups due to armed conflict, legal status, caste discrimination, or general restrictions on civil and political rights. Adopting a human rights framework will help humanitarian groups identify the most vulnerable and deliver assistance in a manner that does not compound vulnerabilities to abuse.
2. **States should commission an independent survey of tsunami-affected areas to assess the process of aid distribution.** The ultimate purpose of the survey should be to determine if the aid distribution process was conducted properly, fairly, and efficiently, and if any vulnerable groups were overlooked. Recommendations for how to remedy those survivors who have not received payments should be made.
3. **States should increase accountability and transparency of public and private aid providers.** The national human rights commissions in the five countries surveyed should monitor and report on their government's compliance with international human rights standards. States should create ombudsman offices for tsunami survivors that can adjudicate individual complaints during the reconstruction phase. An ombudsman would also be able to investigate individual allegations of human rights violations and to refer appropriate cases for prosecution under domestic law.
4. **State agencies should strengthen coordination with UN and NGOs during the reconstruction phase of the tsunami catastrophe.** In recent months, states have improved their knowledge and supervision of the type and quality of material donations and the number of NGOs operating within their territory. However, much more needs to be done to improve coordination among these agencies. A central registry should be kept of all national and international aid agencies involved in relief and reconstruction work so as to ensure that those organizations are legitimate. The UN should assume a leadership role in coordinating the reconstruction activities of NGOs and promoting synchronization between public and private rebuilding efforts.
5. **States, international agencies, and local aid organizations should improve community participation in reconstruction planning and implementation.** State reconstruction agencies should develop community-based consultation mechanisms that are legitimate and transparent. UN agencies and NGOs should participate in consultations so that all providers are working together with community members.

6. **A human rights framework should inform coastal redevelopment and the re-establishment of land rights.** Redevelopment planning should be transparent and NGOs and survivors should have the opportunity for legitimate consultation. In many areas there is uncertainty about land rights and in some instances disputes have turned violent. Expedited procedures should be put into place to establish title and occupation rights. The ombudsman offices, suggested above, could serve this function.
7. **Particular attention must be paid to those affected by ongoing armed conflicts.** It is apparent that war, political violence, and the priorities of warring parties will often be given precedence over assisting survivors. In these situations, the United Nations or other international mediating parties must provide leadership to secure a temporary cessation of fighting or a peace agreement in order to maximize the ability of humanitarian aid providers to help those in need.

Introduction

Natural disasters, like the tsunami of December 26, 2004, often catch governments, rich and poor alike, unprepared to deal with the massive exigencies of emergency relief and management. Nowhere has this been more evident than in the failure of U.S. authorities to respond adequately to Hurricane Katrina. Natural disasters also can exacerbate pre-existing vulnerabilities of specific populations and expose them to violations of human rights. Poverty-stricken groups living in substandard housing, on unstable ground, or in flood plains are usually the major victims of these disasters. Often these groups have experienced ongoing discrimination because of their ethnicity, religion, class, or gender, which has left them living in fragile physical environments.

Pre-existing civil war or a history of ongoing human rights abuses can complicate or interfere with aid relief and reconstruction. When victims of a natural disaster join those displaced by internal conflict, the distinct needs of these two groups may not be attended to by humanitarian agencies and government planners.

In countries where corruption and bureaucratic incompetence are rife, certain individuals and groups may manipulate their political connections to receive aid at the expense of others. Still other groups may receive little or no aid because of their ethnicity, religion, gender, age, or social standing. These abuses can leave individuals and families at risk and prolong the time they have to stay in poorly built and even dangerous camps and shelters for internally displaced persons. Isolated in camps, survivors often are sidelined as government officials in distant towns and cities formulate and implement resettlement and rebuilding programs, sometimes in favor of special interests. Some may lose their property and land to unscrupulous developers or as a result of new laws that prevent or restrict rebuilding. Further, uncoordinated relief efforts run the risk of exacerbating these problems especially where there is weak government oversight on the international agencies or aid groups that descend on a country after these catastrophic events. This lack of oversight exposes survivors to nongovernmental organization (NGO) agendas based on religious goals¹ or to opportunists with unscrupulous goals whose interests do not lie in helping the displaced.

Against this background, the Human Rights Center of the University of California, Berkeley, in partnership with the East-West Center, dispatched teams of researchers in March and April 2005 to five countries—India, Indonesia, the Maldives, Sri Lanka, and Thailand—affected by the tsunami of December 26. The researchers interviewed hundreds of tsunami survivors and key informants. The research teams were assisted by the College of Public Health, Chulalongkorn University (Thailand); DEMOS (Indonesia); the Madras Institute of Development Studies (India), the International Centre for Ethnic Studies (Sri Lanka), and the Human Rights Commission (Maldives).

The specific objectives of the survey were:

1. to assess the nature and extent of pre-existing human rights problems and their impact on vulnerable groups prior to the tsunami;
2. to investigate violations of human rights in the post-tsunami period;
3. to examine the response of governments and aid agencies to reports of human rights abuses; and
4. to identify human rights problems that are likely to develop or persist during the reconstruction phase.

Methodology

Researchers used a semi-structured questionnaire to interview tsunami survivors and key informants. Similar questions were asked in all five countries. In some cases, survivors were interviewed in a group setting. Key informants were defined as individuals directly responsible for developing or implementing policies or practices that affected post-tsunami relief. They included representatives of government aid or other agencies, police, army officers, UN disaster relief personnel, and representatives of nongovernmental human rights and aid organizations. Verbal informed consent was obtained from all participants. In India, surveys were carried out along the coast of Tamil Nadu, the worst-hit state, in the districts of Cuddalore, Nagapattinam, Kanyakumari and Kancheepuram. In Sri Lanka, we interviewed in three provinces, Northeastern (Batticaloa and Ampara), Southern (Galle and Matara), and Western (Colombo). In the Maldives, research was done in Male', Hulhumale', and Guraidhoo. In Thailand, interviewers worked in eighteen communities on the coasts of the Andaman Sea and the Gulf of Thailand. Finally, in Indonesia, field research was undertaken in nine refugee areas, Banda Aceh, Aceh Besar, Sigli, Bireuen, Pidie, Lloksuemawe, Aceh Utara (all in Aceh), Medan and Deli Serdang (in North Sumatra). Researchers also consulted archival documents, including newspaper articles, and reports on the conditions and experiences of tsunami survivors, as well as laws, policies, and guidelines issued by national governments and international organizations.

Researchers presented their initial findings at a meeting in Bangkok, Thailand on June 3–4, 2005. The meeting was attended by representatives of nongovernmental organizations working with tsunami survivors in the countries studied and representatives of the national human rights commissions of the Maldives, Sri Lanka, and Thailand. Approximately twenty-five representatives of UN agencies and human rights organizations observed the proceedings. The final country reports included in this publication incorporate the comments and additional data provided by the participants and observers at the Bangkok meeting.

Principal Findings

Six themes emerged from the survey data that were common to all the countries that we surveyed.

1. **Exacerbation of prior human rights violations.** Examples of these were the instrumental use of aid delivery to control perceived threats to internal security, lack of migrant protection, lack of trust in government based on prior abuses, corruption threatening property rights, and gender violence.
2. **Inequities in aid distribution.** There were multiple causes for maldistribution including withholding aid from certain ethnic, religious, or discriminated subgroups such as castes, inequities based on political influence, bureaucratic inefficiencies, and exclusion of specific groups based on government definitions of victimhood.
3. **Impunity and lack of accountability.** Human rights vulnerabilities were insufficiently addressed due to lack of state action in responding to tsunami victims, lack of independent redress mechanisms, lack of political will to investigate abuses, and lack of reporting of human rights violations by humanitarian aid agencies.
4. **Poor coordination of relief aid.** The efforts of multiple institutions and organizations providing relief were not harmonized because of a lack of coordination among humanitarian and aid agencies, different levels of government, competing agendas, and lack of NGO accountability.

5. **Low public confidence in coastal redevelopment.** There is a lack of clarity among survivors in coastal areas regarding the conditions under which the coastal areas will be rebuilt. Policy makers have responded to the environmental damage with nontransparent policy recommendations that appear to marginalize or even disenfranchise the poor.
6. **Lack of community participation.** Community participation rarely took place when decisions were made about reconstruction and rebuilding programs. In some cases, decision-makers discredited or ignored the views and opinions of local communities. Many survivors perceived the government as aloof and nonresponsive. Donors and aid agencies often prioritized timely outcomes over deliberative processes that allowed for community participation and discussion. Some agencies deliberately excluded certain groups because they were viewed as only serving “their own.”

Limitations of Study

Given the time constraints, study investigators focused their interviews on the most hard-hit areas of these countries. Of necessity, this means that not all areas of a country were surveyed. While every attempt was made to secure meetings with representative survivors, government, NGOs, and international agencies, we did not interview all the stakeholders. In some countries, the number of NGOs reached into the hundreds. At times, political concerns or specific mandates constrained interviewees from being open and they preferred to speak “off the record.” Conflict or security concerns hindered access to some vulnerable groups. Where working with interpreters was necessary, language translation raises the possibility of interpreter distortion even though interpreters were trained by the researchers. Where the investigators were male, it is possible that women survivors were less open than they might have been especially around such issues as domestic violence/abuse, harassment or sexual violence in camps, and the difficulties they may have had in securing supplies for their specific needs. Class differences and, perhaps, biases may have impeded open discussion in some cases. Given these constraints, researchers made every effort to reach representative groups, but a selection bias may have been introduced as they were often solicited through convenience sampling. An important next step would be a geographic multistage cluster sample survey. Finally, the occupational roles, desire to provide responses thought to please the researchers, and distortions in memories that reflect rumors and political beliefs may have colored responses.

Acknowledgements

This report was edited by Laurel Fletcher, Eric Stover, and Harvey Weinstein (Human Rights Center, University of California, Berkeley), who also wrote the Introduction, Background, General Findings, and Recommendation sections. The manuscript was edited by Amanda A. Morgan. Harvey Weinstein (Human Rights Center and School of Public Health, University of California, Berkeley) researched and wrote the country reports for Sri Lanka and the Maldives. Aviva Nababan (Human Rights Center, University of California, Berkeley), Agustinus Agung Widjaya (Centre for Democracy and Human Rights Studies [DEMOS], Indonesia), and David Cohen (University of California, Berkeley) researched and wrote the country report for Indonesia. Eric Stover (Human Rights Center and School of Public Health, University of California, Berkeley) and Dares Chusri (College of Public Health, Chulalongkorn University) researched and wrote the country report for Thailand. V. Chandrasekara Naidu (Madras Institute of Development Studies) researched and wrote the India country report with the assistance of Laurel Fletcher (Human Rights Center and School of Law (Boalt Hall), University of California, Berkeley) and Harvey Weinstein. Further research assistance for this project was provided by Kahla M. Bunde, Justin T. Berger, Michael Burstein, and Catherine Reilly of the International Human Rights Law Clinic, School

of Law (Boalt Hall), University of California, Berkeley. This study is the result of a partnership between the Human Rights Center, University of California, Berkeley and the East-West Center. We wish to thank Nancy Lewis and Philip Estermann of the East-West Center for their unflagging dedication to the project. Our meeting in Bangkok, Thailand would not have been possible without the invaluable support of Dean Chitr Sitthi-amorn and Dr. Ratana Somrongthong, assistant dean, and their colleagues at the College of Public Health, Chulalongkorn University. We gratefully acknowledge the generous support provided by The Sandler Family Foundation.

¹ Many NGOs sponsored by or affiliated with religious institutions offer aid without proselytizing; the concern raised by this study is that some NGOs working in tsunami-affected areas linked assistance to promoting a particular religion.

Background

Natural disasters are the subject of considerable study and international attention. Much of the literature on the topic addresses the causes and effects of natural disasters from multiple perspectives, including environmental studies, humanitarian assistance, disaster planning and hazard reduction, psychology, and public health. Little attention is paid to the impacts of natural disasters on individuals and communities from a human rights perspective. The response to the 2004 tsunami may be a turning point in this regard. Media coverage of the human rights dimensions of the tsunami relief and recovery phases has drawn attention to the relationship of natural disasters and human rights. While further study is needed, four observations may be drawn about the way in which natural disasters may increase risk of exploitation and violence of vulnerable members among tsunami survivors.

Observations Regarding Natural Disasters and Human Rights Vulnerabilities

First, natural disasters, like armed conflicts, tend to make vulnerable populations even more vulnerable. Disasters disrupt the economy of the impacted area, but those most at risk are those who participate at the margins of or are active in the informal economy—fishermen, small shopkeepers, and those selling food at the beaches or roadsides.¹ Disasters are more likely to wipe out the investment and savings of these marginal economic actors, leaving them unable to reestablish their livelihoods. Compounding their lack of resources, a natural catastrophe such as a tsunami leads to destruction of identity papers and other documents, and makes it difficult or impossible for survivors to receive aid, secure employment, obtain health care, and receive inheritance from deceased family members. Land issues are exacerbated by natural disasters. And (re)establishment of legal rights to land impacts the pace of, and planning for, reconstruction. Women and children, especially if they are widowed or orphaned, are at risk of exploitation, due to higher rates of morbidity and mortality and continued displacement without the safety net of family and community to protect them. Moreover, aid often undermines self-sufficiency and perpetuates dependency on relief.

Second, natural disasters erode the social fabric of communities, often leaving them fragmented and vulnerable to exploitation. Individuals must cope with the personal impact of the disaster. They may be grieving for lost loved ones, be troubled by a sense of helplessness and feelings of guilt for surviving, or perceive themselves as inadequate because of their inability to provide for their families. Families are the most important social unit to enable individuals to carry on after natural disasters; for those who have lost family members, their neighbors and community are the next source of support.² Widespread disaster that destroys the infrastructure of communities can wipe out these vital social networks of relationships that hold individuals and families together.³ Attention to maintaining communities intact during the reconstruction period is as critical as rebuilding communal infrastructure like schools, parks, and markets.

Third, natural disasters can magnify and exacerbate existing human rights problems. Vulnerable groups affected by disasters find it most difficult to claim their human rights.⁴ Women and children are disproportionately affected by disasters and conflict; and in the case of the tsunami, women and children were killed in greater numbers and their voices and needs have not been included in decisions about relief allocation. Lack of adequate health care, housing, and livelihood assistance to women has deprived them of their right to be treated with human dignity. Minority groups such as Dalits in India and Burmese migrant workers in Thailand have suffered discrimination in aid assistance, and lack of legal protection and enforcement of their rights render them vulnerable to abuse. In Indonesia and Sri Lanka, ongoing separatist conflicts in tsunami-impacted areas affect the human rights of survivors. In Aceh, the exercise of control over those displaced by the tsunami interferes with their access to aid. Similarly, in Sri Lanka

the lack of an agreement between rebel forces and the government over control of relief distribution has interfered with aid delivery and progress on reconstruction. In the Maldives, the lack of attention to the problems of distant islands made these more vulnerable to the effects of the tsunami and has exposed vulnerabilities in the transport and supply systems.

Finally, natural disasters can highlight and draw public attention to systemic weaknesses and abuses (corruption and fraud in government bureaucracies), political struggles (treatment of minorities), and other longstanding internal conflicts in the affected areas (dissension and covert resistance to government and armed separatist movements). Where the government response to marginalized groups is unsatisfactory, this can galvanize political movements to demand change.⁵ Social tensions may increase, and how the state responds—by addressing claims or clamping down on dissent—will exert a profound impact on the political stability of the country.⁶

Normative Human Rights Framework Applicable to Natural Disasters

Two sets of international standards are directly applicable to the human rights of survivors of natural disasters: the 1998 Guiding Principles on Internal Displacement⁷ and the Humanitarian Charter and Minimum Standards in Disaster Response for humanitarian assistance.⁸ Both are nonbinding documents designed to provide guidance to states and humanitarian agencies in their treatment of internally displaced people (IDPs) so that the rights of these vulnerable groups may be secured.

The Guiding Principles, written by a group of independent experts, draw on existing international law to identify specific norms that protect the internally displaced. These nonbinding guidelines seek to address the gap in international law for those who are forced to leave their homes due to armed conflict, violence, or disasters but do not cross international boundaries. Thus, internally displaced people lie outside the protections accorded to refugees. The security and protection of the internally displaced are the responsibility of their own states.⁹ The Principles identify rights and guarantees for the internally displaced during three phases: prior to displacement, during displacement, and during return and reintegration.

Relevant to those displaced by the tsunami are the protections during displacement and return. The Principles affirm the general right of the individual to dignity and to physical, mental, and moral integrity (Principle 11). Children are specially protected from recruitment for or participation in combat (Principle 13). The internally displaced are to enjoy the right to recognition, and governments are to provide identity documents to implement this right (Principle 20). Authorities should provide safe access to basic supplies—food, water, shelter, and medical care—and should work to ensure that women participate fully in the planning and distribution of these resources (Principle 18). The Principles identify guarantees to effectuate delivery of humanitarian assistance in a nondiscriminatory manner (Principles 24–27). And states are urged to take “special efforts” to fully involve IDPs in the planning and management of their return (Article 28).

The Sphere Project—an initiative by international humanitarian agencies¹⁰—developed the Humanitarian Charter and Minimum Standards in Disaster Response for humanitarian assistance to “establish minimum standards in core areas of humanitarian assistance” and “improve the quality of assistance to people affected by disasters, and to enhance the accountability of the humanitarian system in disaster response.”¹¹ The standards, framed as rights, apply to food, water, sanitation, health, and shelter; the project also articulates technical indicators to monitor implementation of these guarantees. The goal is to promote voluntary compliance with these minimum standards among humanitarian agencies and states in order to provide those affected by disasters with access to a life with dignity. The Guiding Principles and the Sphere standards together provide benchmarks against which to measure the success of tsunami relief and reconstruction efforts in fulfilling the basic human rights of survivors.

¹ Frederic C. Cuny, *Disasters and Development*, pp. 49-54. New York: Oxford University Press, 1983.

² A Guide to Emergency Health Management After Natural Disaster. Washington, D.C.: Pan American Health Organization, Pan American Sanitary Bureau, Regional Office of the World Health Organization, 1981. See also Cuny, *Disasters and Development*, pp. 80-81.

³ The negative, unintended consequences to a community of temporary relocation decisions made in response to a dam collapse are documented in a study by Gerald M. Stern, *The Buffalo Creek Disaster*, New York : Vintage Books, 1977.

⁴ International Federation of Red Cross and Red Crescent Societies, *World Disasters Report 1993*, p. 52.

⁵ For example, the failure of the Pakistani government to respond adequately to the 1970 cyclone in East Pakistan triggered a sequence of events that resulted in a political movement that eventually led to the independence of Bangladesh. Cuny, *Disasters and Development*, p. 54.

⁶ The violent demonstration in Male', Maldives, in August 2004 with the arrest and detention of many of the rioters revealed the extent of dissatisfaction with the authoritarian government of President Gayoom. The repetition of that event in August 2005 indicates that despite the promises of reform, the people continue to feel government repression. Discussion of this issue is available at <http://www.alertnet.org/thenews/newsdesk/COL253497.htm>.

⁷ Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, Feb. 1998. Available at <http://www.ohchr.org/english/issues/idp/standards.htm>.

⁸ The Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response*, 2000 (Sphere Handbook). Oxford: Oxfam Publishing. Available at http://www.sphereproject.org/handbook/hdbkpdf/hdbk_full.pdf.

⁹ The Principles (Preamble, para. 2) define the internally displaced as "persons ... who have been forced to leave their homes ... 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."

¹⁰ Partners of this project include the Steering Committee for Humanitarian Response (a group of private humanitarian agencies) and Inter-Action, a 150-member US NGO consortium.

¹¹ Sphere Handbook, cover page. One representative of the international relief agency Oxfam described the need to improve accountability by recalling the deaths of thousands of Rwandans in Goma, in the aftermath of the genocide, due to the failure of some groups to provide effective services: "It's almost as if running a hospital or a water treatment system in a foreign country somehow confers immunity upon the implementing agencies and staff from all charges of unprofessional conduct or negligence." Nicholas Stockton, *Performance Standards and Accountability in Realizing Rights: The Humanitarian Case* (1999) available at <http://www.odi.org.uk/speeches/stockton.html>.

Country Reports

The problems described above were observed in each of the five countries. How these problems manifested varied depending on the particular context. The country's political history, cultural and religious traditions, civil conflict, and economy were all influential in shaping the human rights violations that we documented. How these play out varies, and in some cases the violations are more blatant than in others. The full findings of each country study are set forth below. Recommendations specific to a particular country are included within the relevant country report. Our analysis of the core set of themes found in all the countries is contained in the General Findings section. In the concluding Recommendations section, we offer proposals to address the common problems confronting tsunami survivors that have emerged from this regional research project.

INDIA

V. Chandrasekara Naidu*¹

I. INTRODUCTION

Based on field research, this report examines the pressing challenges faced by survivors of the 2004 Indian Ocean tsunami in the Indian state of Tamil Nadu. Most of the tsunami deaths and destruction in the country occurred in this area. Those living near the coast depend on the sea directly or indirectly for their livelihood and the destruction of their communities presents several important challenges for rebuilding. This research suggests that the prior human rights situation in Tamil Nadu directly affects the manner in which relief and reconstruction are conducted and, critically, who is served and who is excluded in this process. Our study indicates that the social structure of these communities—highly hierarchical based on caste status—excludes subordinated castes and tribes from access to emergency relief. In addition, distribution of assistance from the state is politicized, lacks transparency, and results in discrimination against or exclusion of eligible survivors. Finally, reconstruction after the tsunami offers a unique opportunity to rebuild communities to address underlying social inequities and to strengthen human rights protections for vulnerable groups.

Effects of the Tsunami

The 9.0 earthquake off the coast of northern Sumatra, Indonesia displaced a substantial amount of the sea bed, triggering a tsunami that struck the southeastern coast of India, as well as the Andaman and Nicobar islands, at about 8:00 a.m. on Sunday, December 26.² Reaching up to ten meters high, the waves traveled as far as three kilometers inland.³ In India the water killed at least 12,405 people,⁴ and approximately 5,640 are missing.⁵ About 8,000 deaths occurred in the state of Tamil Nadu;⁶ five districts bore the brunt of these losses—Chennai (250 deaths), Kancheepuram (250 deaths), Cuddalore (500 deaths), Kanyakumari (1,000 deaths), and Nagapattinam (6,000 deaths). At least one-third of those who died in Nagapattinam were killed during services at Velankanni Church—an important international pilgrim center for Christians—located within 200 meters of the shore. Most of those killed—75 percent—were women and children.⁷ Many fishermen also lost their lives. For example, in the Nagapattinam district of Tamil Nadu, the tsunami increased the number of widows by 63.1 percent.⁸

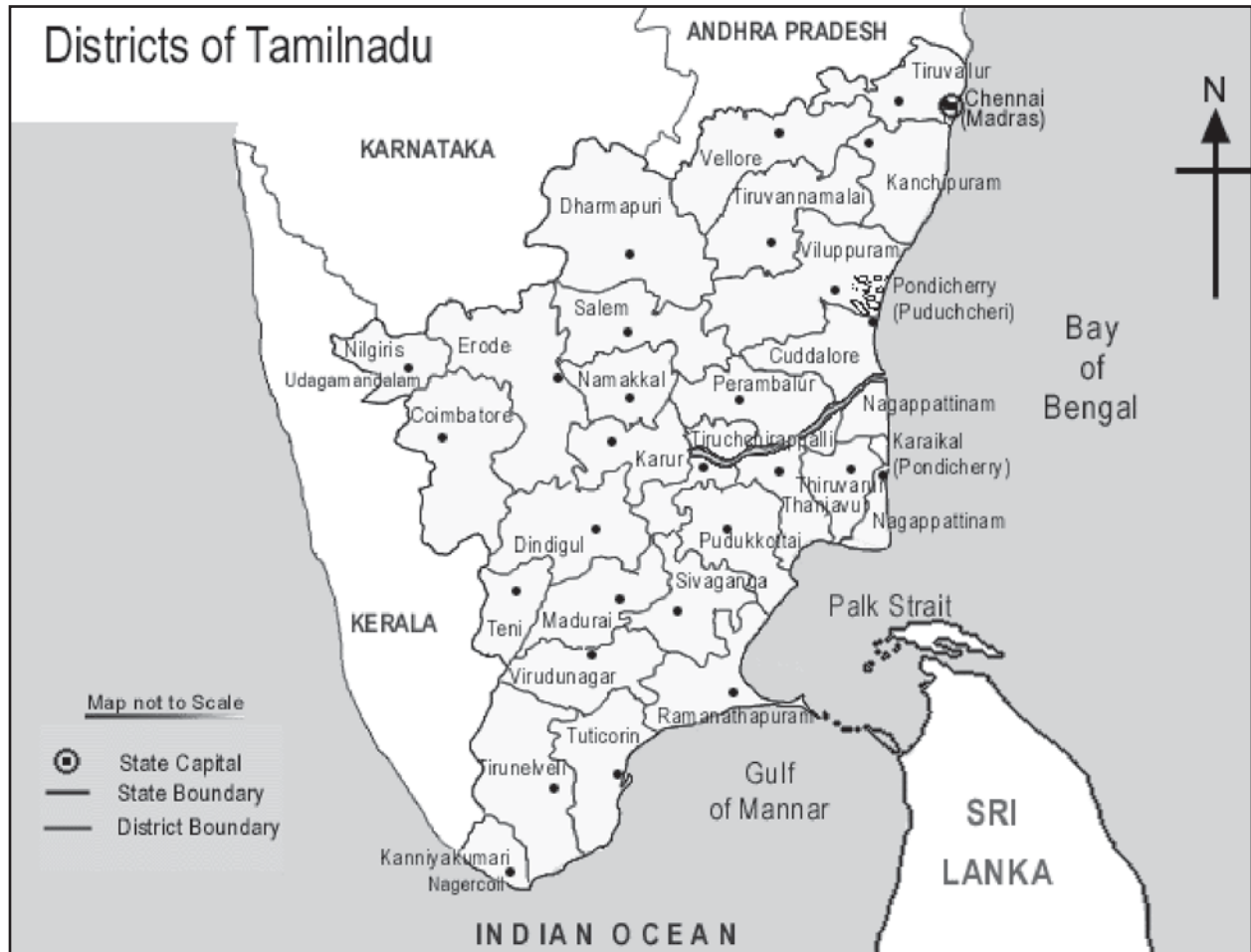
More than 90 percent of the deaths and property damage occurred in coastal fishing villages that were located within 100 to 200 meters of the sea. The tsunami destroyed more than 200,000 homes in the country (190,000 of these in Tamil Nadu) and 83,788 boats (52,638 of these in Tamil Nadu), wiping out these coastal fisher communities. Inland areas were severely affected by the salt water; thousands of acres of agricultural land were damaged, most in Tamil Nadu.⁹ Throughout affected areas more than nine hundred camps housed the approximately 600,000 displaced by disaster, more than 300,000 of them in Tamil Nadu.¹⁰ The damage is estimated at Rs. 11,544.1 crore (US\$265 billion); losses in Tamil Nadu totaled an estimated Rs. 4,528.66 crore (US\$104 billion).¹¹

Methodology

From April 10 to May 20, 2005, researchers interviewed NGO representatives of sixteen organizations working directly in relief and reconstruction as well as fifty-eight tsunami survivors. The

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aid organizations operated in the three worst-hit districts of Tamil Nadu—Cuddalore, Nagapattinam, and Kanyakumari—which together accounted for about 7,500 of the more than 8,000 deaths in the state. The individual survivors researchers interviewed came from nine villages in three districts and each had lost family members and property. These villages accounted for more than 2,129 deaths. We also interviewed survivors in Kancheepuram district about the general human rights situation. In addition to the interviews, researchers analyzed human rights reports and studies of the impact of the tsunami in Tamil Nadu. Secondary sources, including newspaper articles, were also consulted.



Background

Poverty and high income inequalities prevailing in Indian society, illiteracy, a rigid caste system, religious tensions, and concentration of political power within elite groups have all prevented many poor people from obtaining equal opportunities and social benefits. These problems are also present in Tamil Nadu. A brief sketch of the social and political dynamics of the primary groups comprising the affected coastal communities is necessary to understand the human rights impacts of the relief and reconstruction efforts.

According to official data in the state from 2000, the size of the fisher population is 679,711, or less than 1 percent of the state’s population. Fishers (in Tamil *Meenavars*) collectively are referred to as a “backward caste” by the government and contain several distinct sub-castes. More than half are

Hindu and slightly more than one-third are Christian. Followers of different faiths live for the most part in separate villages. Hindu fishers are concentrated primarily in Nagapattinam, Ramanathapuram, Chennai, and Cuddalore districts, while Christian fishermen largely live in the two neighboring districts of Kanyakumari and Thoothukudi at the southernmost tip of Tamil Nadu. The Muslim fisher community accounts for most of the remaining. Fishers are classified as belonging to either “backward castes” or “most backward castes” depending on their position on the socioeconomic ladder in Tamil Nadu; almost four-fifths of them belong to the “most backward castes.” Literacy rates among this group are lower than those of the general population of Tamil Nadu.

The fishers in Tamil Nadu in 2002-2003, the latest year for which data are available, produced about 15 percent of the state’s fish exports, which accounted for 36.5 percent of the value of all fishing products exported from India. Most adult males (87 percent in 2002-2003) are employed exclusively in fishing activities, while women are primarily responsible for marketing of fresh and dried fish. Data on the annual per capita earnings of fishers in the year 2000 reveal that 20 percent live in poverty, earning less than Rs. 3,000, while 60 percent are middle-income earners.

Fisher communities are tightly knit social units in which families depend on and support each other.¹² The occupational hazards of sea fishing result in a higher percentage of widows in coastal communities than in inland areas. It is common in fishing villages for neighbors and extended families to support children and widows who have lost fathers and husbands to the sea.¹³ In general, NGO informants observed that fisher communities tend to be self-reliant and do not expect the state to protect or provide for them.

Fishers and their families sustained the bulk of the death and damage from the tsunami as most lived and worked within 200 meters of the sea. However, the tsunami killed others who worked on the beaches and damaged the livelihoods of inland communities that depended on the fishing industry. Subordinate to all castes, the Dalits (untouchables) serve as manual labor on the beach to the fishers; they move, sort, and clean the catch, and pack the fish for fish traders. In addition, Dalits and Irulas (a tribal group) are inland fishers, catching prawns, oysters, clams, and lagoon crabs. This source of food and livelihood was severely compromised by the tsunami flooding as well.

In addition to castes subordinate to the fishers, NGO representatives reported another distinct group—bonded laborers (fishermen coolies) who work for other fishermen in their own villages despite their being of the same caste. These laborers, mostly in the southern parts of Tamil Nadu, receive advances from boat owners in exchange for an agreement to work on the employers’ boats. Crews are comprised of four to five bonded laborers, who usually receive one-third of the harvest at the end of the day to divide amongst themselves or receive a daily wage of Rs. 80-100 (US\$1.83-2.29) per day. From their earnings, the bonded laborers must repay their initial advance. Given the meager earnings, the laborers in practice find it difficult if not impossible to satisfy their debt and leave their employer.

Fishers, Irulas, Dalits, and bonded fishers comprise the lower social strata in Indian society and as such are vulnerable to exploitation. Their needs for assistance are the focus of this study.

II. FINDINGS

The Indian government mounted an impressive relief effort. The national government determined that it had sufficient resources to address the disaster and refused offers of international assistance. India also provided assistance to its affected neighbors, Sri Lanka, the Maldives, and Indonesia. Nevertheless, given the unprecedented scale of the disaster, it is not surprising that problems surfaced in the relief and reconstruction efforts. In particular, we found there are concerns with (1) inequity and discrimination

in aid distribution; (2) provision of basic needs in camps for the internally displaced (IDPs); (3) re-establishment of livelihoods; (4) relief efforts for women and children; and (5) the role of NGOs. These issues deserve attention to ensure that the response to the tsunami supports survivors to rebuild their lives and reduce vulnerabilities to exploitation and human rights violations.

Inequity and Discrimination in Aid Distribution

Immediately after the tsunami, the Tamil Nadu state government, local authorities, and NGOs established temporary shelters for those displaced by the destruction. The central government established a one-time relief package for all the tsunami-affected families that consisted of a cash grant of Rs. 4,000 (US\$91.95), along with rice, fuel, and basic household supplies (cooking stoves, vessels for fetching water, etc.). For the next three months (February, March, and April), the government issued an individual relief package of Rs. 1,000 (approximately US\$23) and material relief worth Rs. 526 (US\$12) to tsunami-affected families. The government established a special relief fund from which the next of kin for each deceased family member received a one-time payment of Rs. 100,000 (approximately US\$2,300). In addition, the prime minister's relief fund also paid Rs. 100,000 each to next of kin for a family member tsunami casualty.¹⁴ In addition to death payments, the government announced it would compensate owners of machine boats between Rs. 300,000 and Rs. 500,000 depending on the extent of damage. Compensation for fiberglass boats and catamarans was less (Rs. 25,000, 32,000, or 75,000, depending on the extent of damage).

Although the national government designed the initial relief package for all residents in tsunami-affected villages, the rehabilitation measures largely concentrated on those who actually had lost their family members and sustained property damage. However, the assistance provided by the state government in Tamil Nadu is not limited to families who have lost loved ones. The state government is constructing new houses for tsunami survivors in general. It also has provided a few boats to the elderly fishermen in the tsunami-affected villages and has extended its social security health and educational schemes to cover all the elderly people and student survivors.

Our data indicate that authorities have succeeded in informing most survivors about the assistance available to them. A multimedia outreach effort involved announcements on television and radio and in newspapers. In addition, government agencies displayed notices and wall posters to reach those without access to other forms of communication. And civil society groups spread the word to their members.

Widespread awareness of benefits has not meant that survivors have received the benefits to which they were entitled. Human rights advocates working in Tamil Nadu to whom we spoke pointed out that the government assistance to those who have lost immediate family members excludes most Dalits and Irulas who, because they live in inland areas, did not suffer casualties but whose livelihoods have been destroyed. Unable to fish in backwaters that have been contaminated or to cultivate crops because the salt water has damaged the soil, these subordinated castes are in dire need of assistance—but most are ineligible for central government relief and are also not receiving state government assistance. Thus, these marginalized groups must rely on NGOs for assistance. Some aid groups have targeted Dalit and Irula communities. One such group, the Society for Rural Education and Development, reported that relief needs in these communities have barely begun to be met. Cleanup efforts have concentrated on fisher villages; water, roads, health centers, and communication links to Dalit settlements are damaged or destroyed and repairs have not been undertaken. Aid to these communities has been slow to arrive, if it has arrived at all.

Among those families eligible for government relief, NGO representatives and individual survivors complain about corruption and political favoritism that results in inequity in aid distribution. Government

officials rely on lists of tsunami victims prepared by local fishermen's associations or local leaders to distribute aid. Since fishers do not permit Dalits to join their associations, those Dalits who made their living as fishers, and who otherwise would be eligible for government aid, are excluded from benefits.¹⁵ Further, NGO informants report that leaders of fishermen's associations, in collusion with politicians, have included non-affected individuals in the lists and have allowed beneficiaries to collect more than their share of benefits. The result is that the lists used by government officials to distribute assistance are underinclusive of those affected by the tsunami or eligible for relief, include those who suffered no losses from the disaster, and in some cases allow individuals to collect on multiple claims for the same loss.

In addition to concerns with alleged malfeasance by local authorities in drawing up lists of those eligible for benefits, researchers also found problems in disbursement of funds. Further investigation is needed to determine the cause for the following instances of maldistribution of benefits.

- In Keechankuppam village in Nagapattinam district, which suffered the highest number of deaths of any village in the state, one hundred families had not received compensation from the central government for deceased family members (the state government had distributed its payments). Bonded fisherman in the village had not received any compensation from the government or NGOs; aid providers had distributed only a small amount of food and relief items.
- Fishers in Kaller village in Nagapattinam district had not yet received full compensation for their boats. The three hundred families in this village have united around aid distribution and have refused to accept relief supplies for less than all families.
- Residents report in Devanampattinam, a village in Cuddalore district that received substantial media attention because a Hindi movie celebrity "adopted" the area, the government has paid out less than half of the compensation to fishers for damage to their boats. Fishers are refusing to cash their checks until the government provides full payment.

Survivors also disclosed complaints about aid distributed by private groups. In Kottilpadu, a fisher village in Kanyakumari district, residents reported that aid distributed by the local church and NGOs has been inadequate. Some accused the local priest of locking up relief supplies and refusing to distribute them to the villagers. In Sonangkuppam village in Cuddalore district, some fishermen accused NGOs operating in the area of embezzling funds they had collected for tsunami survivors. Other NGO representatives remark that the sudden influx of private relief groups into the state, many with no history of relief work, has led to concerns about the professional capacity of some groups to provide competent assistance.

Our field researchers focused on the impact of the tsunami on fisher communities and did not visit inland hamlets of Dalit or Irula communities. Human rights organizations operating in Tamil Nadu have reported discrimination against these subordinated groups.¹⁶ For instance, in the immediate aftermath of the tsunami, authorities brought in Dalits from other areas to remove dead bodies. However, they were not provided with gloves, masks, or other basic measures to prevent infection or the spread of disease. Discrimination against the lowest castes existed in fisher communities prior to the tsunami and continues in its wake. Thus we include here some information regarding the discrimination against these groups in relief and reconstruction efforts to complement our data on inequity in aid to fisher communities.

An NGO engaged in relief efforts reported that at some camps housing tsunami survivors, fisher folk insulted or harassed Irulas and Dalits or prevented them from receiving supplies. Many camps are organized by caste and at some, residents have turned away Dalits or Irulas seeking assistance. For example, at a camp in Muttukaddu, Ekanthammal, fisher folk beat up an Irula for requesting milk.

Many Dalits do not seek help for fear of discrimination or retaliation and seek shelter with relatives in neighboring villages rather than at camps for tsunami-affected people.

The preliminary results of a survey conducted by the NGO People's Watch—Tamil Nadu in nine coastal villages in four tsunami-affected districts in early February documented a pattern of caste-based discrimination in tsunami relief.¹⁷ The survey found that 7,796 individuals had been discriminatorily denied or excluded from government relief to which they were eligible. The most common reason reported for the denial was caste discrimination, followed by occupation, and religion.¹⁸ People's Watch estimates that within each district the percentage of all those excluded from aid constitute from 1 to 8 percent of the total number of tsunami-affected families.¹⁹ Three of the nine districts in the People's Watch survey were the same districts in which researchers for this study interviewed survivors: Cuddalore, Nagapattinam, and Kanyakumari. The People's Watch data indicated that 690 families in Cuddalore reported they had not received assistance due to discrimination or exclusion.²⁰ Sixteen percent of the villages surveyed in Nagapattinam district reported discrimination or exclusion.²¹ People's Watch researchers found that in the district of Thoothukudi, public officials who themselves were Dalit were afraid to register Dalit tsunami survivors if their superiors belonged to another caste. At the same time, non-Dalit officials refused to register Dalits for benefits.²² These figures raise serious concerns about the scope of discrimination in general and exclusion against Dalits in particular in Tamil Nadu that require further investigation.

There was widespread agreement among fishermen surveyed that the rich received better attention and treatment than the poor. Many complained that within their communities, wealthy fishermen who own expensive, sophisticated fishing boats receive more public and private assistance than bonded laborers who could not secure any benefits despite the fact that they had also lost all their assets. One poor fisher commented: "The tsunami did not discriminate against people in its devastation and fury but the rich and powerful have discriminated against us in securing aid." This remark may be even more apt with regard to Dalits and those occupying the lower social status than with regard to fishers in coastal communities.

Housing and Access to Basic Services

The state government of Tamil Nadu and NGOs rushed to provide temporary shelter and serve the basic needs of the hundreds of thousands displaced by the tsunami in Tamil Nadu. The government has constructed more than 11,000 temporary shelters and NGOs more than 14,000 in the tsunami-affected districts of the state. Aid organizations distributed food and household supplies and provided medical care to tsunami survivors. Impassable roads complicated relief efforts and the complete devastation of infrastructure required bringing in clean water and all relief supplies. These efforts, while impressive, at times led to inadvertent neglect of some important needs of survivors. For example, the military moved into the area to collect the thousands of corpses along the coast. Officials rushed to bury the dead so quickly that many survivors that we interviewed complained bitterly that they had not been informed of the disposal of corpses in mass graves, depriving them of the opportunity to engage in burial rituals. Our research also found substantial deficiencies in the provision of goods and services to those displaced by the tsunami as measured by the standards of the Sphere Project and the UN Guiding Principles on Internal Displacement.²³

NGOs constructed more shelters than the government, and survivors surveyed felt that the housing built by NGOs was generally of better quality than that constructed by government agencies. Nevertheless, residents in both kinds of camps complained about the quality of the temporary shelters. In some of the camps, there are no attached toilet and bathing facilities for the people living in these shelters. For example, in Akkaraipettai village in the Nagapattinam district, the temporary housing constructed by NGOs and the government is inadequate. The shelters, built with tin, asbestos, and cardboard roofs, had

sunk two feet into the ground. The clearance inside was reduced to six feet, making them stifling hot in summer. Many units leaked in the rains of March and April.

Moreover, our survey found problems with the quality of food provided to survivors. The rice that the state government supplied to tsunami survivors from its surplus stores turned out to be unfit for human consumption. In addition, many fisherwomen who spoke to researchers complained about the poor quality and lack of variety in food. In some camps, residents were provided meals that are not a part of their usual diet, which increased their sense of displacement and lack of control over their lives.

Another serious problem for tsunami survivors highlighted by our participants was the lack of safe, clean water. At some camps, the authorities had arranged for hand pumps. However, due to the infiltration of salt water into the surface and underground aquifers, these measures are unlikely to solve the problem. A few NGOs in the initial stages of tsunami relief trucked in potable water. However, by the time of our study some of these organizations had withdrawn from the area, leaving camps without access to clean water.²⁴ The lack of adequate housing and clean water at the camp in Akkaraipettai contributed to health problems among residents. Children in particular were suffering from sores in the mouth, jaundice, fever, and chicken pox.

Security appears to be good within fisher communities. Researchers found few reports of violence. However, some survivors reported a few human rights violations in their villages.

- Several fishers in Kanyakumari district mentioned an incident in which members of fishermen's associations were roughed up after they sought to obtain benefits from both the government and NGOs.
- In Keechankuppam village, Nagapattinam district, researchers learned that in the immediate aftermath of the tsunami, local residents had removed the gold ornaments from the bodies of the dead and that police reportedly did not intervene.
- Residents of the village of Melmanakudi in Kanyakumari district caught a policeman who tried to take away the gold ornaments from the tsunami-damaged hut of a fisherman and turned him over to higher police officials. The policeman was subsequently dismissed from service.
- In Kanyakumari district, a Roman Catholic fisherwoman was punished for converting to the Pentecostal faith both by the priest of the local Roman Catholic Church and by the villagers who ostracized her so that ultimately she left the village.

NGO informants and survivors expressed concern and frustration at the slow pace of reconstruction. In April, the government had made no progress in construction of permanent homes for tsunami-affected residents. The government had planned to complete these before the start of the northeast monsoon season in September-October. Rebuilding is complicated by coastal zoning regulations issued by the state government of Tamil Nadu. According to regulations issued in March 2005,²⁵ residents who lived within 200 meters of the sea will receive a free, newly constructed house worth Rs. 150,000 (US\$3,400) located more than 200 meters inland. Those who wish to rebuild on existing sites will not receive any state support. Residents who lived between 200-500 meters from the sea are given the choice of moving to a new location, farther back from the sea, or reconstructing homes at existing sites. Owners of partially damaged homes beyond 200 meters will receive a grant payment based on the extent of the damage.

However, villagers and officials have yet to identify, at least in the majority of the tsunami-affected villages, sites for the construction of new permanent houses for the fisher folk. There is widespread opposition among fishermen to relocation from their original homes. They will not be able to fish if they

move away from the sea, but they fear for their safety if they remain on the beach. We found that most of the tsunami-affected fishermen want houses in their native villages as well as in inland areas, possibly near towns where there are facilities for education and health, so that their families would be protected from another tsunami.²⁶ In the village of Akkaraipettai, Nagapattinam district, residents were united in their determination to remain in their homes, stating their fear that if they agreed to move, the government would sell their land to developers to build resorts along the coast. They believe that if they move inland, they will not be able to continue to earn a living from the sea.

A survey conducted by a coalition of NGOs in early 2005 in sixty-one villages throughout eight tsunami-affected districts in Tamil Nadu found similar results to our research. That survey found that 95 percent of families interviewed did not want to move from their existing property.²⁷ And 98 percent believed that their livelihoods would suffer should they relocate. Although 62 percent of those surveyed stated they felt that relocation would not create religious or caste-based conflict, respondents based their views on the assumption that new settlements would maintain the previous segregation by caste and religious belief. Ominously, this suggests that coastal residents believe that integration may lead to social conflict.

Restoration of Livelihoods

According to tsunami survivors, NGOs are taking a leading role in helping fishers re-establish their livelihoods. According to some survivors, NGOs have been more responsive to and engaged with fisher communities than government agencies. NGO representatives extensively discussed the needs of community members with fishermen's groups and delivered services with the cooperation and support of the beneficiaries of aid. This is in sharp contrast to the top-down approach employed by government agencies. For example, there are few allegations of maldistribution of benefits by NGOs (in sharp contrast to government relief). NGOs operating in the area tend to be more transparent and accessible to the beneficiaries by working and living alongside villagers and discussing the details of relief and rehabilitation packages with the stakeholders themselves.

After housing, new fishing craft and nets are the top priorities of fishers. Many of them also want long-term loans from the government at subsidized rates of interest so that they can invest in permanent assets that are urgently needed to revive their fishing capacity. Fishers also want fishing harbors reconstructed with better fish landing facilities. At the time of our study, government and NGO rehabilitation efforts focused on individual needs—primarily boats—at the expense of improving the fishing capacity and infrastructure—frozen storage for fish catches, marketing yards, transport facilities for fish trade, and other community assets. For example, the government provides compensation for damaged or destroyed boats, while some NGOs focus on providing new fiberglass boats costing Rs. 150,000 to 180,000 to groups of four or five fishermen. However, fewer NGOs provide fishermen with the nets essential to catch the different varieties of fish. Nets, without which fishers cannot resume their productive activity, cost between Rs. 5,000 and 100,000. Another shortcoming of recovery efforts is the lack of planning to encourage fishers to acquire comprehensive insurance coverage. Few fishers insure their property and health, and offering incentives to purchase comprehensive insurance would cushion them from any future disasters.

The focus on quickly replacing fiberglass boats has led to a drop in quality of the new craft. Manufacturers stated that simultaneous bulk orders from numerous NGOs for fiberglass boats created a shortage of raw materials and resulted in the supply of low-quality new fishing vessels. Researchers learned that many fiberglass boats distributed by NGOs were found not to be seaworthy and in fact, a few of the fishermen already had begun to sell these watercraft at about three-fourths of their original price, dividing the money among themselves.

Fishers face difficulties in obtaining loans to re-establish their fishing assets. Some banks and the Fisheries Department of the government of Tamil Nadu have promised low-interest loans. The central government has announced a loan package for fishers, but at the time of the study this program had not been implemented in the areas visited.²⁸ Some fishermen were still borrowing from private moneylenders at higher interest rates by pledging jewels or other valuables. Researchers learned that two fisherwomen in Kanyakumari committed suicide recently; they became overwhelmed after borrowing money at usurious interest rates to re-establish their trade. Some women's microfinance groups told researchers that nationalized commercial banks had promised to provide them capital, but they had not yet received any such financial assistance. However, one or two NGOs have provided loans to these groups in one or two villages. This assistance in turn angered fishermen whose own associations did not offer similar loans. The sluggish pace of reconstruction has led to great frustration among fishers. In two villages surveyed—Melmankudi, Kanyakumari district, and Akkaraaipettai, Nagapattinam district—fishers have refused to resume commercial fishing until they receive full compensation and new boats, nets, and homes from the government or NGOs. The basis for their demands is unclear but their anger at the government's response to the disaster suggests that the failure of authorities to meet survivors' expectations to distribute aid equitably and quickly is damaging community confidence in authorities that will complicate reconstruction efforts.

The publicly financed programs to rebuild infrastructure and revive the coastal economy focus on fishing communities in the state without much attention to the many other forms of economic activity that have been wiped out by the disaster.²⁹ In addition to the subordinated castes working in the area, inland farmers, small-business owners, and poultry and dairy operators also have seen their livelihoods destroyed. Although the government has approved compensation for these groups too, the benefits have yet to reach them. For example, 19,000 hectares of agricultural land were damaged in Tamil Nadu. Reclaiming this land is a laborious process. Farmers use hoes to scrape off the salt and sand crust, up to three feet deep, and cart it away in wheelbarrows. One NGO estimates that it takes nine men about three days to clear one acre, often under a brutal sun, with temperatures reaching 110 degrees Fahrenheit. Experts estimate that it will take from twelve months to two years to clear the croplands, and that fields may not reach their former levels of productivity for several seasons.³⁰

Women

Women as a group are vulnerable to human rights violations and exploitation. The response to the tsunami in Tamil Nadu affected women differently from men, and in some instances exacerbated rather than addressed their vulnerabilities. We found that in general, public and private relief agencies failed to meet women's essential needs for food, shelter, health, and security. In addition, women face exclusion from relief and reconstruction assistance.

Most of the fisherwomen surveyed complained about the lack of privacy in camps sheltering those displaced by the tsunami. Many do not have separate toilets or bathing facilities for women; in others, women must walk as far as one kilometer to reach the bathroom at night. Unable to work, men are idle in camps. Women and NGO representatives are concerned about the increase in alcohol consumption among men. Groups frequently drink and play cards near the bathrooms, harassing or intimidating women. Fortunately, to date there have been few reported incidents of violence against women tsunami survivors, although it is potentially an area of concern. One tsunami survivor, a young woman tourist from northern India, was gang-raped while sleeping in a temporary tent shelter. She reported the incident, but has been unable to identify her attackers.

Women also complained that in many shelters they were provided with the same cooked food three times a day. In fact, in the initial stages, some of the north Indian NGOs provided them with only rotis and chappathis, which they rejected as their staple diet is rice and fish curry.

An NGO representative active in relief efforts in Tamil Nadu reported that, in the weeks after the tsunami, women's health needs were unaddressed. Doctors in temporary shelters provided basic medical assistance but our informant saw no gynecologists at the sites.³¹ Further, she reported several cases of lactating mothers whose infant children had drowned in the tsunami but who had not received any medical treatment in camps housing the tsunami homeless to ease their physical pain from being unable to nurse. They needed to seek medical care in hospitals. At one hospital, a woman was told that she could receive an injection to stop lactation, but that the treatment would prevent her from lactating ever again, affecting any future pregnancy. In addition, sanitary supplies are inadequate or nonexistent in many camps, causing women discomfort and embarrassment.

Aid distribution to women is often ineffective or promotes dependency. An NGO representative reported women complaining that compensation and aid are delivered directly to the male head of household, bypassing women and increasing their reliance on husbands for access to relief. Also, officials turned away some widows seeking compensation for their lost husbands because they could not produce the body.³² Further, most fisherwomen have been unable to receive government compensation for their losses since women are not members of the fishermen's associations that draw up the lists of their members eligible for relief. However, the tightly knit fishing villages have support mechanisms in place to care for widows and orphans, due to the occupational hazards of the industry. This mitigates the vulnerability for widows to be exploited; however, given the unprecedented destruction of communities, this is an area that requires monitoring.

Researchers did not find any confirmed cases of human trafficking of tsunami survivors.

Children

Many of the children and the aged were wounded or injured when they ran for safety when the waves struck. Children comprised 24 percent of the deaths reported in our study. In some villages, the number of children killed by the tsunami was higher than the number of men killed. At the same time, over 350 children in Tamil Nadu were orphaned by the tsunami.³³ In response, the state government of Tamil Nadu has created a fund for tsunami orphans and has created bank accounts in the name of each orphan. Each account has Rs. 500,000 (US\$11,700), which the beneficiary may cash only upon reaching eighteen years of age. In addition, the government has built orphanages for tsunami orphans in affected districts. However, some of the children have refused to enter these orphanages because they do not wish to move away from their own villages. In these cases, relatives and neighbors have taken them in. A few NGOs have begun to support orphans living with relatives with monthly cash payments; other groups plan to open orphanages for the children in their villages so that they may remain in the community. Some NGOs are operating programs to house and educate orphans and have accepted tsunami orphans into their programs.

We found few incidents of abuse against children reported, likely due to the social cohesion and support structures in fishing villages. Similarly, we found no reports of attempted trafficking of children in the villages surveyed. The government ban on adoptions and the absorption of orphaned children by the communities likely helped to reduce this vulnerability. However, in the village of Kottipadu, Kanyakumari district, two boys disappeared from the temporary shelter and had not been found as of the time of our visit.

It is difficult to assess the level of trauma among children; some appeared to the investigators to be exhibiting signs of trauma such as being extremely fearful and withdrawn. Only a few NGOs have provided psychological counseling to survivors, and more culturally appropriate programs are needed to serve all those traumatized—men, women, and children. While on the whole children show great

resilience to traumatic events, their health and welfare should be monitored in the months and years ahead to ensure that they receive the support and assistance they need to develop full and productive lives.

The Role of NGOs

NGOs began operating in tsunami-affected areas of Tamil Nadu immediately after the disaster, while in many areas, the state government did not start relief activities for two or three weeks. The state government and police did not initiate collection of corpses until the military arrived a few days after the tsunami hit. Thus, NGOs led relief efforts on the ground throughout much of the relief stage. However, some problems surfaced with the delivery of NGO services. Lack of coordination and financial transparency caused tensions within fishing communities. Moreover, there were some allegations of religious-based groups using aid coercively to gain converts; this should be investigated.

While some of the NGOs are headquartered in the state of Tamil Nadu, most came from neighboring states. Their size varies from 50 to 500 staff members and almost all are funded by foreign donors. In the aftermath of the tsunami most NGOs worked to provide the basic needs of fishing communities, distributing rice and other provisional items—cash, clothes, and household articles—and constructing temporary shelters. Some groups replaced or repaired fishermen’s fiberglass boats. A few other NGOs helped repair houses, for example helping villagers to replace thatched huts in their own original dwelling places. More recently, a few NGOs started constructing permanent houses for fishermen at a cost of Rs. 150,000 to 175,000 per unit.

A few NGOs are offering employment opportunities to the adult fishermen as well as training adolescent girls to become seamstresses and offering computer training for both boys and girls in tsunami-affected fishing villages. Whether these are sustainable activities or vocations that are desirable to the survivors is unclear, nor is it apparent that the communities have been involved in selecting these options. In addition, some NGOs are caring for orphans and widows. A very few have reactivated the women’s micro-finance groups by offering them low-cost financing. Currently, most NGOs are concentrating on the provision of permanent rehabilitation measures such as the construction of new housing and the distribution of fiberglass boats. Similar to the government rehabilitation strategy, in general, NGOs focus relief and reconstruction efforts at the level of the individual rather than adopting a community focus. Few groups are working to rebuild community-based assets and infrastructural facilities for the fishermen’s groups—such as fish storage facilities and resource centers to train fishers about early warning signs of cyclones.

Coordination of NGO and government activities is problematic. Although there are NGO information and coordination centers in the district headquarters, we found there is little coordination of or among NGOs in the field. The fishing villages were inundated with NGOs—more than 450 registered to operate in Nagapattinam district (the worst affected)—leading to saturation of relief in fishing villages but a lack of assistance to inland and other affected communities. Some of the NGO representatives argued that the lack of cooperation even between well established NGOs resulted in the duplication of benefits provided to fisher survivors. For instance, multiple NGOs distributed food and relief supplies to the same camps housing fishers. This resulted in a surplus of such items; survivors in turn sold the items in the market or gave them to relatives and friends.

The high concentration of NGOs, many from outside the state, in fisher communities has raised suspicion among fishers that some of these groups are misusing the funds they raised in the name of tsunami survivors. And in Sonankupam village in Cuddalore district, after fiberglass boats arrived with cracks, some of the educated fishermen confronted an NGO with their concerns that the group was paying inflated prices for boats through commissions paid to the middlemen. In addition, some fishermen

complained that some of the field representatives of NGOs are failing to provide accurate lists of expenditures in the distribution of benefits to tsunami survivors.

In general, religious-based NGOs are working in villages in which the majority of fishers share the same religious practice. Christian-supported NGOs are largely working with fishers in Kanyakumari district, where most of the population are Christians; Hindu-affiliated NGOs are largely working in Nagapattinam and Cuddalore districts because most of the fishermen in these districts are Hindu. However, during our surveys in selected villages in Kanyakumari, Nagapattinam, and Cuddalore districts, we found tensions between religious-sponsored NGOs. The groups accused each other of proselytizing in fisher communities under the guise of distributing benefits to tsunami survivors. Pondicherry Diocese was working in Devanampattinam village of Cuddalore district, where a Hindu NGO accused it of performing conversions. NGO informants reported that in Nagapattinam district, supporters of a Hindu religious organization implementing relief and rehabilitation programs for fishers have threatened the church-based NGOs there. Similarly, we found concerns over perceived intentions of Hindu religious-based NGOs to operate in Christian-dominated Kanyakumari district. Perhaps it is too early to assess the impact of such antagonism, but attention should be paid to ensure that the right of tsunami survivors to practice freedom of religion is not compromised.

III. CONCLUSIONS AND RECOMMENDATIONS

This study indicates that for all the funds pledged and aid distributed and despite massive efforts on the part of central and state governments, serious gaps exist in meeting the short- and long-term needs of tsunami survivors in Tamil Nadu. While some fisher communities are saturated with assistance, other communities have been neglected. Maldistribution of aid has strong overtones of corruption and this has led the unaffected and/or well connected in some communities to siphon off compensation funds. Exclusion and discrimination by fisher organizations and government officials have prevented many, including women fishers and widows, Dalits, and Irulas, from receiving the government relief and compensation packages to which they are entitled. Rights to health, security, nondiscrimination, freedom of religion, and freedom of movement have all been threatened. Finally, there has been little active involvement of tsunami survivors in articulating needs and in prioritizing relief and rehabilitation efforts. To address these problem areas we recommend the following.

1. In addition to the assistance offered to the coastal fisher communities, government and NGO relief efforts should also be directed toward inland areas in which Dalits, Irulas, and poor farmers struggle to rebuild their lives. Non-fishers living in tsunami-impacted areas have seen their livelihoods destroyed but government rehabilitation programs have yet to target these populations.
2. Discrimination and exclusion in the distribution of disaster benefits violates the human rights of survivors and undermines the ability of vulnerable groups to re-establish their livelihoods. A comprehensive survey of the affected area should be conducted to measure the scope of the problem as well as to identify patterns. Allegations and incidents of discrimination in disaster benefits need to be investigated by an impartial body which would recommend any needed compensation measures. A new accountability mechanism may be necessary to administer and redress violations.
3. In the coming months, reconstruction planning and implementation should include active participation by community members so that the problems with inadequate temporary housing are not repeated. Despite the multilateral lending agencies and other international support, the state and central governments have been moving too slowly in framing appropriate policies.

Policy makers and NGOs must—with meaningful participation by the community—address the needs of the *entire* coastal population affected by the tsunami. The coastal economy and social structure is an integrated system of many communities. The tsunami rendered groups that were already marginalized and vulnerable even more so. Efforts to rebuild must attend to the needs of women, children, and subordinated castes, and ensure that reconstruction restores full enjoyment of their human rights and that the commitment of the United Nations to “build back better” translates from words into deeds.

¹ Laurel E. Fletcher, clinical professor of law and director of the Globalization Project, Human Rights Center, University of California, Berkeley, and Harvey M. Weinstein, clinical professor at UC Berkeley’s School of Public Health and senior research fellow at the Human Rights Center, University of California, Berkeley, contributed to the research and writing of this report.

² United States Geological Survey, “Magnitude 9.0—Sumatra-Andaman Islands Earthquake off the West Coast of Northern Sumatra,” Available at <http://earthquake.usgs.gov/eqinthenews/2004/usslav/>.

³ R. K. Pal, “India: Tsunami Situation Report,” World Health Organization, Jan. 23, 2005, p.1, available at http://w3.whosea.org/LinkFiles/India_IND23JAN05SITREP.pdf.

⁴ Government of India, *Tsunami—A Report to the Nation, June 3, 2005*, sec. I, available at http://www.undp.org.in/dmweb/Tsunami/Tsunami_report%20to%20the%20nation.pdf

⁵ Indian Ocean: Earthquake and Tsunamis Fact Sheet #39 (FY 2005), US Agency for International Development, July 7, 2005. Available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/EGUA-6E3Q4Z?OpenDocument>.

⁶ Government of India, *Tsunami—A Report to the Nation*, sec. I.

⁷ Government of India, *Tsunami—A Report to the Nation*, sec I. The total number of orphans is reported to be 480.

⁸ Gal Frenkel and Dana Dasch, *Widows and Orphans Report*, People’s Watch—Tamil Nadu, March 21, 2005, “Summary and Discussion.” Other affected areas in the country include Andhra Pradesh (107 deaths), Andaman and Nicobar islands (3,513 deaths), Pondicherry (599 deaths), and Kerala (177 deaths). Government of India, *Tsunami—A Report to the Nation*, sec. I.

⁹ Government of India, *Tsunami—A Report to the Nation*, sec. V

¹⁰ Government of India, *Tsunami—A Report to the Nation*, sec. II.

¹¹ Government of India, *Tsunami—A Report to the Nation*, sec. I.

¹² Frenkel and Dasch, *Widows and Orphans Report*, “Summary and Discussion.”

¹³ Frenkel and Dasch, *Widows and Orphans Report*, “Summary and Discussion.”

¹⁴ Government of India, *Tsunami—A Report to the Nation*, sec. III.

¹⁵ Fatima N. Burnad (Society for Rural Education and Development), interview by Laurel E. Fletcher and Harvey M. Weinstein, June 4, 2005, Bangkok.

¹⁶ *Ibid.* See also Human Rights Watch, *After the Deluge: India’s Reconstruction Following the 2004 Tsunami*, May 2005 Vol. 17, No. 3.

¹⁷ People’s Watch—Tamil Nadu, *Study on Discrimination & Exclusion in State Relief* (draft report) available through info@pwt.n.org.

¹⁸ People’s Watch—Tamil Nadu, *Study on Discrimination & Exclusion in State Relief*, p.13. Our researchers learned of one case of religious/political discrimination. A fisherwomen was denied tsunami aid provided by a well known NGO after she opposed the Catholic Church to contest village *panchayat* (local counsel) elections on behalf of the Communist Party of India.

¹⁹ People’s Watch, *Study on Discrimination & Exclusion*, p. 12.

²⁰ People's Watch, *Study on Discrimination & Exclusion*, p. 7.

²¹ People's Watch, *Study on Discrimination & Exclusion*, p. 8.

²² People's Watch, *Study on Discrimination & Exclusion*, p. 9.

²³ See the Background section of this report for discussion of these two documents.

²⁴ Not only does the lack of clean water contravene the Sphere standards, the National Human Rights Commission of India recently has included the right to good-quality food and water as part of its human rights mandate. Thus, there is increasing recognition of access to clean water as a human right with concomitant obligations on the state.

²⁵ Government of Tamil Nadu, Order, G.O. Ms. No. 172, March 30, 2005.

²⁶ Some fishers have requested the government and NGOs to provide two new houses for each family. To date, this request has not been acted upon. Government and NGOs have been noncommittal about such requests.

²⁷ Tsunami Relief & Rehabilitation Coordination, Tamil Nadu & Pondicherry, Report of the Study on "People's Perceptions on G.O. 172," July 1-8, 2005.

²⁸ Government of India, *Tsunami—A Report to the Nation*, sec. III.

²⁹ The total reconstruction package, valued at US\$27 billion, is allocated as follows: 34 percent to housing and internal infrastructure (water, sewage, roads, etc.); 15 percent to livelihoods; 38 percent to ports, jetties, roads and bridges, communication, and tourism; and 9 percent to coastal protection. Government of India, *Tsunami—A Report to the Nation*, sec. IV (note: the report does not attribute the remaining 4 percent).

³⁰ Roger O. Burks, Jr., "Bright Shades of Green," Mercy Corps, July 22, 2005, available at http://www.mercycorps.org/index.php?sections_id=4&subsections_id=113&items_types_id=7&items_id=771.

³¹ Burnad, interview.

³² Burnad, interview.

³³ Louis Prakash, "Displacement and Rehabilitation in Post-Tsunami South Asia," *Social Action*, v.55 (July-Sept. 2005).

INDONESIA

David Cohen,* Aviva Nababan,* Agung Widjaya[†]

I. INTRODUCTION

On Sunday morning, December 26, 2004, around 8:00 a.m. local time, Juanda and Embong had just finished a report they worked all night to complete in the People's Crisis Center (PCC) Office in Banda Aceh, and decided to walk to a nearby market to buy some breakfast. Suddenly the earth shook mightily, preventing the two men from walking. Embong could only watch as a two-story building slowly collapsed and shattered.

Everyone ran out from the buildings, their panic intensified by seeing waves as high as 20 meters approaching the road. The population ran without direction. Juanda and Embong tried to run to the Merduati area, where Embong's house was, remembering that Embong's father was sick and resting at home. But in seconds they were swallowed up by the waves. They survived by hanging on to an electricity pole, and could only watch as children, women and senior citizens were swept away by the waters and drowned.

It was as if doomsday had come. People were screaming prayers, and chaos was everywhere. Two hours later, the two men climbed down, swam, and later walked to the site of the PCC office, which was gone. They immediately went to Merduati village, and stopped when they came across a body. As Embong hugged the corpse of his father, whom he had been unable to rescue, they cried and called upon Allah's name.

Unfortunately, this heart-wrenching story is similar to those of thousands of tsunami victims in Aceh. A series of earthquakes, reaching up to 8.9 on the Richter scale, shook the province and some parts of North Sumatra. The quake was followed by tsunami waves hitting the coastal areas, taking hundreds of thousands of lives and destroying everything in their path.² People lost their homes. Some of them, when they could salvage enough remaining assets, fled to the neighboring province. As an Acehnese victim who took refuge in Medan (North Sumatra) said: "After the tsunami I lost everything; my home and its contents all gone. We went to Medan bringing nothing with us. We just saw it as important to get out of Aceh, and the closest destination was Medan." In the areas where our team conducted interviews, many people lost their relatives, and many of them are still missing.

The government's data show that the natural disaster has taken 124,946 lives, while 94,994 people are still missing. At least 400,376 people have been displaced.³ The official figure of material loss due to the tsunami is US\$445 million, 60 percent of which is property loss and 34 percent of which is lost income. The December 2004 tsunami was certainly one of the worst natural disasters the world has ever seen, and while the most extensive damage occurred in Aceh, it also impacted the neighboring province as well as other countries bordering the Indian Ocean.

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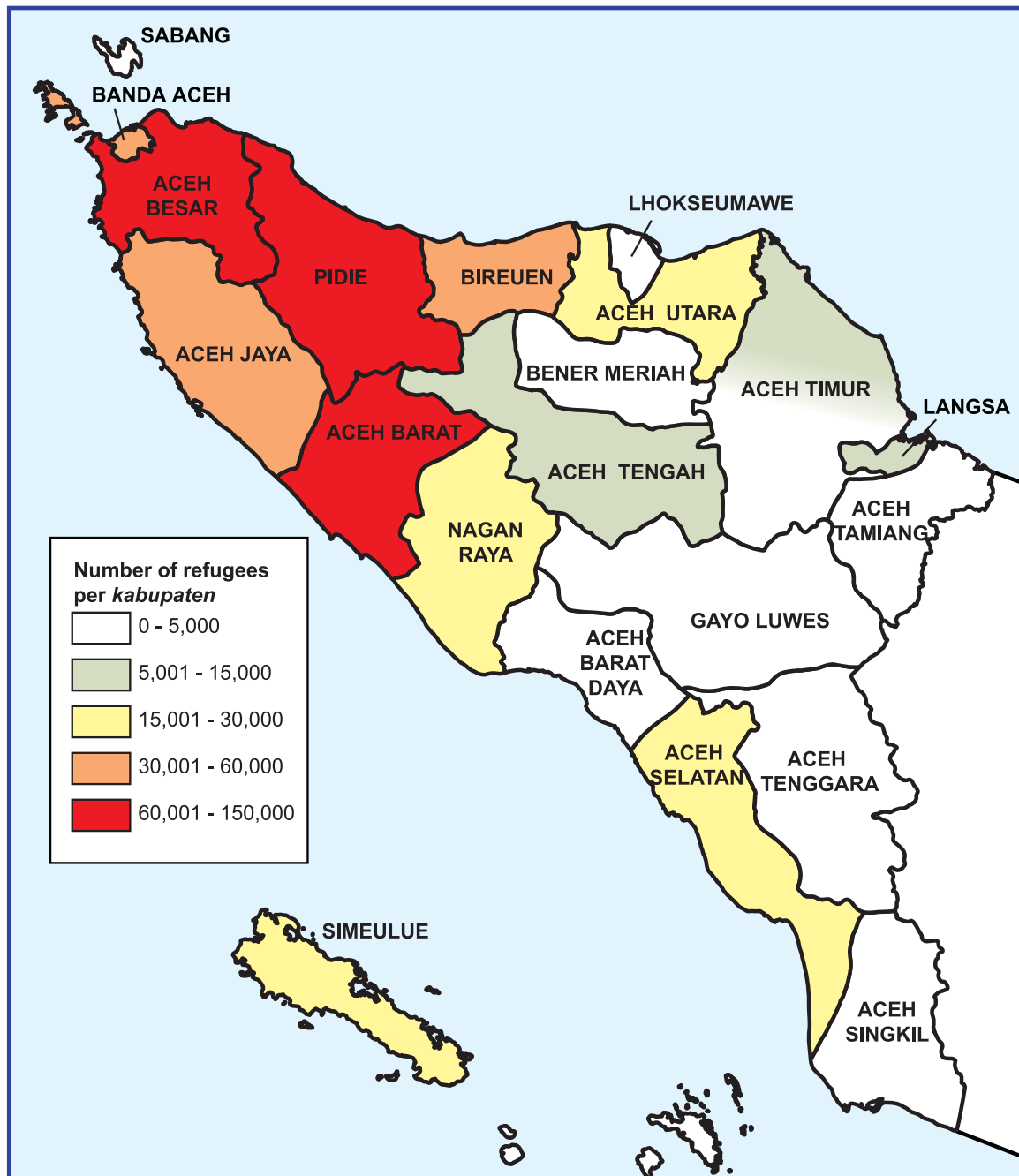
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Methodology

This report presents the result of observations, interviews, and document analysis in those parts of Indonesia affected by the tsunami, with the focus on Aceh. Researchers conducted the study between March and May 2005, with one-week visits to Aceh and North Sumatra. The researchers made an additional visit to Aceh in July 2005 to update the findings and to visit areas that were not accessible during the first visit. We visited Banda Aceh, Aceh Besar, Sigli, Bireuen, Pidie, Lhokseumawe, North Aceh, Medan, and Deli Serdang (the last two areas are in North Sumatra) from March 24–April 3, 2005, and Meulaboh and Lamno from July 6–12, 2005. We also met and interviewed key informants from organizations and agencies headquartered in Jakarta that are working in post-disaster relief in Aceh.

Map of IDP Distribution (March 2005)



This report has three objectives:

1. to identify the most vulnerable groups in post-tsunami Aceh;
2. to identify those areas of human rights violations in need of specific attention during the immediate period after the tsunami (the rescue and relief phase) as well as during the reconstruction and rehabilitation phase; and
3. to formulate recommendations for the next phase in the recovery of Aceh.

II. PRE-EXISTING HUMAN RIGHTS VIOLATIONS

Before the tsunami, the majority of the people of Aceh—traditionally known as Nganroe Aceh Darussalam—lived in a deplorable situation. The natural disaster presented yet another challenge to those who had struggled for years. For decades the people endured the effects of an ongoing guerrilla war between GAM (the Free Aceh Movement) and Indonesia’s military. The guerrilla war, arising mainly from the inequitable management of resources in the province by the central government, has lasted for decades. The Jakarta government benefited most from the vast profits produced by the province’s natural resources. The central government responded to this struggle with large-scale military operations. Throughout the years of war, the population has suffered human rights violations committed by both sides.⁴ Acehnese civilians have been deprived of their ability to earn their living and to exist peacefully during the conflict. The conflict has stifled the economy of the region, and poverty has been the common condition for most of the residents of this fertile land rich with natural resources.

The military presence, and the ongoing human rights abuses, also created an atmosphere of fear and psychological trauma. Prior to the tsunami, prevailing human rights violations included killings, arbitrary detention, torture, and civilian kidnapping.⁵ Patterns of vulnerability in the population in Aceh before the tsunami show that males of reproductive age were the most vulnerable to abuse by the two conflicting parties, followed by women and children.⁶

However, in many ways women have borne the greatest impact of the conflict. They have been the backbone of the community: fending for their families, confronting the military during raids while the men ran to the forest for fear of abduction or other violence, earning their families’ livelihoods after male heads of households died or disappeared, and pleading with the authorities when men were detained. Despite the restrictions placed on women by cultural and religious practices, they have asserted themselves.

Legacy of Struggle

A legend says that the name of Aceh is derived from the names of nations that were part of the region’s ancestry: Arabia, China, Europe, and Hindustan (India). Fiercely independent, the Acehnese were one of the peoples in the former Dutch East Indies who maintained a continuous and fierce fight against the colonizers. The government of the newly established state of Indonesia initially acknowledged their services in the struggle for independence, which included purchasing the first airplane for the Republic. Yet as Aceh became a part of Indonesia, those services seem to be forgotten. In 1953 the central government decided to merge Aceh with North Sumatra to create a larger province, inciting anger and a struggle for independence that lasted until 1959, when the central government declared Aceh again to be one province, with a special honorary status. However, economic injustices by the central government continued; and triggered by the massive exploitation of gas resources in North Aceh, the Free Aceh Movement or GAM emerged in 1976. Since then the guerrilla war against the government of Indonesia has not ceased.

The civil governance collapsed as Aceh was declared a military operation area (DOM) in 1989. After the fall of Soeharto in 1998, this status was lifted and attempts were made to hold peace negotiations between the government of Indonesia and GAM, facilitated by the Henry Dunant Centre. These talks collapsed in 2003. This was followed by President Megawati’s decision to declare Aceh a military emergency area (DM), which was similar in arrangement to a DOM. This decision was revised in 2004, when Aceh was declared a civil emergency area (DS), enabling some powers to return to the hands of civilian government officials. However, the human rights situation did not improve by much.

In Aceh, displacement of people is not a new phenomenon. In another violation of human rights, illegal levies imposed by both parties have forced many people to abandon their land. These earlier Aceh IDPs (internally displaced persons), sometimes referred to as DOM IDPs (or IDPs from the era when Aceh had “military operation area” status), have scattered to various parts of Sumatra, surviving with minimal aid, and sometimes in conflict with local communities. Up to now, the pre-tsunami IDPs have not received the support they are entitled to from the government. This lack of support for those displaced by human rights violations in the province led Siswanto from GEMA, a Medan-based organization that has worked with pre-tsunami Aceh IDPs, to express skepticism about the government’s commitment and ability to effectively address the tsunami IDPs. According to this NGO representative, the government has not treated IDPs well, even without the challenges brought by a natural disaster that has wiped out a major part of civil government and where a large part of the population suffered complete destruction of property.

The civilian government in Aceh collapsed before Soeharto’s regime designated Aceh a military operation area (DOM) in 1989.⁷ Governance of Aceh has been in the hands of a regional military commander for decades. Although in 1998 the DOM status was lifted, a state of military emergency was declared in the province was reinstated in 2003 under the name military area (DM) after the peace negotiations mediated by the Henry Dunant Centre failed. In 2004, Aceh’s status was downgraded to a civil emergency (DS) and governance of the province was formally returned to civilians—although the governor may only make decisions with the consultation of the regional military commander and the regional chief of police. However, as many of our respondents noted, the real situation in the DS did not change significantly from the DM and DOM.⁸

It was in this framework that the tsunami occurred. Thus, new or potential human rights violations in Aceh are in part the extension or aggravation of the pre-existing situation in the province. Similarly, the recovery phase can only be understood and evaluated with reference to the historical context.

III. ACEH AFTER THE TSUNAMI—NEW HUMAN RIGHTS VIOLATIONS

The tsunami brought about a major change in access to Aceh. The government, which for decades had insisted on its sovereignty and security as a reason to “quarantine” Aceh, suddenly was forced to open the doors of the province to “outsiders” from other areas of Indonesia as well as to foreign parties. Civil society, NGOs, INGOs, international bodies, and foreign militaries, all responded to the needs of the Aceh people for assistance. The government of Indonesia admitted its inability to manage the unprecedented scale of destruction and loss of life and allowed these actors to enter—although with increasing caution over time. These actors, together with national and local governments as well as the TNI/POLRI, Indonesia’s military and police forces,⁹ collaborated in the rescue and relief of the survivors and the reconstruction of the province.

Our study found that the post-tsunami IDPs could be categorized into four groups according to where they were taking refuge/residing: (1) IDPs living in barracks constructed by the government, usually with military assistance, (2) IDPs in temporary camps, (3) IDPs who were taking shelter with family members, and (4) a growing number of IDPs who were returning to their homes and starting to rebuild with or without the assistance of the authorities or civil society.

The study found that the following groups remain the most vulnerable in Aceh.

Women

Women’s rights have been significantly restricted. Throughout the conflict they have borne the brunt of losing male family members to the conflict; further, they have been the direct objects of violence. Women

were also the majority of casualties during the tsunami. Several explanations for their high mortality have been offered: Women were not trained to swim or climb trees; they tended to be at home at the time; and they were likely to be more protective of their parents and children. Thus many did not run to seek safety when the water came. Unfortunately, since the tsunami, their special needs (in facilities, health, education, and protection) have largely been ignored. In the aftermath of the tsunami they are as vulnerable to abuses as ever, if not even more so.

Children

After the tsunami, many parties were concerned about the possibility of trafficking in women and children, especially as so many children lost parents. These fears did not come to pass. However, aside from protection against trafficking, these survivor children have many other unmet needs, such as trauma healing, recovery of childhood, and access to nutrition, health care, and free education.

Adult males

The conflict has made young and middle-aged men vulnerable, since they can be victimized as GAM suspects or government sympathizers. Either way, these men are prone to discrimination, abuses, and killings. This pattern has been noticeably lessened in the aftermath of the tsunami, especially in coastal areas; but the concern is that the pattern will resume.

Our study found that in the rescue and relief phase as well as in the reconstruction phase, vulnerability to human rights violations exists due to: (1) lack of coordination between actors, (2) the role of the military in relief and reconstruction, (3) rampant corruption and abuse, and (4) lack of community participation. These areas of concern not only lead to the failure to maximize assistance for the victims but also escalate their vulnerability to violations of their rights.

Rescue and Relief Phase

The series of earthquakes, followed by the tsunami waves, left the people of Aceh in a state of panic. They still experience a sense of bewilderment and of feeling lost. As Lalilisma Sofyati, head of the Women's Empowerment Bureau, an NGO working in Aceh, recounted her experience, she remembered that after the water level had gone down and they had managed to climb down from the roof of the house that became their refuge, she and her daughter "wandered listlessly for hours, while bodies were scattered around us."

The local government was immediately crippled. For example, of the 25 staff of the Women's Empowerment Bureau, only 6 survived. Saiful Mahdi from the Aceh Institute reported that the local government had been "in coma" and had lost the trust of the people during the conflict. The tsunami affected many members of the local government, rendering them incapable of offering assistance. This further weakened the role of local government. While local government faltered, the solidarity response from the Indonesian people and from the international community rose to an unprecedented degree. Other nations issued pledges of aid, while foreign militaries immediately offered their available resources to help reach areas isolated by the destruction. Indonesians from around the nation went to Aceh to volunteer their help. As one of the IDPs interviewed in Banda Aceh said: "Imagine, in the epicenter of the earthquake, in Meulaboh, after three days the government's reaction was only monitoring with helicopters ... the elements of society responded more rapidly ... even those from outside Aceh ... why couldn't the government do it? Perhaps our government tends to think about themselves."

Lack of Coordination and of Swift and Appropriate Response

In the first days after the tsunami, a lack of coordination was almost expected. With local government incapacitated, the central government needed time to organize a response to a disaster of such magnitude. Further, the sudden influx of humanitarian aid actors into Aceh inevitably led to chaos in the delivery of assistance. Aid and volunteers piled up in Polonia Airport, Medan, due to the inaccessibility of many areas in Aceh. There was great redundancy in some types of aid (such as food and clothing) provided by well-meaning actors. On the other hand, other types of urgently needed aid such as medication or baby food were not available.

Some of the lapses in the rescue operation seemed unjustifiable to the survivors, especially when expected measures such as immediate care for sick and injured victims were not readily forthcoming. This led to a high death rate among tsunami victims. “There was no (rapid) rescue operation, and that in itself is a human rights violation. In the first and second day, there were survivors who were buried under the debris. But (they died) because there was no rescue operation,” said Bambang Antariksa, the Aceh regional executive. The same fate also befell many survivors who were washed away and floated in the middle of the sea. This was, for Antariksa, an intolerable slight on the part of the government. He said that the government only concentrated on emergency aid for those who were safe, but failed to mount rescue operations for those who survived but were in dire need of immediate assistance during the first two days.

As Antariksa noted: “But if talking about responsiveness on emergency aid—say in terms of logistics, I would have to say yes. . . . But . . . we see the warehouses in Banda Aceh, many logistics were gathered there yet the distribution is problematic, because there is overwhelming accumulation in one place and the lack of it in another.” This, as well as responses from other observers, illustrated the severe lack of coordination in the distribution of aid, as well as the high price paid by victims for this shortcoming.

There were also problems in terms of the appropriateness of the aid given. This may be understandable in the immediate post-tsunami period, but it continued for months afterward. For example, when victims were in dire need of medication, what came were instant noodles. There was no attention on the government’s part to women’s specific needs, such as feminine pads and underwear. This caused many women to survive in a very uncomfortable and unhygienic state.¹⁰ During the team’s first visit to Aceh, disgruntled refugees complained about the government’s frequently conducted needs assessments and elaborate promises that contrasted with the small amount of concrete assistance. There have since been significant improvements in the availability of aid, but it took three months to achieve.

One of the many reasons for the prolonged confusion during the rescue and relief phase was the status of Aceh. Due to the anomalous status of the regional government, it was unclear who was responsible for making key decisions. The Satkorlak¹¹ (the local unit of the national disaster-management agency BAPENAS¹²), the surviving regional government, and the civil emergency military commander all had claims to governing Aceh. This could have been avoided if the president had taken over the Satkorlak. According to the Law on Dangerous Conditions,¹³ he could, in his capacity as high commander of the armed forces, have overridden the authority of Aceh’s military commander.

Mixed Response to the Military’s Involvement

During the initial days following the tsunami, the military played a significant role. As arguably the only surviving governmental structure, they took the lead in evacuating the victims, clearing the debris, opening roads, and building public restrooms and IDP barracks despite the loss of personnel they had suffered.

However, our informants had a mixed response to the military's involvement in the rescue phase. For example, while the work of the TNI, especially the Navy, was critical in removal of corpses, their role was criticized. Respondents questioned why the Navy was so slow in responding, despite their clear chain of command. As Mahdi pointed out, although

in the middle of February, those who are still working for evacuation were TNI, FPI, and MMI, ... one should note that at the time the volunteers who had been working in the immediate period were already exhausted, thus the parties aforementioned seem to be the ones who work when nobody else wants to. Whereas at the initial stages, it really was not [the military] who managed the corpses' evacuation and took care of the sick and injured.

Unfortunately, the TNI's active role in the evacuation and rescue phase was marred by abuses. For example, the priority for evacuation during the three days after the tsunami seemed to be for members of the police force (POLRI) and military (TNI) and their families. "I saw in Bandara Iskandar Muda airport that those who were prioritized to be evacuated by plane were the families of TNI/POLRI. If [you're] not their families, don't even hope that you would get [this kind of] rescue," said a People's Crisis Center volunteer who has been involved since the initial phase of the evacuation process in the Banda Aceh and Aceh Besar area.

This type of discrimination was not the only problem. There were other, more blatant forms of abuse during the early period. Many survivors recounted during the interviews that the military was employing—even forcing—survivors to remove the bodies from the streets instead of doing the painful task themselves. As Ita, a survivor from Lamno District, described it: "The military were just standing there, guarding the people while instructing the people to clean the bodies and the debris from the streets." The employment of civilians to do the work was not a new trend. Ruslanyah, a survivor from Meulaboh area, pointed out: "This happens before tsunami, especially for the projects the military appropriated, like in the area of Tutut, West Aceh. The army was given the project to build a bridge by the regent. But then the people were the ones told to do the project without being paid, and the military received all the money." Pre-existing patterns of human right abuses clearly shaped the post-tsunami attitudes and responses of the military and security forces.

Looting by the military was also evident immediately after the tsunami. Ruslansyah recollected:

I swear I saw with my own eyes. I was looking for my girlfriend after the disaster struck, and the military was forbidding us from staying in the center of (Meulaboh). But they themselves, in their uniform, were breaking doors of stores ... One of them saw me and told me that before I go, to help myself to the jewellery on a woman's corpse nearby. I shook my head and ran.

Many Acehense women wear gold jewellery. In Banda Aceh and Aceh Besar, a lot of jewellery from the corpses was gathered by Indonesia's Red Cross, who later on surrendered two kilos of gold to the military area commander to build a *meunasah* or small mosque. However, this did not occur in other areas such as Lamno. As Ita explained while laughing bitterly: "Well, in Lamno the jewellery was appropriated by the dictum of finders-keepers, including the military and the people ... perhaps that's why the military guarding us were very interested when we said the corpse was female."

In relief distribution and management of IDPs, the military has always maintained a prominent role, especially in remote areas. Yet this involvement was also problematic. First, due to the history of prolonged conflict and human rights violations, some felt that their presence in the camps generated more fear and insecurity than feelings of safety. The Air Force, which helped to erect tents for IDPs in Blang

Bintang, actually spread fear among the female IDPs because of their reputation for abuse. Sub-regency officials and the military managed some aid distribution posts, which inhibited the community from gaining access, either because of fear or outright prohibition.

The practice of withholding aid, while also a form of corruption, should be seen as motivated by the military's attempt to reinforce its position in Aceh through intimidation. Initially, aid distribution was the tool they used to exert power, especially in the first three months. For example, in Pidie, in the village of Kembang Tandjoeng, withholding of aid was used to prevent access of GAM personnel. Pidie, identified by the military as a "black area" or GAM stronghold, was subjected to various human rights violations before the tsunami. After the catastrophe, the residents remained vulnerable to repression, especially in terms of aid distribution. As one IDP in the area explained:

We are not being beaten up as often now, yet there are still problems ... Some weeks ago the aid in a warehouse had to be thrown away because it had reached the expiry date without being distributed to people ... I was also called and threatened because we took the aid that was distributed by helicopter by Americans... There was also a problem when the Swedish installed clean water facilities in our village. The local military immediately called me and said the fact we allowed this to happen signified our village was pro-GAM, because we took aid from Sweden.

This anti-Scandinavian sentiment arose from the fact that post-tsunami negotiations between the government of Indonesia and GAM were taking place in Finland. In Lamno, the villagers were consistently prevented from receiving aid directly from foreign aid providers. As the village secretary of Gampong Baroe village explained: "Due to the ruined access of roads, in the early days, when there was a foreign helicopter delivering aid, the military immediately prevented anyone from taking it even by using violence, and even against children. They kicked the children who were trying to take the milk offered by the foreigners." Usually the aid was loaded onto military trucks and taken to the sub-regency office, where it would be distributed to the IDPs. Such incidents also illustrate the consequences of a failure to provide international monitoring of aid distribution.

Discrimination and Rampant Corruption

Corruption has been a problem from the beginning. In the rescue and relief phase, the most often heard examples of corruption were those acts perpetrated by the military or civil government. The military, which controlled distribution in many areas, frequently did not distribute the aid or took the best of it before distribution to the IDPs. "Sometimes," Lilies from Kalyanamitra told us, "when there's luxury aid, like perfume and so forth, or clothing, we can see that the military screens the best of it, then gives the rest to the IDPs." This was even more problematic in remote areas where the scale of destruction was massive, such as in the Long region, Aceh Besar, and the areas of Meulaboh, Calang, and Seledon where the military controlled aid distribution. In Meulaboh, for example, the *korem* (military regiment commander) decided which IDPs had access to aid and who did not.

Our key informants did not offer many positive responses when asked about the government's efforts. Aside from the lack of a rapid response, the omissions, the lack of coordination, and the lack of responsiveness, there also have been accusations of corruption by local government officials with respect to aid funds. In February 2005 in Pidie, 200 women demonstrated against corruption in aid distribution by local government. The protests were held at the sub-regency, regency, and governor's offices, but public officials gave no response. "Much of the aid has been corrupted by them, for example, in Pidie area, there was a head of regency who corrupted the fund for the IDPs. The fund was to buy kaffan sheets to wrap

the corpses, but the people did not receive it. But now that official is already fired,” stated Adi, one of the volunteers working in Pidie.

In the early months after the tsunami, the government promised to distribute a sum of money termed *jadup* (*jatah hidup* or basic living allowance) of Rp. 3,000 (US\$3) a day to all of the tsunami victims. During the period of our study, no money arrived. In Medan, the Acehese IDPs with whom we spoke said that they had never received the money. The same was true of the IDPs interviewed in Pidie. When we visited Lamno, the IDPs from Gampong Baroe village had only received the *jadup* in the last month—six months after the tsunami. The failure to deliver the *jadup* promptly is unacceptable, especially in the early months after the tsunami when the survivors had no way to earn a living.

Informants also reported discrimination in aid distribution by the government as well as ordinary citizens. In Medan, or in particular the Pantai Cermin area in Deli Serdang, aid from generous citizens was funneled only to the families of the four casualties in Kualama village. Other tsunami victims became jealous. Distribution of aid may reflect the dynamics of local politics, particularly where the first direct election of heads of regions is scheduled shortly. Many fishermen who remain without boats and equipment are asking NGO activists whether they need to die first in order to deserve aid.

Resettlement and Reconstruction

After the rescue and immediate relief stage ended, resettlement of the IDPs and reconstruction of Aceh have become the priorities. The focus now is on helping rebuild the lives of the people. However, the scale of destruction is immense. For example, travel remains a challenge. The very poor quality of the road from Banda Aceh to Meulaboh or Lamno requires a significant amount of time and a very tough vehicle. To reach other areas such as Calang from Meulaboh, a car must be transported by a makeshift ferry or by helicopter.

However, problems other than logistics are of greater concern. If they remain unresolved they could result in the failure of Aceh’s reconstruction. These problems reflect a continuation of the issues that Aceh faced prior to the tsunami, which were exacerbated in the immediate post-disaster period. The absence of public participation in planning and decision-making has minimized further the chances of success in this immense project. Increasing security problems in the province have only made matters worse.

Increasing Problems in Coordination and Continuing Unresponsiveness

Lack of coordination resulting in uneven distribution of aid characterized the immediate post-tsunami period. This problem has continued well into the reconstruction phase. There is a distinct lack of coordination between the central government, including the legislative branch, and the body responsible for reconstruction of Aceh. Furthermore, coordination among local government and other organizations and agencies working to rebuild Aceh is problematic.

BAPENAS (Badan Perencanaan dan Pembangunan Nasional, or the National Development Planning Agency) designed BRR (Badan Rehabilitasi dan Rekonstruksi, or Aceh and Nias Rehabilitation and Reconstruction Agency) as part of the master plan for Aceh reconstruction. BRR reports directly to the president, ostensibly at the ministerial level,¹⁴ with a four-year mandate and the possibility of extension. Kuntoroo Mangkusubroto is its chairman. Rehabilitation will involve repair and renovation of public infrastructure and facilities, economy, banking, finance, health, psychosocial-religious life, culture, education, and land and property rights. Reconstruction, on the other hand, covers urban planning, natural resources management, and the rebuilding of physical infrastructure.

Unfortunately, coordination with other national-level bodies is poor, although Mangkusubroto’s

vision and values are appropriate. For example, in response to the many criticisms of the existing blueprint, he issued a statement that the blueprint was only a guideline, and that the public would have input into its implementation. While the blueprint had been designed to be the “holy book” that would dictate Aceh reconstruction efforts, public criticism came quickly. Mangkusubroto’s statement was responsive to the voice of the people. Yet, many believe that the BRR is moving very slowly because his statement offended BAPENAS. In turn, this caused problems in securing funding. In addition, since the blueprint has been dismissed as a mere guideline, there are no clear priorities or criteria at present as to how to proceed with reconstruction.

Even before BRR existed, problems in reconstruction were prevalent. For example, when the tsunami hit, people sought shelter anywhere they could find it; later they moved into temporary camps. Two months afterward, the government adopted a policy of erecting temporary barracks that would serve as “in-between” settlements for the IDPs residing in camps, awaiting the reconstruction of houses and their resettlement. But the barracks were built in poor locations and lacked facilities like adequate toilets and showers that IDPs, particularly women, need.

The barracks’ distance from centers of economic and social activity, as well as their lack of adequate facilities, have isolated the IDPs. This problem is even more difficult for the fishers, as the barracks are generally located at a considerable distance from the sea. For example, the research team learned of a district head who forced the IDPs to move to Reuleuh. As the refugees explained:

The facilities are complete in Reuleuh, but we are fishermen, we have to live near the sea, we can’t live on the sides of a mountain. The cost of transport, *ojek*, to the sea and back (is too costly). We usually get ten thousand rupiahs from a day’s fishing, if we spend fifteen thousand for transport, it’s not workable.

Thus the population refused relocation but their refusal bore consequences. They lost their access to government-organized logistical aid.

Perhaps this policy was made hastily; but while the population reacted to the choice of barracks location, there were indications that subtle and not-so-subtle forms of pressure were employed to force the people to move into them. This occurred despite repeated assurances by the government that the IDPs were free to choose whether to return to their villages or to stay in the temporary settlements. One way to exert such pressure is by ensuring that those who stay in the government-allocated IDP camps have more access to aid than those who stay in private homes. While the IDPs who live in the barracks or camps provided by the government and TNI/POLRI have access to government and government-organized aid, those living outside the barracks are treated as if they were not IDPs. The excuse often employed is the concern that the aid would be misused by GAM. Thus discrimination in resettlement was based on the presumed political beliefs of the IDPs. For example, in one village in Lhoksemauwe, the population chose to leave their makeshift camps and return to their village; the IDPs explained that now they were dependent on aid distributed by NGOs instead of by the Satkorlak.

Another example of insensitivity in the reconstruction phase is the fact that the majority of the barracks for tsunami survivors were constructed in close proximity to a military or police facility such as a barracks or headquarters. Often, there is a security post at the entrance to the tsunami barracks. This restricts freedom of movement and full access to aid. Aside from the military presence being used as a means to control residents under the guise of maintaining security, it also plays a role in determining when a survivor can return home. Also the military sometimes use their role as managers of aid to prevent people from leaving the barracks at all. In Pidie, there was a community that initially lived in a camp and then decided to go back to the village. The sub-regency apparatus and the *koramil* (military region commander), however, told them that if they left, they would have no further access to aid.

The close proximity of military or police forces may prolong the trauma healing process. As Erlin from Volunteers for Humanity (TRK), who was working in Aceh during the early period after the tsunami, explained: “The children are traumatized by the tsunami, but actually they are more traumatized by the presence of military. I can see when they are around the military they show fear.”

The lack of sensitivity to the needs of the survivors is also evident in the design of the barracks. For example, the quarters in the barracks were built to accommodate six people in a space that measures 4 meters by 5 meters, without partitions. As Mahdi pointed out, when the IDPs moved into the barracks, the six-person-per-quarter quota had to be fulfilled without regard to maintaining family unity. This is a cultural problem because women traditionally cannot change their clothes in front of their children, especially when they are males, or even around other women who are not close relatives. Thus it became very inconvenient for women. Also, problems with toilet and washing facilities and poor sanitation in general have become chronic problems in the barracks and camps. There are an equal number of bathing facilities for men and women, despite the fact that women need a longer time to take a bath, and traditionally have to bathe the children as well.

The government also has not responded appropriately to the challenges of economic recovery. In northern areas, the IDPs in the camps stated that while they have enough aid in the form of food, they really need aid in the form of capital to regain their livelihood. The IDPs seem to share the desire to regain their means of production.

Increasing Security-Related Problems

The presence of the military has continued to be problematic despite the announcement of the lifting of the civil emergency in the province.¹⁵ In fact, since the announcement, there have been calls to increase the extent of the security apparatus.¹⁶ As of July 6, 2005, the head of public relations (*kapuspen*) of the Army to the Commission I of DPR, reported that the number of non-local troops in Aceh is more than 39,000. This number could be increased as a part of the TNI’s strategy against GAM, despite the peace negotiations between the government of Indonesia and GAM in Helsinki, Finland. Prior to the peace agreement reached in mid-August the TNI repeatedly stated that while they support peace negotiations, they will continue to search for and fight GAM wherever they are.¹⁷

Banda Aceh is considered one of the safest places in Aceh, but military or police posts are placed less than one kilometer apart, and residents regularly see soldiers bearing firearms on the streets or in coffee shops. As Tarmidzi jokingly said, “The TNI is like God now. In Islam we have this story about a person asking ‘Where can I see Allah?’ and the answer is ‘Wherever you turn, that’s where you see Allah’ ... well, now that’s also the case with the military here.” This situation, while considered normal in Aceh, raises the question of whether Aceh in fact remains in a state of military emergency.

Military control has not weakened as reconstruction progresses. Residents are arrested for petty matters, for example if they have an inappropriate identification card or fail to follow some procedure of which they only learn as they are arrested; or they are beaten if suspected of not offering enough assistance to the military. One example of this abuse occurred with the Gampong Baru survivors in Lamno, at a time when they were still living in the temporary camp provided by Ratna Sarumpaet Crisis Center. “There was a gunfight in Meulinteng and that was near Gampong Baru. At that time there were Gampong Baru people who were fishing there, and when they saw what happened they ran back to the camp. Not long after the military came and made all the men line up, asking who were fishing in Meulinteng. No one admitted to this, so everyone get kicked,” recounted Lilies. The village secretary, Abdullah, quipped, “Yes, that was one month ago. But by then we were already trained. Better stay silent and get one kick rather than say something then get taken to their headquarters.”

Control and scare tactics are employed not only against the survivors but also against organizations working in Aceh, though with more subtle methods. There are several examples of this. In June 2005, field workers of the International Labor Organization (ILO) in Meulaboh went to collect data on workers who have specific skills and who were seeking work in two villages at Woyla Regency. Before they began they reported to the head of the sub-regency. After two days, they were arrested by the military. When the ILO interceded, the field workers were released with the warning that every agency must report its activity to the military. Amirullah of ILO Meulaboh, when recounting this incident, said, “Well, now we know. We used to think that reporting to the (local government) is enough.” Carla Riupassa from Obor Berkat Indonesia (OBI) described the experience of her colleague who was assisting a local government health center (*puskesmas*) in Aceh. At the time, the colleague was treating someone who turned out to be the son of a GAM high commander. The military later visited the OBI secretariat. “They did not do anything, they just talked to us. So that was OK. And we are not afraid, really; we are doctors. We have taken the oath to help anyone. So may it be the military or GAM or whomever, we don’t care. If they are sick, we help them.”

There has been an escalation of armed contacts and some shootings of international aid workers. In the latter case, both GAM and the military are pointing fingers at each other. At the time of our July field visit, a Brimob (police) officer was shot in Geumpang, Pidie district. This resulted in a vehicle search of every car that passed that road. Newspapers have also regularly reported armed contacts. There have been two recent shootings of aid workers—a Hong Kong national, Eva Yeung, a volunteer with the International Federation of Red Cross and Red Crescent Societies, in the area of Lamno, Aceh Jaya, and a Dutch researcher, Marije Mellegers, in Kluet Utara, South Aceh¹⁸—by unknown assailants.

Achenese have the right to be free from violence. The military should protect them and the reconstruction effort from violence, yet the violence is often committed by military forces.

Corruption and Lack of Public Participation

Lack of community consultation remains inadequately addressed in the reconstruction phase. There is a deficit of public participation in policy making and of local involvement in the organizations and projects concerned with reconstruction.

Lack of public participation was highlighted by the process that produced the BAPENAS reconstruction blueprint. In the document, the zoning policy determined that some kilometers of the coastal areas should remain empty of housing, that new homes and activity centers could be built only in designated areas. “We see that blueprint concept as no more than a documentation of isolation and city planning by the government, by evicting the people from what is referred to as coastal settlements, which would be converted into green lines and rescue areas,” said Bambang Antariksa, the Aceh regional executive. The reconstruction scheme calls for eviction of those still living in coastal areas. Informants fear that this displacement, with the legal excuse of constructing open-space buffer areas and evacuation areas, would create conflicts such as those already occurring among the urban poor in Jakarta and other major Indonesian cities.

As previously noted, when BRR was established, this blueprint was deemed to be merely a consultative document subject to the will of the people. However, since the BRR lacks any presence so far, policies in regards to Aceh reconstruction seem to be undirected. While many parties try to ensure public participation, some of these exercises are problematic. Lack of direction in the policies has led to frequent changes in the standards imposed by the government, causing delays in crucial work in the field. As Nasrudin from the Catholic Relief Service (CRS) explained about the cause of delay in building permanent housing in Meulaboh, “Although the establishment of BAPEL (Badan Pelaksana, the

implementation body) is a positive development indeed, there is some confusion in the blueprint zoning policy, and also miscommunication with the government in assigning the rebuilding projects. There are no clear standards, and there are procurement problems due to the shifting standards, and also the replacement of public officials, such as the recent transfer of governance to the new regent and staff.”

The World Bank has tried to deal with these problems by introducing a new structure to involve the community in its reconstruction projects. Each *gampong* (village) chooses six *kerap* (representatives) to lead the reconstruction process. But as an anonymous source lamented, this scheme often creates conflict between pre-existing (non-elective) structures of authority and the newly imposed structures. This is further complicated by the fact that since the *kerap* are considered to be the representatives of the people, the World Bank consults only with them, even on major decisions that would benefit from a popular consultation process.

Public participation for women also has not improved. Although the Women’s Empowerment Bureau of Aceh Province has asked the women of each barracks to appoint a spokesperson, with whom the bureau holds regular meetings, the reports of these meetings have not borne visible impact in the planning process. As Lilies Sofyanati explained: “During the blueprint consultation process, I had to sneak into the meeting held for NGOs so I can hear what is happening and give my opinion. Originally all policies have to be confirmed with us, but in practice this has not happened. The blueprint does not even contain my proposed project for trauma healing for women and children.”

Aside from the dearth of community involvement in policy making, our study shows a lack of involvement of local individuals in key positions within the organizations and international agencies working in Aceh. Although there has been involvement in internationally sponsored “cash for work” programs, the work involves no specific skills and is seen as having a negative impact on local communities. As Amir from the organization Emergency and Peace for Aceh in North Aceh pointed out: “The cash for work program is a bit dangerous because it alters the concept of community work. Something that is usually done in the culture of helping each other in Aceh now becomes paid work. You would usually bury your dead or help each other building houses as an act of goodwill. Now we are being taught that we have to get material advancement for it.”

Some organizations such as ILO, in cooperation with the local Office of the Department of Labor or other local and international NGOs, have been working to empower the people again through training programs and the creation of small businesses, and to ensure sustainability of employment even after reconstruction. Whether these programs will be effective remains to be seen. Yet it is crucial for local people to hold key positions in organizations and agencies in order to ensure the suitability of the projects and also to assist the organizations themselves. ILO has been assembling a database of skilled local people and has been encouraging international and local actors to employ them: “Each consultative meeting with other agencies I would stand up and advertise the ability of the local people.” Yet as of our last interviews, in July 2005, only 268 of 5,600 people in the database have successfully gained employment.

International agencies frequently cite the lack of suitable skills and language facility in explaining why there are few local people in positions above the level of administration staff and field workers. Yet local knowledge is crucial in executing programs where, for example, governmental requirements may not be clear. This is illustrated by comparing Catholic Relief Services’ experience and that of KKSP¹⁹—the Education and Information Center for Child Rights—in a housing project in Meulaboh. While the CRS project has stalled, the KKSP project, albeit in much smaller scale, went through easily due to staff members’ ease in working in the local context. While CRS has been stalled by its inability to obtain a permit to build houses, KKSP was encouraging IDPs to purchase the land to be built upon. When the head of the regency said that no building should be constructed without coordination with BAPEL, the IDPs were

incensed. KKSP suggested that the refugees draw up a letter requesting that KKSP build houses, and copy the head of regency. KKSP then met with the members of the DPRD (regional parliament) and asked them for assistance in securing the permit. DPRD had a meeting that resulted in a request to the head of regency to issue the permit. Due to this pressure, the head of regency relented and gave permission. The whole process took two months. KKSP staff's local knowledge was critical in getting this project off the ground.

Corruption is still rampant, despite the fact that BAPEL has announced that corruption eradication is at the top of its agenda and that a "zero tolerance policy" is to be implemented in Aceh reconstruction. Corruption still exists in terms of illegal levies. For example, to obtain a national identity card, which should have been free, the residents of Gampong Baroe had to pay Rp. 12,000 per person. In Meulaboh, Roeslan had to pay a Rp. 150,000 bribe for the local authorities to measure his land and issue his new land certificate when the whole process should have been free.

Teten Masduki from Indonesian Corruption Watch suggested there has been over-budgeting: "There is inflation of funds allocated for security and order that is quite fantastic. The reality is, the amount of destruction is not too much, only dormitories and police and military posts. Yet, the allocated fund for this field is 2.195 trillion rupiahs."²⁰ As we have noted, problems in the distribution of *jadup* still persist at the time of the writing of this report. Indications of corruption are also seen in civil society. As Aminullah explained from ILO: "We had someone who came to our office from a village in West Aceh. He was complaining about an NGO who came and told them to build boats, and they would be paid for their labor. Yet when the boats were finished, the NGO just disappeared."

IV. CONCLUSIONS AND RECOMMENDATIONS

Our research revealed that human rights violations are rife in Aceh in the wake of the tsunami. These range from violations of economic and social rights to curtailment of freedom of speech and assembly. The danger of arbitrary displacement persists due to the continued threat by authorities of cutting aid distribution to force people to leave camps or stay in barracks. The government has failed to provide an adequate standard of living, whether in the form of accessibility to aid or of means to earn a livelihood in the barracks. In addition, property rights have been threatened because of the absence of a clear system for obtaining identity cards and land certificates. Some villages, for example in the Lamno area, actually disappeared and have now become a part of the sea, and villagers have been unable to get clear information about compensation and resettlement. These problems are exacerbated by the lack of participation by local people in decision-making, including involvement in key decision-making positions in organizations working in Aceh.

1. Basic economic, social, civil and political rights must be monitored, especially since the government of Indonesia has signed a peace agreement with GAM. The success of this agreement needs to be ensured. Anti-GAM operations coexisted with the peace talks, leading to fears that the agreement might not be able to ensure full cooperation from the parties involved. Such a breakdown would lead to further conflict and human rights violations. The formal and informal involvement of the army and police in civil relief and reconstruction operations must be monitored to assure that the violations we have described do not continue and undermine the peace process.
2. Women's rights must be addressed, and they must be assured the right to participate in the planning of relief and reconstruction efforts. With more participation in decision-making, we expect that ignorance of the needs of women, especially in relation to local culture, may be remedied. Aceh's legal system is based on Shariah or Islamic law, which, many parties have pointed out, substantially restricts the freedom and rights of women. If reconstruction

in Aceh is going to lead to a better life for women in the province, then the women of Aceh should have a better guarantee of their rights and freedoms. Without that, even when the peace agreement is implemented, women will remain vulnerable in Aceh.

3. Children's rights in the reconstruction effort are a major concern. Up to this point, there has been no assurance of free education for children; the cramped living situation in the barracks and the ongoing military presence inhibit children's recovery from trauma.
4. Attention must be paid to issues of compensation with institutionalized mechanisms of redress. There is no clear mechanism for compensation or conflict prevention in the current scheme of resettlement, which in itself can breed conflict. We strongly urge that an independent body be formed to receive complaints in regards to Aceh reconstruction. Another possibility is to equip an existing body, such as the Indonesian human rights group Komnas HAM, to receive and act upon complaints.
5. Finally, recurrence of conflict remains a possibility. There are fears of horizontal conflict between civilians. The zoning policy could be problematic: If the coastal people are to move to a safer zone, what will happen to the people who already live there? In recent months, pro-Indonesia groups or militias have been detected in Aceh. When the president announced the change in Aceh's status, some of these groups expressed their discontent, saying they still need a military presence. If these groups are unhappy with the Helsinki agreement, conflict may ensue. Prior to the recent agreement between the government of Indonesia and GAM, the chief commander of Iskandar Muda Military Region, Mayjen Supiadin AS, had proposed to erect "military guided and monitored villages" in the reconstruction of Aceh. The same policy was implemented in East Timor. While the peace agreement appears to preclude such a tactic, much care must be taken to avoid any reactivation of historical memories of this prolonged civil war and the attendant repression.

In conclusion, we refer to a comment made by one of our informants about the current situation in Aceh: "They are talking about reconstruction of Aceh—yet how can it be when Aceh is already destroyed even before the tsunami? We have to aim to construct Aceh—not to *reconstruct* it to be what it was in the pre-tsunami condition. We should aim to make the people (of Aceh) to be again free, secure, and prosperous."

¹ The authors would like to extend immense gratitude to the individuals who have provided support for this research, especially but certainly not limited to Mr. Tarmidzi of Aceh People's Forum, Mr. Syaiful Mahdi of Aceh Institute, Lembaga Bantuan Hukum (Legal Aid Agency), Pusat Studi Hukum dan Kebijakan Indonesia (Center for Indonesia's Legal and Policy Studies), DEMOS: the Centre for Democracy and Human Rights Studies, and the Institute for Research and Advocacy (ELSAM).

² Master plan on Rehabilitation and Reconstruction of Ngaranro Aceh Darussalam and Nias North Sumatra, BAPENAS, 2005, available at <http://acehreconstruction.bappenas.go.id/>. The areas considered worst hit are: Nias Islands (North Sumatra province), Banda Aceh, Aceh Jaya (Calang and Teunom), and Meulaboh (West Aceh).

³ Ibid.

⁴ See, for example, Human Rights Watch, *Aceh Under Martial Law: Inside the Secret War*, available at <http://hrw.org/reports/2003/indonesia1203/> (February 14, 2003).

⁵ The head of the Campaign Division of the Human Rights NGO Coalition of Aceh, Kurdinar, said during an interview in March 2005 that in 2004 there were 779 reported human right violation cases, consisting of 373 cases of killings (or 47.88%), 173 cases of arbitrary detention (22.21 %), 161 cases of torture (20.67%), and 72 cases of kidnappings of civilians (9.24%). The perpetrators were from both sides of the conflict although the majority of the cases were committed by the military and police.

⁶ Ibid. Of the 779 cases, 397 cases (or 50.96%) were against people identified as GAM members, while from TNI/POLRI there were 70 cases (8.99%). The remaining 312 cases (40.06%) were against civilians. Of the 312 civilian victims, 44 were women and 27 children.

⁷ DOM (military operation area)—*daerah operasi militer*; DM (military area)—*daerah militer*; DS (civil emergency status)—*darurat sipil*.

⁸ Aside from the continuing military raids and curfew, during DS, the people were required to have a “red and white” identity card, a special identity card for Acehese people, without which someone could be detained indefinitely.

⁹ Indonesia’s military force is called TNI or Tentara Nasional Indonesia; its police force is called POLRI or Polisi Republik Indonesia.

¹⁰ Many reports have been written about the heart-wrenching situation in which Acehese women and children must live. One of the most current and comprehensive is the April 2005 edition of *Journal Perempuan*, which is dedicated to the situation of women in Aceh.

¹¹ Satkorlak is the Implementation Coordination Unit for Disaster Management—the regional branch of the National Coordination Body for Disaster and IDP Management (BAKORNAS), which was stipulated by Presidential Decree No. 3 year 2001. Satkorlak is usually headed by a governor. But because of Aceh’s special status and the scale of the damage, the Satkorlak for Aceh was headed by the minister of people’s welfare, Alwi Sihab.

¹² BAPENAS itself was headed by the vice president.

¹³ UU Keadaan Bahaya, No. 23/PRP/1959, which is one of the legal bases for the Civil Emergency Area status of Aceh.

¹⁴ The BRR was established by Presidential Decree No.63/M, in lieu of Law (Perpu) No. 2 year 2005.

¹⁵ This was the result of a consultation between the government and DPR on May 17 2005, reflected in Presidential Decree No. 38 year 2005 on the Elimination of Civil Emergency Status of Aceh. Thus, as of May 18, 2005, civil rule was returned to Aceh.

¹⁶ The most recent example is the statement of the head of regional police (*kapolda*) of Aceh, Irjen Bachrumsyah Kasman, who believes that there should be 8,000 police personnel in Aceh, and also an additional BKO (military personnel whose command is transferred to another authority—in this case, the police). See Aceh Kita, “Polda Butuh 8000 Personnel untuk Amankan Aceh,” July 05, 2005, available at <http://72.14.207.104/search?q=cache:9UMTQiCLhO4J:www.acehkita.com/content.php%3Fop%3Dmodload%26name%3Dberita%26file%3Dview%26coid%3D4036%26lang%3D+%22Polda+Butuh%22&hl=en>.

¹⁷ Media Indonesia, “TNI Dukung Keputusan Politik Pemerintah soal Aceh,” July 6, 2005. For an update on the results of the peace accord between the GAM and the government, see endnote 1 in the General Findings section of this report.

¹⁸ See <http://news.indonesia.com/item.php?code=200507082> for reports of shooting.

¹⁹ Pusat Pendidikan Dan Informasi Untuk Hak Anak.

²⁰ Majalah Gatra, “ICW: Blueprint Aceh banyak di Mark-Up,” June 24, 2005.

MALDIVES

Harvey M. Weinstein*¹

I. INTRODUCTION

A Tropical Paradise with Problems

The Republic of the Maldives encompasses some 1,190 coral islands stretched out over almost 1,000 kilometers of the Indian Ocean southwest of India and Sri Lanka. Its population of 290,000 people inhabits 199 of the islands. Of these islands, 59 percent (or 118 islands) have fewer than 1,000 inhabitants; 39 percent (seventy-seven islands) have between 1,000 and 5,000 inhabitants; only 2 percent (four islands) support more than 5,000 people.² Its capital city, Male', which occupies primarily one island, is the most densely populated, with some 70,000 residents. There are twenty-six groups of islands or atolls divided into twenty administrative atolls. The Maldives' main industries are tourism and fisheries; estimates are that, at the time of the tsunami, nearly 40 percent of the workforce was employed in the tourism industry. Prior to the tsunami, this sector directly and indirectly helped produce 74 percent of the nation's gross domestic product (GDP). Today's Maldivians are a blend of many cultures—Indian, Indo-European, Sri Lankan, East African and Arab. Maldivians converted to Sunni Islam in the 12th century and Islam is the country's official religion. In fact, citizenship requires adherence to the Islamic faith.

The Maldives face two major problems in its growth and development. First, the population's wide dispersal over long distances makes infrastructure improvement and the provision of services quite difficult. Everything that is imported goes first to Male' and then must be distributed. Virtually all foodstuffs and manufactured goods are imported, which makes nationwide distribution of even basic items a challenge. Second, the Maldives is virtually the flattest country on earth with a maximum altitude of only 2.3 meters.³ Global warming and rising sea levels threaten the very existence of the country. There is concern that ultimately the islands may disappear under the waters of the Indian Ocean. Some islands may be spared but are vulnerable to erosion; and if populations move to a smaller number of islands, those islands may not be able to sustain the higher numbers.

Despite these immense challenges, the state has developed remarkably in the last thirty years—its GDP has increased six-fold; its exports twenty-five-fold; life expectancy at birth has gone from forty-eight to seventy-two years; the infant mortality rate decreased from 120 deaths per 1,000 live births to fourteen deaths, and the literacy rate reached 99 percent. The Maldives were within six days of being removed by the UN from the status of lesser developed country; then, on December 26, 2004, the tsunami hit.

Effects of the Tsunami

Unlike other countries impacted by the tsunami, the *entire* nation of the Maldives was affected. Waves of up to four meters (almost fourteen feet) hit the entire archipelago and only nine of the islands escaped flooding. Thirteen islands were totally evacuated. At one point, about 40 percent of the land area was estimated to be under water.⁴

The loss of life in the Maldives was minimal. There were eighty-two deaths and twenty-six people reported missing; 1,313 people were injured, and 15,000 (about 5 percent of the population) were

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displaced. About one-third of the population was severely affected by the catastrophe. In its March 2005 recovery plan, the Maldivian government summarized the effects of the disaster:

The tsunami destroyed much of the country's physical asset base, including homes and entire settlements, public service utilities such as hospitals, clinics, and schools, transport and communications infrastructure, private businesses and livelihoods. The main industries of fisheries and tourism were badly hit, wiping out two decades of investment and economic development. The total asset loss is estimated to be 62% of GDP.⁵

Electricity was cut off in twenty-six islands; communications in seventy islands; fishing boats in fifty islands and twenty-one of eighty-seven resorts were shut down or destroyed. The water supply was disrupted in 15 percent of the islands; and jetties and harbors, critical links to Male', were affected in 104 islands. Environmental damage included beach erosion, groundwater contamination, topsoil salination and erosion, and waste accumulation. In short, in this country of far-flung islands, the critical components of a thriving economy—supply and communication lines, and public and industrial infrastructure that support the essentials of life—were severely compromised.

Methodology

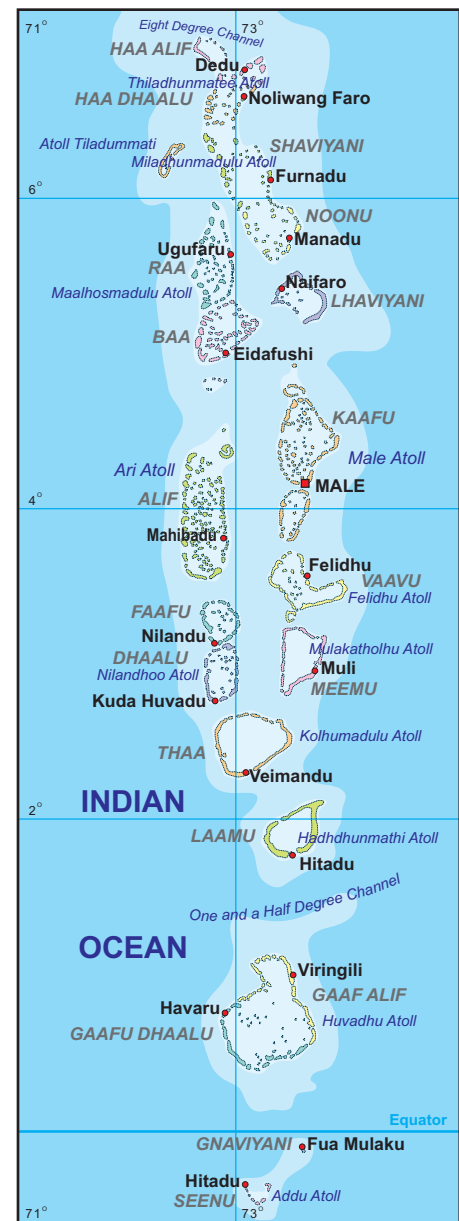
In this report, we examine the effects of the tsunami from a human rights perspective. The researcher collected the data from April 13, 2005–April 19, 2005 through key-informant interviews and visits to camps set up for IDPs (internally displaced people) who had survived the tsunami, and through review of relevant documents prepared by government agencies. The research was conducted in the capital, Male', and on the islands of Hulhumale' and Guraidhoo in the south Male' atoll.

In the IDP camps with transitional housing, interviews were conducted with one to ten people, usually outside or in common areas—although we were invited into the cabins to see how people were living. Since there are few community-based organizations working directly with IDPs, most of the meetings were with UN, government, or international NGO staff or with the IDPs.

II. BACKGROUND

Human Rights in the Maldives

The effects of the tsunami and the response of the government occur against the backdrop of a complex political situation. Maumoon Abdul Gayoom has been president of the Maldives since 1978 and has retained power, governing in an authoritarian manner. He was approved for a sixth five-year term of office in 2003. He survived a coup attempt by Sri Lankan Tamil mercenaries in 1988; and since 2003 occasional antigovernment demonstrations demanding political reforms have occurred.⁶ There is no question where the power lies in this nation. The form of government is that



of a parliamentary democracy with a strong president; however, the president holds the dual posts of chief executive and the highest authority in charge of administration of justice.⁷ The 2004 US State Department report on human rights in the Maldives notes:

The President appoints the Cabinet, members of the Judiciary, and 8 members of the 50-member Parliament ... [and] derives additional influence from his constitutional role as the “Supreme authority to propagate the tenets of Islam.” The unicameral legislature, the People’s Majlis selects a single presidential nominee [who must be a Sunni male, from a list of self-announced candidates] who is [then] approved or rejected in a national referendum. The People’s Majlis (Parliament) must approve all legislation and is empowered to enact legislation without presidential approval.⁸

Each atoll is assigned two parliamentary seats (despite wide variation in population). This assures that the more educated and sophisticated population of Male’ does not significantly influence the nature of the parliament. Parliament is subject to the influence of the president as well as his right to appoint eight members of the body. Further, no political parties are allowed in the country. The president has ultimate authority over the judicial system in that he can exercise his right to review all High Court decisions, appoint and dismiss judges at his pleasure, and grant pardons and amnesties. The Majlis has no voice in the confirmation of judges. Further the president appoints the atoll chiefs thus extending his power to the entire country. Relatives of the president occupy important jobs and often multiple posts. We heard from several sources that an “elite” in Male’ runs the country and that contacts are everything. One individual can hold several powerful positions in the government. To some extent, Maldivians approach the political situation with humor. One young person told the following story, which illustrates this intense concentration of power in the hands of a very few people: “The president of China is visiting the Maldives and meets with one Minister and then another and then another. At the end of his visit, he offers the president his congratulations for being the first country in the world to perfect cloning.”

Under this regime, there have been reports and allegations of a variety of human rights abuses including abuse of prisoners; arbitrary arrests and detention; torture; lack of freedom of speech, of the press, and of religion; a ban on opposition political parties; and limits on free assembly. However, there has been some opening up of this repressive regime. In December, 2003, the president established a National Human Rights Commission. In June 2004, he announced that an independent judiciary and a Supreme Court would be established and proposed constitutional reforms that included the right to establish political parties.⁹ A Special Majlis was to be established to develop these constitutional reforms.

In August 2004, some 5,000 people demonstrated in the streets of Male’ to demand the release of political prisoners and more rapid implementation of reform. The crowd reportedly became agitated (this is disputed) and the police used tear gas. They arrested 180 people including twelve members of the Special Majlis. The government declared a state of emergency in Male’ and some adjacent islands and suspended constitutional rights. Seventy-eight people were detained for several weeks without charge and without access to counsel or their families. Detainees made allegations of abuse, ill-treatment, and coerced confessions. Ultimately, all were released (some after the tsunami when the attention of the world focused on the Maldives).

Since the demonstration, the Human Rights Commission has continued to release reports despite the fact that its constitutional status is still being negotiated with the parliament. A parliamentary election was held in January 2005, which the Human Rights Commission criticized as “not free or unbiased or removed from unwarranted influence.”¹⁰

Reform measures continue¹¹ and include plans to promote an independent parliament,¹² modernize the judicial system by strengthening the independence of judges and increasing appellate safeguards,¹³ and establish human rights programs.¹⁴

While some in our discussions saw the proposed reforms as genuine, others saw them as cynical and expressed doubt as to the realization of democracy and human rights in the country. At this time, the government's policy of top-down responses to dissent, its vacillation on constitutional reform, its use of funds, and its profoundly centralized system of control, confounded by the lack of transparency in media due to fear of government reprisal, prevent community participation in decision-making from becoming a reality for Maldivians. Further, the lack of attention beyond lip-service to women's and children's rights suggests that government responses to the effects of the tsunami will need to be scrutinized carefully for their human rights implications.

A Human Rights Framework for Tsunami Response

In 1998, the United Nations adopted a set of principles to guide state treatment of those internally displaced. These guidelines sought to address the normative gap in international standards for protection of this vulnerable population due to the fact that the vast majority of those displaced by war did not cross international boundaries and therefore did not enjoy the protections accorded to refugees in international law.¹⁵ The security and protection of the internally displaced are therefore the responsibility of their own states.

The UN's Guiding Principles on Internal Displacement protect "persons ... who have been forced to leave their homes ... 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" (emphasis added). These principles enshrine protections for women and children, establish protections against dislocation of residents, and encourage states to include IDPs in decisions about relocation, return, and reintegration. A copy of the Guiding Principles is attached as an appendix to this report.

III. GOVERNMENT RESPONSE

In many ways, the response of the government of the Maldives to the tsunami was prompt, efficient, and organized. Given the major problems of a population spread over a thousand miles of ocean, lack of communication, and significant loss of infrastructure, the Maldives might serve as a model for disaster response. By 10:40 on the morning of December 26, the government set into motion a coordination process. Immediately following the tsunami, a National Disaster Management Center (NDMC) was set up in Male' composed of two major units: the National Disaster Relief Coordination Unit to focus on shelter, repair, registration of IDPs, relief assistance and psychosocial support, and the National Economic Recovery and Reconstruction Programme with two subunits, the National Economic Recovery Unit and the Transport and Logistics Unit, which focused on redevelopment and revitalization of the islands affected and of the country as a whole.

As of May 2005, the NDMC continues to operate. From its work, the government has prepared a very detailed National Recovery and Reconstruction Plan that was in its second printing as of March 2005. There are four priorities—shelter, reviving livelihoods, rebuilding infrastructure, and mitigation of the effects of future tsunamis and rising water levels. Homes on seventy-five islands require repair, and homes on fifty-eight islands require complete rebuilding. Under the plan, thirty-six permanent homes were to be built in the first eight months. Sixty thousand survivors received one-time cash payments, and a three-year program of loans and grants was initiated. With major destruction of water supplies,

sanitation facilities, harbors and wharfs, health facilities, schools, and other infrastructure, the tasks are enormous. We will address the mitigation question below.

Our initial meeting was with the representatives of the NDMC including specialists in finance, health, fisheries, security, environment, gender and family, and housing and agriculture. We heard an update on the current status of reconstruction and a review of the very significant challenges that these agencies had faced. Major problems continue to be the need for safe water to drink (requiring desalination systems), the presence of contaminated water from latrines and from salt, lack of trained technicians, lack of health care personnel and destruction of clinics and equipment, and lack of mental health personnel. While the Maldives grows very little of its food, there are small gardens that grow mangoes, bananas, and some root vegetables, often for home use and sometimes as cash crops. The soil is now too contaminated with salt and at the time of our study, it was not clear that the monsoon rains would make a difference.

The logistic challenges were and are enormous. Transportation depended on private contractors who broke down under the increased needs; later, outside agencies such as the UN, which could pay more for their services, monopolized the private contractors. There is no large storage capacity in the islands other than on Male' and warehousing was an issue. There were no reports of looting or crime; however, the police faced the major problem of not having autopsy facilities in the Maldives. Interpol was called in; a team arrived one month later and remained to complete the work. With its assistance, 280 body parts were collected, two bodies were identified from driver's licenses and other documentation, and DNA samples were collected and stored in local hospitals. There is a strong need to increase the forensic capacity of the country.

Providing shelter has been difficult in that even temporary housing requires material and at times technical assistance: One government official told us that "Even a plank of wood needs to be transported." The temporary homes were designed in one day; and on one island we visited, they were completed in one week. However, they did not meet the recognized Sphere standards for space and privacy, and new housing required some changes. All told, some 3,600 homes need repair but there is a dearth of contractors and the government is encouraging community members to assist in rebuilding. No NGOs are building temporary housing and progress is slow. The IDPs stayed initially with family or in shelters and finally moved to IDP camps. The international community donated tents but many refuse to live in them, preferring to live ten to fifteen people to a room with family. Thus temporary housing construction is problematic and permanent housing construction will be slow.

In the realm of social security, the government has issued cash payments of Rfs. 1,500 (US\$117) to repair damage to homes and Rfs. 500-1,000 (US\$39-78) for food as a one-time payment. In total, Rfs. 48,000,000 (US\$3,735,408) have been given to 57,000 people. These payments were established on the basis of reports from teams that went to the affected islands, and we were told by a representative from the National Disaster Management Centre that many survivors were unhappy with the amount of the payments that were made.

Finally, all children were back in school by the third week in January although not all classes were held in their original buildings.

IV. HUMAN RIGHTS ISSUES AFTER THE TSUNAMI

It is difficult indeed, given the amount of time and effort that have gone in to responding to the disaster, to point out that some of the programs and processes may not meet international standards for IDP protection. However, there are areas of concern.

Community Participation

We visited two islands where IDPs are encamped—Hulhumale', where temporary housing was constructed, and Guraidhoo, where fourteen families are living in tents (thirteen other families have moved to stay with relatives). Hulhumale' is a relatively new island close to Male' that is constructed from fill with a sea barrier. Planners anticipate that it will hold a larger population than is currently resident in Male'. Some 1,500 people have resettled on the island with access to a new hospital, shops, a mosque, new flats and roads.

The IDP camp is some distance from the permanent settlement, and the area surrounding it resembles a desert. Sixty people live in these houses—eleven families from two islands. While initially there were two families to a housing unit, there is now one family for every two houses. At the beginning, there were two to three couples in a room; now there is only one. In fact, there are more houses here than needed. While the houses look better than those we have seen in other countries, they are extremely hot and the provision of electric fans has still not allowed the inhabitants to remain comfortably within them during the daylight hours. There are no windows and the ventilation is poor. Furnishings include beds, mattresses, and a collapsible cupboard. Each unit has its own lock.

One woman with seven children had been living in one such house for four months and believes that this will be her home for at least two years. Her complaints ranged from difficulty obtaining food to fears about theft and break-ins. She reported that “drug addicts” come around at night and are prepared to steal. Some of the men also expressed concern that they could not leave their wives and daughters for fear these “addicts” would molest them. These men also suggested that they could not go to work because of this. There are no jobs in any case.

Another complaint was difficulty in obtaining medical care. (There is no universal health scheme in the Maldives, although it appears that provisions have now been made for tsunami victims.)

One noticeable problem is the lack of opportunity for displaced people to take responsibility for the care of themselves and their families. Since the displaced families arrived on Hulhumale', a caterer has prepared five meals a day, leaving the women with nothing to do. As the men also have no work, they too spend much time sitting around. The lack of purposeful activity sets the stage for social and familial problems to emerge. Another example of this problem is the children's playroom, which was initially stocked with toys that, over the weeks, began to dwindle and was now empty. The proposed plan was to buy new toys and assign social services staff to watch the room. Turning over management of the space to parents who have nothing to do was not even considered. In a similar vein, one very frustrated man stopped us to complain that he had asked for some tools to create a window in his cabin to relieve the heat but had received no response.

A few days after one researcher mentioned the food issue, we were informed that the catering would stop shortly.

People with whom we spoke were concerned about their livelihoods, e.g., loss of equipment for fish processing, and were unsure about the future. The range of time that they thought they would be in these cabins was eighteen to twenty-four months but they were uncertain.

People denied any problems of domestic or child abuse.

On the whole, people expressed satisfaction with the government response.

On the island of Guraidhoo, about forty-five minutes by boat from Male' in the south Male' atoll, the tsunami had destroyed thirty-nine homes. Three had been rebuilt on their existing foundations. Eleven

families are living in tents and expressed multiple complaints. They had just been offered waterproof tents (as the monsoon was about to begin), but they refused to move, as the tents were smaller. There was much dissatisfaction—some want the tents on their own property, others want to move to a better temporary arrangement, others want to live with family. They also complain of the heat.

While each family has its own cooker, they cook in a communal kitchen. They do not know for certain how long they will be there (they think three to five years), nor does the island chief who accompanied us. “Only God knows,” he said, although he added that he believes the processing of the paperwork is ongoing. The island chief did not appear to be a useful source of information. Residents reported that the atoll chief visited once but did not talk to them.

One couple whose home had been rebuilt on its foundation showed us that a wall now braced by a steel beam was breaking and the bricks were falling out. They refused to stay in the rebuilt home and preferred the tent. They have asked for it to be fixed; a man the island chief told them was an engineer has looked at it and declared it to be fine. They want the home demolished so they can rebuild, but they have not received a response from the island chief or the rebuilding supervisor. The island chief later told us that they just want a new house and he will do nothing to help them.

The children are in school, but they continue to experience emotional problems such as difficulty sleeping at night and fear of being alone in the tents. Parents say their children are “doing poorly” and feel that they have been severely affected by the tsunami. A short-term counseling program has ended.

Many people’s livelihoods depended on tourism. The tsunami obliterated the resort on the adjacent island, which destroyed their jobs at the hotel and their income from shops and services that catered to tourists.

Women’s needs and concerns have been given short shrift. Several women told us that sanitary napkins were in short supply; one elderly woman appeared to be all alone; other informants told us that domestic violence does exist on the island, although how the tsunami has changed this is unclear. Although there are Women’s Development Committees and Island Task Forces, formed to seek solutions to the effects of the tsunami, we heard that a new government directive indicated that the membership of the latter should consist exclusively of government representatives. How much the Women’s Committees can contribute to monitoring the gender-based problems also remains to be seen.

In sum, the designers of the temporary homes for IDPs seem to have ignored the problem of excessive heat. Privacy was a problem but that seems to be resolved. There appears to be a top-down, disempowering approach to the IDPs that may emerge from a desire to take care of them but ultimately destroys their self-sufficiency. The housing on Hulhumale’ is isolated and feels as though it could be a refugee camp miles from anywhere. Security seems to be an issue at some sites. In general, the IDPs are involved only rarely as active participants in relocation and reconstruction; communication is poor and there may be a significant problem with island chiefs and atoll chiefs treating the IDPs with dignity. One Maldivian NGO that works with displaced people reported that atoll chiefs do not treat all islands the same, indicating a discriminatory policy based on political influence.

No NGOs were involved in any decision-making about sites for transitional housing. One organization proposed that 30–50 percent of community participants in any task forces should be women but many women told them that they do not trust government committees, as there is no transparency, and they reject participation.

Some organizations express concern that survivors are not able to make informed choices due to lack of information, nor do they understand the consequences of giving up their homes or islands in order to move to government-sponsored “safe island” locations. They do not realize that they have rights since

they have lived in a country where a repressive regime has assured obedience to central government authority. For example, there will be no compensation if new houses are not equivalent in space and quality to those they had before. Permanent housing construction will be slow. The government has decided to offer an 86 square meter, three-bedroom house that can be extended. What input IDPs had in this planning process is unclear although the INGOs that are awarded contracts plan to consult not only communities but also individual householders.

The IDP Program at the NDMC has worked very hard to meet the needs of those who have been displaced. The problem lies more in how the government sees the ability of survivors to make informed choices. The government is aware of the psychosocial needs of survivors and has received assistance from INGOs in this area (they even had a hotline for upset people to call). The IDP Program is bringing in additional help from all sectors to the islands, including imams, and they are paying for medical costs. While the motivations and delivery are exemplary, the disempowering process will ultimately undermine community development after the acute period has ended.

The Safe Islands Concept as a Human Rights Issue

“Our main recovery program is based on safe islands program. It’s a sort of new paradigm in the country’s development. We are identifying four to five larger islands. We are going to build an environmentally protected zone on their perimeters, have some higher buildings which can serve as shelters against storms and rise in water levels,” stated government spokesman Ahmed Shaheed.¹⁶

For some years, in response to concerns about rising sea levels, the government has discussed and begun to implement a “focus island program.”¹⁷ The goal was to relocate people from smaller islands to a few larger ones where there would be sea walls and amenities that were unavailable on the smaller islands. Thus, some 1,500 people have moved to Hulhumale’ in the past two years where they were offered quite favorable leases or home sales. The Planning Ministry hopes that the idea of new housing, social amenities and better facilities such as new schools or community centers will serve to attract families to relocate, a so-called market-driven program. For those already living on the islands, the cost of electricity would drop; new schools would also serve their children. The first inhabitants of Hulhumale’ came from Male’, a short boat ride from the island, and they were offered an opportunity to escape the crowded capital while still being able to avail themselves of its attractions and job opportunities.

This plan is not new; it was tried some years earlier and failed due to fears that it would destroy traditional village culture. Also, citizens wanted more compensation for the homes they were leaving behind. Many people returned to their original homes after a short while. The initial plan was to build up five to six of these focus islands using the market-driven strategy to enhance voluntary migration, provide better economic opportunities, and consolidate population.

Since the tsunami, the government has expanded this concept into the Safe Island Programme. These focus islands will be developed in such a way that there will be what the government terms “enhanced mitigation features” including coastal protection, efforts at protecting the land through vegetation, areas of higher ground and some two-story structures for vertical evacuation. In addition there will be speedy access to these islands in emergencies, a buffer stock of basic foods and water, and alternate modes of communication and energy for emergencies. While at one level this sounds prudent, some INGOs have raised concerns about how voluntary any relocation really is. They report that the earlier focus island program was not well handled with poor communication to people in the outer islands. This led to misunderstandings and mistrust.

Blending island populations is a problem—e.g., which chief becomes the new chief? Some islands are split between residents who want to relocate and others who do not. Some INGOs expressed concern

that the island committees and chiefs may not reflect the will of the people (and we observed their lack of response on one of the islands we visited). Surveys will be done to ask whether individuals want relocation, offering a choice of islands or a choice not to move. The British Red Cross has been so concerned about this that they will not build houses for those being relocated.

One of our informants, originally from an outer island and now from the capital, reports that there is a long tradition of looking down on the outer islanders as ignorant, poor, uneducated or common. In fact, at one point in the country's history, these people were required to obtain a permit to visit Male'.

The question comes down to whether the new relocation program would be voluntary, or forced, or based upon lack of information. Furthermore, the fact that citizens may not get particular amenities if they remain on their own islands suggests that the process is coercive to some degree. Obviously, this would not be acceptable under the UN's Guiding Principles on Internal Displacement.

Protection of Women and Children

The government, INGOs, and local NGOs report that there have been no problems of trafficking in the Maldives either before or after the tsunami. Similarly, we heard no reports of child abduction, forced labor, or other manifestations of child abuse. The IDP Program of the NDMC is doing an excellent job of registering IDPs with teams out in the atolls as well as a registration office in Male'. As of April, there were 11,000 registered IDPs. However, we were told that there are unofficial reports of sexual abuse and child abuse as well as domestic violence. The Ministry of Gender completed a report in 2004 on Gender-Based Violence in the Maldives that we have not seen as yet, and UNICEF has commissioned a report by an Australian child abuse prevention advocate, Dr. Reina Michaelson, as well, but this was not completed at the time of our visit.

Child protection has not fared very well in the Maldives. While there is a unit for the rights of children within the Ministry of Gender, the focus has been on counseling. There is minimal staff and the agency does not really have a monitoring function. We heard that children were flogged until two years ago. Also, under the current legal system, if a young girl of twelve or thirteen years has reached puberty and is raped, she is held responsible. We heard that parents will walk their children to and from school both on the outer islands and in Male' out of concern for possible abuse. An NGO noted that the Maldives has signed the Convention on the Rights of the Child with reservations. This is also the case for the Convention on Discrimination Against Women (CEDAW). While the Maldives is a moderate Islamic country, Shariah law may modify the way in which international human rights law is interpreted. A disability rights advocate described the lack of trained teachers and specialized services for children with autism, cerebral palsy and other disabilities, leading to lives of isolation and stigma.

The Planning Ministry notes that the fertility rate has dropped to 2.8 from 6.1 in 1990; more children of both genders are in school; the state has raised the legal age of marriage to eighteen years, and has supported the United Nations Population Fund in family planning since the 1970s. From that perspective, attention has been paid to gender issues and opening up opportunities for women.¹⁸

The tsunami may not have resulted in increases in gender-based violence, trafficking, or child abuse but it is difficult to be certain because these topics are not discussed in the country. Further, the IDPs live in unsettled conditions, without work and income, in temporary housing or in crowded spaces with extended families. These adverse conditions ultimately may cause a breakdown in social structures and conventions. Under that scenario, the most vulnerable will be affected first—women and children. Several organizations expressed this concern. More follow-up and careful monitoring are indicated.

The Overall Human Rights Situation

We held several meetings with members of the Human Rights Commission, who filled in many aspects of what we have reported above. The HRC in the Maldives has had difficulty in receiving its full endorsement as a constitutionally recognized body; in order to do this, it must work with various committees of the Majlis to bring it into law. Despite several drafts, it still does not meet the standards enshrined in the Paris Principles applicable to the creation of independent human rights bodies.¹⁹ The Chair of the Human Rights Commission assured us of its independence, and the commission has stood up to the president on occasion.

The commissioners are working to ensure that the HRC meets the guidelines of the Paris Principles. They have tried to work on several issues ranging from suspicious deaths in jails likely due to beatings, to torture, to training the media in reporting of human rights abuses, to dealing with the country's lack of forensic capacity. The HRC investigated the conditions of detention in which those arrested after the August 2004 demonstrations were kept. On September 20, 2004 they released a report, which found cells unfit for human habitation, physical and sexual abuse, and prisoners transferred in the middle of the night blindfolded and in chains. The local media refused to print it, out of fear and self-censorship, and it appeared on an offshore Web site. The local media then covered the report the following day. Commissioners told us that many Maldivians expressed shock that anyone could criticize the government.

There are other examples of the commission's independence including their monitoring of the last election, in which they uncovered and reported irregularities. They have proposed that the constitution be changed to indicate that only Maldivians can run for office, on the grounds that the present wording that this privilege belongs only to Muslims is discriminatory. Finally, they would like to address the self-censorship of the media.²⁰ As one commissioner noted, "There is freedom of speech and of the press but no freedom after." Media outlets are owned by friends or relatives of the president or his associates (the "Male' elite"), and so criticism is very rare. However, some liberalization is occurring—a new weekly is publishing critical reports and some sections of society see that they can be critical and not be punished.

The HRC is still suspect in the eyes of some as its membership is made up of people who have served the country in important capacities. However the commissioners are faced with changing a thirty-year-old system of authoritarian rule where human rights have not been a priority. It is important to recognize that the tsunami occurred in a country where human rights were a distant concept and not really understood by most Maldivians. Given the history of a lack of governmental transparency, there is a need for caution in examining government plans and statements.

Livelihoods

With so much of the Maldives gross domestic product based on tourism and fishing, those areas clearly require urgent attention. The Maldives government has delineated its strategies and financing needs in a variety of sectors. For example, in tourism, where the tsunami destroyed or damaged twenty-seven resorts, the plan is to offer soft loans to the private tourism sector for rebuilding and restoration not covered by insurance. The loans program will be combined with marketing and advertising campaigns, particularly in Europe. In the fishing sector, programs range from provision of large and small fishing vessels and fishing gear to providing small- and medium-scale fish-processing units. Some UN agencies and INGOs are active in livelihood development.

We heard one gender-based concern about restoration of work and income. Many women lost their gardens and other utensils or implements needed for their own livelihoods. These needs do not tend to be a priority and may be forgotten in the concern for the larger sectors of the economy. Women may end up disempowered, living with children in half-finished houses while the men are working in resorts on other

islands and not always sending money regularly. Other than this concern, livelihood development appears to be planned in an equitable manner.

Nongovernmental Organizations and International Aid

The Maldives were fortunate in that the NGOs that arrived to assist were limited primarily to UN agencies and the International Federation of the Red Cross (there is no local Red Cross agency). The NDMC staff note that diverse approaches to assistance can be problematic: Some international agencies clearly see their role as following the lead of the government in meeting a country's needs. Others are donor-driven and follow their own pre-formed agendas with less sensitivity to developing countries' needs and priorities. NDMC representatives complained about initial rapid assessments that produce insufficient information yet drive subsequent programs.

The government, while very appreciative of the assistance offered, was concerned about false promises regarding money and the ways in which international agencies disrespect the governments of affected countries. For example, the Maldivian government had put into place accounting practices that are transparent and accountable and meet the criteria of the World Bank and the Asian Development Bank. However, international aid agencies wanted the accounting practices changed to meet their own criteria. This approach has placed pressure on the government not only in the Maldives but also in other small countries.

UNDP has made it a priority to support the Maldivian government in coordination of aid (this is the largest amount of aid funding ever to come into the country) and they do see gaps in the country's response—particularly in the area of coordination among NGOs and the private sector. In particular, there are problems with implementation and lack of follow-through.

In the health area, government representatives noted that much of the medicine was expired or improperly labeled and had to be discarded. On the positive side, the UN and the British Commonwealth provided short-term physicians and nurses; but many have left. There are few mental health resources in the country and the assistance of INGOs in providing psychological services and training was greatly appreciated. The problem remains, however, that the operational and theoretical definition of psychosocial assistance is murky and therefore what it can accomplish requires further evaluation.

The director of a key NGO informed us that, although there are many local NGOs registered, few are independent. One source alleged that the government must respond to the pressure of the international community to support community-based organizations but in the Maldives, the great majority of these are not free from government influence. These allegations need to be further examined.

In summary, NGOs need to be aware of their ethical responsibilities under the UN Guiding Principles. In addition, government, INGO, and NGO coordination mechanisms must be developed prior to any further catastrophe so that humanitarian intervention can proceed more smoothly. Finally, the government should foster the development of a vibrant and independent civil society.

The Drug Abuse Problem

In several meetings and interviews, we heard that drug abuse (particularly heroin use) has increased markedly in the Maldives. Informants advised us that 80–90 percent of those incarcerated are drug offenders and that the problem is worse in the southern islands where there is little police presence. Current thinking is that these drugs are smuggled in through networks from Sri Lanka and India. As

noted, the IDPs on one island were afraid of drug addicts stealing from them and hurting the women and girls. On the other hand, we were also told that the focus on drug abusers, e.g., after the August 2004 demonstrations, may reflect a strategy by some in government or law enforcement to divert attention from the real problem of lack of democracy. Public health professionals need to gather better data on the prevalence of this problem and, if necessary, to mount programs of prevention and treatment. A realistic assessment would clarify whether this is a significant issue for the Maldives.

V. CONCLUSIONS AND RECOMMENDATIONS

The Republic of the Maldives is in the midst of significant change. Its capacity for development has been demonstrated clearly over the last decade. Its ability to develop a transparent government committed to democracy and human rights remains to be tested. The response to the tsunami has raised human rights questions primarily because of human rights problems that antedated the disaster.

1. Top-down governance is centered in the capital in the hands of a small group of people. This crony mentality extends to the governance of the atolls and islands, where island chiefs are appointed and may not always represent the best interests of their communities. Island Development Committees and Women's Development Committees may not have real power nor may they be immune from external influences. The same is true for the tsunami-responding Island Task Forces. This tradition of top-down governance has extended to the government's response to the disaster. Thus, a lack of communication and disempowerment of IDPs is a major problem in the tsunami response.
2. There is a cultural divide between Male' and the outer islands that needs to be bridged to assure the development of an equitable society.
3. The special needs of women and children need to be acknowledged not only in law but also in practice. Issues of domestic violence, child abuse, and sexual abuse must be exposed and dealt with directly. Provision of services for disabled children should be a high priority.
4. Promotion and protection of basic human rights such as freedom of the press and freedom of information should allow informed decision-making around the Safe Island Program. Migration should clearly be voluntary and not coerced directly or indirectly.
5. Participation of displaced people in planning and decision-making is critical. Women need more involvement.
6. Coordination of NGOs and the government should be promoted and policies established for future collaboration. NGOs must be allowed to function without government influence or interference.
7. The financial assistance for post-tsunami development requested by the government should be predicated on the follow-through of the government reform plan. External monitors should work with civil society and the Human Rights Commission to assure progress and change.
8. There is a dearth of trained health professionals. Recruitment should be a government priority with incentives for professionals in medicine and psychology, and for ancillary health professionals such as physiotherapists or occupational therapists, so that basic health needs are met.
9. More data must be collected about the extent of problems that threaten vulnerable populations. These include gender-based violence, child abuse, drug abuse, suspicious prison deaths, and disability. More rigorous data gathering should be encouraged and technical assistance sought to realize this objective.

10. The forensic capacity of the country needs to be strengthened. Whether an ongoing cooperative agreement with a nearby state is a solution or whether a Maldivian-based system is feasible should be assessed.

The government of the Maldives has developed an impressive program of response to the tsunami. Given the challenges, its organization and efficiency have been outstanding. The gaps and concerns we address emerge out of the backdrop of authoritarianism and human rights abuses that characterized the country over the last thirty years. The tsunami offers an opportunity not only to respond to the humanitarian concerns but also to change the way that basic rights are observed.

¹ The author extends special thanks to Moomina Waheed for arranging the meetings and to Ibrahim Shareef and Mohamed Musthausim Billah for accompanying him and interpreting.

² Some of this material is taken from a presentation prepared by the Ministry of Planning of the government of the Maldives titled *The Maldives: Tsunami Disaster 26 December 2004, Recovery and Reconstruction*; and from Wikipedia: The Free Encyclopedia: *Maldives*, available at <http://en.wikipedia.org/wiki/Maldives#Geography>; and from “At-a-glance: Tsunami economic impact,” BBC News, March 22, 2005, available at <http://news.bbc.co.uk/1/hi/business/4154277.stm>.

³ *Sea Level Changes in the Maldives Islands*, available at <http://en.wikipedia.org/wiki/Maldives>.

⁴ Andrew Torchia, “Tsunami May Accelerate Maldives’ Dilemma: Relocate or Perish,” Dow Jones Newswires, January 5, 2005, available at <http://www.climateark.org/articles/reader.asp?linkid=37881>.

⁵ Republic of the Maldives, Ministry of Planning and Development, *National Recovery and Reconstruction Plan: Programmes and Projects*, 2nd ed., March 2005, p. 2.

⁶ Nils-Axel Mörner, *Flooding concept called off—New facts from the Maldives*, available at http://en.wikipedia.org/wiki/Politics_of_the_Maldives.

⁷ Amnesty International, *Maldives: Human rights violations in the context of political reforms*, February 24, 2005, available at <http://web.amnesty.org/library/Index/ENGASA290012005?open&of=ENG-MDV>.

⁸ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices—2004*, February 28, 2005, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41741.htm>.

⁹ Reform measures to democratize the functions of the state include: (a) a new Family Act vastly strengthening women’s rights, (b) a Human Rights Commission, established on December 10, 2003, (c) codification of arrestable and non-arrestable offences in February 2004, (d) accession to the UN Convention Against Torture in April 2004, (e) a Public Complaints Bureau established in June 2004, (f) police separated from the security services and made a civilian force in September 2004, (g) provision for legal representation strengthened in April 2004, (h) a Jail Oversight Committee of judges and MPs formed in April 2004, (i) jail system reorganized, with the separation of remand centers from the prison, (j) agreement signed with the International Committee of the Red Cross in October 2004 to give the ICRC access to prisons, (k) Amnesty International given free and unfettered access to prisons in October 2004, and (l) a study by the US National Democratic Institute (NDI) on developing a legal framework for a multiparty democracy, in October 2004. Additional reform measures are underway and include: (a) redrafting of the Penal Code, (b) drafting of a Freedom of Information Act, strengthening media freedom, (c) formulation of a Political Parties Bill, (d) formulation of a five-year Criminal Justice Action Plan, (e) formulation of a Police Act, (f) drafting of the Criminal Procedures Act, (g) drafting of the Parole Act, (h) drafting of the Prisons Act, and (i) electoral reform being undertaken with the assistance of the Commonwealth Secretariat, leading to a new Electoral Bill.

¹⁰ Human Rights Commission of the Maldives, press release, February 3, 2005.

¹¹ On June 2, 2005, the Maldives moved to establish a multiparty democracy when the Majlis, at the recommendation of the president, voted to allow multiparty politics.

¹² These measures include: (a) introduction of parliamentary immunity, (b) introduction of the practice of presenting an annual statement of government policy to the parliament, (c) introduction of the practice of setting up parliamentary commissions and standing committees, (d) introduction of the practice of reporting to parliament on major issues of national interest,

(e) introduction of independent foreign observation of elections to the parliament and the presidency, (f) development of Cabinet government, (g) creation of oversight bodies such as the Anti-Corruption Board, (h) election of Island Development Committees on every island to promote participatory local governance, (i) establishment of advisory committees and councils comprising eminent persons from the public and private sectors to advise on policy formulation and decision-making, and (j) development of media and communications, including programs to train journalists.

¹³ These measures include: (a) establishment of the High Court, (b) establishment of a Court for Juveniles, (c) establishment of an appellate panel of eminent judges and lawyers to review appeals, (d) establishment of a Faculty of Shariah and Law, and (e) introduction of training programs for judges and lawyers, including programs taught by the president himself.

¹⁴ The jail system was reorganized and the facilities provided were improved; the Maldives acceded to international human rights instruments, notably those promoting the rights of women and children; and the status of the populations in the outer atolls was given special priority, seeking to empower them through rapid development of the atolls.

¹⁵ UN Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement*, available at http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html.

¹⁶ “Maldives Looking to shift residents to ‘safe islands,’” *Taipei Times*, January 20, 2005, available at <http://www.taipeiimes.com/News/world/archives/2005/01/20/2003220175>.

¹⁷ Taken from PowerPoint presentation, *Ministry of Planning and Development and the National Recovery and Reconstruction Plan: Programmes and Projects*, Ministry of Planning and Development, 2nd Printing, March 2005.

¹⁸ See also Annex 14, Gender, in *Republic of the Maldives, Tsunami: Impact and Recovery*, Joint Needs Assessment, World Bank, Asian Development Bank, and UNDP, available at <http://www.adb.org/Documents/Reports/Tsunami/joint-needs-assessment.pdf>.

¹⁹ Annex: Principles relating to the status and functioning of national institutions for protection and promotion of human rights. In UN Office of the High Commissioner for Human Rights, *Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights*, available at <http://www.unhchr.ch/html/menu6/2/fs19.htm#annex>.

²⁰ On June 6, 2005, the Human Rights Commission issued a statement that called for press freedom in the Maldives. See “Human Rights Commission Calls for Press Freedom in Maldives; MDP Website Ban Lifted,” Minivan News, June 7, 2005, available at <http://www.minivannews.com/news/news.php?id=759>.

SRI LANKA

Harvey M. Weinstein*¹

I. INTRODUCTION

Effects of the Tsunami

For the last two decades of the twentieth century, Sri Lanka endured war, massive displacement, and human rights violations ranging from torture to extrajudicial executions, disappearances, and child abductions. The 2002 agreement to cease hostilities brought a significant measure of relief. On December 26, 2004, that peace ended abruptly with fifteen minutes of terror as the tsunami lashed the coasts of the island nation. While the disaster primarily affected the north, east, and south coasts, more than half of the country's provinces and districts were affected. The waves affected about a quarter of a million families and displaced hundreds of thousands.² At the beginning of March 2005, more than a half million people remain displaced, many in temporary or transitional housing where infrastructure can be precarious and where the level of displeasure with the pace of repair has been increasing. The immediate aftereffects of the tsunami have been well documented.³ A critical perspective on how the human rights of the vulnerable populations impacted by the tsunami have been addressed is missing in recent analyses of the effects of this natural disaster. Some reports have paid particular attention to issues facing women and children, although these data are sparse and limited primarily to anecdotal evidence. However, there is relatively little focus on monitoring the rights of the internally displaced people, whether they are being treated with dignity, how national governments as the duty bearers are fulfilling their obligations, and whether the massive amounts of aid that have flowed into the region from around the world are reaching those so desperately in need. The tsunami brought to the surface long-standing human rights concerns that have made the vulnerability of certain groups even more apparent. In this report, we describe the issues as they surfaced in a trip to the country from April 4 to April 13, 2005.

Methodology

During the nine-day visit, the investigator met with representatives of government at the district and national level, local nongovernmental organizations (NGOs), international nongovernmental organizations (INGOs), United Nations organizations, and members of the police and military forces. In addition, the researcher spoke with human rights officials and activists, and most critically, with men and women who have been internally displaced (IDPs) and are living in transitional housing or tents in camp-like environments. Interviews with IDPs took place in groups of three to thirty, usually in a tent or cabin or outside when it was too hot. These meetings lasted anywhere from twenty minutes to sixty minutes. Where possible, we addressed questions to women as well as to men. However, a limitation of this preliminary study was that the interviewer and interpreter were males, males tended to dominate discussion (with some exceptions), and the issues facing women were downplayed except by representatives of NGOs.

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Sites of the Fieldwork

The investigator conducted interviews in the Northeastern, Southern, and Western provinces—in Batticaloa and Ampara in the east, Galle and Matara in the south, and Colombo, the capital, in the west. We talked with displaced persons at Methodist College Refugee Camp in Batticaloa (Tamil), Maruthamunai Mass Grave site (Muslim), Wesley College Refugee Camp (Tamil) and M.H.M Ashroff Refugee Camp (Muslim) in Kalmanai, Reggipura and Paraliya Camps in Galle, and Ahungalla Camp in Matara.

II. BACKGROUND AND HISTORY

Political Conflict

Several aspects of the turbulent history of Sri Lanka are pertinent to the findings of this study. Sri Lanka has been at the nexus of multiple influences—Sinhalese, Portuguese, Dutch, British, and Indian. Emergence from colonialism led to political developments that has produced a potent brew of suspicion, conflict, ethnic nationalism, and war among the country’s Sinhalese, Tamil, and Muslim populations.⁴ From the time of independence in 1948 and the disenfranchisement of the tea plantation Tamils,⁵ seeds of unrest were sown. During the 1950s, the government made Sinhala the national language, which led to increasing unhappiness and, in 1958, rioting between the Tamil minority and the Sinhalese majority. Periodic conflict between Tamil Muslims and Tamils who were both Christian and Hindu, as well as between Tamils and Sinhalese, along with language disputes, continued to influence the course of politics over the subsequent fifty years. As Rogers et al.⁶ point out, “public discourse increasingly equated Sinhala identity with national identity, which accentuated the political alienation of non-Sinhala.” The Official Language Act of 1956 was not anti-Tamil as such; rather, it focused on displacing the use of English. But the Tamil population remained the major opponents to it. A new constitution in 1972 made Sinhala the only official language, and Buddhism was made the foremost of Sri Lanka’s religions. Further, changes were made to university admissions policies that had the effect of decreasing the number of students from Jaffna, a majority Tamil area, and placing Tamil youth at a disadvantage in many fields as they were less able to obtain higher degrees. All of these changes inevitably influenced Tamil perceptions of discrimination by the majority population.

The economy seesawed due to socialist policies that included nationalization of industry and rejection of a market-oriented economy; this led to soaring unemployment. Lack of opportunity for work culminated in a Marxist rebellion in 1971 by a Sinhalese youth group known as the Janatha Vimukthi Peramuna (JVP) or People’s Liberation Front. The Sri Lanka police killed many thousands of people, setting the stage for ruthless policies that led to a climate of fear and mistrust. This furthered unrest and led to states of emergency being imposed in the north, where the Tamils were the majority, and in the east, which, while multiethnic, had a population that was about one-third Tamil.

As Senadhira indicates,⁷ “The accumulated sense of grievance and discrimination was exacerbated by the inability and/or unwillingness of successive governments to address this and by their determined pursuit of majoritarianism.” By the mid 1970s, a new group known as the Liberation Tigers of Tamil Eelam (LTTE) or the Tamil Tigers formed to fight for an independent Tamil state in the north and the east. During the 1980s, the government tried to reach out to the Tamil minority by making Tamil a national language. At the same time, the government promoted constitutional changes that increased both presidential power and the power of the dominant political party. Accusations of electoral irregularities were made. In 1983, following an ambush of army soldiers by Tamils in the north, massive Sinhalese mob violence erupted, leading to destruction of Tamil property and the death of hundreds, perhaps thousands, of Tamils all over the country, including Colombo. The government did not protect Tamil citizens. Thousands of Tamils were displaced; Sinhalese left Tamil areas; Tamils emigrated to India and elsewhere. Funding from the Tamil Diaspora, covertly from the Indian state of Tamil Nadu, and then the government of India, fueled ongoing conflict. By the mid-1980s, with increased support from the Tamil people, militant groups went on the attack in the north, leading to ethnic cleansing of the civilian Sinhalese population. By 1984, the government of Sri Lanka had lost the city of Jaffna. And soon, Tamil Muslim-Tamil Hindu violence ensued as well.

In the midst of this unrest, the Marxist JVP returned and in 1987, launched a new revolt. Over the next three years, terror erupted. The army used brutal tactics to quell the rebellion. Assassinations, torture,

disappearances, and fear became the norm. An estimated 60,000 people died in the next three years. This period, coupled with the state's failure to protect its civilian population during the second JVP uprising, has laid a foundation of mistrust in government, a fear that civil liberties will be tampered with, and a legacy of displaced peoples that has yet to be resolved.⁸ Informants suggest that undiscovered mass graves dot the country, especially in the north, and that thousands remain missing.

Because of the considerable support for Sri Lanka's Tamil population in Tamil Nadu and because there had been threats of Tamil Nadu's secession, India had covertly supported the militant groups in the north and east. In 1986, India and Sri Lanka began to discuss possibilities for settlement of the conflict between Tamil and Sinhalese in Sri Lanka, but violence intensified in the next months. In July 1987 the two countries signed an accord that went some distance toward meeting the demands of the militant groups. Sinhalese opposition to this accord erupted in violence. As part of that agreement, the government of Sri Lanka allowed an Indian Peace Keeping Force (IPKF) into the country; but this had little positive effect. In fact, the LTTE turned on the IPKF with a vengeance. By 1990, after losing hundreds of soldiers, India withdrew and violence intensified. The LTTE took control of Jaffna and most of the north. War continued into the 1990s, fuelled by extremists, and assassinations and attempts on the lives of many highly placed political figures in India and Sri Lanka occurred. The army was at its highest strength but could hold the LTTE only to a standstill in the north despite massive attacks. By 1998, the LTTE controlled most of the north (except Jaffna), parts of the east, and the major highway between Colombo and Jaffna. During this period, both sides to the conflict committed arbitrary arrests, unlawful detentions, extrajudicial killings, murder, torture, extortion, assault, forced conscription, and other violations of human rights. The LTTE launched a campaign to control Tamil civilians, and dissent was not tolerated. Censorship of news and intimidation of journalists became the norm.

In 2000, the government invited a Norwegian peace mission to facilitate peace talks between the state and the LTTE. Proceeding at a desultory pace, the talks did not end the violence. An attack on the international airport at Colombo destroyed most of Sri Lanka Airline's planes and much of the state's air force. After the events of September 11, 2001, the United States and other western countries declared the LTTE to be a terrorist organization and it faced a cutoff of overseas funding. In December of that year, the parties announced a ceasefire and in February 2002 they signed a ceasefire agreement. For the most part, violence was kept to a minimum, but in 2003 the LTTE pulled out of the agreement when their demands that the government of Sri Lanka (GSL) give them interim authority to govern all eight districts of the north and east were not met. While no overt fighting has resumed, and the highway to Jaffna has been opened, murders and intimidation continue, especially by the LTTE against non-LTTE Tamils.

Most recently, splits within the LTTE have surfaced. One year ago, the eastern commander of the LTTE, known as Colonel Karuna, defected with his troops. Colonel Karuna alleged that the LTTE favored the Tamil population in the north over those living in the east. Intra-Tamil fighting erupted, causing many deaths. Recently, murders have increased in the east as well as in Colombo, the most recent being the murder of a pro-LTTE journalist, Dharmaretnam Sivaram, in Colombo on April 28, 2005. This latest attack on a journalist reflects a long-standing history of suppression of dissent on both sides of the conflict. Rumors have circulated blaming both the GSL and the Tigers.⁹

Overt expressions of discontent within the Tamil community itself have surfaced. University Teachers for Human Rights in Jaffna has documented resistance to LTTE leaders' "perceived monopoly of power." The group suggests that the murders and intimidation have cowed the Tamil population. The Scandinavian-staffed Sri Lanka Monitoring Mission, established as part of the ceasefire agreement between the government of Sri Lanka and the LTTE, is kept busy with the ongoing spiral of violence and human rights violations.

Human Rights In Sri Lanka—A Legacy of Violations

Despite Sri Lanka's support for international treaties that enforce human rights, the abuses that have occurred in the years since independence suggest that ongoing vigilance is essential if civil liberties are to be protected in the country. It is critical to consider the history of Sri Lanka in assessing how a natural disaster such as a tsunami can increase the danger of human rights violations. Ethnic rivalries and violence, the war between the LTTE and the government of Sri Lanka, a long history of government repression and human rights abuses such as torture, murder, and unlawful detentions against civilians of all ethnic groups, the totalitarian methods of the LTTE, the abduction of children by the LTTE to serve as child soldiers, all lead to vulnerabilities that can intensify in the face of a catastrophic disaster. Further, the centralization of power in Colombo despite government efforts at devolution, combined with allegations of election fraud, have eroded any trust in the state. Consequently, individuals affected by the tsunami may have little faith that the government will be responsive to their needs. The existence of laws protecting rights does not guarantee these rights will be protected in practice. Despite the establishment of a national Human Rights Commission and a National Child Protection Authority, human rights violations are many. Analysis of whether the tsunami has elicited further rights violations must begin against the backdrop of a beleaguered country where the rule of law is inconsistent and transparency only a dream.

III. FINDINGS

In 1998, the United Nations adopted a set of principles to guide state treatment of internally displaced people. These guidelines sought to address the gap in the international standards for protection of this vulnerable population. The vast majority of those displaced by war do not cross international boundaries and therefore do not enjoy the protections accorded to refugees in international law.¹⁰ The security and protection of the internally displaced are therefore the responsibility of their own states. These principles protect “persons ... who have been forced to leave their homes ... 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” (emphasis added). The principles enshrine protections for women and children, establish standards of nondiscrimination, and encourage states to include IDPs in decisions about relocation, return, and reintegration.

With the UN's Guiding Principles on Internal Displacement as a framework, several human rights concerns emerged from these interviews.

Disempowerment of the IDPs and Camp Life

There was a marked discrepancy between the reports of great progress in reconstruction and supporting data offered by the government agents and their deputies, and the experience of the displaced persons in the camps that we visited. In every camp visited, virtually all IDPs reported that they had no idea for how long they would be in temporary housing or shelters. They complained about lack of communication from authorities regarding maintenance of the camp facilities and lack of information about where they would be going and when. They said that government representatives collected information but provided them no follow-up on relocation plans. Although the Guiding Principles encourage community participation, we saw no evidence of IDP input into the choice of relocation sites, timing of moves, aid priorities, and the planning of housing. When the state acquires land for permanent housing, people from the area who know the geography have no input into its selection. One NGO expressed concern that some of the best land (forested land) is being reserved for the LTTE in the east as part of the negotiations between the government of Sri Lanka and the LTTE.

In a situation where NGOs provide some services and the government provides cash, food coupons, and other services, IDPs complain that it is sometimes unclear who has responsibility for camp maintenance, e.g., sanitation or protection against flooding. Many complain that there is insufficient food or money to purchase food. In some situations, people are cooking with wood stoves inside their houses, which will contribute to acute respiratory disease. Infrastructure is still a significant problem. Wells remain contaminated by salt water; there is a lack of water delivery to holding tanks; and temporary housing is poorly sited in flood zones. In one camp, there was no water for drinking or sanitation and no government or NGO representatives had visited the camp. Even where the government has developed mechanisms for providing cash and other goods, IDPs (and the village headmen) are uninformed and complain that they have no idea from day to day what will happen next.

Problems exist with the temporary housing that has been constructed. While tents may be the only option initially and may meet acute needs, the transitional housing in which people may need to remain for eighteen to twenty-four months is problematic. Each NGO appears to have followed its own design. However, most transitional housing consists of shell structures with metal roofs and poor ventilation. In the tropical climate, these shelters heat up to such a degree that people must spend the daylight hours outside. With a number of people residing in each house—at times, two families per structure—privacy is at a minimum and there is little respect for human dignity. The transitional housing projects vary in quality, especially where people were moved in without adequate infrastructure in place or where planners selected sites without regard to geographic factors.

After an NGO constructs housing, the responsibility for site maintenance is unclear and IDPs are caught between local government officials and the NGO. In one camp, we observed that the camp coordinator could not find any volunteers to clean the toilets when the army came to pump them out. The army stayed five minutes and left without pumping the toilets. The prolonged uncertainty and lack of jobs or other meaningful tasks leads to passivity and anger. The perceived lack of coordination and support coupled with lack of paid employment is fertile ground for the development of problems of domestic violence, alcohol abuse, child abuse, and social unrest.

In the area of security, virtually every camp (there are exceptions) has a military (Special Task Force, Navy) or police presence. For the most part, residents welcome this protection. However, there are reports of problems with the police, e.g., a stabbing that was not investigated. Camp residents in one location thought that police had been instructed not to press charges because people were under stress (the police deny this). Camp incursions do occur, from individuals selling liquor, to attempts at child abductions by the LTTE, to occasional reports of attempts at sexual violence.

It is unclear whether the protection officers have received specific training to work with IDPs and to address camp management issues. As the state has an obligation to protect the IDPs, especially women and children, this is an area of concern. Both in shelters and in camp-like situations, conditions are far from ideal. In the crowded shelters, drunkenness among the men is a problem with implications for violence. We saw one man stagger along the main courtyard and then fall. Four to five residents then dragged him to a quiet place. Survivors informed us that he had lost all the members of his family and his response to this loss was to drink to oblivion. In another camp, rumors of an impending attack by the LTTE against the camp guards led to great concern, but no such attack occurred. However, such rumors fuel the fires of discontent and fear.

The role of the police and the military needs to be spelled out and more closely monitored. One NGO expressed concerns about the “militarization” of camps, particularly in the northeast on both sides of the conflict. While there were no incidents reported of guards abusing their position, including with respect to women, we did hear concerns about police not responding to IDP complaints, as we have noted above. Early on, camp residents complained about guards pilfering supplies. Whether these were

police or military was not specified. A major implication of all of this is the need for training in disaster management with regard to the human rights of those affected.

Many of these families have moved two or three times since the tsunami—from shelters to relatives to transitional houses. They do not have enough information to understand who is available to help them. Some local NGOs, INGOs, and other foreigners appear who help some and not others; rumors abound, leading to ill feeling. IDPs feel a lack of response from the government and complain that they are either ignored or treated poorly by local authorities when they try to seek assistance. There is a large gap between stated government intention and IDP perceptions of help and efficiency. We heard in several interviews that the IDPs are unaware that they have both options about where they live and rights to demand state protection that upholds their dignity. Finally, some IDPs report that there have been no visits by health personnel, and specifically no attention to childhood immunizations. This may vary with geography and accessibility but needs careful attention if disease is to be avoided.

Maldistribution of Aid and Questions of Corruption

In the northeast, we heard both from NGO personnel and from IDPs that the services and the pace of reconstruction were farther along in the south. Repeatedly we heard allegations that, since there are more members of parliament from the south and because the prime minister has a home on the south coast in Hambatota, land acquisition was more advanced and more permanent homes were being constructed in the south than in the equally hard-hit areas of the east and north. These allegations should be further investigated to ascertain whether international aid is being distributed fairly without discrimination and with transparency. There is profound distrust of the government based on Sri Lanka's history of violence, electoral irregularities, and ethnic division. The old allegations that Sinhalese are treated better than Tamils have surfaced based on a lack of parliamentary representation for the eastern Tamil population.

Statistics and government reports do bear out the allegations regarding the disparate pace of reconstruction in the south compared to the north. In Batticaloa, on the eastern coast, the authorities had not yet completed the development plan. Yet the Tsunami Disaster Information Unit of the District Secretariat in Batticaloa reported as of April 1, 2005, that 12,232 homes were completely destroyed and 5,376 homes partially destroyed; 20,888 people were in welfare centers. In Ampara, we learned that land acquisition is occurring in rice paddy areas but the process is slow. However, from the government agent in Hambatota in the south, we learned that transitional housing began five weeks after the tsunami and in the week before our visit, all those displaced had been removed from shelters. The state had selected 1,200 acres of government land and one hundred acres of private land for acquisition. Land surveys had been done and donor agencies selected. The authorities had completed eighty to one hundred houses and on the day of our visit, an additional twenty-five houses were ready for new occupants. Authorities projected to have 200 more permanent houses by the end of April. They expect that everyone will be in permanent housing by the end of December—a sharp contrast to what we heard in the northeast.

The Assistant Land Commissioner for Matara, also in the south, reported the destruction of 1,810 homes with partial damage to an additional 1,892 homes. Land has been identified and they plan to build 1,500 houses in three months with 1,810 completed by the end of December. If this information is accurate, then there does appear to be a discrepancy in the pace of reconstruction between the geographic areas. Such a discrepancy could be explained by multiple factors; but if it were based on discrimination or political influence, then it would constitute a human rights violation.

Permanent Housing and Rebuilding

The Guiding Principles on Internal Displacement emphasize that full information should be made

available to IDPs and that they should be involved in the planning and management of return, resettlement and reintegration. One area in which the government of Sri Lanka has apparently failed to live up to this principle is in its plans to establish a buffer zone—100 meters deep along the south and west coasts and 200 meters in the north and east—in which new housing and reconstruction would be discouraged. Those who do not wish to accept newly constructed permanent housing inland but who choose to build their own homes elsewhere outside the buffer zone will receive 250,000 rupees (US\$2,500). It is not clear how the government arrived at the buffer zone decision. No information had been published on whether the decision was based on the probability of a tsunami recurring or on other scientific data or whether scientific experts had explored alternatives to the buffer zone such as coastline protection, for example enhancing vegetation. Support options offered by the government clearly influence people's decisions on relocation. However, if fishers are not given all the options, and do not have information about other alternatives, can they truly give informed consent? Without such information, flight inland appears to be the only reasonable option and fear becomes the determining factor in people's decisions to relocate.

In Hambatota district, thirty-three families have chosen the option to rebuild inland thus far. They will not receive any government funds if they choose to rebuild on their pre-tsunami land. As noted, while this decision may be reasonable from a prevention perspective, it does not fit within the framework of voluntary choice. In one camp, we were told that some had received the 250,000 rupees and nevertheless had rebuilt within the buffer zone. Whether these rumors are true or not, there appear to be inconsistencies in how the new regulations are put into practice by various officials. Such variation invariably will lead to comparison and elaboration.

We did note that along the highway, particularly in the south, residents are rebuilding commercial establishments, such as small guesthouses, as well as private homes. Thus, those with their own funds are making a decision to remain close to the beaches. Both government officials and police informed us that there is no policy of forcing people off the land or of destroying rebuilt homes. However, we did hear from a local NGO that rebuilt boutiques (small shops) had been destroyed.

Of the IDPs with whom we spoke, the vast majority are open to removal inland although they want to maintain ownership of their coastal land. One government official in Matara informed us that 188 of 1,563 families preferred to rebuild on the beach. The fishermen with whom we spoke indicated that they would build sheds on the beach for their equipment. There are rumors of building marinas where boats would be secure and there was support for this. In other cases, survivors indicated that they would use their old land for cultivation.

There is no question that there is great fear of another tsunami among those we interviewed and that safety is a primary concern, given the loss of life, especially among children. The second major earthquake off the coast of Indonesia, on March 28, 2005, reinforced the fears of the survivors. However, from a human rights perspective, these people have lived for generations along the water, and it is essential that they have the information and support they need to make voluntary relocation decisions.

The government of Sri Lanka has decided that for hotels and resorts within the buffer zone, if the damage is less than 40 percent, the owners can rebuild. However, one government official suggested that there is flexibility in this. For example, there are many unregistered small businesses along the coast and it is likely that they will be permitted to rebuild. For the large resorts, if the damage is more than 40 percent, the decision on whether to approve rebuilding will be made on a case-by-case basis. The amount of rebuilding of resorts that we saw on the south coast suggests that owners are moving ahead. Whether these decisions are being adjudicated fairly without political influence or bribery needs close attention.

A major problem for the government has been the identification of land for permanent housing. Much of the land selected is already in government hands; some is private, and purchase prices must be

negotiated. Land surveys are necessary to complete these transactions. Once surveyors have completed their assessments, the district governments are signing memoranda of understanding with NGOs for the construction of homes. The homes offered will be 50 square meters and for the most part are single-family dwellings. In some cases, the land is relatively close to pre-tsunami dwellings. In others, homes are four to five kilometers away and for fishers this may be problematic depending upon what the government decides about beach reconstruction for boats and fishing equipment.

A common complaint that we heard in the camps was that the IDPs have not been consulted about where they thought appropriate land for relocation could be found. Some noted that, as they lived in the area, they knew the geography, the flood plains, and other important features of the land. They expressed their concern that some choices, e.g., building in rice paddy areas, were very problematic while other, forested areas seemed to be off-limits. There is no question that the land acquisition and planning process has systematically excluded the IDPs. Even the village headmen, who are supposed to be the conduits of information, either do not know or do not share information with the displaced. Often they do not reside in the camps and may not even visit them. This lack of communication and disempowerment is leading to street demonstrations.

Government officials assured us that land titles and property documents are being taken care of but this is an area to monitor closely. In one camp, the IDPs reported that they had completed applications for new documents some weeks earlier but had received no word on when they would have them. Other than this report, we did not hear from the IDPs that this was a significant problem.

Livelihoods

The destruction of boats, hotels, and ancillary tourist businesses has affected vast numbers of families. While some INGOs have developed work projects, most of the men remain unemployed and disaffected. Rumors about which group received what assistance from which agency lead to anger and resentment among survivors. Not only are there rumors about preferential treatment of the south compared to the northeast, but also stories circulate about differential treatment within these regions. In one shelter, residents reported that those outside the camp received help but not those within the shelters. They noted that authorities had delegated the Fishermen's Union to provide assistance but only for those who are members.

Survivors report unexplained variation in who among them receives financial assistance. Of 350 members of the Fishermen's Development Society in one area, only eighteen received money for new boats or equipment. In another area, there was one new boat for the three hundred fishers. This group felt cheated and one member exclaimed: "Why is it that foreign aid came but not to us?" One man complained that he did not know where to go to obtain help to buy new nets. At one camp in Matara, the fishermen complained that they did not know where to turn to get boats but that they knew that fishermen in Hambatota had obtained them because that was where the prime minister had a home. Some fishermen and their wives noted that they have never been able to depend on the government—only on their own effort; with their work, they could live. In this group, some of the widows talked about the possibility of self-empowerment projects that might offer them an income and a sustainable future. The overall sense of residents in this shelter was that they needed homes and tools to rebuild their lives; they were not looking to be cared for.

The IDPs offered examples of bureaucratic difficulties. They cannot obtain bank loans without a guarantor or deeds. In one case, a man reported a bank manager refused to extend him a loan until UNHCR intervened. If there are any mistakes in the application form, the banks send survivors away and this is a hardship for those living at some distance. The district governments have prepared lists of

survivors for the banks; any mistakes, however slight, in those lists can result in banks turning away applicants or demanding documents that have been lost.

Once again, rumors are rife. Bureaucracy and rudeness destroy dignity. The inconsistent responses of government and NGO representatives lead to a sense of helplessness and simmering rage. While NGOs report that they are initiating livelihood projects, there is a question of inconsistency in their actual implementation.

Protection of Women and Children

The Commissioner for Probation and Child Care Services reported that as of April 11, 2005, 1,080 children had lost both parents as a result of the tsunami and 3,739 had lost one parent. In Northeastern Province alone, there were 740 orphans. The government of Sri Lanka, and this department in particular, are to be commended for the rapidity and scope with which they documented the number and whereabouts of child survivors and assured that they were appropriately cared for. Their emphasis on keeping children within their home communities and not removing them to institutions was carefully considered, as was the emphasis on preventing illegal adoptions. Only sixteen children were placed in government homes. Selection of appropriate guardians was efficiently organized and monitored. The agency made further psychological and emotional support to these children readily available, helped them to secure their birth documents and re-enroll in school, and provided them with uniforms and school supplies.

Reports of child abduction have been extremely rare. In one instance an NGO attempted without permission to remove six children to a separate house to provide them education. In another recently reported case, a man from the United States who worked in an orphanage in the south in the guise of helping tsunami-affected children was found to have a history of sexual offenses against children and young women. After careful surveillance, the National Child Protection Authority police apprehended him and his partner. They had a Web site and were collecting funds for their ostensible charity, another example of the scams perpetrated on unsuspecting donors. There was the unusual situation of seven mothers claiming the same newborn, who had been separated from family during the tsunami, a dispute finally settled by DNA identification. UNICEF reports that there may be five to ten reported cases of trafficking post-tsunami. The figures are unreliable and range widely but suggest small numbers. There may be examples of trafficking within families; the South Asia Women's Fund described one case of a grandfather trying to sell his grandchild, but again, this information is anecdotal and, in terms of numbers, rare.

However, there have been reports of attempted child abduction from shelters and camps in the Northeastern Province. These reports suggest that the problem of child abduction for recruitment as child soldiers by the LTTE continues. Both UNHCR and the local NGO Sarvodaya reported attempts at child abduction. A police official in the east described an abduction attempt from a large camp on about March 29, 2005. More than one child was involved and the attempt led to a confrontation between the LTTE and the Special Tsunami Force. No shooting was involved and the raid was unsuccessful. According to the Sri Lanka Monitoring Mission, there have been few reported cases of child abduction but the problem has not stopped altogether.

The Tamil Relief Organization told us that they had to open four additional children's homes after the tsunami. However, the state officials whom we interviewed suggested that there were few orphans. This raises questions about who these children were and whether they were tsunami survivors. From the Human Rights Commission, we heard that in the east, unknown men had brought in twenty-four boys unaccompanied by family for haircuts preparatory to recruitment as soldiers; their parents were called and

they were brought home. While the facts of the story remain vague, such reports and the discrepancies in numbers of orphans raise red flags and suggest the need for further investigation. A senior government official in the east denies that there have been any problems with child abductions or trafficking.

As education has traditionally been a high priority in Sri Lanka, it is not surprising that many schools have been reopened. Support for orphaned children to attend school has been forthcoming.

At this point, there appears to be little evidence of any increase in violence against women as a result of the tsunami. There were two reported cases of rape immediately after the tsunami; one of the rape of a woman who had gone to a guesthouse with her boyfriend after the tsunami hit and was attacked by three strangers, another of two women raped by six men after being abducted from a beach a week after the tsunami. Other reports are unofficial (and perhaps only rumor), such as a woman having been raped while being rescued from the waves. However, the Coalition for Assisting Tsunami-Affected Women released a briefing note that suggested specific gender-related concerns such as insensitive male camp officials who subjected women to indignities when they needed sanitary napkins or undergarments, women being groped in the dark, and women having no say in camp management.¹¹ We noted that in all the camps (with the exception of one), men were the spokespersons while the women remained in the background. While we were able to engage the women in discussion, it is likely that certain topic areas such as gender-based violence were off limits.

We did hear of a woman whose drunken husband had poured kerosene on her in preparation for setting her on fire, and another incident where a woman had been stabbed but police did not respond. UNHCR reports increases in domestic violence and alcohol use. While the police suggest that alcohol and domestic violence are problems, the police official with whom we spoke indicated that no rapes or incidents of human trafficking had been reported. The South Asia Women's Fund suggests that domestic violence is hidden in Sri Lanka and rarely reported, as the barriers to reporting are significant. Displacement, shelter and camp life have the potential of heightening risk, but the data are sparse.¹² While NGOs are aware of instances of domestic abuse, there are minimal data and few women will report abuse. An active network of NGOs supports the protection of women and women's development. However, domestic abuse is a pre-existing vulnerability in Sri Lankan society that the tsunami with its even more massive displacement, the shelters, crowded transitional housing, and increased alcohol abuse is likely to exacerbate. The natural disaster makes protection of women and children in Sri Lanka even more of an urgent concern.

Our meetings with UNICEF and the South Asia Women's Forum, and material that we obtained from Lawyers for Human Rights and Development (LHRD), suggest that trafficking in boys and girls is a major problem in Sri Lanka, with movement of girls primarily from rural to urban areas and of boys to Colombo and the beach areas of the west and south. Estimates of children in commercial sex exploitation range from 1,500 to 30,000 with four times as many boys as girls being exploited.¹³ The underlying factors appear to be poverty and the growth of the tourist industry.

While Sri Lanka has signed and ratified relevant international treaties related to child protection and has several laws that could protect children, there has been a distinct lack of enforcement of these laws.¹⁴ Further, trafficked children and women are treated not as victims but as criminals. The report from LHRD reveals a distinct lack of response from police and from the judiciary. Young girls are abused not only through sex trafficking but also as domestic workers. Further, chains of trafficking have been traced to Singapore and this appears to involve international criminal networks. With Sri Lanka's liberal visa rules allowing thirty-day visits, it now serves as a transit stop for the sex trafficking of women from such areas as Eastern Europe. There have been some flagrant cases of abuse such as attempted adoption of children, pedophilia resulting in deportation of a foreigner, and the forced labor of children both within and outside the country.

Finally, a report from the LHRD¹⁵ suggests that exploitation of Sri Lankan women, as domestics in the Middle East, may be a severe problem. The South Asia Women's Forum reports that abuse of domestic workers within Sri Lanka is rampant with little protection or legal representation for those who complain. The international NGO Solidarity reports that there may be as many as two hundred thousand migrant workers moving from rural areas of Sri Lanka to factory zones and to other jobs with little protection. Solidarity expressed concern that the tsunami may heighten the problem, as vulnerable people may be enticed to work as domestic or factory workers as an escape from poverty. This too is an area that will require close monitoring, legislation, and training of law enforcement.

Effects of the Years of War

Despite the ceasefire agreement, tensions between the GSL and the LTTE are apparent in the Northeastern Province. While we did not enter the LTTE-controlled areas, we were in the LTTE-active areas along the coast near Batticaloa and inland at Ampara. From NGOs we heard that there have been upwards of fifty killings in the east in the last two months. In none of the cases have the authorities filed charges. The recent murder of a Tamil journalist in Colombo at the end of April reflects an ongoing campaign of intimidation and murder. Our informants suggest that these incidents reflect a continuing split in the LTTE since the defection of Colonel Karuna, the eastern commander, in March 2004 and the disbanding of his militia. In addition to these murders, ongoing child recruitment may be a problem as it was prior to the tsunami, and we heard of attempted abductions of children from IDP camps for military duties in the LTTE. One of our informants suggested that if the tsunami had not intervened, civil war would have broken out again.

One of the aftereffects of the twenty-year war is the massive and ongoing displacement of several hundred thousand people who have never been permanently resettled. In one camp that we visited, the Tamil-Muslim conflict had displaced people in 1986 and then again in 1990. The UNHCR reports that an important problem is the mix of conflict-displaced IDPs and tsunami-displaced IDPs. These two groups have both similar and different problems that require attention. The ICRC has worked in Sri Lanka for years addressing violations of international humanitarian law. As of the middle of January 2005, they had established field offices to address the issues of tsunami displacement along with various Red Cross federations.

The well-publicized disagreements about aid to the LTTE to assist those in the area it controls reflect the political tension that exists. It is important that those IDPs in the LTTE-controlled areas receive support but also that an assessment be made of whether their human rights are being observed in their shelter situations.

Along with these concerns, Sri Lanka is facing the problem of locating mass graves and exhuming and identifying the missing from this quarter century of war. Estimates suggest that some 5,500 soldiers and an additional 6,000 civilians went missing in action. There has been resistance to locating the missing, especially on the part of the government. Superimposed on war-related missing are those who disappeared as a result of the tsunami. How far to pursue the missing from the past, and how to assess the desires of those who survived the recent disaster to locate and identify the missing, remains a challenging task. The tsunami revealed the need for upgrading forensic capacity in Sri Lanka and this should be pursued.

Psychosocial Assistance

The buzzword of "psychosocial assistance" is reflected in the work of many INGOs and some NGOs as well. What the term means is not clear. There is a dearth of information on its definition, its

implementation, and its effectiveness. Yet, if the health and well-being of survivors is to be attended to, this is an important area to understand. WHO has defined the issue as a “hidden psycho-traumatic epidemic.” Whether such definitions are helpful to survivors is an open question. In our visits to the camps, psychosocial support was not high on the residents’ list of what was needed. How to assess what survivors do need in the way of emotional support and how and by whom it could be provided remains a challenge for humanitarian aid agencies. The contribution of psychosocial programs in long-term social reconstruction is an uncharted area.

Nongovernmental Organizations

The government and IDPs recognize that foreign NGOs have offered an enormous amount of assistance to Sri Lanka, but there are problems that may affect the human rights of survivors. IDPs in camps complained that transitional housing had been built in locations that were subject to severe flooding during the monsoons and that they had not been consulted about the geography of the areas. Further, survivors reported that they were moved into housing where the infrastructure was not complete. In one camp, there was no water delivery and no water for sanitation. In other camps, women complained of lack of sufficient food especially for their children. When maintenance problems arose, no one claimed responsibility. IDPs were stuck in the middle between government and the NGO, each placing responsibility on the other. Once NGOs left, it was not always clear to IDPs to whom they could turn for help.

One complaint that surfaced particularly from government and from major NGOs was the question of motivation of some organizations that arrived on the scene in the wake of the disaster. Sometimes, these new groups were religiously based and their proselytizing goals were inappropriate to the needs of the people. In other cases, the motivations were political—one NGO accused another that had an ethnic political agenda of taking its supplies and putting its own label on them. Some “fly-by-night” NGOs appeared to be newly constituted with very little experience. An experienced government planner described these groups as interfering with the government’s reconstruction strategies. At times, NGOs built too many temporary homes or built homes where they were not needed. The same local official described the difficulty in determining who were the “good” NGOs and said with frustration that they would not coordinate with local government, leading to gaps in assistance. While this official expressed the most frustration, we heard the same concern reiterated in other meetings.

The Guiding Principles on Internal Displacement place the responsibility for providing assistance with national authorities, not the humanitarian aid agencies. Further, the principles instruct these agencies to “respect relevant international standards and codes of conduct.” It is apparent that guidelines for disaster relief need to spell out more clearly how to mobilize, screen, and coordinate massive aid from multiple organizations without impeding the provision of aid.

IV. GOVERNMENT RESPONSE

The government of Sri Lanka responded quickly to the disaster by establishing a Center for National Operations (CNO) through the Presidential Secretariat. The Human Rights Documentation Center report of February 2005 lays out in detail the issues that were raised about its legal standing, the lack of consultation with organizations outside Colombo, the lack of specification of the roles of the military and police, and the lack of transparency. Establishment of the CNO was quickly followed by enactment of the Public Security Ordinance (Emergency Regulation No. 01), which granted the president and the government great powers. After six weeks, the CNO was dissolved and replaced by the Task Force on the Rebuilding of the Nation (TAFREN) and the Task Force on Relief (TAFOR).

In our interviews, we heard questions about the composition of TAFREN with suspicions raised that the rebuilding of the country had been turned over to a small group of businessmen. The state of emergency in the country heightened concerns about human rights protections as well. At the beginning of February, the government announced that it would provide Rs. 15,000 (US\$150) for a death, Rs. 2,500 (US\$25) for utensils and kitchen supplies, Rs. 5,000 (US\$50) for sustenance, and Rs. 200 (US\$2) for purchase of food plus a daily ration offered by the state. As well, it will offer loans of Rs. 250,000 (US\$2,500) for rebuilding homes, to be paid off over twenty years, and Rs. 100,000 (US\$1,000) for repairs. We were told that civil servants would be given a special loan program at favorable terms.

In our interviews, however, even with government officials, there was confusion over what survivors were entitled to receive. For example, local authorities appeared to lack guidance regarding how often survivors were to receive Rs. 5,000—once or twice, or monthly? This confusion about what entitlements existed and the processes by which people were to receive them marred good intentions. The ignorance that we observed was surprising as we were told that all the government agents met twice a week in Colombo.

After visiting a government official who had a clear understanding of the bureaucratic process and who complained that the IDPs tried to cheat and were ungrateful, we saw IDPs in camp settings who had no idea what they could expect. While he placed the blame on them as people out to scam the government, their precarious existence belied his claims of government largesse and efficiency. The impatience of the IDPs would build as they felt a lack of response from government agents, their representatives, bank bureaucrats, and NGOs who seemed to them to favor some and not others. This had led to street demonstrations in the east but there was still little response to the IDPs' concerns. The principal source of information at the local level is supposed to be the village headman, who receives his information from the government agent. In many cases, the village headman was absent, visited the camps rarely or not at all, or pleaded ignorance. Thus, the flow of information was impeded, leading to increasing dissatisfaction. This system lacks the flexibility that such a catastrophe requires and in fact, may reflect vulnerability in government service delivery. While the district offices could produce mounds of computer-generated data, relevant information was hard to come by on the ground.

Another problem in the government's response was the lack of consultation with those affected by the tsunami. Planning processes basically excluded IDPs and local civil society. One district government official told us that he would inform people where they would resettle when the foundations for the houses were poured. This lack of respect for the right of IDPs to help direct their own recovery coupled with a lack of transparency on the government's part pervaded all aspects of the planning process. IDPs were left in the dark with little sense that they could influence anything having to do with their well-being.

We heard complaints of hunger, lack of infrastructure, lack of water in some cases, and lack of health care in others. In some areas, it seemed as though the government had lost its ability to coordinate and monitor the aid process that was carried out by INGOs. One lesson from the tsunami is the need to screen more carefully those organizations or helpers who come into the country and to assure that coordination at the government level is maintained.

Through the National Child Protection Authority and the Department of Probation and Childcare Services, the GSL acted quickly to ensure protection for children who had lost one or both parents. This response was organized and effective and likely forestalled abductions or trafficking in children. While the response to child protection needs was excellent, the needs of women were ignored despite the bureaus for women and children in the police department and the attention to gender throughout the government. A gendered response to natural disasters is important especially as the risks to women and children increase. As noted above, the collusion in the society to ignore domestic abuse must be addressed and be seen as a risk factor for IDP women.

The GSL announced on April 29 that 90 percent of the permanent housing would be completed by the end of the year. Land had been demarcated for up to 34,000 permanent homes and seventy-one memorandums of understanding had been signed with donors. Further, the government stated that the total requirement of 30,000 transitional houses would be completed by May 2006. Authorities also announced that the Rs. 5,000 monthly would be paid to survivors through June. While this appears to be an impressive record, our findings in the northeast suggest that this will be an ambitious undertaking. The downsides of the government housing program have been outlined above.

On May 4, the BBC reported that the president of Sri Lanka was committed to working with the LTTE to provide aid to tsunami victims and would press for a joint mechanism to provide that assistance. This is likely to be seen as controversial in an environment where the LTTE are seen as terrorists.

V. AREAS FOR FUTURE RESEARCH, MONITORING, AND TRAINING

While the government of Sri Lanka has made a Herculean effort to respond to a major calamity, problems do exist that go beyond the technical difficulties that might be expected. There are significant gaps in our understanding of the extent of human trafficking (internal and external) in Sri Lanka. If this process is driven by poverty, the tsunami may have additional impact on it. Other dimensions of forced labor also may increase.

The hidden problems of domestic violence and alcohol use need further investigation and monitoring. The potential for human rights abuses related to equitable distribution of aid, lack of transparency, and structural problems in delivery of government services will require ongoing monitoring. The problems of child abduction and recruitment of child soldiers remain unresolved and require additional data and monitoring. IDPs, women and children in particular, have not received sufficient protection.

The impact of the tsunami on the survivors can be assessed in a systematic way and will result in programs designed to meet the identified needs of survivors. The preservation of property rights or appropriate compensation, along with the provision of identity documents, must be monitored to assure that no one is deprived of their basic rights. Livelihoods must be restored based on what people want, not on what NGOs or government prefer—this is an area in which monitoring is essential with indicators of progress clearly defined. Finally, the problem of finding mass graves and identifying the missing remains an ongoing legacy of years of war, a legacy compounded by the addition of those who lost their lives in the tsunami.

VI. CONCLUSIONS AND RECOMMENDATIONS

Given the magnitude of the catastrophe, the GSL responded in an admirable fashion. In retrospect, it is always easy to point out errors and to suggest alternate pathways. However, it also is important to focus on the problems that emerged after the acute phase of the humanitarian relief process ended so that we can prepare for and mitigate the consequences of the inevitable next natural disaster. With this in mind, we recommend the following.

1. Two major concerns are the lack of transparency in decision-making and the lack of communication to internally displaced people. This is leading to mounting frustration and demonstrations as impatience grows. We suggest that the government of Sri Lanka develop a more consultative process of decision-making that would include representatives of those living in shelters and in transitional housing. We also suggest that a more effective mechanism of communication be established since depending on village headmen to deliver information does not appear to be working. District liaisons with specific constituencies might be one option.

2. Basic questions exist about the extent to which political influence determines the pace of reconstruction and the geographic area where it occurs. One option is to appoint a commission to investigate these allegations, which might include international members from the donor community.
3. The involvement and participation of IDPs in decision-making about location of housing and other important dimensions of daily life is minimal to nonexistent, and this should be rectified. This is in line with recommendations made above. It requires that district secretaries and planning departments establish community-based consultation mechanisms that are legitimate and transparent and that have some power over outcomes.
4. The provision of services to camps is spotty and responsibility for different tasks is not always well defined. This places people at risk for disease and particularly threatens children's well-being. A mapping of all shelters and temporary housing should be done to assess the adequacy and quality of infrastructure and services. Remediation mechanisms must be in place and operational.
5. There is insufficient attention paid to issues of violence within shelters, especially the role of alcohol in promoting domestic violence. Little attention is paid to the specific needs of women and children. The export of Sri Lankan women as domestics and their abuse at the hands of their employers must be controlled. States in which the abuse occurs must take responsibility. The National Child Protection Authority and gender-related government programs must take the lead in holding police and the judiciary accountable for enforcing the laws that are on the books, and they need to lobby Parliament for the promotion of mechanisms that will protect domestic workers.
6. In the east, protection of IDPs from intimidation by LTTE and from child abduction is an urgent need. The longstanding issues of child sexual exploitation and trafficking of women and children may worsen with the economic fallout of the tsunami. Monitoring mechanisms are essential; education of the population, and particularly the parliamentarians, about these abuses should be expanded. The issue of trafficking (both domestic and international) and the importation of foreign sex workers must be more closely followed and appropriate sanctions put into place for the traffickers as well as enhanced support for those who are trafficked.
7. The question of the buffer zone and reconstruction requires more thought and consultation, not only with the IDPs themselves but also with those who possess appropriate scientific expertise. Government policy that excludes support for rebuilding on the buffer zone should be re-examined.
8. Urgent attention to restoration of livelihoods based on what the IDPs want is critical. As many IDPs pointed out, shelter and an ability to return to work will allow them to rebuild their lives much faster than government handouts. This is especially true with respect to the provision of boats and equipment for the fishermen.
9. Guidelines for NGO cooperation with national authorities should be developed and ongoing monitoring of their work is essential.
10. The ongoing problem of child abduction and recruitment of child soldiers must be addressed. This should be an extremely high priority for the GSL, the LTTE, the Sri Lankan Monitoring Mission, and UNICEF.

¹ The author gratefully acknowledges the invaluable assistance of Muthiah Duraisamy for his help collecting the data on which this report is based, and the International Centre for Ethnic Studies in Kandy, especially Professor Stanley Samarsinghe, and Palitha Elkaduwa for arranging the interviews and planning the itinerary. Kalyananda Tiraganama provided an exceptionally helpful review of the initial report.

² Hiranthi Wijemanne, “The Tsunami in Sri Lanka and Women,” UNU Public Forum to Commemorate International Women’s Day, March 8, 2005, Tokyo, Japan.

³ INFORM Human Rights Documentation Centre, “Human Rights Issues in the Post-Tsunami Context,” February 2005.

⁴ Richard Plunkett, Brigitte Ellemor, and Victoria Campbell, “Introduction,” *Sri Lanka* (Melbourne: Lonely Planet, 2003); Human Rights Watch, *Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka* (New York: Human Rights Watch, November 2004); University Teachers for Human Rights (Jaffna), *Political Killings and Sri Lanka’s Stalled Peace*, Special Report #18, March 28, 2005, available at <http://www.uthr.org/SpecialReports/spreport18.htm>.

⁵ During the British period, thousands of Tamils were imported from India beginning in the mid-19th century to work on the tea estates as cheap labor. Their descendents constitute one of the two main population groups of Tamils in Sri Lanka, many of whom still work on these estates. While similar in many respects to the Sri Lankan Tamils, they are seen as two distinct populations. They were not granted Sri Lankan citizenship at the time of independence and many thousands repatriated to India. Over the years, citizenship rights have been extended to most of the remaining population.

⁶ John D. Rogers, Jonathan Spencer, and Jayadeva Uyangoda, “Sri Lanka: Political Violence and Ethnic Conflict,” *American Psychologist* 53:7 (1998), pp. 771-777.

⁷ Sugeeswara Senadhira, “Peace Process in Sri Lanka,” Asian Affairs, available at <http://www.asian-affairs.com/Sri-Lanka/sugeeswara.html>.

⁸ The vast majority of the people killed during the second JVP uprising—more than 90 percent—were Sinhalese. Both the JVP and the Army killed the Sinhalese. While the JVP rebels were Sinhalese, they also were Marxists and attacked members of their own ethnic group in order to achieve their ideal of a Marxist state. There was no protection provided to Sinhalese, Tamils, or Muslims by the government. During the period July 1987–February 1990, Indian Peace Keeping Forces were occupying the north and the east. The Sri Lanka government under President Premadasa conducted peace talks and provided arms and money to LTTE to fight the Indian Army. Personal communication, staff member, Lawyers for Human Rights and Development.

⁹ The violence continues. A state of emergency was declared following the assassination of the foreign minister, Laksman Kadirgamar, on August 12, 2005.

¹⁰ UN Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement*, available at http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html.

¹¹ Coalition for Assisting Tsunami Affected Women, *Gender Specific Issues Relating to Post Tsunami Displacement*, Nawala: Briefing Note 2, January 15, 2005. Also at http://www.womeninlondon.org.uk/download/tsunami_women_press_release2.doc.

¹² South Asia Women’s Fund, *The Tsunami Disaster in Sri Lanka: Promoting and Implementing Gender Sensitive and Child Friendly Community Based Approaches to Rehabilitation* (Colombo: South Asia Women’s Fund, 2005).

¹³ Sarath W. Amarasinghe, *The Commercial Sexual Exploitation of Children: A Rapid Assessment* (Geneva: International Labor Organization, 2002).

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THAILAND

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I. INTRODUCTION

This report presents the findings of a fact-finding mission to four tsunami-affected provinces (Phuket, Krabi, Phangnga, and Ranong) in southern Thailand from March 30 to April 8, 2005. The main objectives of the assessment mission were:

1. to examine existing and emerging human rights issues, especially those affecting vulnerable populations (women, children, and migrants) in the aftermath of the tsunami;
2. to assess the needs of tsunami survivors; and
3. to identify human rights concerns that will need to be monitored and responded to during the reconstruction phase.

Methodology

The mission team interviewed sixty-six informants. Of these, thirty-two were tsunami survivors—fisher folk, business people, shop owners, and construction workers—from eighteen communities on the coasts of the Andaman Sea and the Gulf of Thailand.² (The team was unable to interview any of the hundreds of Thais who were working in southern Thailand when the tsunami struck and subsequently have moved to other parts of Thailand.) Twenty-one were key informants—relief workers, village leaders, health and social welfare officials, immigration police, labor union leaders, and human rights activists—who have been engaged in relief and reconstruction efforts since late December 2004. The team also met, in Bangkok, with thirteen representatives of national and international aid agencies, Thai government institutions, and nongovernmental groups.³

II. OVERVIEW

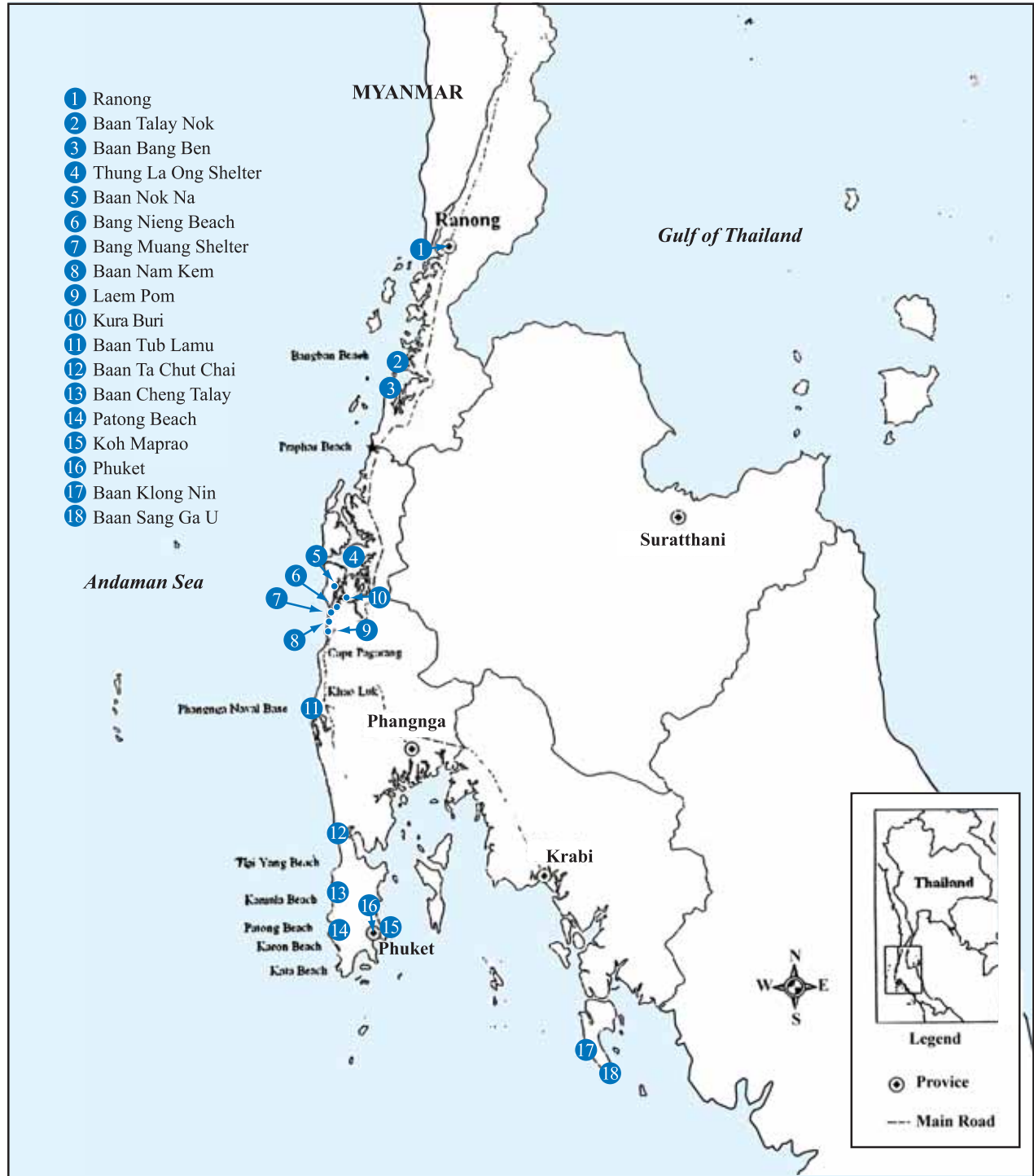
In May 2005, the Thai Ministry of Interior Department of Disaster Prevention and Mitigation released the following figures on the tsunami of December 26, 2004: 5,395 dead (1,975 Thai, 2,245 foreigners, and 1,175 unidentified) and 2,845 missing. Some 58,550 people from 12,480 families in 412 villages were affected.⁴ UNICEF reports that 1,221 children lost one or both parents or an immediate guardian. Aquaculture equipment, fish ponds, and fish nursery areas were irreparably damaged. According to the Thai Department of Fisheries, 7,446 fishing boats were lost or severely damaged (i.e., non-seaworthy). In tourist areas, the tsunami destroyed about 40 percent of the 53,000 hotel rooms. The Thai Tourism Authority cut its forecast for visitors to Thailand this year to 12 million from 13.5 million, a major blow considering that tourism produces about 6 percent of the country's gross domestic product. In response, the Thai cabinet approved a US\$137 million budget for tourism revival projects.⁵

The emergency response to the tsunami-affected areas of southern Thailand was swift.⁶ In addition to the assistance provided by the Thai government, hundreds of Thai and foreign volunteers descended on the Andaman provinces immediately after the tsunami. The Ministry of Public Health sent 200 medical

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doctors to Phuket immediately after the disaster occurred. In the meantime, international, national, and local humanitarian organizations and foundations have initiated an array of recovery projects, including workshops to repair fishing boats and to train women in the production of handicrafts. Local restaurant owners have helped fishing communities that have supplied them with seafood in the past. Some agencies, like the Swiss Agency for Development and Cooperation, have begun projects to rebuild small fishing villages literally from the ground up. Thai-based companies and foundations, including Thai Cement and the national television channel ITV, have provided food and building materials to the internally displaced and created a project to replace or rebuild damaged boats.

On April 30, 2005, Thailand took an important step toward improved disaster preparedness by instituting a tsunami warning drill in Phuket. On May 4, the Department of Meteorology reported that it is working on automatic seismic monitoring, a database on geohazards migrations, and tsunami detection buoys in the Andaman Sea. Key issues under consideration are how to get warning information received from seismic stations to district authorities and communities, use of measures other than TV and radio, and use of knowledge of indigenous peoples and “local wisdom” when considering any early warning system.

Against this backdrop of disaster and ministration, one might think that there would be few, if any, human rights concerns in the tsunami-affected areas of southern Thailand. Yet these facts and figures fail to convey the qualitative impact the tsunami has had on the social fabric of poor coastal communities. Displaced and traumatized, the most vulnerable members of these communities are at risk of exploitation and violence unless proper measures are taken to protect their physical safety and well-being. Why is this so?

Many tsunami victims in Thailand literally lost their identities. Without vital documents, including work permits, birth certificates, and land and property titles, they are unable to obtain certain types of aid, secure employment, obtain health care, and receive inheritance from deceased family members. If survivors cannot establish who they are, and what land or property they owned, then the process of returning home and reconstructing their lives is infinitely more difficult. Women and children, especially if they are widowed or orphaned, are at risk of exploitation, higher rates of morbidity and mortality, and continued displacement without the safety net of family and community to protect them.

The tsunami that struck the Andaman Coast not only affected hotel resorts and businesses, it also severely impacted fishing villages, including sea gypsy villages and families living along the shoreline who depend on the sea and the tourist industry for their livelihood. In some cases entire villages were washed away and survivors had to move to one of a dozen shelters constructed on higher ground. Shelter residents live in tents or single-unit plywood structures, often with four to six people sharing a room. Many residents are unemployed and are receiving no job training. Sanitation is poor and flooding is a persistent problem whenever it rains.

In Thailand, where migrant labor is critical to the economy, many of the country’s 1.5 to 2 million migrant workers (of which roughly 80 percent are Burmese⁷) have faced discrimination and exploitation largely because the government has failed to enforce labor laws designed to protect the human rights of foreign laborers. Nor has it implemented a registration process and outreach program that includes effective incentives for migrant workers to register for work permits.⁸ When the tsunami struck southern Thailand many Burmese migrant workers—most of whom were unregistered—went into hiding in the hills or on plantations because they feared being arrested and deported. Police raids soon followed, and hundreds of migrants were arrested and deported.

III. FINDINGS

Our study found six overlapping human rights concerns affecting tsunami survivors in southern Thailand: (1) distribution of aid; (2) protection of women; (3) protection of children; (4) protection of Burmese migrants; (5) land rights and tenure; and (6) potential for human trafficking.

Distribution of Aid

By most accounts, the Royal Thai Government and international aid agencies moved swiftly to provide relief to tsunami survivors.⁹ The Cabinet assigned the Ministry of Social Development and Human Security to coordinate with the defense ministry and housing authority in the construction of shelters and permanent housing. The Ministry of Public Health and provincial health offices provided medical care to survivors and conducted surveys to monitor for the spread of infectious diseases and the general health impact of the tsunami.¹⁰ The Ministry of Fisheries dispatched staff to fishing villages to assess the loss and damage to fishing boats and to distribute compensation to families whose boats were registered. Families of Thais and registered migrants who died during the tsunami were to receive 20,000 Baht (approximately US\$500) in compensation. To claim compensation, a death certificate for the deceased family member would be required. Key players in this compensation scheme have been the Tambon Administration Organizations, or TAO, which are local governing bodies that operate at the subdistrict level.¹¹ In all, approximately seventy-eight TAOs have been involved in the distribution of compensation in the six Andaman provinces.¹² By early April 2005, the Thai government had spent approximately 812.26 million Baht (US\$20.92 million) in relief aid to tsunami-affected areas of southern Thailand.¹³

During the first two months after the tsunami, nongovernmental organizations generally praised the Thai government's relief efforts. Yet, at the time of our visit (March 30–April 8, 2005), that sentiment was beginning to be tempered by complaints that the government was more concerned with revitalizing the tourist industry and less attentive to the long-term, complex social and livelihood issues affecting displaced villagers and foreign migrants. Some key informants said government ministries were overwhelmed by the disaster and needed to expand and train their staff in disaster management skills. Others criticized what they called the government's "cash-response syndrome," which sought to give survivors a relatively meager one-off payment without any meaningful effort to provide survivors with the skills that would enable them to lead productive lives. Such efforts were largely left to international foundations and aid agencies.

Most key informants agreed that the government's relief efforts needed to be held up to greater accountability and transparency. They also said both the Thai government and private aid agencies needed to better coordinate their relief efforts and to make community participation a top priority, especially in the area of new housing. An assessment team from the Institute of Asian Studies of Chulalongkorn University, which visited southern Thailand in March 2005, confirmed many of our findings:

First, there is a shortage of funding [for housing]. The government assigned a special budget for building new permanent houses of victims but due to various reasons, the money has not been completely transferred to the communities, has been delayed, or has not been enough to complete the projects. Second, many of the workers participating in the housing projects are tsunami victims themselves and there are numerous complaints that the 170-200 Baht per day that they receive as payment for their work are inadequate to support their families. Third, even those families who already received houses express fear that the government did not provide enough guarantee over their ownership and that one

day they might be forced to leave as it happened to those who lost their properties from the public coastal areas.¹⁴

Tsunami survivors we spoke to criticized fly-by-night groups that came to the south with both good and bad intentions. Many of these groups woefully underestimated the length of time required to complete reconstruction projects and made promises to villagers they could not keep. In Baan Nam Kem (“Baan” means village in Thai) we discovered a boat construction project operated by a Thai woman and her foreign boyfriend. They promised to build several boats and posted a sign seeking donations. Yet villagers told us that the couple used the money to contract with local carpenters to build two longtail boats for themselves.

Chaiyos Wichitbot of the Mobile Assistance Center, a nongovernmental group formed by several labor unions to assist workers affected by the tsunami, told us that many survivors were slipping through the government’s safety net. He said some employers had taken advantage of Article 75 of the Thai Labor Law, which allows companies to halve their worker’s salaries in times of extreme difficulty. According to Wichitbot, the law has adversely affected the salaries of some 400 to 500 workers in Phuket and Phangnga provinces. The Mobile Assistance Center has also documented the cases of 40 tsunami survivors who have been denied governmental assistance as they are registered as residents of other provinces.

Several key informants suggested that the government should establish a tracking and compensation system by which survivors who lost immediate family members, property, or their livelihoods and chose to return to their home provinces are provided with resettlement funds. They also said that survivors from other provinces who chose to remain in the south should receive equal compensation.

Nongovernmental relief workers in camps and shelters for internally displaced people told us that they had had little, if any, engagement with the government since late February. “Much of what you see in this camp is a smokescreen,” said a Thai relief worker at the Bang Muang shelter, as two of his colleagues nodded in agreement:

To the casual visitor it might look as if the government has done a good job here, but, in reality, it hasn’t. It is like *pachee roy naa* [cilantro], the herb we Thais put on top of what might be a so-so meal to make it look and smell good. The camp was built to last three months, but residents were recently told they will have to stay here at least a year. This has caused a lot of despair. ... We have no 24-hour health staff or a surveillance system to track infectious diseases. We often have no milk powder or supplemental food for children. For the first three months, security was good [at the camp], but recently the Ministry of Interior took away their guards and we now have to rely on three policemen who aren’t very dependable. ... One day the TAO came to announce that everyone would get 50 Baht per day for food, but then, how do you say, they were “gone with the wind.” Recently the free soup kitchen closed. ... The government has no long-term plan for these people. Women can receive training in handicraft production, but then there is no marketing support or training, so nothing gets sold. And so the women become disenchanting and drift away. Without job training and start-up jobs, some [camp] residents have approached their relatives elsewhere or wealthier people who live in town to borrow money. The problem is these loans usually carry a high interest rate, and this is the first step toward a lifetime of debt. Now is the time to take a good hard look at reality. We need to help tsunami survivors in a way that is both practical and just. We need to make the boat float again.

Tsunami survivors we interviewed echoed similar sentiments. “I don’t trust the way the local authorities are managing the relief aid,” a survivor from Baan Cheng Talay told us. When the waves struck, he lost his brother, who was blind, and the family grocery shop. He eventually found his brother’s body in a wooded area, but the TAO refused to help him bring it to the house. Nor would they help him pay for the funeral. When his mother went to the TAO to ask for assistance, they turned her away because her ID card had expired. Eventually, the TAO gave his family 20,000 Baht in compensation, and an American married to a local Thai woman provided an additional 100,000 Baht. “At least, I received something,” he said, gesturing to a cluster of houses closer to the shore. “That village over there has a very weak Tambon [TAO] and even though they lost nine people no-one has received any compensation.”¹⁵

Joseph Campbell, in his book on mythmaking, writes, “Where ignorance of the actual causes of distress and harm exists, then human beings inevitably seek for an explanation. It is as if individuals, groups and communities cannot tolerate to live with events that are apparently inexplicable. Thus, when such events occur, no relief, no cleansing can take place until an acceptable explanation has been found.”¹⁶

In other words, when a natural disaster strikes we instinctively seek explanations because we need to impose order on chaos and, if possible, rescue hope from despair. Thus, it is easy to understand why so many tsunami survivors blamed the government for their suffering. By blaming the government survivors could find cause and meaning—the “acceptable explanation” which Campbell refers to—for an inexplicable and devastating event. It also provided a kind of symbolic, though often temporary, form of retribution and a temporary illusion of power because the feelings were mobilized and channeled and collectively shared.

That said, if our limited sample is indicative of the general sentiment of tsunami survivors in the six southern provinces, then the government needs to re-evaluate its principles and priorities as it moves into the reconstruction phase of the tsunami disaster. In nearly every village we visited survivors complained, often bitterly, about the paltry amount of aid they received from the government. They also complained about the delay in its distribution and the discriminatory manner in which it had been distributed. Below is a sample of what survivors told us:

- The owner of a large fishing fleet on Maprao Island said he received 538,000 Baht for his losses, even though he lost more than a dozen boats and employs many of the men in his village. Using his land as collateral, he then borrowed an additional 200,000 Baht from the bank, but still needs 500,000 Baht more to replace or repair his fleet. In the meantime, he is unable to offer work to his former employees.
- A group of five women in Baan Tub Lamu said the local authorities appeared to have no set standard for distributing compensation, and that many families in the village had received nothing.
- A female diabetic in the same village told us she had not gone to the hospital because she had recently been denied health care because she was born at home and thus had no birth certificate to prove her Thai citizenship. Seriously injured during the tsunami, she was now bedridden; her right leg had turned gangrenous and, without immediate care, would need to be amputated. Meanwhile, her husband had received 4,000 Baht from the TAO to fix his boat. But it was not enough to cover the repairs. In the end, they had to borrow an additional 10,000 Baht to buy her painkillers and other medications.
- A 60-year-old woman at the Thung La Ong shelter who had lost her husband and daughter during the tsunami said she had stopped going to government offices to seek assistance because it was too painful having to constantly repeat the same story.

- “The government has a black heart,” a young woman on Kho Khao Island told us. A widow with four children to care for, she felt the government should be more generous and equitable in its distribution of aid. She complained that the TAO had given her neighbor, also a widow, the same amount of compensation although she had only one child. She said the TAO was offering baking classes for women but they were useless because there were no tourists to buy their products.
- A group of villagers on Lanta Island complained that fishermen who had failed to register their boats had received 30 percent less in compensation than those who had. This was a big blow to their village as only one of the 47 boats had been registered.
- The head of a fishing village in Ranong province said that most of the aid that reached her village had come from private sources, particularly Thai Cement and Michelin. The TAO reportedly gave nothing, but the fisheries department provided 20,000 Baht for registered boats and 14,000 Baht for unregistered boats. Some fishermen, she said, refused to accept the compensation as they felt it was “insultingly low.” She praised the generosity of foreign foundations and aid agencies, which, in her words, had “saved the village.” They had supplied seeds for planting, rebuilt the village school, repaired water lines and the communal pond, and built a health clinic for young children. But she also complained about the lack of coordination among aid agencies. Ruptures had emerged in the community as it often appeared as if an agency favored one group of villagers over another.
- Many tsunami survivors, especially those who had moved to temporary shelters, fell into a “Catch 22” situation when it came to accessing government aid. Supot Sukontharot, the head of a village on Kho Khao Island that was swept away by the tsunami, said that many of his fellow villagers had lost their radios and televisions and thus had missed government announcements instructing people where to go to apply for aid. Others missed out because they were too traumatized or were preoccupied taking their dead to the temple. When they eventually went to the government offices, they found them closed.

Numerous agencies, private and government alike, have implemented first-rate projects aimed at helping tsunami survivors rebuild their communities. Among them is an exemplary initiative started by the Swiss Agency for Development and Cooperation (SDC). From its headquarters in Kura Buri, the SDC is coordinating a two-year project that aims to rehabilitate three fishing communities on the islands of Kho Khao and Phra Thoung in the province of Phangnga. With a budget of US\$5 million, the SDC has made community participation the guiding light of its operations. SDC engages villagers in the design and construction of every aspect of reconstruction. Regular meetings are held with the provincial governor, the district chief, and village representatives, as well as contractors, architects, scientists, partner organizations, and journalists. Every step of the way, villagers are involved in rebuilding the infrastructure of their communities, including new homes, schools, piers, health centers, and bridges, and receive a salary comparable to local wages.

The SDC project embodies the most important aspect of post-tsunami reconstruction, namely that villagers themselves must be the driving force behind the rehabilitation of their communities and the management of their natural resources. Rather than pursuing a piecemeal, “cash-response” approach to aid distribution and reconstruction, the Thai government and aid agencies should work together to promote community participation at all levels of the rebuilding process. This means that tsunami survivors and their communities should be regarded as rights-bearing agents whose views are taken seriously. They should be active and engaged participants in—not merely auxiliaries to—reconstruction efforts. As rights-bearing agents, tsunami survivors will be better able to regain control over their lives and influence the events that impinge on them and their communities. Through community meetings with

fundes and aid agencies, they can begin to re-create social ties and establish methods of governance. They can inform humanitarian groups who are the most vulnerable in the community and in need of special aid, rather than leaving that decision to government officials and aid workers who have a limited knowledge of the region. Most important, they can take ownership of (and eventually pride in) the reconstruction of their villages. Community participation will help eliminate the cynicism and anger that many survivors have expressed regarding the lack of transparency in the distribution of aid.

The government and aid agencies could help promote community participation by establishing a central fund to support community rebuilding initiatives (e.g., homes, schools, piers, bridges, and community centers) and livelihood development, conduct resource assessments and implement rehabilitation activities including the replanting of mangroves, sea grass management, installment of artificial coral reefs, and the breeding and releasing of fish species.

Protection of Women

Women are particularly at risk of exploitation, violence, and discrimination in the tsunami-affected areas of southern Thailand. Many of them have lost documents that entitle them to inheritance and property, as well as health and social benefits.

For the most part, shelter residents have been vigilant toward women and children. Yet, the very nature of these camps—the porous and unprotected perimeters, cramped living conditions, idleness and despair, and lack of meaningful work—is antithetical to the well-being and security of women and children. After safety, housing, and physical and mental well-being, the most pressing problem for female tsunami survivors is finding a livelihood.¹⁷ Female survivors who are most vulnerable include the destitute, widows, the internally displaced, the disabled, Thai and non-Thai migrant workers, and those severely traumatized by the disaster and loss of loved ones.

Female tsunami survivors we interviewed in villages and internally displaced camps along the Andaman coast had strikingly similar concerns and needs. Those living in temporary shelters were desperate to return home or, if that was impossible, to be provided with housing, preferably with members of their original communities. The vast majority of women said they feared another tsunami. Some said they felt “tired and lethargic,” and were unable to focus on performing even basic chores. These symptoms worsened after the earthquake that shook parts of southern Thailand on March 28, 2005. At the time of our research, every evening in the village of Baan Tub Lamu a group of women walked to the pier to see if the sea was shaking or had changed color. None of the women we interviewed had participated in a psychosocial program, nor did they know if any existed.

Aid workers at the Bang Muang shelter expressed concern at the complete lack of programs in the camp designed to educate women about reproductive health and child care. Women at the shelter received no information about family planning, including birth spacing intervals. They lamented the fact that this was a perfect opportunity to impart such information to women.

Finally, most women we interviewed, especially widows, expressed concern about their future livelihoods. They were unimpressed with many of the existing “skills-training” programs, including baking, batik, and handicraft production. They viewed these initiatives as stopgap attempts to keep women occupied rather than providing them with real trades. In a village on the island of Koh Kho Khao, several women suggested that the government or a private company build a cannery on the island that would employ women. More generally, there appears to have been little thought given to an overall economic program that could provide jobs for women and not add further stress to the fragile coastal ecology.

Protection of Children

We found the resilience of children in the aftermath of the tsunami astonishing. It was common to see children circling their families' temporary homes on brand-new bicycles, and going to school in crisp new uniforms. Yet such outward signs of youthful well-being may often mask a subliminal world of troubling thoughts, doubts, and uncertainties. Workers at health and play care centers in the Bang Muang shelter told us that they frequently saw children suddenly stop in the midst of play and stare into the distance before turning to look for an adult. At the primary school in Baan Nam Kem—one of the villages worst hit by the tsunami—27 of the school's 419 students died, and almost every pupil lost at least one friend. Seven lost both their parents, and many of the younger children remained terrified of the sea.

UNICEF estimates that 1,172 children were orphaned by the tsunami. Of this number, 964 are living in the six affected provinces while 208 are living in other provinces, mainly in the north and northeast.¹⁸ The high number of missing and unidentified dead—roughly 53 percent of the total of the known dead and missing—means that a significant number of orphans have still not learned the fate of one or more of their parents. Health workers we spoke to were particularly concerned about the welfare of the 443 children who have lost their mothers and are now living with their fathers or other male guardians. When men are in charge of household responsibilities, children may become more vulnerable, as traditionally it is the mother who is the anchor for the family. Moreover, alcoholism rates among men often rise in the aftermath of a natural disaster which, in turn, may increase the risk that children will be neglected and abused.¹⁹

Beyond the immediate needs of safety and comfort, children need to recover psychologically as a prerequisite for optimal learning. As of early April, over 1,000 school children, including those affected and their close friends as peer support, had attended “first-aid” psychosocial sessions. Yet, as UNICEF acknowledges, such outreach efforts have only reached a fraction of children psychologically affected by the tsunami. Nor has there been an efficient process of follow-up visits to the homes of particularly vulnerable children to assess their well-being and needs.²⁰

At the time of our visit, no comprehensive system was in place to monitor the welfare of vulnerable women and children. Such a program is urgently needed, especially as those displaced by the disaster begin moving to temporary housing or back to their home communities. A tracking system, backed up by psychosocial services and an appropriate vocational skills training program, would help to ensure that vulnerable women and children do not fall prey to exploitation or neglect. Such a program could also monitor school attendance. Education can provide an important protective function for children in post-disaster situations. The normality and stability provided by daily schooling is psychologically important. Schools are places not only for the teaching of traditional academic subjects, but also for the dissemination of information on human rights and health, especially HIV/AIDS awareness. Children learn quickly, and can impart their knowledge in turn to other members of the household, especially in the areas of sanitation and nutrition.

Protection of Burmese Migrants

“Burmese migrants must respect the laws of Thailand,” Aung Myo Min of the Human Rights Education Institute of Burma told us, “but the Thai authorities must also respect the human rights of migrants who are contributing so much to the Thai economy.”

All foreign workers, including Burmese, are required by law to register with the Ministry of Interior. Either the employer or the migrant worker can initiate the registration process by requesting a 13-digit registration number from the Ministry of Interior. At the same, the applicant provides the ministry with a photograph. If the application is approved, the migrant has the right to stay in Thailand for a specified

period of time. If the applicant wishes to work, he or she must obtain a health card from the Ministry of Public Health that entitles him or her to participate in the “30-Baht scheme.” Once the initial 1,900 Baht fee (600 Bhat for physical examination and 1,300 Bhat for insurance) to join the scheme is paid, the migrant can access health services by paying 30 Baht per visit. (Studies have shown that Burmese migrants often choose not to utilize such services because of language barriers.²¹) Finally, to receive a work permit the migrant or employer must pay an additional 1,900 Bhat (100 Bhat for the work permit application and 1,800 Bhat for the work permit card). This means a total of 3,800 Bhat (US\$95) must be paid to receive a work permit.

There were 127,714 Burmese migrant workers in the six provinces hit by the tsunami. Of these, only 22,504 or less than 18 percent were registered with the Thai Ministry of Labor.²² Although there were sporadic reports of discrimination, most migrants who sought relief and medical care immediately following the tsunami received it. However, as the weeks and months wore on, there were increasing reports of Burmese migrants being denied assistance because they could not produce the proper documentation. Some migrants, having lost their work permits in the tsunami, feared arrest if they went to the local labor office to request a new permit. Others who sought a re-issuance of their permits were turned down because they could not remember their 13-digit registration code.²³ “The tsunami,” said an international aid worker, “exposed how really vulnerable Burmese migrants are along the coast and how little we know about their lives and livelihoods.”

Thousands of Burmese migrants were killed or went missing during the tsunami. Employed largely on construction crews and fishing boats, they lived in shantytowns next to piers or close to construction sites within three kilometers of the shoreline. Since most Burmese migrants are single men who are unregistered, there has been no way of quantifying exactly how many of the dead and missing are Burmese migrants. Without ante-mortem data, such as medical and dental records, and DNA samples from relatives, forensic pathologists have been unable to identify many of the bodies believed to be Burmese migrants.

Fear and desperation swept through those Burmese migrant communities that survived the tsunami. Traumatized and fearing a second wave, many fled north in an attempt to return to Burma. Others, fearing arrest and deportation, went into hiding in the hills and plantations further inland, where they had little access to food and medical care. Local police and immigration authorities ignored calls by nongovernmental organizations for a suspension of the arrest and deportation of irregular migrants.²⁴ This situation was further aggravated by local press reports of Burmese migrants seen looting homes and resorts damaged by the tsunami which, in turn, resulted in police raids and arrests in migrant settlements.²⁵

Some employers, especially in the fishing industry, were upset by the sudden departure of their migrant workers, especially as they had paid their registration fees. In at least one case, the owner of a large fishing fleet in Baan Tub Lamu used force to stop volunteers with World Vision from helping some of his Burmese deckhands return to Burma.

In recent years, fishing boat owners, like the one in Baan Tub Lamu, have turned to Burmese migrants to fill jobs on their boats. Two major types of boats employ migrants: those that fish in Thai coastal waters and are out at sea for 14 days, and those that fish in foreign waters for two to five years. Both types of boats employ a few Thais in key positions, such as engineer, foreman, and captain, but rely on migrant workers to carry out the more laborious and dangerous work. Remuneration can vary from boat to boat, but it is usually based on a percentage of the boat’s catch after expenses, which include food, fuel, and other operating costs. According to a recent report on management of foreign workers, “[t]he percentage paid to the crew varies depending on the type of boat, its size, the type of gear used, and the type of fish caught. It is also dependent on the effectiveness and productivity of the individual crew

member, as assessed by the Thai captain or foreman. The owner of the vessel may receive 70 percent, and the crew the remaining 30 percent, thus leaving Burmese migrants earning an average of Baht 200 (US\$4.60) a day.²⁶ Labor advocates assert that some owners cheat Burmese workers through price rigging with fish processors.

When not at sea, Burmese workers usually live in shantytowns often built and managed by their employers near where the boats are docked. Over time workers may become dependent on their employers, some of whom have paid a fee to register them with the authorities and provide them with housing, loans, advice, basic supplies, and food. According to an informant with a large nongovernmental organization in southern Thailand, some boat owners employ thugs to watch over their workers and to ensure that they pay back their loans and do not leave their employ for other jobs.

The Baan Tub Lamu incident took place at a time when a growing number of Burmese migrant workers were trying to return to Burma. To deal with this exodus, the Thai government had established a transit center in Ranong Province under the direction of the Provincial Employment Office in cooperation with the Immigration Office, Ministry of Interior, and World Vision of Thailand. World Vision became involved in the shelter after it learned from its informants on the Ranong pier, a transient point for Burmese migrants, that as many as 2,300 migrants had returned to Burma either by themselves or with the help of Thai and Burmese brokers.²⁷

In the meantime, a World Vision staff member in Phangnga province, where Baan Tub Lamu is located, began making a series of radio announcements encouraging migrants who wished to return to Burma to contact the organization. What happened next is not entirely clear, but it appears that on January 19 the owner of the fishing fleet in Baan Tab Lamu, a man who is both revered and feared by villagers, seized three Burmese volunteers with World Vision (two men and one woman). The three were reportedly making arrangements to send several of the boat owner's migrant workers to the shelter in Ranong. Another version of the story maintains that the owner thought the three were brokers trying to recruit—or even traffic—his workers to other jobs. Either way, the owner placed the three volunteers in a large cage.

Later that day, when the World Vision staff member arrived in the village, men reportedly employed by the owner immediately abducted him. The men then placed him in a pickup truck and allegedly beat him. As the truck left, a reporter managed to take several photographs of the World Vision staff member and of the three volunteers in the cage. (The Human Rights Center possesses four of these photographs—one depicting what appears to be the beating of the World Vision staff member and three others showing the caged volunteers.) The owner's minions eventually released the World Vision staff member, and reportedly told him to stay away from the village and not to say anything about his ordeal to the police. Shortly thereafter, the three volunteers were set free. As of the time of our visit, no-one connected to the incident had been arrested.

Was the incident at Baan Tub Lamu symptomatic of an industry that has been operating at the margins of the law for far too long? Or was it simply an unfortunate case of miscommunication in an unsettled and turbulent time? And what of the alleged deeds—the alleged beating and kidnappings? Should they go uninvestigated and, if proven true, unpunished?

A few representatives of aid agencies told us that, though they knew little about the actual details of the Baan Tub Lamu case, they thought it was probably best to forget the incident and move on. This attitude, though somewhat introspective, is understandable. Humanitarian organizations often shy away from contentious human rights problems as their involvement in such matters can seriously complicate their primary mission of providing aid. Yet it also underscores why an independent human rights monitoring and protection project should be established in the tsunami-affected provinces (see the “Conclusions and Recommendations” section below). The project could bring human rights concerns like

the Baan Tub Lamu case to the attention of local and national authorities, international organizations, and the media in a timely manner. It could also monitor the situation of migrant workers in the six tsunami-affected provinces. This initiative takes on added urgency as the demand for cheap labor in a number of industries (i.e. construction, tourism, fishing) is increasing and will continue to do so in the years ahead.

Land Rights and Tenure

Loss of property in the Andaman provinces is widespread, as is the loss of legal and financial records. These problems are further compounded by the virtual disappearance of some land, the obliteration of boundaries, and the lack of land titles in many poor coastal communities. Even when the internally displaced are willing and otherwise able to return home, property issues often pose additional barriers. In some areas, officials are barring villagers from returning to their ancestral homes on the grounds that the area is public land. Many villagers are afraid of speaking out because they fear being blacklisted and cut off from governmental assistance, which is supervised by the same local administrators who have, in some cases, conspired with developers to take over public lands in their communities.

Inhabitants of more than thirty coastal villages (fourteen of which are in Phangnga Province) are now engaged in land and tenure disputes with the government and private companies in tsunami-affected areas of Thailand.²⁸ Although the fine points are complicated, squatters in Thailand generally have a right to the land they live on if nobody else has claimed it for ten years. In Krabi Province, the villagers at Baan Sangka-U on the island of Koh Ko Lanta were ordered to relocate though their homes were not destroyed. In Phuket, district officials have barred the villagers who have been living at Kamala beach for more than fifty years from returning to their homes on the grounds that the area is public land.²⁹

Meanwhile, the government has set aside land plots to resettle tsunami survivors in all six Andaman provinces. Residents of Baan Nam Kem in Phangnga Province, where 85 percent of houses were completely destroyed, will be relocated to Baan Pru Tiew, about five kilometers inland from their original home on the coast. The province has announced that it will provide daily transportation to fishermen. However, several villagers told us that they do not want to live in a place where they cannot keep watch over their boats and fishing gear.

During our trip, we interviewed two residents of Baan Nam Kem who are presently engaged in court cases to retain land that they claim has been occupied by their families for over thirty years. We also spoke to Chuchai Jatupitponchan, who owns a jewelry shop on Patong Beach in Phuket Province. Mr. Jatupitponchan told us that many of the small-business owners on the beach were upset and believed that the owner of a hotel, who was also the mayor, was taking advantage of the disaster to expand his property boundaries. Both our informants in Baan Nam Kem reported that the Far East Trading and Construction Company, which claims ownership of a large tract of land in the village, has used violence to intimidate them and other families who refuse to leave their land.

- Lamia Rodson, a 48-year-old widow who lost her husband to the tsunami, has been in a protracted land tenure battle with the Hok Jong Seng company and the Far East Trading and Construction Company for the past seven years. Rodson claims she has legal title to the land because her family has occupied it since before the Hok Jong Seng company was granted a mining concession in the late 1970s. The mining company claims it later sold the land to the Far East Trading and Construction Company, which now wants to build a pier on Rodson's land and a resort at the south end of the village. Rodson said that prior to the tsunami, a company representative had threatened her and her husband if she did not leave. Ten days later, a bomb exploded in front of their house, killing one person and seriously injuring

another. After the tsunami Rodson returned to Baan Nam Kem to find the company had posted a sign near her house that read, “No Trespassing or Construction of any Sort.”

- Ratre Kongwatmai, a 32-year-old part-time laborer and mother who lost her 8-year-old daughter to the tsunami, was evacuated to the Bang Muang shelter from her destroyed home in a small community on the outskirts of Baan Nam Kem. At the end of February, with the tacit backing of a government minister, Kongwatmai and about fifty of her neighbors gathered tools, tents, and cooking pots and returned to the site where their homes had once stood. By the time of our visit, the villagers had created a community fund to pay for the rebuilding of homes and waterlines. According to Kongwatmai, a few days before our arrival, men employed by the Far East Company had come to the encampment brandishing guns and ordering the villagers to leave. A similar incident had taken place in December 2002 when policemen and company agents tried to erect a fence around the village. When villagers confronted the group, one of the agents reportedly pulled a gun and threatened to kill one of the villagers. The agent later backed away, shooting his gun in the air, and the group left. In December 2003, the company took their land claim to court, where it remains until today. Win or lose, Kongwatmai says, each family will have to pay between 20,000 and 30,000 Baht in court fees.

While ultimately it will be the courts that must resolve these cases, it is paramount that the National Human Rights Commission of Thailand and legal advocacy groups monitor land disputes to ensure that tsunami survivors receive the full protection of the law. Moreover, the Commission should investigate reports that some private companies have threatened and physically abused villagers who have returned to their property.

Potential for Human Trafficking

The United Nations defines trafficking as

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual slavery, forced labor or services, slavery or practices similar to slavery, servitude or removal of organs.³⁰

The International Labor Organization and the U.S. Department of State have long recognized Thailand as a hub of trafficking in southeast Asia.³¹ Economic disparity in the region helps to drive significant illegal migration into Thailand from its neighbors, presenting traffickers opportunities to move victims into labor exploitation. International trafficking victims come mainly from Burma, Laos, Cambodia, and China. Many victims are from stateless ethnic tribes in northern Thailand and the surrounding region. In recent years, the Thai government has pledged to stop trafficking through tighter border controls, increased prosecution of offenders, strengthening of child protection laws, public awareness campaigns, and inter-regional cooperation.³² Still, trafficking persists throughout the country and is believed to be increasing.

Trafficking is a serious risk that is heightened when people are displaced, families separated, children orphaned, and livelihoods destroyed. No one we interviewed in the six Andaman provinces was aware of any cases of human trafficking since the tsunami struck on December 26, though they gave several examples of incidents that potentially could have turned into trafficking.

- An aid worker who works with displaced children at the Bang Muang shelter in Phangnga Province said that in the immediate aftermath of the tsunami several people had come to the facility inquiring if any Burmese children had been brought there. He also said “a few people wished to donate 500 Baht to our health clinic [a clinic for mothers and children under five] and then take children on excursions outside of the camp. These people may have had the best of intentions, but, of course, we would never allow it.”
- The day before our interviews at the shelter, a foreigner had taken a teenage girl for a ride on his motorcycle, which caused her family and neighbors to panic. The girl arrived home safely that evening. However, an aid worker said that “it would be easy to traffic girls out of the shelter especially if outsiders enticed them to leave by offering them work or even a good time.”
- An activist with the Tsunami Action Group (TAG) in Phangnga Province told us of the case of a Burmese woman who, prior to migrating to the province, had adopted two children in Burma. Having lost all her money and possessions during the tsunami, she wanted desperately to return to Burma and had let it be known in the Burmese migrant community that she wanted to sell the children. When TAG activists heard of her intentions, they contacted her husband in Burma, who managed to persuade her to return home with the children.

Our informants said they knew of no organization that was routinely investigating potential trafficking cases in the tsunami-affected areas. Indeed, several informants suggested that it was too dangerous to do so because gangs were involved.

Although human trafficking as a result of the tsunami did not appear to be a problem at the time of our visit, the incidents reported above and the Baan Tub Lamu case suggest that the potential for trafficking could increase as the southern provinces move into the reconstruction phase of the tsunami crisis. World Vision of Thailand has announced its intentions to conduct a long-term study of trafficking and the situation of Burmese migrant workers in the Andaman provinces. We believe this initiative could be a useful first step toward establishing a permanent monitoring and protection system in the region. The study could examine the ways in which Thai and Burmese brokers move migrants across the border and into Thailand’s formal and informal coastal economy. It could also suggest measures that could be taken at the national and regional level to prevent trafficking and forced labor.

IV. CONCLUSIONS AND RECOMMENDATIONS

Unlike Indonesia and Sri Lanka, which took the brunt of the tsunami of December 26, Thailand is likely to rebound economically from the catastrophe in less than two years. Even so, the physical and psychological scars remain. The tsunami killed thousands of people, left tens of thousands without homes and livelihoods, and destroyed the social fabric of hundreds of small fishing villages and resort areas. As we move into the reconstruction phase of the crisis, we must do our utmost to ensure that vulnerable groups—the poor, women, children, and migrants—are protected from exploitation and violence. This is in keeping with the recommendation of several regional and international institutions that have called on governments and agencies engaged in post-tsunami relief and reconstruction efforts to take a “rights-centered approach” in their work.³³

Several measures can be taken to protect the human rights of vulnerable populations in the tsunami-affected areas of Thailand.

1. An independent body should be established to monitor human rights in the southern provinces during the reconstruction phase. This project should work in collaboration with

government agencies, local nongovernmental groups, and aid organizations to track the status of vulnerable groups as they struggle to rebuild their lives. It should research and monitor several critical areas, including livelihood; physical safety and protection; access to aid; health education, including information about sexually transmitted infections and HIV/AIDS; access to healthcare, including psychosocial and reproductive health services; land rights and tenure; education; inheritance; housing; skills training; and employment. The project should generate policy recommendations to improve reconstruction efforts. It should also bring cases of serious violations of human rights to the attention of local and national authorities, international organizations, and the media.

2. Surveys should be conducted to assess the process of aid distribution in the tsunami-affected provinces. Our preliminary survey found that there was considerable discontent on the part of tsunami survivors about the process of aid distribution. Nearly everyone we spoke to felt that government relief efforts required greater accountability and transparency. The ultimate purpose of the survey should be to determine if the aid distribution process was conducted properly, fairly, and efficiently, and if any vulnerable groups were overlooked. The survey should seek opinions from those affected by the tsunami about how the process of reconstruction could be implemented to meet their needs and how they could be integrated into decisions affecting their communities.
3. A training program in lessons learned, best practices, and governance should be instituted for members of the Tambon Administration Organizations (TAOs) in tsunami-affected areas. In the immediate aftermath of a natural disaster, the response of local authorities is critical to saving lives and protecting vulnerable groups. Although the national and local authorities responded admirably to the tsunami of December 26, they were clearly and understandably overwhelmed by a disaster of unprecedented proportions. Some TAO received high praise from their constituents, while others were roundly criticized for favoritism and poor management. The TAO training seminar should cover a range of governance issues, including best practices, ethics, administration, and coordination of emergency and long-term relief.
4. A single government agency should be established to coordinate and direct the reconstruction phase of the tsunami catastrophe. In addition to the need for accountability and transparency, our informants said that the process of aid distribution and reconstruction needed to be centrally coordinated. Indeed, most informants were baffled by the number of representatives of government agencies, nongovernmental groups, and international aid agencies that visited their communities. A central registry should be kept of all national and international aid agencies involved in relief and reconstruction work so as to ensure that those organizations that participate in the reconstruction effort are legitimate.
5. An effective early warning system and evacuation plan should be established for all coastal areas of Thailand. Based on our interviews, many residents in tsunami-affected areas have been unable to move on with their lives simply because they fear a second wave. In some villages, this dread is palpable. It is also preventing some internally displaced people from returning to their coastal communities. The establishment of an early warning system will go a long way to alleviating these fears and to reassuring tsunami survivors, especially those living in rural areas, that the government is concerned about their safety and protection.
6. A tracking and compensation system for tsunami survivors who lost immediate family members, property, or their livelihoods and chose to return to their home provinces should be established, to provide these individuals with resettlement funds. Tsunami survivors from other provinces who chose to remain in southern Thailand should receive equal compensation.

Southern Thailand's tourist industry is comprised of thousands of workers from other areas of the country. Many of these people, having lost all of their possessions when the tsunami struck, chose to return to their home provinces. In doing so, they failed to receive compensation. In addition, many of the children of couples who died during the tsunami and who are living in other parts of the country have not received compensation.

7. Administrative and legal cases involving disputes over land rights and tenure should be monitored closely to ensure that tsunami survivors receive the full protection of the law. Ultimately, the courts must resolve these disputes, but national human rights institutions, such as the National Human Rights Commission of Thailand, must take a proactive role in ensuring that acts of intimidation and violence against tsunami survivors are fully investigated and those responsible brought to justice. We found several incidents where certain community members had taken the law into their own hands. Such impunity, especially in the aftermath of a mass disaster, is reprehensible and every effort must be made to prevent it.
8. Research on the situation of foreign migrant workers, especially Burmese, in the six Andaman provinces should be conducted to ensure that their human rights are being respected. The research should be investigatory in nature. It should focus, among other things, on the methods used by "brokers" to recruit and transport migrants to determine if they constitute human trafficking. It should also investigate the conditions under which migrants are employed in a wide range of industries and activities, including fishing and processing, construction, domestic service, plantation work, and entertainment, to determine if they are being subjected to forced labor.³⁴ The study should review and recommend changes in the existing registration program for foreign migrants.
9. The incident at Baan Tub Lamu involving the alleged kidnapping and beating of a staff member and volunteers with World Vision of Thailand should be investigated and, if crimes were committed, they should be prosecuted. To our knowledge, no such investigation has been conducted despite evidence suggesting that these acts were criminal in nature and violated the laws of Thailand and international human rights standards. The National Human Rights Commission of Thailand would seem to be the appropriate institution to conduct such an investigation.

¹ The authors wish to thank Dr. Ratana Somrongthong of the College of Public Health at Chulalongkorn University for her assistance with this project.

² Most interviews were conducted with individuals. However, on several occasions, three to five community members were interviewed collectively.

³ Meetings were held with representatives of the National Human Rights Commission of Thailand, Tsunami Action Group (TAG), Research and Campaign for Women Project, Asian Forum for Human Rights and Development (FORUM-ASIA), United Nations Children's Fund (UNICEF), United Nations Development Programme (UNDP), United States Agency for International Development (USAID), Joint United Nations Programme on HIV/AIDS (UNAIDS), International Labor Organization (ILO), Office of the United Nations High Commission for Human Rights (OHCHR), United Nations Office for the Coordination of Humanitarian Affairs (OCHA), and the International Organization for Migration (IOM).

⁴ UN Country Team, *Thailand Field Situation Report No. 13*, May 13, 2005; Center of Excellence in Disaster Management & Humanitarian Assistance, *Indian Ocean Earthquake & Tsunami Emergency Update*, March 9, 2005, Tripler Army Medical Center, Hawai'i, www.coe-dmha.org.

⁵ In Phangnga province only 38 percent of hotels were open as of April 1. In Phuket, 88 percent of hotels were taking guests, as were 89 percent in Krabi. Reconstruction in Phuket is expected to be complete by the summer. Rebuilding on Phi Phi Island

will take about two years. Repairing of the hotels on Khao Lak Beach could take up to three years. See Seth Mydans, "After the Tsunami, Rebuilding Paradise," *New York Times*, April 14, 2005, p. 8, and Asian Forum for Human Rights and Development, *Tsunami and Human Rights, 100 Days After*, Bangkok, April 5, 2005.

⁶ UNDP announced in early March 2005 that it was providing US\$5.2 million for programs to assist women. At the same time, the United Nations unveiled a US\$9 million long-term rehabilitation program for affected people, primarily in the provinces of Phangnga, Phuket, and Krabi. According to the Interior Ministry, the Thai government has paid some US\$6.25 million in compensation to people affected by the disaster. See Center of Excellence in Disaster Management & Humanitarian Assistance, March 9, 2005.

⁷ According to the Ministry of Interior, 98.8 percent of the registered migrants in the six tsunami-affected provinces are Burmese and 1.4 percent are from Cambodia and Laos. See IOM, UNHCR, UNIFEM, UNOCHR, WB, "Technical Assistance Report: A Joint Tsunami Migrant Assistance Mission to the Provinces of Krabi, Thangnga, Phuket, and Ranong, Thailand, 20-25 January 2005," hereafter referred to as the "Migrant Assistance Report," p. 3.

⁸ For background on the migrant registration system in Thailand see Asian Research Center for Migration, Institute for Population and Social Research, Thailand Development Research Institute, *Thailand: Improving the Management of Foreign Workers, Cases Studies on Five Industrial Sectors*. Bangkok: International Organization for Migration, 2004.

⁹ *United Nations Country Team Trip Report: Joint Needs Assessment Mission*, UNDP/UNHABITAT/ILO/IOM/UNHCR/UNESCO/UNEP, Phuket and Phangnga, January 10-13, 2005, p. 8.

¹⁰ The Human Rights Center has on file reports on the health impact of the tsunami compiled by four provincial health offices. These reports are in Thai and, at the time of writing, have not been translated into English.

¹¹ TAOs were created under the 1997 Constitution, which sought to decentralize governance throughout Thailand and to delegate greater power to provincial and local authorities. TAOs have a mixed record in Thailand. Some have operated efficiently and properly, while others have reportedly been despotic and rife with corruption and favoritism.

¹² United Nations Country Team Report: Joint Needs Assessment Mission, p. 9.

¹³ Together, the Thai Ministry of Finance; the Office of the Prime Minister, Assistance Fund for Disaster Victims; and the Ministry of Social Development and Human Security made total cash payments of 318.54 million Baht (US\$8.2 million) to affected people in six provinces. The government also dispersed 409.82 million Baht (US\$10.56 million) to assist affected fishermen and operators of fish and shrimp farms. This goes toward repair and construction of fishing boats and equipment, and to assist tour operators. Another 83.9 million Baht (US\$2.16 million) has been paid from the Assistance Fund for Disaster Victims. In addition, the United Nations has pledged US\$9 million for a rehabilitation program in the areas of livelihood, shelter, and environment, primarily in the hardest-hit villages of Phangnga, Krabi, and Phuket. See *UNICEF Situation Report—Thailand*, April 5, 2005, p. 2.

¹⁴ See Bryce Smedley, Cai Li, Maysisi Aung, Pakorn Leopairut, Pitt Rattanadian, and Viorica Vladica, Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, *Report on Tsunami Affected Thai People in South Thailand*, April 2005, p. 4.

¹⁵ This informant and his mother, who was also interviewed, were also upset that his children, who he said were traumatized, had not received any psychosocial help.

¹⁶ Joseph Campbell, *Myths to Live By*. London: Souvenir Press, 1973, p. 41.

¹⁷ Women are a vital and integral part of the economy of southern Thailand. They work as shopkeepers, health professionals, teachers, homemakers, hotel workers, laborers, fisher folk, shop owners, hawkers, and farmers. Most women in the six Andaman provinces are native to the area, but a significant number have migrated to the region from other parts of Thailand, especially the northeast. Most foreign migrants—primarily Burmese, Cambodian, and Laotian—are male, but in recent years, an increasing number have been female.

¹⁸ Of the 964 orphaned children in the six provinces, 91 have lost both parents, 447 have lost mothers, 393 have lost fathers, and 33 have lost immediate guardian(s). *UNICEF Situation Report—Thailand*, April 5, 2005, p. 1.

¹⁹ *UNICEF Situation Report—Thailand*, April 5, 2005, pp. 3-4.

²⁰ *UNICEF Situation Report—Thailand*, April 5, 2005, pp. 3-4. UNICEF found that many children even four months after the tsunami were still having nightmares, were anxious, and had phobias about the sea and going near it.

²¹ Dares Chusri, "Life and Fate of Burmese Migrant Workers," unpublished manuscript, February 22, 2005.

²² See Kimberly Brown, Kanchana Yoowattana, William Phalehcher, Komonjaroon, Wendy Myint Myint Hla, Devraj Rangsit, and Rochelle Jones, Asian Center for Migration, Institute of Asia Studies, Chulalongkorn University, *Tsunami Emergency Response Evaluation: Burmese Migrant Population*, p. 11.

²³ According to the "Migrant Assistance Report" (p. 23-24), the labor office in Phangnga informed the mission team that re-issuance of a work permit was only possible if the 13-digit code was known. "If it is not known the office cannot retrieve the personal information of the migrant from the central database. In Phuket, however, the labor office informed the team that if migrants can show any piece of identification, they can re-issue the document." As of January 25, 2005, there were no reported cases of the re-issuance of registration documentation in Phangnga or Krabi provinces. About 20 had been re-issued in Phuket province.

²⁴ In January 2005, several UN agencies called for a suspension of the arrest and deportation of irregular migrants. They argued that such a measure would (1) assist to preserve the labor force in affected areas; (2) allow for a more effective targeting of humanitarian assistance; and (3) facilitate family reunions and the identification of both affected individuals and their deceased/injured loved ones. See "Migrant Assistance Report," p. 25.

²⁵ *Ibid.*, p. 9.

²⁶ Asian Research Center for Migration, Institute for Population and Social Research, Thailand Development Research Institute, *Thailand: Improving the Management of Foreign Workers, Case Studies on Five Industrial Sectors*. Bangkok: International Organization for Migration, 2004, pp. 27-28.

²⁷ Approximately 692 migrants (506 males, 139 females, and 47 children) passed through the transit center in Ranong Province until it was closed on January 10. When migrants arrived at the facility, they were given food and clothing. Migrants and their children were also provided with counseling and recreation activities. Migrants who wished to stay and work in Thailand were given the opportunity to meet with employers who visited the shelter on a regular basis. Those who chose to return to Burma were divided into small regional groups, given basic supplies, and sent across the water in longtail boats. This was a prudent measure as Burmese soldiers often arrest and detain large groups of returning migrants. Six hundred and seventy five migrants returned to Burma either voluntarily or by way of deportation.

²⁸ See Asian Forum for Human Rights and Development, *Tsunami and Human Rights, 100 Days After*, pp. 29-31.

²⁹ See, for example, Sanitsuda Ekachai, "This Land is Our Land," *Bangkok Post*, Outlook Section, March 2, 2005, pp. 1-2, and Seth Mydans, "Builders Swoop In, Angering Thai Survivors," *International Herald Tribune*, March 10, 2005, p. 2.

³⁰ "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime," U.N. General Assembly Resolution 55/25, annex II, U.N. GAOR, 55th sess., Supp. No. 49, at 60, U.N. Doc. A/45/55, vol. 1, adopted 2000.

³¹ Information about trafficking in Thailand can be found at <http://www.humantrafficking.org/countries/eap/thailand/ngos/intl/ilo.html>.

³² On May 13, 2004, Deputy Prime Minister Purachai stated that "Thailand has the 'political will' to tackle the problem of human trafficking and that the issue is a top national priority for the government." See "H.E. Deputy Prime Minister Prof. Purachai Piemsombun's Special Lecture," 1st Workshop on Human Trafficking In Thailand, Dusit Island Resort, Chiang Rai, Thailand, May 13, 2004.

³³ See, for example, Asia-Pacific Regional Office, United Nations Office of the High Commissioner for Human Rights, *Meeting Report, 4 March 2005*, Bangkok, Thailand; *Protection of Internally Displaced Persons in Situations of Natural Disaster: A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin*, February 27 to March 5, 2005; and Asian Forum for Human Rights and Development, *Tsunami and Human Rights, 100 Days After*, April 2005.

³⁴ The International Labor Organization Convention Concerning Forced Labor (No. 29) defined forced labor, with exceptions, as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

General Findings

Our data suggest that many tsunami survivors in all five countries were dissatisfied with the manner in which relief and reconstruction aid was distributed by government and aid agencies. We identified six themes that continue to exert a profound and negative impact on the ability of tsunami survivors to rebuild their lives: the impact of pre-existing human rights problems on relief and reconstruction; inequity in aid distribution, impunity and lack of accountability, lack of coordination, low public confidence in coastal redevelopment, and lack of community participation.

I. PRE-EXISTING HUMAN RIGHTS PROBLEMS

Our study findings indicate that the human rights context profoundly affected tsunami relief and reconstruction efforts. The disaster rendered groups who prior to the tsunami faced human rights vulnerabilities even more exposed to abuse. However, aid agencies for the most part failed to take into account the prevailing human rights conditions in the areas in which they worked. The result was that in some instances, relief agencies unwittingly compounded human rights vulnerabilities.

In Indonesia and Sri Lanka, the ongoing conflict between the government and armed separatist groups complicated and frustrated aid delivery. In Indonesia, humanitarian agencies focused on delivery of assistance and complied with the military directive to construct barrack housing over which the military would exercise control. Tsunami victims, particularly adult males, experienced the prior military presence in Aceh as repressive since they were vulnerable to abuse on suspicion of being supporters of the separatist Free Aceh Movement (GAM). Many survivors live in the barracks in name only, remaining off-site during the day and returning only as minimally necessary to maintain aid eligibility. Many local human rights and aid groups welcome the international presence as a restraining influence on the military but some criticize the failure of international groups to confront the military about its aid regulations. Government authorities in Aceh have restricted humanitarian agency access to survivors on the grounds that suspected GAM activity creates a security threat. The result of such measures is that some survivors are not reached and there is no outside monitoring of their condition.¹

In Sri Lanka, conflict hinders access to survivors by aid organizations. The Liberation Tigers of Tamil Eelam (LTTE or Tamil Tigers) control parts of the tsunami-damaged areas in the north and east of Sri Lanka. The failure of the government and the LTTE to reach an agreement that would allow the insurgent group to receive and distribute aid leaves many in the north and east unassisted.² Moreover, fear of both the LTTE and state authorities because of their past human rights abuses keeps tsunami victims from seeking aid. Due to the conflict, there are many IDPs already in camps who are now joined by tsunami IDPs. However, each group is treated differently, with tsunami survivors receiving more benefits. Such disparities cause tensions within camps, but a political decision has not been reached to equalize levels of aid. Related to this conflict, the kidnapping of children by the LTTE for service as soldiers has continued post-tsunami with attempted raids reported in IDP camps. The inability of the government of Sri Lanka to offer protection remains an ongoing concern.

In India and Thailand, prior acts of violence and discrimination against Dalits (untouchables) and Burmese migrant workers in many instances have prevented members of these groups from seeking aid. Dalits are not included on government lists of tsunami survivors eligible for aid, and a history of social and political exclusion has discouraged some from challenging government policy, although some NGOs are working specifically with Dalit communities to fill this gap. In the immediate aftermath of the disaster, many Burmese migrant workers went into hiding for fear of being arrested. Fear of arrest

has also discouraged Burmese migrants from claiming the bodies of their dead loved ones. Thousands of bodies remain unidentified and some NGOs estimate that many of these may be Burmese migrants who worked in the tourist areas. Lack of vigorous enforcement of anti-discrimination laws, and lack of protections for migrants in Thailand and for lower castes in India, have contributed to the vulnerability of Dalits and Burmese migrant workers to human rights violations in the relief and reconstruction phases. In the Maldives, the authoritarian nature of the regime has prevented the realization of human rights and has inhibited the development of civil society capable of demanding rights.³ And residents on outlying islands in the Maldives traditionally have been excluded from participation in civic life, further frustrating efforts to organize an effective response among these survivors. Survivors have little input into decisions made to provide relief both in the short-term and in reconstruction.

Finally, in all areas visited, the years of human rights abuses or weakness in enforcement mechanisms have led to a lack of trust in government. Tsunami survivors and key informants express a lack of confidence that their governments are capable of guaranteeing high-quality provision of services, transparency in decision-making and implementation, and protection of human rights for tsunami survivors throughout the reconstruction period. In general, government was seen as a threat to freedom and autonomy, while private and international groups often were seen to have exaggerated powers to ameliorate their troubles. Unrealistic expectations of survivors for what nongovernmental groups can accomplish has led to disappointment and may lead later to withdrawal and resentment if their needs are not met.

II. INEQUITIES IN AID DISTRIBUTION

The data indicate that throughout the tsunami-impacted areas studied, inequities in distribution of assistance plague survivors. Inequality in distribution potentially affected all survivors, although vulnerable populations, in particular women and members of certain ethnic or religious groups, face particular obstacles to receiving assistance.

In Sri Lanka, India, and Thailand, it was not uncommon to find that fishermen in one village received aid to rebuild their damaged boats, while fishermen in a nearby village received no assistance. In some instances, villagers alleged that corruption by government officials caused such disparities. In other instances where the aid was provided by private organizations, villagers in locations that the aid group did not select for receipt of goods were perplexed by this treatment. They had received no information about why they were not eligible for help. In Indonesia, the military threatened to withhold aid from some villagers as a means to exert control over where they resettle. Researchers also reported allegations of military personnel siphoning off relief supplies for their private use. In Sri Lanka, survivors allege that reconstruction has proceeded at different rates depending on ministerial influence, and a disparity in rebuilding is borne out by the data. Plans for rebuilding housing in the tsunami-impacted areas of the north and east lagged behind the damaged areas in the south—districts that elect a disproportionate number of the parliamentarians and where the prime minister maintains a home. In the Maldives, survivors complain that response to their needs sometimes depends on the whims of a particular island chief or on connections with the central government in the capital.

In some instances, government regulations operate to exclude some populations who have lost family members, their livelihood, or property from receiving government assistance. In Indonesia, eligibility for government relief is restricted to individuals with a state-issued identification card. Residents must be vetted by the military authorities to receive this card—a security measure imposed prior to the tsunami to restrict support for the separatists. Individuals who do not have a card, either because it was lost or because they had never applied—were unable to receive relief. The majority of disaster victims in India are fishers and the government used lists of members of fishermen's societies as

the vehicle for distributing relief. Victims whose names did not appear on these lists were ineligible for temporary shelter and assistance and were forced to rely on private groups for support. Members of the Dalit caste, port laborers, small business proprietors, and widows of fishers all have livelihoods dependent on the devastated fishing industry but are excluded from membership in the fishermen's societies and thus from government aid. And in Thailand, the government did not compensate Burmese migrant workers for their losses. The government provided free medical care to foreign tourists injured in the tsunami, but required Burmese migrant workers to pay for their medical treatment.

In addition to government regulations, several factors appear to contribute to disparities in aid distribution among tsunami survivors. In Sri Lanka and Indonesia, the ongoing conflict between government and separatist forces has complicated aid distribution. Lack of an agreement between the government of Sri Lanka and the LTTE to permit the separatist group to receive and distribute aid in the areas it controls has hindered assistance to those survivors. Key informants and survivors in Aceh report that the military restricts aid to those who reside in government barracks, on the ground that aid given outside such compounds may fall into the hands of the separatists. Thus political tensions impede direct access and efficient distribution to tsunami survivors.

The tsunami caused extensive damage to roads and bridges, making it difficult to reach survivors. In the emergency phase of relief efforts, assistance from the militaries of other countries made it possible to get basic supplies to those in need. Problems with access continue in remote areas. As survivors relocate inland, a new challenge has emerged. In Indonesia, Sri Lanka, and Thailand, researchers found that in the months after the tsunami, some survivors who had lost their homes relocated to inland areas—some at quite a distance from their homes—to live with relatives. These survivors remain in need, but are unable to access assistance because they reside outside the affected area where distribution centers and aid organizations are located.

Finally, key informant interviews suggest that part of the problem of aid distribution is due to government mismanagement and lack of a national strategy to address a disaster of the magnitude of the December tsunami. The number of those affected and the virtual complete devastation of communities overwhelmed the capacity of governments to mount an effective relief effort. Researchers found that in the months following the disaster, central planners and policy makers had drawn up plans to meet the immediate needs of survivors. However, at the local level there often was no awareness of these policies or there were significant gaps in their implementation. The result was that many survivors reported being turned away from government offices because they lacked appropriate documentation or information, in contravention of stated practices. Central planners often made decisions based on inaccurate information as the affected people were excluded from the planning process.

The effects of these disparities reverberate throughout tsunami-impacted communities. In India and Thailand aid policies exclude minorities and other vulnerable groups from help. The inequities are leading to social problems. In India and Sri Lanka, tsunami survivors have taken to street demonstrations to protest the lack of government responsiveness to their needs. In Indonesia, Thailand, and the Maldives, survivors expressed to researchers that they feel neglected and alienated from the government, and are frustrated that there is no mechanism available to assist them.

III. IMPUNITY AND LACK OF ACCOUNTABILITY

Our researchers found that there was virtually no accountability of governmental or other aid providers for the reported corruption, arbitrariness in aid distribution, and violations of international standards that protect the human rights and dignity of survivors of natural disasters. Multiple factors contributed to the impunity that service providers enjoyed for the consequences of these actions. For example, in Indonesia,

researchers found that humanitarian organizations were reluctant to report incidents of corruption or malfeasance by government personnel to higher authorities for fear that state authorities would retaliate against their organizations by denying them access to affected areas. Similarly, some humanitarian groups noted that they did not refer incidents of abuse to the state because they felt such action was a monitoring function and therefore outside of their mandate to provide relief supplies and services. The absence of a clearly identified mechanism to respond to complaints is another factor that contributes the lack of reporting by humanitarian groups.

Researchers received complaints from residents of camps for internally displaced people, and groups working there, about lack of security. Members of the army entered barrack housing where women were living in search of GAM members. The women were extremely upset by the unannounced incursions but they did not report these incidents to the police, stating that they did not believe the police could exert control over the army. In Sri Lanka, there are reports of LTTE entering IDP camps to forcibly recruit child soldiers. And in the Maldives, IDPs report they are afraid to leave their temporary shelters at night for fear of attacks by drug users who reportedly roam outside. These problems point to the need for a reliable mechanism that can investigate and take further steps if necessary to hold perpetrators accountable.

Our data indicate that the national accountability mechanisms generally are weak, and the influx of tsunami assistance reveals these weaknesses more starkly. In all the countries studied, there is a lack of transparency regarding the amounts of aid the government has received and has allocated, which inhibits the participation of civil society to monitor aid distribution. Similarly, there is no reliable source of information publicly available about the amount of aid private groups have received and distributed. In many areas, there is a lack of political will by local authorities to investigate reported abuses, which may be lodged against their own agencies. Personal ties between local and state or national politicians have been the basis for securing resources at the local level. Entrenched power structures have benefited from control to tsunami assistance and appear resistant to outside oversight and public accountability. And lack of legal protections for whistleblowers—government employees who report incidents of suspected malfeasance—impede self-regulation.

Yet state officials are only one type of service provider. International and national humanitarian and development agencies are also responsible for assisting tsunami survivors, but there is no system for beneficiaries of these services to hold private providers accountable.⁴ The relevant norms are not enforceable. UN Guidelines are voluntary standards that apply only to states. While the Sphere standards apply to humanitarian NGOs and incorporate international principles to protect the rights of IDPs to assistance and to a life with dignity, they too are voluntary and there is no enforcement mechanism. As one author on disaster response has written: “Without accountability, programs inevitably become paternalistic in nature or end up serving the needs of the donors and the agencies rather than the needs of the victims.”⁵ The need for redress is clear from the perspective of tsunami IDPs, many of whom are living throughout the region in temporary housing that is inappropriately built for the climate, located in areas prone to flooding, or lacking in adequate privacy and sanitation facilities. Some NGOs have built camps and left without establishing clear responsibility for their maintenance. At one camp in Sri Lanka, there were no clean drinking water or sanitation facilities and no one from the government or any NGO had visited. Survivors are caught—they must rely on assistance but they often have little or no communication with service providers about problems with the facilities and they have nowhere to turn to gain redress.

National human rights commissions exist in each of the five countries studied and these potentially can serve as monitoring and advocacy bodies for the rights of tsunami survivors. In some countries, like Sri Lanka, the Human Rights Commission has begun investigating allegations of rights abuses. However,

some Indian NGOs working with tsunami survivors have criticized the Human Rights Commission in the state of Tamil Nadu for failing to address the human rights conditions in the tsunami-impacted areas. In the Maldives, the Human Rights Commission has been working to establish itself in the absence of enabling legislation by Parliament. Any actions that it takes plough new ground, and its ability to hold government accountable has yet to be tested. It remains an open question what role national human rights commissions may play to strengthen human rights protections for survivors. It may be that in some countries, these bodies lack sufficient independence and credibility to take on this role. Further, the commissions generally serve to report on trends and conditions and have limited enforcement powers. What is missing is an effective redress mechanism that can respond to individual and systematic allegations of abuse or violations of norms by public and private aid providers.

IV. LACK OF COORDINATION

The countries in which the tsunami struck hardest experienced an astonishing influx of assistance from other states, UN agencies, and international NGOs. Even in countries like Thailand and India, which did not accept support from other states, national and international NGOs rushed to the affected areas. The sudden activity of large numbers of aid providers overwhelmed the capacity of states to effectively coordinate relief efforts. During our field research, about three months after the tsunami, researchers documented some of the negative impacts brought about by this lack of coordination and identified some structural features that indicate this problem continues and requires attention during the reconstruction period.

From our research, the picture on the ground that emerged is one of a plethora of aid providers operating with little or no synchronization of effort. State agencies do not appear to have a comprehensive understanding of the groups—particularly small NGOs—providing assistance, and therefore are unable to ensure that services and needs are matched. In some areas of Sri Lanka, researchers found NGOs had constructed more temporary housing than was needed, while overcrowding or inappropriate shelters were a problem in other areas. In general, there was lack of coordination among state agencies involved in relief efforts, even in countries such as Sri Lanka, the Maldives, and Indonesia, in which a central planning agency had formally been created. Similarly, key informants reported that the UN relief agencies had not always organized their work sufficiently and often one agency was unaware of the activities undertaken by another. Each agency and NGO adheres to its own mandate—providing assistance to children, building shelter, promoting access to healthcare—which means that there is no uniform prioritization of needs of tsunami survivors. Donors emphasize speed of aid delivery, reflecting a laudatory desire to help those in need. But a focus on timing leads NGOs on the ground to complain that they are not able to plan sufficiently to ensure their work does not duplicate that of other groups or that they are prioritizing services based on accurate data. While INGOs indicate that their primary responsibility is to those in need, in reality they answer to central offices far away who define the objectives and strategies. This decision-making from a distance may be at odds with what a government sees as essential and the territoriality may interfere with a coordinated response among NGOs and between the government and the NGOs.

Our study indicates that the lack of trust in government by civil society in the countries surveyed hampers the ability of the government to facilitate greater harmonization of aid provision. Prior experience of local NGOs with state officials—who NGO representatives perceive as unresponsive, dismissive, or incompetent—has meant that local NGOs with a history of success in service delivery are accustomed to working independently from the state. While such a response may be understandable, in the context of tsunami relief and recovery work, it poses a challenge to achieving much-needed coordination.

V. COASTAL REDEVELOPMENT

The data indicate that there is much confusion and tension among tsunami survivors regarding the development and implementation of the coastal redevelopment plans in each of the five countries studied. Survivors and local NGOs complain that the plans are being promulgated by authorities at the national level and that communities have not been consulted. There is a lack of clarity regarding the content of the plans and uneven implementation. India, Indonesia, Sri Lanka, and Thailand are creating “buffer zones” along the coast designed to mitigate the impact of damage from future storms or tsunamis. The decisions about these zones and the financial or other incentives to move inland leave the survivors little choice about relocation. In the Maldives, the government seeks to implement a “Safe Island” plan, which involves relocation of residents from particular islands that are endangered by rising seas as a result of global warming to higher ground on larger islands, but residents had no information about the location, the timing, or the conditions under which they would be relocated and some expressed fear that their traditional culture would be destroyed through relocation and redevelopment.

There was considerable confusion over the size and regulation of the “buffer zones.” In India and Indonesia researchers found conflicting information about the size of the zone. In Sri Lanka, the government had stated that it would not subsidize rebuilding within 100-200 meters of the shore, depending on location, but that residents were free to self-finance construction. However there were reports of authorities tearing down new construction. In Indonesia, the stated policy of allowing residents to return to the villages located on the coast is not always observed in practice.

A further complication in land use results from the fact that there is considerable uncertainty about who possesses land rights in most affected areas in the region. In some cases, residents occupied land without formal legal title but relied on legal custom to establish entitlement to occupy the real estate. In India there is no provision to recognize customary occupation and fishers fear they will be forced off the land by companies seeking to create aquaculture facilities. In other cases, documents were destroyed that established title. In still other instances, prior land disputes are flaring and individual landowners fear that companies and redevelopers are manipulating the reconstruction process to acquire land at the expense of survivors. For example, in Thailand some coastal residents have been threatened by developers who seek to establish ownership over disputed plots. In Sri Lanka, there are allegations that resort developers will be able to rebuild within the buffer zones while small-business owners and residents will be urged not to do so. The debate about appropriate land use implicates the stability and livelihoods of those living along the coasts, and the lack of access to meaningful input into these decisions contributes to anger and despair among many survivors.

VI. LACK OF COMMUNITY PARTICIPATION

To rebuild communities that will be physically and socially resilient to the effects of natural disasters, tsunami survivors and their communities must be active and engaged participants in—not merely auxiliaries to—resettlement and reconstruction efforts. Across all areas studied, survivors complained that decisions about relief, resettlement, and reconstruction aid were largely taking place without consultation with their communities, leading to frustration and despair. Survivors living in IDP camps had little or no communication with government authorities about how long they could expect to remain housed there, whether and where they would be allowed to rebuild or be relocated, and the process for redevelopment planning in coastal areas. Some government officials interviewed displayed open disregard for survivors. In answering how decisions about the location of permanent housing were transmitted to IDPs, a reconstruction official in Sri Lanka remarked: “The [IDPs] will know it when the foundations are poured.” None of the areas visited had effective, established processes through which community members could provide input into the planning process. In the absence of such opportunities, there is little

chance for IDPs to challenge the perceived aloofness and disrespect on the part of government toward tsunami survivors.

In general, government officials and some NGOs communicate with IDPs through village leaders who may not relay the information to survivors or who do not necessarily represent the views of all segments of the community. In each country, researchers found that women were not included in decisions among IDP camp residents and frequently found their needs ignored or belittled. For example, female survivors had difficulty obtaining sanitary pads and in several countries reported that male leaders mocked or ridiculed them when they presented their requests for such supplies. In all countries, women reported a lack of security in camps. Sometimes multiple families shared temporary housing, or shelters did not have locks and could not be secured at night. In Sri Lanka and the Maldives, IDPs complained about the lack of security within camps, although there were few reports of physical abuse.

The effects of trauma on some survivors may account for their lack of engagement in decisions affecting their community. However, research on natural disasters indicates that providing individuals opportunities to shape their futures facilitates their recovery.⁶ Prior relationship of communities to government influences the readiness of communities to participate in consultative processes. Many tsunami survivors in Aceh expressed fear of the military—based on its history of human rights violations in the area—and saw consultation with authorities as a potential threat to their autonomy. At the same time, many recognized the power of the military to determine the course of reconstruction and thus wanted to influence this process, but felt unable to do so without risk of retribution if they expressed views contrary to local state and military authorities.

Similarly, there is a lack of history of effective democratic mobilization and civil participation at the local level in Thailand, Sri Lanka, and the Maldives. Key informants observed that the absence of a culture of rights—most relevant the right to participation—and lack of a history of civic participation in decisions at the local level meant that residents were unaware of their rights and unlikely to mobilize to advocate for their enforcement. Residents need to support new housing, land use, and environmental practices, and create sustainable livelihoods that will reduce vulnerability to and risk of destruction from natural disasters. What is needed are mechanisms to promote effective community engagement so that survivors have the power and capacity to improve their lives in partnership with—and not in opposition to—state and private aid agencies. This suggests the need for new models to ensure effective community participation to achieve the goal of rebuilding communities capable of withstanding future natural catastrophes.

¹ On August 15, 2005, it was announced that the government of Indonesia and the Free Aceh Movement signed a peace agreement under the mediation of the former president of Finland, Martti Ahtisaari. Both sides made significant concessions. The rebels accepted the principle of local self-government and the right to form a political party; the Indonesian government agreed to release political prisoners and to offer farmland to ex-combatants. The rebels agreed to disarm and non-local Indonesian troops and police would be withdrawn. A Human Rights Court and Truth Commission were planned. Information is available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4151980.stm>.

² Although such an agreement was finally reached by the government of Sri Lanka and the LTTE in June 2005 (an agreement that was bitterly rejected by government allies such as the JVP party), it was temporarily suspended by the country's Supreme Court on July 15, 2005. While holding it to be legitimate, the court objected to various clauses. The subsequent assassination of the foreign minister, Laksman Kadirgamar, on August 12, 2005, led to a declaration of a state of emergency. On August 18, 2005, the LTTE agreed to return to the bargaining table under Norwegian mediators. As of the writing of this document, the situation remains unclear. Information is available at <http://www.tamilnet.com/art.html?catid=13&artid=15392> and www.colombopage.com. See also http://news.bbc.co.uk/2/hi/south_asia/4147196.stm.

³ On August 12 and 13, 2005, a demonstration was held in Male' to protest the lack of elections despite the formation of opposition parties. This demonstration was held on the one-year anniversary of the demonstration that resulted in the promise of

reforms. One hundred and sixty-three people were arrested initially and seventy-eight were let go the next day. The leader of the Maldivian Opposition Party was also arrested and charged with fomenting social disorder. Free speech and the right to protest remain problematic.

⁴ For a review of the increasing complexities that surround the work of NGOs, see William F. Fisher, "DOING GOOD? The Politics and Antipolitics of NGO Practices," *Annual Review of Anthropology* 26 (1997):439.

⁵ Frederic C. Cuny, *Disasters and Development*, p. 94.

⁶ *Ibid.* p. 92-93.

Recommendations

The 2004 tsunami wrought massive devastation to the areas studied. The relief efforts have been extraordinary. Particularly when considering the regional scope of disaster, the amount of emergency assistance needed and the rapidity with which it was delivered is staggering. States, UN and humanitarian relief agencies, and NGOs rushed to the scene to alleviate the suffering of the survivors. Despite the outpouring of material aid and goodwill, in the months since the catastrophe struck several concerns have emerged regarding the treatment of tsunami survivors—concerns that threaten to undermine social and physical reconstruction efforts and in fact may exacerbate social conflict in the affected areas. To address these concerns, we recommend the following measures.

- 1. UN agencies and NGOs should take into account the prior human rights context of the particular country in their aid and reconstruction policies and programs.** We found that in each country studied, the prior human rights situation exerted a profound impact on tsunami relief and reconstruction efforts. However, for the most part, international humanitarian aid providers did not take this context into account in carrying out their activities; and as a result, in many instances, aid providers unintentionally compounded problems. Non-state actors carrying out relief and reconstruction work should take into account the pre-existing human rights vulnerabilities of groups due to armed conflict, legal status, caste discrimination, or general restrictions on civil and political rights. Special efforts should be directed to delivering assistance to those groups that face pre-existing barriers to accessing their rights, since a natural catastrophe will tend to exacerbate these problems. Adopting a human rights framework, as has been advocated by international groups, will help humanitarian groups to advocate for access to the most vulnerable and to deliver assistance in a manner that does not compound vulnerabilities.
- 2. States should commission an independent survey of tsunami-affected areas to assess the process of aid distribution.** Our survey found that many tsunami survivors believed that aid was not distributed fairly. Nearly all surveyed felt that government relief efforts required greater accountability and transparency. Definitions of who the state considers a victim of the tsunami for purposes of relief vary by country; therefore, we suggest the definition of internally displaced person contained in the UN's Guiding Principles be adopted so patterns within countries and the region may be detected. The ultimate purpose of the survey should be to determine if the aid distribution process was conducted properly, fairly, and efficiently, and if any vulnerable groups were overlooked. Recommendations for how to remedy those survivors who have not received payments should be made.
- 3. States should increase accountability and transparency of public and private aid providers.** There is no accountability mechanism to address reported irregularities in aid distribution, corruption, and failure to ensure that basic necessities are provided to tsunami IDPs in a manner consistent with the minimum international standards laid out by the Sphere Project. The national human rights institutions should monitor and report on compliance with international standards. In conjunction with UN and international humanitarian agencies, these national institutions should educate NGOs building housing for IDPs about the Sphere Project minimum standards. In addition, each state should address the lack of an individual redress mechanism. Each state should create an ombudsman office for tsunami survivors that has the power to adjudicate individual claims of survivors who have not received the aid to which they are entitled and to receive complaints regarding violations through the reconstruction

period. An ombudsman would also be able to investigate individual allegations of human rights violations by public and private actors and to refer appropriate cases for prosecution under domestic law.

4. **State agencies should strengthen coordination with the UN and NGOs during the reconstruction phase of the tsunami catastrophe.** Informants reported an urgent need to improve central coordination of aid distribution and reconstruction. Most survivors were baffled by the number of representatives of government agencies, nongovernmental groups, and international aid agencies that visited their communities. Although it appears that states have begun to get a handle on the type and quality of material donations entering and the number of NGOs operating within their territory, greater coordination is necessary during reconstruction. A central registry should be kept of all national and international aid agencies involved in relief and reconstruction work so as to ensure that those organizations that participate in the reconstruction effort are legitimate. Given the history of local NGOs and state agencies, the UN should assume a leadership role in coordinating the reconstruction activities of NGOs and promoting synchronization between public and private rebuilding efforts.
5. **States, international agencies, and local aid providers should improve community participation in reconstruction planning and implementation.** Our research found that those affected by the tsunami had little or no communication from or consultation with state officials or aid providers. The participation of IDPs in decision-making about location of housing and other important dimensions of daily life is minimal to nonexistent. State reconstruction agencies should develop community-based consultation mechanisms that are legitimate and transparent and that have some power over outcomes. UN agencies and NGOs should participate in consultations so that all providers are working together with community members. To ensure that IDPs will inhabit newly constructed homes, become skilled in sustainable income-generating activities, and rebuild their physical infrastructure in ways that strengthen social networks needed to sustain communities, IDPs should be integrated into decisions affecting their communities.
6. **A human rights framework should inform coastal redevelopment and the re-establishment of land rights.** Tsunami survivors and key informants reported considerable tension and confusion about how the coastline will be redeveloped and where and whether residents will be able to rebuild their homes. It is not clear in determining a “buffer zone” whether state agencies are considering environmental policies that could reduce risk of tsunami damage. Redevelopment planning should be transparent and NGOs and tsunami IDPs should have the opportunity for consultation. In many areas there is uncertainty about land rights and in some instances disputes have turned violent. Expedited procedures should be put in place to establish title and occupation rights. The ombudsman offices, suggested above, could serve this function.
7. **Particular attention must be paid to those affected by pre-existing civil war.** It is apparent that ongoing conflict, political tensions, and military/rebel priorities will often be given precedence over assisting survivors. In these situations, a major priority must be to effect a temporary cessation of fighting or a peace agreement in order to maximize the ability of humanitarian aid providers to help those in need. Leadership must be provided either by the United Nations or other international mediating parties.

Appendix

UN Guiding Principles on Internal Displacement

Introduction—Scope and Purpose

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

Section I. General Principles

Principle 1

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.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, color, 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.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

Section II. Principles Relating to Protection From Displacement

Principle 5

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.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

(a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

(b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

(c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and

(e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

(a) A specific decision shall be taken by a State authority empowered by law to order such measures;

(b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;

(c) The free and informed consent of those to be displaced shall be sought;

- (d) The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

Section III. Principles Relating to Protection During Displacement

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favor or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
- (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labor of children; and

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) 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.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavor to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavor to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
 - (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
 - (b) The right to seek freely opportunities for employment and to participate in economic activities;
 - (c) The right to associate freely and participate equally in community affairs;
 - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
 - (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programs.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

Section IV. Principles Relating to Humanitarian Assistance

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

Section V. Principles Relating to Return, Resettlement and Reintegration

Principle 28

1. 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, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.