

WORKING PAPER SERIES NO. 58

Civilian protection in Sri Lanka under threat

A collection of papers based on presentations given at the September 2009 international conference on *Protecting People in Conflict and Crisis: Responding to the Challenges of a Changing World* and a follow-up roundtable discussion on *Post War Future in Sri Lanka*. The conference and roundtable were hosted by the Refugee Studies Centre and respectively organised with the Humanitarian Policy Group at the Overseas Development Institute (HPG) and the Centre for Research on Inequality, Human Security and Ethnicity (CRISE), University of Oxford.

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1 Introduction

Dr Rajesh Venugopal

Dr Rajesh Venugopal is the Altajir Lecturer in Post-War Recovery Studies at the Department of Politics and the Post-War Reconstruction and Development Unit (PRDU) at the University of York. Between 2008 and 2009 he was a researcher in the Centre for Research on Inequality, Human Security and Ethnicity (CRISE) at Oxford University. Dr Venugopal's research interests are in the politics of development and post-conflict reconstruction, with a regional focus on South Asia, particularly Sri Lanka.

Context

Between January and May 2009, Sri Lanka briefly became one of the most widely discussed and heavily debated cases of international intervention and civilian protection. As many as 200,000 civilians are thought to have been trapped in the intense military confrontation between government forces and the last remnants of the rebel Liberation Tigers of Tamil Eelam (LTTE), and there was a growing clamour internationally for greater efforts to ensure their protection and safety.

For the most part, the Sri Lankan government rejected any outside intervention into the conflict, or indeed any externally imposed or supervised constraints that would impede their military objectives. The government also imposed a media ban on the war zone, and ordered all expatriate staff of international organisations (except the International Committee of the Red Cross) out of the area in September 2008. Throughout the war and the post-war period, UN agencies and other relief and humanitarian organisations operating in Sri Lanka also encountered increasing difficulty in conducting their work, and found that the government viewed them with suspicion and at times hostility.

Concerns over the government's commitment to civilian protection extended beyond the formal end of hostilities in May 2009 and became focussed around the issue of Internally Displaced Persons (IDP) issue, and particularly over the 260,000 Tamil IDPs who were effectively incarcerated for several months in rudimentary camps pending security clearance. The widespread unease within the humanitarian community at the actions and inactions of the Sri Lankan government during and after the war were compounded by the apparent inability of the UN and outside actors to exert any meaningful influence. The three papers in this collection are important contributions to this debate, and have significance for the larger debates about protection that extend beyond the immediate case of Sri Lanka.

Since the early 1990s the humanitarian agenda has expanded and grown significantly from a more passive commitment to 'do no harm' and meet needs, towards a more ambitious and activist project of protecting vulnerable civilians at risk from violent conflict. However, the rise of this new agenda has in recent years been mirrored by the growth in sophistication and determination of state and state-like actors to find ways to undermine and resist it, Sri Lanka being a case in point. For example, as international

pressure mounted on Sri Lanka in the final weeks of the war, the government increasingly responded to criticism of its military approach by itself invoking the language of humanitarianism, civilian protection, and anti-terrorism. The military offensive against the LTTE was recast as a humanitarian operation, and government ministers increasingly referred to it as a mission to rescue trapped Tamil civilians. Indeed, the LTTE's appalling treatment of the Tamil civilians in their care during the last weeks of the war lent substance and credibility to this rhetoric, and served to occlude the extent of the government's own indifference to the life and liberty of these people.

Background

Sri Lanka's civil war of 1983-2009 was embedded in a longer ethnic conflict between the island's Sinhalese majority and the Tamil minority. The Sinhalese, comprising 74% of the population, predominate in the south and centre of the island while Tamils are a majority in the north and parts of the east. Ethnic polarisation increased steadily after independence in 1948, particularly because of the Tamils' perception that they were being economically and culturally marginalised by a Sinhalese-controlled state. By the late-1970s a number of militant Tamil groups had emerged to demand that the north-east of the island be carved out as a separate state. The insurgency launched by these groups expanded into civil war by mid-1983. The war subsequently went through four distinct phases, each one punctuated by failed attempts at a peaceful solution. The last phase started in August 2006 following the collapse of a Norwegian-mediated peace process and cease-fire agreement that had been in force since February 2002.

Between August 2006 and July 2007 the war was fought largely in the eastern province where the LTTE controlled a series of small pockets of territory. The genesis of the latest humanitarian crisis effectively began in March 2008, when the Sri Lankan army shifted its attention to the north, capturing the large swathe of contiguous LTTE-held territory in Mannar, Killinochchi, and Mullaitivu. Increasing numbers of Tamil civilians resident in these areas fled the fighting and the advancing Sri Lankan army, effectively following the retreating LTTE into a shrinking area of control. By January 2009 the army had taken control of Killinochchi, the LTTE's administrative capital, forcing the LTTE to retreat to the eastern district of Mullaitivu. By February-March 2009, the government had effectively trapped the LTTE and as many as 200,000 IDPs within a small sandy enclave on the Mullaitivu coast. This resulted in a long and deadly stand-off in which both sides exploited the civilians to their advantage. Due to the absence of media or aid personnel, it is impossible to verify the actual number of civilian deaths, but estimates vary from 4,000 to 20,000.

The papers

The papers by Edward Benson and Bhavani Fonseka are based on presentations given at the September 2009 international conference¹ hosted by the Refugee Studies Centre on *Protecting People in Conflict and Crisis: Responding to the Challenges of a Changing World*.

¹ The conference was organised in collaboration with the Humanitarian Policy Group at the Overseas Development Institute (HPG). It was generously supported by the Danish Ministry of Foreign Affairs, UK Department for International Development and UNHCR.

The paper by Ambika Satkunanathan was presented in a follow-up roundtable discussion on *Post War Future in Sri Lanka* hosted by the RSC and the Centre for Research on Inequality, Human Security and Ethnicity (CRISE). These papers are important and timely interventions into the debate on humanitarianism and civilian protection. All three papers tackle the contradictions, tensions, ambiguities and dilemmas of UN and international organisations in protecting civilians in times of conflict. Edward Benson describes UNHCR's work on both needs and rights in Sri Lanka during the peace process, particularly with regards to IDPs, at a time when the organisation's mandate was expanding to cover more rights-based protection. He notes the difficulties in evaluating the impact of the rights agenda, and discusses the ephemeral nature of any such success in a fragile conflict situation. Ambika Satkunanathan's paper describes the tension faced by the agencies between addressing protection and assistance needs of the displaced population. What Benson describes as the 'needs' versus 'rights' dilemma is referred to by her as 'assistance' versus 'protection'. By exploring the circumstances in the late-conflict and post-conflict period she argues that this tension can be resolved by situating humanitarian work more explicitly within a rights context that is politically informed, and asserts that the absence of such an approach to humanitarian work has limited its impact. Finally, Bhavani Fonseka's paper is a useful summary of the dilemmas and constraints faced by humanitarian workers and NGOs within the post-war situation, and highlights many of the problems faced by activists who are working inside Sri Lanka. She argues that the humanitarian actors in search of expedient short-term solutions were often manipulated by the government, and calls for a 'principled, strong and coordinated stand'.

Fonseka's paper frames the debate and describes the complexities that arose as a result of the government's approach. Benson's paper can be viewed as a rejoinder to this, looking at the practical dilemmas faced by one organisation (UNHCR) in balancing needs and protection as a ceasefire came into and out of force. Satkunanathan's paper brings the focus back to the post-war moment, and argues that the contradiction between rights and needs is not as strong as is made out: there are indeed ways to achieve the one through the other. Overall, Fonseka and Satkunanathan take a more critical position towards the role of the UN, while Benson provides a counterpoint by giving an insider's perspective.

The changing situation in Sri Lanka

It is important to recognise that many of the concerns and debates that arose in the final weeks of the war and the post-war moment in Sri Lanka during 2009 are specific to that period. Elections in early 2010 have the potential to significantly change the political environment and agenda, particularly given the new electoral schisms and alignments that are likely to arise in the process. Yet what is of concern is that the forms of governmentality exercised in this period - in terms of militarisation, weakening adherence to human rights standards, the legal precedents on a number of issues, the treatment of IDPs, and the impunity with which the executive operates - will prevail problematically into the future.

The acrimonious relationship that developed between the government and the international community is likely to cast a shadow on future cooperation and on the functioning of humanitarian agencies in Sri Lanka. Internationally, the ease with which the Sri Lankan government was able to deflect international pressure and to appropriate the language of civilian protection in the service of military aims must be reflected upon by academics and practitioners, for its significance lies beyond the island itself.

2 Protection under stress in Sri Lanka

Edward Benson

Edward Benson² is currently a Visiting Research Fellow at the RSC. He spent four years (2002 - 2006) working for UNHCR in Sri Lanka, which included being seconded to the government, liaison to the LTTE in the north of the island and heading their office in Jaffna District before moving on to run their confidence building field operations in Western Sahara and southern Algeria. Prior to working for UNHCR he did his MSc in Development Studies at the School of Oriental and African Studies, University of London.

Introduction

The title of this conference, protecting people in the midst of conflict and crisis, is fitting with respect to recent developments in Sri Lanka. A protracted internal ethnic conflict, which began in the early 1980s, came to a brutal and bloody end in May 2009 with the military defeat of the Liberation Tigers of Tamil Eelam (LTTE) by Government of Sri Lanka forces. While recent events have been extreme, they cannot be adequately understood without some understanding of what went before.

During the course of this conflict, UNHCR has been a key international humanitarian actor, unusual for an organisation not mandated to deal with IDPs. UNHCR operations in Sri Lanka date back to the repatriation of Sri Lankan refugees from India that started in 1987, after the India-Sri Lanka Peace Agreement. With the outbreak of new hostilities between Sri Lankan army forces and the LTTE in the 1990s, UNHCR's role changed to focus increasingly on providing protection and assistance to IDPs and the organisation became the lead agency for conflict IDPs.³ The last few years have also seen a shift in UNHCR's position in terms of greater commitment to engage with IDP caseloads elsewhere in the world. The comparative longevity of UNHCR's involvement with this IDP caseload (and including natural disaster IDPs in 2005) leads one to believe that there is value in considering UNHCR's role in Sri Lanka.

The first section will give an overview of the operational climate for UNHCR's protection roles and responsibilities in Sri Lanka, particularly during the period of relative peace during a sustained ceasefire from 2002 to 2006. In addition, while external or situational factors were altering how UNHCR approaches its protection roles and responsibilities, institutional shifts were also happening within the organisation and in regard to its

² Edward Benson can be contacted at edward.benson@qeh.ox.ac.uk

³ In July 1990, the Government of Sri Lanka requested UNHCR to continue its presence in the affected areas of the north and north-east of the country. In 1991 and 1997 the Secretary-General of the UN reaffirmed the role of UNHCR in relation to IDPs in Sri Lanka. Sri Lanka is not party to the 1951 Convention or the Protocol Relating to the Status of Refugees. Since there is an absence of a domestic legal framework that provides protection to asylum seekers and refugees, UNHCR carries out refugee status determination under its mandate on the basis of an informal agreement with the Government of Sri Lanka. Though UNHCR remains involved in other forced migration issues, including statelessness and asylum policy and practice, conflict IDPs form the vast majority of the agency's work and it is this caseload that is the subject of this paper.

position on conflict IDPs. The second section will focus on UNHCR's operational role, capacity and competency in terms of IDP protection in Sri Lanka. This will include examining rights versus needs approaches and the degree to which UNHCR focused its efforts on one or the other (or both). The 'thick' analysis of detailed UNHCR work in this period is designed to illustrate a 'normal' range of actions during a relatively peaceful period. The third section will reflect on some of the more recent developments in the conflict, and what if anything this should teach us in terms of engagement with IDP caseloads in different phases of a conflict.

IDPs during relative peace: 2002 - 2006

Following the election of Ranil Wickremesinghe as Prime Minister in late 2001, new efforts to find a political solution for the conflict soon had an impact on the conflict IDP caseload, which at the time stood at approximately 800,000 persons. With a seemingly stable ceasefire, the presence of the Sri Lankan Monitoring Mission (SLMM) on the ground, the opening up of the A9 road in the northern districts of Kilinochchi and Mullaitivu after 12 years (the key transport artery that linked government-controlled areas to LTTE-controlled territory) and peace talks in progress, 2002 was a time of significant optimism.⁴ Following the signing of the Memorandum of Understanding (MoU) in February 2002 by the Government of Sri Lanka and the LTTE to formalise their ceasefire agreement (CFA), UNHCR's role with conflict IDPs started to broaden as the agency increasingly focussed on finding durable solutions for the displaced. Signs of a peace 'dividend' were evident in the increasing numbers of civilians returning spontaneously to their places of origin, voting their support for the peace process with their feet.⁵ The demographics were impressive: by 2003 over 40 per cent of the IDPs were recorded by Sri Lankan government officials as having returned to their place of origin.

As the ICRC scaled down its operations, UNHCR scaled its operations up. The organisation launched a Supplementary Programme for the period October 2002 to December 2003 to address the growing material and protection needs of the spontaneous returnees. For 2003 this meant that the total funds available increased from US\$6.3 million to US\$17.9 million. More widely, international donor support was impressive. Despite concerns over the country's capacity to spend large amounts of money, US\$4.5 billion was pledged at the Tokyo conference in June 2003 to support the reconstruction and development of an island one quarter the size of the United Kingdom and with a population of less than 20 million. Evidence of openness towards UNHCR included the establishment of a UNHCR-funded unit in the agency's newly created government counterpart, the Ministry of Rehabilitation, Resettlement and Refugees (MRRR). An immediate tangible sign of willingness to collaborate was an island-wide census of all IDPs, funded by UNHCR and implemented by government civil servants. Building bridges between UNHCR and counterparts was not restricted to the government. With

⁴ The Sri Lanka Monitoring Mission (SLMM) was an international instrument and organisation to monitor the ceasefire agreement between the two parties.

⁵ Another tangible sign of progress in 2002 was the closing of the last remaining Open Relief Centre (ORC) in Madhu, Mannar District. The ORC concept was based on an understanding from 1990 with both government forces and the LTTE to provide protection from military operations.

IDPs also returning to their place of origin in LTTE-controlled areas, Kilinochchi town was fast re-establishing itself after years of conflict as the political and administrative headquarters of the LTTE. In January, 2003 UNHCR hosted a Voluntary Repatriation Workshop in Kilinochchi town and by the end of the year UNHCR had transferred its key office in LTTE-controlled areas from Mullaitivu District, an area where persons fleeing the conflict had taken refuge, to Kilinochchi town. Other key operational UN agencies also relocated to Kilinochchi. This spirit of cooperation and sense of progress included the arrival of international de-mining units working in LTTE areas. As UNHCR stated, 'prospects for peace in Sri Lanka were better than at any time since the conflict commenced in 1983'.⁶

As a key humanitarian agency seeking to support the peace process, UNHCR sought to offer a channel of dialogue with the LTTE at various levels, from almost daily interactions between field staff and the LTTE's Political Wing, to meetings between the Head of the Political Wing and the Country Representative, to missions from senior UNHCR staff members from Geneva. UNHCR's desire for engagement with the LTTE to discuss and advocate for the rights and needs of IDPs and to achieve durable solutions for the remaining caseload meant that the agency was keen for an open and constructive channel of discussion. At the time it was clear that the desire for engagement was not just one-way. Evidently the LTTE were keen for greater international recognition as a legitimate entity to represent the Tamil people and - critically- for actions or words that they felt might help shake off their association with terrorism, which in the aftermath of the 11 September 2001 attacks on the US had inhibited their fundraising activities among the Tamil diaspora in North America and Europe.⁷ This involved trying to build diplomatic interactions to compete with those of the Sri Lankan state and to establish links with key European governments. This generated a meeting between EU External Relations Minister Chris Patten and the highly elusive and secretive leader of the LTTE, Velupillai Prabhakaran, in Kilinochchi in November 2003.

For those operating at the field level perhaps one of the most striking examples of the LTTE's engagement on a key human rights issue was the signing up to an *Action Plan for Children Affected by War*, produced in April 2003 by a workshop held in Kilinochchi with the LTTE, Government of Sri Lanka, UN agencies and other national and international NGOs and organisations. The document, produced by UNICEF, contained, among other things, project summaries in areas of child rights training, awareness campaigns on child rights and - significantly - the release and reintegration of under-age recruits (child soldiers). It was clear that the international stain on the LTTE because of their association with the forceful recruitment and use of child soldiers was not helpful to their pursuit of legitimacy. This was presumably a major reason for signing the *Action Plan*, as opposed to a genuine commitment to releasing combatants and to protection of child rights.⁸

⁶ UNHCR Global Report 2002.

⁷ *Jane's Intelligence Review*, 'Cornered Tigers – The LTTE evolves as guerrillas', 11 March 2009

⁸ While efforts to try and tackle this highly sensitive issue in a tangible way could be commended, strong evidence for their actual impact on demobilising child soldiers was questionable. Initially there were some positive signs with the number of reported cases of underage and/or forced recruitment in the north and

Also, with Sri Lanka seemingly emerging from war into a post-conflict situation, efforts at peace building and addressing some of the longer term impacts of war meant new roles for UNHCR:

- monitoring the implementation of the World Bank's Unified Assistance Scheme, which provided each returnee family with a cash grant to help with the sustainability of their return;
- seeking to implement the incumbent High Commissioner's 4Rs initiative of repatriation, reintegration, rehabilitation and reconstruction, in collaboration with UNICEF and UNDP, an effort to bridge the gap between humanitarian and development needs of the communities in conflict-affected areas;
- implementing a total of 60 peaceful co-existence projects through implementing partners with an aim of helping the various communities find joint, non-violent solutions to problems in IDP and returnee communities.

At the same time as the nature of the conflict had shifted UNHCR's approach to conflict IDP issues in Sri Lanka, the organisation as a whole was also starting to show a new position on conflict-IDPs. During the tenure of High Commissioner Ruud Lubbers between 2001 and 2005, although UNHCR remained engaged in the Sri Lankan IDP caseload, there was a reluctance to be drawn into taking greater responsibility for IDP situations elsewhere in the world. However, with conflict IDP numbers around the world increasing and refugee numbers decreasing, various debates continued as to who should take responsibility for this growing caseload. As High Commissioner Lubbers grappled with budgetary challenges, he underscored the priority of UNHCR's protection responsibilities towards refugees and remained clear that UNHCR would not care for all IDPs, rather that the international community should work together to help them.⁹ Despite Lubbers' early departure in 2005, his position prevailed in UNHCR's commitment to the cluster system: UNHCR would lead the global Protection Cluster Working Group and co-lead the Camp Coordination and Camp Management and Emergency Shelter Clusters. However, the arrival of Antonio Guterres as High Commissioner marked a clearer commitment to conflict IDPs in word as well as deed. While it seems most likely that reasons for this greater commitment were due to a combination of internal and external factors, it was also perhaps indicative of a new High Commissioner's desire to show how his tenure would be different from that of his predecessors.¹⁰

north-east dropping. However, between the signing of the *Action Plan and the end of 2004* more than twice as many children had been recruited as had been released. Perhaps what this tells us is less about the shortfalls or the efforts to try and address this key human rights issue than the reality of what parties to a conflict are really prepared to do as against how they would like to be perceived in terms of their political objectives. Ultimately, waging a highly effective war, including the use of child soldiers, had enabled the LTTE to control one third of the island, be seated at the negotiating table and be engaged with the international community. The desire to maintain military strength, ceasefire or not, meant perhaps it was more likely a case of lip service to human rights concerns than a genuine commitment.

⁹ Interview with High Commissioner Ruud Lubbers, *Refugees* magazine, 2001: 'I will not say that UNHCR will care for all IDPs. I don't believe in that at all. If internally displaced persons are in a serious situation, then the international community should work together to help them.'

¹⁰ I am fully aware that addressing internal displacement is the primary responsibility of the state itself and

The *Guiding Principles*: rights versus needs

Central to the foundation for UNHCR's IDP-related operations in Sri Lanka were the *Guiding Principles on Internal Displacement*, a set of 30 principles that emerged as a result of a collaborative effort that involved legal experts, UN agencies, non-governmental organisations and regional organisations under the direction of the then Representative of the Secretary-General on Internally Displaced Persons, Francis M. Deng. As Deng wrote himself in 1998:

'[T]hey set the standards that should put both governments and rebel groups on notice that their conduct is open to scrutiny and will be measured against specific standards. They reflect the needs of the displaced, their corresponding rights, and the duties and obligations of states. They should provide the international community with standards for legitimate action and facilitate conformity and preventative predisposition on the part of governments.'¹¹

During this period of optimism the *Guiding Principles* were not greeted with resistance by the government or the LTTE, and UNHCR continued to recognise the Government of Sri Lanka's primary responsibility for providing protection and assistance to the IDP population within its border.¹² Thus within the overall framework of providing access to national protection and durable solutions for the displaced, UNHCR's primary objectives were to:

- promote and protect the rights of IDPs and returnees, with a special emphasis on freedom of movement, liberty, security, minority rights, property rights, recovery of documentation and the problem of sexual and gender-based violence;
- rapidly and effectively respond to the immediate material and protection needs of spontaneous returnees;
- continue to stabilise internal displacement and promote solutions for the remaining IDPs;
- create conditions which allowed for safe and dignified return of IDPs and refugees;
- strengthen national capacity, through training and direct engagement, to assist displaced persons and develop the ability of the national authorities and NGOs to respond effectively to changing needs.¹³

UNHCR's activities to try and meet these objectives were delivered through six key field offices located in the conflict-affected district capitals in the north and east and a seventh field office in Colombo to cover the border districts of the conflict.

must remain so. But UNHCR has been accused in the past of lacking full commitment, of unpredictability, and of having a pick and choose approach. Whether this is fair or not is not for me to judge. What I can guarantee is that UNHCR wants to be fully engaged as a predictable partner in helping to fill this gap.' Statement by High Commissioner Antonio Guterres, 56th session of the Executive Committee, October 2005.

¹¹ Cohen & Deng, *The Forsaken People*, 1998, pp. 6-7.

¹² Principle 2.1 states that "These *Principles* shall be observed by all authorities, groups and persons and irrespective of their legal status and applied without any adverse distinction." Principle 3.1 states that "National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction."

¹³ UNHCR *Global Appeal 2002-2006*.

Activities were delivered directly by UNHCR national or international staff working out of these offices or by national or international NGO partners, funded by UNHCR. At a national level, UNHCR sought to engage in close collaboration with its key Ministerial counterpart, the MRRR. This included the placement of a full-time international staff-member in the MRRR, the completion of the island-wide survey of IDPs, and in 2003, in an effort to build capacity, the funding of six national consultants to work in various functional areas.¹⁴ The MRRR went so far as to offer a written commitment to 'observe the *Principles* as official policy in assisting internally displaced persons affected by the conflict and commit [other] concerned ministries to bring their policies and programmes into alignment with these *Principles*'.¹⁵

Reflecting the fact that the *Guiding Principles* are a combination of IDP rights and needs, UNHCR sought to protect and advocate for the rights of conflict IDPs and, where possible and within the funds available, address IDP and IDP returnee needs. Activities focussed on IDP rights, often termed 'protection work', were delivered through a combination of field presence, including regular contact with IDP communities and government and/or LTTE authorities, regular field monitoring, specific interventions with the government or the LTTE where possible, advocacy and promotion. Advocacy and promotion in practical terms often took the form of training or awareness-raising exercises. Numerous sessions were conducted with government officials at all levels, the LTTE, civil society and IDP communities. UNHCR funded the printing and dissemination of thousands of copies of the *Guiding Principles* in all three languages (English, Tamil and Sinhalese) and promoted these rights through a specific UNHCR Sri Lanka website and an in-country protection-focussed publication.

Within this large IDP caseload, there were particular efforts to focus on vulnerable IDP groups and/or individuals; this included sexual and gender-based violence and direct assistance for what were termed extremely vulnerable individuals. Engaging with national human rights institutions was another important pillar of UNHCR's protection work and included the funding of the Human Rights Commission and the Legal Aid Foundation. UNHCR also sought to engage with civil society and was a member of the Eminent Persons Group, comprising representatives from the government, civil society, the media and the judiciary.

While UNHCR's protection work was rights-focussed, its programme work was needs-focussed, otherwise termed assistance or relief, covering the direct provision of basic non-food relief items to meet household domestic needs, improved shelter, water, sanitation, education, income generation, health and nutrition.

¹⁴ UNHCR's funding arrangements usually mean that the programme cycle is twelve months from implementation to completion. To what degree, therefore, was it realistic to believe that UNHCR could build capacity with real long-term value, particularly since by 2004 the operational budget had significantly decreased from the previous year?

¹⁵ As stated in their 2003 *Policy Framework for Rehabilitation, Resettlement and Welfare of Displaced People*.

With an increasing budget to support all of these activities, UNHCR in 2003 and 2004 scaled up its activities in both programme and protection work. While field offices tended to differentiate their activities as either programme activities or protection activities, particularly in a field context the difference between programme and protection was less clear. A good example of this was the programme activity of providing shelter. UNHCR engaged in the upgrading of shelters and the provision of transitional shelters both for conflict IDPs living in welfare centres and for tsunami victims.¹⁶ While at the time the activity was viewed as a programme activity, particularly the more than 4000 shelters that were built for tsunami victims, the action of building a shelter could be construed as a protection activity, as is evident in the *Guiding Principles*. It is not just the act of providing a shelter that meets a need but the associated protection benefits that it can provide.¹⁷

It is extremely difficult to measure the impact of UNHCR's work during this period in terms of the objectives it had set for itself. UNHCR's methodology centred on an approach of *objectives*, with linked *indicators* and *outputs* (as measured by the result of the action not the action alone). In addition to the specificities and complexities of each office and the challenges they faced, many activities were delivered by government or NGO partners. In 2002 UNHCR had 10 partners but by 2003 there were 31. Quality and capacity of the different partners could vary hugely and choice of partner in some areas of the country was very limited. Thus an office could be faced with the choice of either trying to do something with limited capacity or doing nothing. Also we do not have the benefit of counter-factual evidence; it is very difficult to determine what would or might have happened to conflict IDPs had UNHCR not delivered and funded these activities between 2002 and 2006.

Despite the difficulty in trying to fairly gauge the value or impact of UNHCR's work, it is worth considering a few basic demographic statistics. From the start of the CFA in February 2002 to end of 2003, 345,000 IDPs returned to their place of origin, with 455,000 IDPs still displaced. During these two years, UNHCR operations spent approximately US\$15 million, a per capita ratio of US\$43 per IDP returnee and US\$33 per IDP, or a ratio of one UNHCR staff-member for every 3,450 IDP returnees or 4,550 IDPs. These are crude calculations but they do highlight the potential gap between the objectives or the

¹⁶ Though the *Guiding Principles* do include persons displaced as a result of natural disaster, UNHCR does not normally engage with this caseload. However with the government requesting international assistance and on the request of the UN Secretary-General, UNHCR expanded its programme to cover tsunami victims. UNHCR's engagement could be seen as an example of circumstances, needs and opportunities converging. UNHCR was seen as one of the most experienced agencies on the ground, the needs were acute and the agency wished to remain a key-player in humanitarian issues, which included stressing the need for parity of treatment for conflict-displaced and tsunami-displaced. The huge donor response allowed unspent tsunami funds to be carried over and used for conflict IDPs in 2006.

¹⁷ Shelters aimed to 'respect family life', ensure that 'family members who wish to remain together shall be allowed to do so' and aided the 'reunion of [separated] families', *Principles* 17.1, 17.2, 17.3. Also, shelters aimed to ensure IDPs had 'an adequate standard of living' and to aid the 'safe access to: (a) essential food and potable water; (b) basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation', *Principles* 18.1, 18.2.

needs and the resources available to try and meet those needs.¹⁸ However it could be argued that the return home of over 40 per cent of the entire IDP population was a measure of significant progress.

Yet to what degree was their movement reflective of UNHCR's presence and activities on the ground? The evidence was that their movement was principally a reflection of the cessation of hostilities, of situational factors as a result of developments at the political level and of personal judgements about security and the availability of basic resources at home. For the IDPs who remained, return was far harder as was evident in the fact that the rate of returns declined significantly. As of the end of December 2004, almost two years after the CFA and with UNHCR's budget falling, an estimated 350,000 persons remained displaced, of whom approximately 23 percent were living in government-run welfare centres. Obstacles to return included fear for personal safety (such as forced recruitment of both children and adults, and distrust between various communities), knowledge that homes and houses had been destroyed, the danger of landmines and unexploded ordnance (UXOs), and the presence of High Security Zones (HSZ) of both the Government of Sri Lanka and the LTTE. With such reasons for lack of movement, it raises the question of what UNHCR could realistically hope to achieve in terms of its objectives, given the resources it had as compared to the scale of the problem, the climate in which it was operating, and the fact that it was working within the jurisdiction of a sovereign state. Therefore, and using the baseline of remaining conflict IDPs as a marker, the evidence suggests that despite UNHCR's objectives space for substantial impact was limited.

Despite the gap between what UNHCR aimed to achieve and what was possible, it is worth underscoring one of its key rights-focussed objectives, especially in relation to Guiding Principle 3.1 (see footnote 10), that is, the promotion and protection of rights with a view to improving awareness and national capacity such that they be respected. As John Holmes the UN Under-Secretary for Humanitarian Affairs wrote of the *Guiding Principles*, '[m]ost importantly, they have made IDPs themselves aware of their rights.'¹⁹ In accordance with this effort to increase awareness of and respect for IDP rights, significant amounts of time, effort and resources were put into these protection activities, especially where a sustained cessation in hostilities, efforts to find a political solution and the LTTE's interest in legitimacy meant it was as positive a time as any to take the *Guiding Principles* seriously. In addition to agreements made with the government at a national level, not only did UNHCR continue at field level to disseminate and promote the *Guiding Principles* amongst the displaced, but also it advocated and promoted them with government authorities, the LTTE, the security forces, police, civil society, and the judiciary.

¹⁸ An obvious example of the shortcomings of this exercise is that it does not factor in the resources of UNHCR's partners, notably their staff, and their efforts to provide protection and assistance for IDPs, nor the fact that as a result of UNHCR's assessments and awareness-raising exercises in terms of the requirements of IDPs, other actors (with their own funds and resources) could engage in an effort to meet conflict IDPs' rights and needs.

¹⁹ *Forced Migration Review*, December 2008.

How can we measure the added value of these protection-focussed activities or the impact of numerous training sessions, various publicity campaigns, and other rights-awareness programmes? One set of indicators could be the number of individuals that attended UNHCR-funded training courses, or recorded and reported violations, or the number of individuals that sought legal or protection advice or received assistance from UNHCR or one of their partners. Perhaps a better sense of the impact would be whether there were increasing signs of respect for IDP rights and fewer violations. The evidence for greater respect for IDP or human rights in general was not overwhelmingly positive. Violations continued to be reported across the North and East, including extortion, protection rackets, child recruitment and abduction, extra-judicial killings, arbitrary detentions and harassment by soldiers at checkpoints. These violations were made worse by a climate of impunity. Thus while in the early months after the CFA there was a decrease in complaints against the LTTE and the government, over time this positive trend started to reverse. While in September 2002 the SLMM reported a 40 percent decrease, with both parties to the conflict 'showing considerable restraint and common responsibility to restoring peace, to the benefit of the public', by the beginning of 2006 the SLMM questioned whether there was still a ceasefire, with more than one hundred people killed in the last month of 2005, 'half of which were civilians'.²⁰ While reasons for the violations were clearly linked to the increasingly tenuous cessation of hostilities, it does raise a question about the lasting impact of all of UNHCR's efforts to promote and protect the rights of IDPs.

Return to war: 'no time for principles'

While the departure of the SLMM from Sri Lanka at the beginning of 2008 could be viewed as the end of efforts to find a peaceful solution to the conflict, for humanitarian actors on the ground the closing of the A9 road in August 2006 marked an earlier turning point. Two months before this the Sri Lankan Air Force launched attacks against positions held by the LTTE and at his annual Heroes Day Speech in November the leader of the LTTE said the organisation felt they had no option but to resume hostilities. While the following two years marked an increasingly difficult, dangerous and at times seemingly impossible task for humanitarian agencies concerned with conflict IDP rights and needs, the final few months of the war offer a stark demonstration of the degree to which civilians caught within an internal conflict can be left helpless. The government's advance on LTTE-controlled areas triggered a chaotic exodus of 100,000 civilians to government-controlled territory with conditions for those who fled described as desperate, with acute shortages of food, water, medical care and shelter and with relief agencies denied access. Worse, as government forces continued to advance on the LTTE's last remaining stronghold, estimates suggested 150,000 civilians were trapped in a tiny pocket of land between Sri Lankan government forces, whose shells were falling on them, and the LTTE, which was using them as human shields and shooting them if they tried to escape. The situation as described by the ICRC was 'nothing short of catastrophic'. Estimates suggest that 30,000 civilians were killed in the final two years of the conflict, with 8,000 killed between January and May 2009. As of September 2009 300,000 IDPs

²⁰ SLMM statements: 13 September 2002 and 13 January 2006.

who fled the conflict zone were living in 40 emergency shelter sites.²¹ The nature of the conflict in the last few months was illustrative of a government prepared to win at all costs and an increasingly cornered and desperate opposition willing to try anything to survive. The consequences for UNHCR and other UN agencies operating on the ground was that by September 2008 they withdrew from the LTTE-controlled districts of Kilinochchi and Mullaitivu, citing the government's failure to guarantee the safety of aid workers.

In short, the end of the conflict resulted in a situation where conflict IDPs' rights and needs as laid out in the *Guiding Principles* were totally disregarded, with appalling humanitarian consequences. The government position in terms of international concerns is worth emphasising. Though reports that were able to emerge described horrendous scenes, efforts by the international community to stop the fighting, in so far as they went, fell on deaf ears.²² The Government of Sri Lanka responded with promises to launch a 'humanitarian operation' to 'liberate the civilians from the clutches of extreme terrorism', co-opting the humanitarian rhetoric and demonstrating a certain resonance with the US's 'war on terror'.²³ This was also perhaps indicative of how the LTTE's tactics of the human shield had played into the hands of their opposition, the LTTE apparently believing that by triggering a potential humanitarian catastrophe, government forces would have to halt hostilities in the face of mounting international pressure. As the powerful second-rung leader Thilliyampalam Sivanesan said; 'the international community is not even looking at us'. The LTTE conceded defeat by May 17th 2009 and blamed the world for failing to save them.²⁴

Particularly when one reflects on efforts to find a peaceful resolution to this conflict and all the subsequent efforts to promote, protect and meet the needs and rights of those displaced by the conflict, the sobering conclusion is all too obvious: external humanitarian actors working within the confines of a sovereign state have few resources to compel either the government or a rebel group to alter behaviour or meet international standards, especially if the international community is itself divided on what to do. While the *Guiding Principles* will continue to inform UNHCR's efforts, the limits and the dilemmas are clear. While *the Guiding Principles* state that '[N]ational authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons' and that the *Principles* should 'provide guidance to' 'all other authorities' and 'groups', the final few months of the war were indicative of totally contrary behaviour by both parties.²⁵ Humanitarian agencies, including UNHCR as the lead agency for the protection of IDPs, were required (for their own safety) to vacate the

²¹ Brad Adams, Asia Director of Human Rights Watch described the shelter sites as the 'world's largest open prison', *Sri Lanka, A Humanitarian and Human Rights Crisis*, meeting: 28 July 2009, London.

²² Despite efforts by the UN Under-Secretary-General, John Holmes, and the US, the European Union, Norway and Japan calling on both sides to respect the no fire zone and protect trapped civilians and making the case for a humanitarian ceasefire, the war continued. Calls for action by permanent members of the UN Security Council made little progress, with Russia and China preventing serious discussion about the war.

²³ Disaster Management and Human Rights Minister Mahinda Samarasinghe, MP, BBC *HARDtalk*, 2 March 2009.

²⁴ 'Sri Lanka An end to the war?', 18 May 2009, *Economist*.

²⁵ Introduction – Scope and Purpose, 3 (c), Principle 3.1.

area of most need. What is perhaps even more sobering is that this downward spiral of events did not occur in the context of an absence of an international humanitarian presence to protect and promote the rights and needs of conflict IDPs. Quite the opposite; they were there, but ineffectual and virtually powerless to prevent a humanitarian disaster.

Conclusion

During my four years working for UNHCR in Sri Lanka between 2002 and 2006 I would frequently ask myself whether I genuinely felt it was better for the people that we were trying to aid that we were there. Was it better that we had internationally-recognised principles that helped guide our work, despite the fact we would often fall short of the mark? And does the sorry record of the last year mean all our efforts were a waste of time? Should UNHCR and other organisations apologise for the fact that they continued to try and offer what relief and assistance they could and from where they could while the government and the LTTE both committed atrocities? Should agencies that remained to do what they could and did not openly criticise the government for fear of ejection be accused of complicity? What criteria should we use to evaluate the performance of humanitarian organisations?

I would submit that the relevant criterion is not the ability to resolve conflicts that states will not or cannot resolve themselves, it is, rather, to do what we can – what is within the means given to us – to give what support we can to the people we are trying to help for as long as we can. We are not, as is sometimes dismissively charged, trying to 'save the world', whatever that means. We are instead trying to do as much as we can to redress the evils inflicted on the weak by the strong and thus to make this a marginally better world. That may not be as heroic as saving the world or solving some of its most demanding problems, but it is impact worthy of the moral responsibility demonstrated and of the international commitment.

3 Protection in practice: the Sri Lankan case

Bhavani Fonseka

Bhavani Fonseka²⁶ is a human rights lawyer and activist, with a focus in assisting victims and affected populations in various parts of Sri Lanka. She is presently working as a Senior Researcher with the Centre for Policy Alternatives, a think tank in Sri Lanka, which involve research, documentation, national and international advocacy and litigation. She has a LLB (Hons) (UK) and LLM (in international human rights law) (USA).

Introduction

In providing assistance in conflicts and other crises, it is important not only to understand the context, politics and underlying local dynamics, but also how best to provide protection to those in need in line with international and national standards that ensure that the human rights of civilians are guaranteed and protected. Protecting people has become increasingly hazardous, dangerous and controversial. Every new conflict and crisis highlights new dangers and the fragility of the rule of law, order and security in society, and also raises new questions, resulting in an evolving framework and standards of protection.

This paper will focus on several key developments that occurred in the recent (2009) phase of the conflict, discussing some of the dynamics and rationale behind decisions and positions taken in addressing and handling the protection of the civilians and how these issues have been dealt with by the key stakeholders. It also highlights some of the challenges that are faced in protecting civilians, looking at the role of government actors, the international community, donors, the UN and the wider humanitarian community. A recurrent theme throughout the paper is the importance of respect for, protection of and promotion of the human rights of those affected and it argues that protection work needs to strive to conform to principles enshrined in international norms and standards. The example of Sri Lanka shows that protection in conflicts is not easy or straightforward. Political, financial and security issues, for example, have challenged and continue to challenge the whole concept of protection. As seen with other cases, a principled, strong and coordinated stand needs to be taken by key stakeholders from the start. It is also important that initiatives undertaken by the various stakeholders are planned and implemented through a rights framework. If not, the essence of protection will be threatened and challenged. This paper therefore attempts not only to highlight the practical and political obstacles in protection in the Sri Lankan case, it also sets out key guidelines to be followed to ensure protection is provided for all those in need.

The concept of protection

It is now internationally accepted that human rights are universal and measures need to be taken to ensure conformity to them. In this respect, refugees and Internally Displaced Persons (IDPs) should not be treated any differently than anyone else; they too have

²⁶ Bhavani Fonseka can be contacted at bhavani@cpalanka.org

rights and are equal before the law. The focus of this paper will be on the protection of civilians in an internal conflict, with specific reference to IDPs. International Humanitarian Law (IHL), human rights law, the *Guiding Principles on Internal Displacement* and other mechanisms provide a framework for protection of IDPs, leaving no room for excuses for the lack of implementation.

Over time the concept of protection has evolved and we are currently at a critical juncture where the meaning of the concept of protection and the responsibility of key stakeholders in upholding the concept is being tested. The concept of ‘sovereignty as responsibility’ which was coined by the then Special Representative of the Secretary-General for Internally Displaced Persons, Francis M. Deng,²⁷ provides that the sovereign state has to meet its obligations and responsibilities in caring for its citizens and has the ultimate responsibility to protect the rights of all its citizens. Thus sovereignty comes with responsibilities for citizens.

It became apparent during the conflicts around the world in the 1990s that strong and immediate action needed to be taken by the international community to address large scale human rights and humanitarian abuses, war crimes, genocide and crimes against humanity. In many of the conflicts across the world, national governments were unable or unwilling to put a stop to massive human rights abuses. New measures were needed to ensure that protection mechanisms were put in place to avoid a repeat of such atrocities. Sovereignty was no longer an overriding argument that states could use to shield themselves from international attention and intervention over abuses perpetrated against innocent civilians and massive human rights violations in their territory.

The culture of protection evolved with the support of the UN and key international actors. In a report issued in 2001 by the International Commission on Intervention and State Sovereignty (ICISS)²⁸ remedies and options were discussed for ending massive human rights violations committed by a state against its own citizens or when a framework was missing to prevent such abuse. Among other options discussed was military intervention. This concept of the responsibility to protect (now better known as R2P) has its supporters and its critics. While its supporters see the concept as essential in today’s world to address massive violations of human rights and the inability or unwillingness of states to step up and prevent atrocities, others disagree. Some are deeply sceptical about the motivations of powerful states that possess the capacity to intervene and see this as another instance of western imperialist behaviour. At the other end of the spectrum is the view that sustainable peace and security cannot be achieved if regimes accused of massive violations are not held accountable and if impunity continues. There is increasing international recognition that such states need to be held to their responsibilities and held accountable.

²⁷ UN Doc, E/CN.4/1993/35 (1993). See also: Francis M. Deng et al., *Sovereignty as Responsibility* (Washington, DC: Brookings Institution, 1995).

²⁸ <http://www.iciss.ca/pdf/Commission-Report.pdf>

The debate over R2P and protection continues to date. Norms and standards enshrined in IHL, human rights and refugee law provide a broad framework to realise safety and security for the victims of conflicts and crisis. Any interventions in the name of protection should also consider the implications as well as the necessity, proportionality, acceptability and practicality of the intervention.

Protection will not be achieved if there is no political will among the key actors. In 2007 Angelo Gnaedinger, Director General of the ICRC in 2007 stated that:

”The main impediment to protecting civilians remains the lack of political will to make sure it is respected by all. Far too often parties to conflict disregard humanitarian law and deliberately target civilians. And we are seeing a dangerous erosion of distinction and proportionality as the cardinal principles governing the conduct of hostilities.”²⁹

There should be no different standards for different groups of people. Sadly, in many of the conflicts there have been notable discrepancies in protecting civilians. The Sri Lankan case succinctly captures several of the protection issues and challenges in the present day, and the lack of political will to provide protection for civilians.

The Sri Lankan context: key issues and events

The ethnic conflict that spanned over two decades and in which thousands of people were killed or injured, disappeared or were displaced, saw a bloody end in May 2009 with the military victory of the Government of Sri Lanka over the Liberation Tigers of Tamil Eelam (LTTE). The exact number of those who perished as a direct consequence of the conflict is as yet unclear but thousands have been permanently scarred by its brutality. The most recent fighting between January and May 2009 was the bloodiest and deadliest. Due to restrictions on independent reporting from the conflict zone, ironically named the ‘safe zone’ by the government, we will never know the exact figures of casualties from the war but the international media have claimed that, according to research, approximately 20,000 civilians died in the space of only five months.³⁰ Leaked documents from the UN stated that they have verified figures of 7,000 civilian deaths in the zone in the period of January - April 2009.³¹

It has been reported that violations of human rights law and IHL were committed by both the government and the LTTE during the conflict. The government is accused of, among other things, extra-judicial killings, disappearances, torture and arbitrary detention.³² The LTTE is accused of killings, forced recruitment including of children, the use of civilians as human shields and many other violations.³³ The last phase of the conflict also witnessed both sides firing into the so-called ‘safe zones’ where trapped civilians had nowhere to go

²⁹ <http://www.icrc.org/web/eng/siteeng0.nsf/html/united-nations-statement-201107>

³⁰ <http://www.timesonline.co.uk/tol/news/world/asia/article6391265.ece>. No independent assessment team has been allowed into the zone since the fighting stopped in May 2009, and as a result independent verification of the status of the zone and civilian casualty figures is yet to be obtained.

³¹ http://www.nytimes.com/2009/07/13/world/asia/13lanka.html?_r=1

³² <http://www.amnesty.org/en/region/sri-lanka>, www.hrw.org/en/asia/sri-lanka

³³ <http://www.hrw.org/en/by-issue/publications/164>

to seek shelter.³⁴ Hospitals and medical facilities were attacked numerous times, killing and injuring patients.³⁵ With no independent access into the zone and other captured areas, it was extremely difficult and dangerous to document the events that occurred there. Those who bravely reported violations, including five medical doctors who were working for the government, were accused of being traitors and detained for more than three months by the same government.³⁶

From the limited verified evidence, it seems that both parties disregarded established international and national frameworks of protection and were unwilling or unable to protect civilians. Though there was condemnation of what was taking place from some quarters of the international community, there was no collective stand to hold both parties accountable. The UN Security Council was unable to hold a proper session on Sri Lanka due to pressures from some of its members. Instead it held informal briefings in the basement of the UN, an indicator of how key actors in the international community perceived the conflict in Sri Lanka and used their leverage to influence the debate and avoid a discussion on R2P and accountability. There was no collective stand on stopping the massive violations of human rights and IHL during the fighting in 2009. The High Commissioner for Human Rights, Navi Pillai, made a strong statement indicating that war crimes and crimes against humanity may have been committed by both parties and for the first time raising the alarm from within the UN about the atrocities being committed; unfortunately there was silence from other quarters of the UN.³⁷ Instead of strong condemnation and agreement on the need for action by the international community, the rest of the UN took a milder position, wanting to 'engage' with the actors rather than lose any leverage they may have. The inability of the international community, the UN and others to take a strong stand pushing for the respect of human rights and IHL norms and the protection of civilians was evident not only during the hostilities but also after the government's victory, with the very large numbers of IDPs trapped in government-run camps.

While there are different positions on the strategy that needs to be taken - from those who are supportive of engaging with the key local actors, to others who believe that no improvement is possible if there is no concerted push on human rights, IHL and accountability - it needs to be considered whether the strategies used in 2009 in fact provided protection to civilians in Sri Lanka. Unfortunately the inability of the international community and the UN to take a strong stand on human rights and abuse of IHL during the conflict resulted in both the government and the LTTE disregarding norms of protection. This not only showed the divisions within the international community and its members' own self-interests and agendas, but also set a bad precedent for future scenarios. Actors in future conflicts and crises will be aware that divisions and self-interested agendas within the international community will mean they are unable to make an immediate, collective and strong response in the face of massive violations of

³⁴ <http://www.uthr.org/SpecialReports/spreport32.htm>

³⁵ <http://www.hrw.org/ja/node/80899/section/5>

³⁶ All five doctors were released on bail in August and September 2009.

³⁷ Statement made by the High Commissioner for Human Rights, 13 March 2009.

human rights and IHL. This is, sadly, not a new development but one that has been evident for years. The international community and the UN need to ensure that a policy decision is taken and criteria recognised for immediate, strong and collective action through the UN Security Council to avoid unnecessary human suffering in future crises. In late 2009 over 100,000 IDPs remain in government-run camps that are surrounded by barbed wire and are highly militarised. There is limited freedom of movement for IDPs in these camps, and very rare opportunities to meet with family and friends who come in the hope of seeing them. The nature of the camps and the militarisation surrounding the camps has resulted in these camps being called ‘detention centres’ or ‘internment camps’.³⁸ Basic food, water, health, shelter and sanitation are below international standards and there are increasing concerns about how to provide for this large number of IDPs. Rains in August 2009 resulted in floods and damage to many of the shelters and other parts of the infrastructure in these camps, having a further negative impact on the lives of those who have borne the brunt of the conflict.³⁹ The government is yet to provide a legal basis for holding such a large group of people in detention-like conditions, including pregnant women, children, the elderly, the disabled and those needing medical attention. As a result, the Centre for Policy Alternatives (CPA) filed a fundamental rights case in the Supreme Court of Sri Lanka in June 2009 stating that such detentions are illegal and violate rights guaranteed in the Constitution of Sri Lanka.⁴⁰ The case is currently before the Supreme Court.⁴¹ National security is used to justify the illegal detention of the IDPs and is applied as a blanket rule regardless of the fact that some of those kept behind barbed wires are unlikely to be a threat to security.

Protection in Sri Lanka: principles vs. practices

The violent past in Sri Lanka has seen many instances where the protection of civilians was sidelined for security and military purposes by both the government and the LTTE. For example, in the present situation in the government-run camps the freedom of movement of IDPs enshrined in the Constitution of Sri Lanka continues to be violated in the name of security.

³⁸ Please refer to ‘Sri Lanka keeps refugees in camp that aid built’, Ravi Nessman (AP), 18 July 2009; ‘Sri Lanka: Free Civilians From Detention Camps’, *Human Rights Watch*, 29 July 2009.

³⁹ According to a letter written and signed by 20 INGOs working in the camps to Mr John Holmes (UNOCHA) and Mr Antonio Gutierrez (UNHCR), serious concerns were raised over the conditions in the camps. The letter states: ‘Even comparatively light rains on 14th August 2009 left four zones of the Menik Farm camp in Vavuniya flooded, leaving hundreds of families without adequate shelter, water or hygiene facilities and causing the death of five IDPs, including one child who drowned. As well as causing acute discomfort and lack of dignity for displaced people, this has greatly escalated the risk of widespread water-borne diseases, potentially to epidemic proportions. Once the monsoon rains set in after September there is significant likelihood of a major humanitarian catastrophe.’ 1 September 2009. Letters on the same issues had been sent previously by INGOs to the government and the UN Resident Representative.

⁴⁰ CPA and Saravanamuttu vs. Mahinda Rajapakse and others, June 2009.

⁴¹ The Supreme Court is yet to give an order on this case. In another fundamental rights case filed by an affected IDP family, the Supreme Court ordered that an injured girl who is an IDP in the camp should be released for medical reasons. Reported in *Daily Mirror*, 27 August 2009.

Protection work in the camps has continued to face obstacles in the recent weeks. There seems to be an ad hoc system for allowing access to the camps, with agencies continuing to face problems in talking to IDPs and providing protection and assistance. According to several humanitarian actors working in the camps, the rule seems to be that agencies are allowed access to the camps only if providing tangible assistance such as shelter, food, water, sanitation or health services.⁴² Though providing such assistance is a form of leverage in obtaining access to the camps, such access comes with restrictions and is controlled by the military.⁴³ A common problem that continues to be raised by agencies is that IDPs are too scared to talk of sensitive issues since it is a known fact that government intelligence officials mingle with the IDPs and observe any protection and documentation work that takes place. IDPs fear that repercussions could befall the IDPs from being seen talking to agencies.⁴⁴ Agencies with a purely protection mandate continue to face problems gaining access.

An issue regularly highlighted is the need to identify strategies that can be used to counter government restrictions and increasing control over humanitarian work.⁴⁵ Views from humanitarian workers indicate that many of the heads of agencies, including in the UN, have opted to engage with the government in order to maintain access to the camps to provide assistance, sometimes at the expense of protection work.⁴⁶ In May and June, protection work in the camps was nearly non-existent, with protection staff of agencies being asked to provide tangible assistance rather than perform their primary tasks.⁴⁷ This shift by the humanitarian community seems to be as a response to government policy that made no space for protection work. The government's unwillingness to respect human rights and IHL and its complete denial over committing and being party to violations was witnessed while the fighting continued. That same stance is in effect at present giving limited scope for human rights and protection work.

The international community and the donors have failed to put pressure on the government to open more space for protection work. This is an indicator of the inability among these groups to agree on a collective stand that can be used as leverage. It becomes even more difficult when some donors and agencies agree to fund and provide assistance, disregarding international and national norms and undermining efforts by others to come to a principled stand. A weak position on protection work emanates not just from head of agencies in Colombo but is a line taken by headquarters.

⁴² Interviews with humanitarian workers, July and August 2009.

⁴³ For example, agencies cannot speak to IDPs inside their tents and any interviews conducted needs to be done outside in view of the military, police and intelligence officials. Interview with humanitarian worker, August 2009.

⁴⁴ Interview with humanitarian worker, August 2009.

⁴⁵ The majority of the humanitarian agencies and actors admit that the justification of national security is used to curtail operations of humanitarian agencies and their staff.

⁴⁶ Interviews with humanitarian workers, July and August 2009.

⁴⁷ Interview with humanitarian worker, Vavuniya, June 2009.

The lack of will to challenge the government on sensitive issues seems to be largely influenced by practical issues including access and the safety of staff members. Agencies opting for a practical position rather than a principled position may bring temporary and immediate gains but the strategies are bound to damage long term plans and programmes. Such weak positions not only allow the government and its agents to manipulate the humanitarian community or sections of it, but also weaken its position with the affected community who are the beneficiaries. The humanitarian community needs to realise that its pragmatic approach compromises their standing and work, ultimately limiting the assistance they provide for those most affected.

Is there space for protection work in Sri Lanka?

There are several reasons for protection work continuing to be sidelined in the humanitarian operations. Government restrictions and control over how humanitarian actors can operate in camps is one key reason. Sadly, the international community, donors and humanitarian actors have been unable and unwilling to come up with a collective stand to counter this approach and convince the government that protection work is an essential element in providing assistance.

In February 2009 donors in Sri Lanka came up with principles of engagement in providing humanitarian assistance and provided criteria for assistance for the camps.⁴⁸ The donors insisted that the camps should be temporary and that a rights framework was important. The debate continues about whether the humanitarian imperative should trump the need for standards and benchmarks. According to humanitarian actors, there is a division among the donors on how rights and protection issues should be approached, with some donors believing that providing basic services to IDPs should not come with any strings attached.⁴⁹ Several months since the IDPs have been in the camps, with no significant improvement in their fundamental rights, donors need to revisit this debate and collectively push for a strong human rights and protection framework. While there is no denying that in the early months of 2009 there was an unprecedented emergency and special consideration was needed, there is no justifiable argument at present why benchmarks and standards cannot be insisted upon from the government by all donors and the agencies they fund. Bilateral donors who provide funds for humanitarian work without benchmarks and conditions undermine the efforts of others in pushing for adherence to standards.

Humanitarian actors also need to take a collective position on protection issues and the importance of human rights in humanitarian work. A weakness identified among some humanitarian actors is that protection is not seen as a core activity and that those

⁴⁸ Interview with a donor, August 2009. The Bilateral Donor Group (BDG) is a forum where donors discuss humanitarian and development issues in Sri Lanka. The BDG set out conditions including unrestricted access to the temporary camps, guaranteed security, safety and protection, immediate preparation for a safe and timely return, emergency assistance and freedom of movement. The BDG comprises the embassies or High Commissions of Australia, Britain, Canada, the European Commission, France, Germany, India, Italy, Japan, Korea, the Netherlands, Norway, Sweden, Switzerland and the USA.

⁴⁹ Interview with a donor in Sri Lanka, August 2009.

providing practical assistance perceive protection as a less important function.⁵⁰ In some instances, protection work is seen as an obstacle to getting access and providing assistance to those in need.

The readiness of the government to blame the donors and the humanitarian community for setbacks and failures should be noted. The floods in the camps when many lost their shelters and were submerged in water is a case where the government took no time in blaming the UN and others for poor drainage. It is very rare for the government to admit its own failures, regardless of the fact that the primary responsibility of providing for the citizens of Sri Lanka lies with their government. This is not new, having been evident previously including in the post-tsunami reconstruction phase.⁵¹ It is easy to shift the blame on to international actors in order to demonstrate to the electorate that the government had no hand in furthering the suffering of the people. By manipulating the media these messages and objectives are easily achieved.

Though these are not new trends, the donors and humanitarian community have yet to learn from these episodes and be better prepared to counter allegations and obstacles. Recent years have witnessed a further shrinking of humanitarian space with more control imposed on agencies, including new restrictions on visas and work permits, limiting access and threats to humanitarian workers.⁵² Looking at past experiences of how humanitarian actors have been treated in Sri Lanka and coupled with the hard-line stance of the government, it is apparent that the role played by humanitarian actors is seen as dispensable after the immediate emergency is over. It should not come as a surprise that soon after the emergency work is completed and the government is able to take over service functions, further restrictions and controls will be imposed on humanitarian actors. The government's request for the ICRC to scale down operations in the East of Sri Lanka⁵³ may be a sign of things to come in the North too.

The space for protection work is further limited by security issues. Testimonies of relatives who visit their family members in the camps and local humanitarian agencies providing assistance draw a very dark picture of the situation⁵⁴ Security is of serious

⁵⁰ Interview with humanitarian worker, August 2009.

⁵¹ CPA Policy Brief on Humanitarian Issues, December 2007, www.cpalanka.org

⁵² Several humanitarian workers have been detained and arrested in recent months. For example, it has been reported that two local employees of UNHCR and UNOPS were abducted from Vavuniya, beaten and tortured and later found in a police station in Colombo. The two staff members have filed a fundamental rights case in the Supreme Court stating that they were tortured by the police and that their detention was illegal. The case is presently before the Supreme Court. This case is an example of the shrinking space for humanitarian actors in the North and the East and the breakdown of the rule of law in Sri Lanka where due process is ignored and government agents choose to take the law into their own hands. Sri Lanka has witnessed a spate of attacks against humanitarian actors resulting in Sir John Holmes labelling Sri Lanka as one of the most dangerous places for humanitarian work. Reuters, Simon Gardner, 'Interview - Sri Lanka a top danger spot for aid workers - UN', August 9 2007. For more information refer to CPA Policy Brief on Humanitarian Issues, December 2007, www.cpalanka.org

⁵³ ICRC press statement, 9 August 2009, <http://www.icrc.org/Web/eng/siteeng0.nsf/html/sri-lanka-news-090709!OpenDocument>

⁵⁴ During the early months in the camps IDPs only had one meal a day. Instances where 10-15 IDPs have to

concern, with most individuals being too scared to report what is happening for fear of possible reprisals.⁵⁵ A multiplicity of factors increase the vulnerability of the IDPs making them less inclined to talk and cooperate with humanitarian actors on issues perceived as sensitive. Building trust and providing IDPs with a secure environment is fundamental in protection work.

Present realities: the government's stance and practical issues

The government has not publicly spelled out their policy on protection issues. Initiatives such as the 180 day return plan⁵⁶, 'One stop shops'⁵⁷, Project for Confidence Building and Stabilization Measures for IDPs⁵⁸ and the National Framework Proposal for Reintegration of Ex-combatants into Civilian Life in Sri Lanka⁵⁹ provide a glimpse of some of the programmes the government intends to initiate. It is still to be seen how the human rights framework and protection issues influence policy discussions and the implementation of programmes.

Statements by key government actors raise concerns about the importance of human rights and fundamental freedom for the present regime. For example the Defence Secretary, a key architect of the successful military strategies and brother of the President, made the following statement:

'Once this terrorism problem which lasted for 30 years is completed, we have to enter the next episode of it. The war is like a cancer. Even after curing a cancer, there is a period for radiation treatment. It is same with the war on terrorism.'

This is an indication that after the military victory a period will be taken by the government to eliminate threats and obstacles. It also raises questions about whether human rights will be further eroded and undermined. The government has not defined the how long a period will be required and there are grave concerns that this was deliberately kept vague so as to use whatever force is needed for as long as necessary with no checks and balances.

The LTTE was militarily defeated in May 2009 but Sri Lanka is still (September 2009) under emergency rule. National security is the most commonly used justification for restrictions and control including the denial of fundamental rights guaranteed under the Constitution of Sri Lanka and under international laws that Sri Lanka has ratified. Though it is internationally established that setting aside rights in the name of security

share one tent were common. Families still remain separated, with children unable to find their parents.

This is largely due to not having a central database of IDPs and the agencies' inability to trace family members. There are reports of the spread of diseases such as chickenpox, hepatitis, meningitis, encephalitis and typhoid as a result of unhygienic conditions and inadequate medical assistance.

⁵⁵ The fear is fuelled by the presence of military, intelligence and other unknown actors, whose exact role is unknown to the IDPs. Interview with humanitarian worker, August 2009.

⁵⁶ www.irinnews.org/report.aspx?ReportId=85360

⁵⁷ Speech made by Hon. Mahinda Samarasinghe, Minister for Disaster Management and Human Rights in Parliament on 22 July 2009 on the occasion of the Adjournment Debate on IDPs.

⁵⁸ www.unhcr.org/pub/PROTECTION/482af5132.pdf

⁵⁹ Draft document circulated at the validation workshop on 39 July 2009.

needs to be proportionate and necessary, this is disregarded in Sri Lanka. If anything, any mention of security results in blanket unchecked powers being given to a close-knit group of powerful actors who can decide on what is best for the rest of the population. Curtailing the freedom of movement of over 280,000 IDPs in government-run camps is a prime example.

A notable feature in the Sri Lankan case is also the increased militarisation. Government camps for IDPs are highly militarised. The recently liberated north is still under tight military control with humanitarian actors and de-mining groups yet to go in to do assessments for possible return. Recent years have witnessed rising numbers of high security zones (HSZ) being declared in Jaffna, Trincomalee, Batticaloa and Mannar. Many of these are ad hoc military creations with no legal justification.⁶⁰ Most likely there will be more HSZs established in the liberated north with significant numbers of IDPs unable to return to their land. The militarisation also means that many civilian administrative posts are now held by active or retired military officials.⁶¹ While increased powers for the military could be justified while the fighting continued, there is no reasonable basis for more powers to be given to the military now. The trends of undermining the civilian administration and disregard for national and international frameworks are disturbing and need immediate attention.

Further, a speech made by the Attorney General of Sri Lanka, Mohan Peiris,⁶² raises questions about whether the government and its agents are finding ways of disregarding obligations under customary international law. He makes reference to the Geneva Conventions Act 2006 which was passed as enabling legislation to the Geneva Conventions and says:

‘It is noteworthy that while enacting our Act, the parliament has omitted Common Article 3 and thus we can safely argue that our Act does not apply to the non-international armed conflict that raged between the government and the Tamil Tigers. Any obligation placed by the Geneva Convention Act to prosecute would apply to an international armed conflict that Sri Lanka would be involved in and any violations of Common Article 3 by the LTTE in the war would remain non-prosecutable under the Geneva Conventions Act No 4 of 2006. So would any violations that might have been committed by the armed forces.’

It is convenient that the Attorney General of Sri Lanka seems to bypass obligations imposed under customary international law by muddling it up with enabling legislation

⁶⁰ An exception is the HSZ in Sampur which was established under emergency regulations in May 2007. A fundamental rights case filed by CPA challenging the establishment of the HSZ in Sampur resulted in the Supreme Court saying that the issue is one of national security.

⁶¹ For example, the Competent Authority for the North (who is also the Governor of the Northern Province) and the Commissioner General for Rehabilitation are both active members of the military. The Governor of the Eastern Province, the Government Agent for Trincomalee district and the person in charge of resettlement in Trincomalee district are all former military personnel.

⁶² Speech made at the National Validation Workshop for the Framework for Reintegration of Ex-combatants into Civilian Life in Sri Lanka, organized by the Ministry of Disaster Management and Human Rights, supported by the ILO, July 2009.

and referring to the Act as only applicable to international armed conflict. The weak legal argument presented to remove obligations and responsibilities under customary international law and absolve it from any accountability is indeed astounding. Is it to be assumed that this argument is to be presented to the international legal community by the government to demonstrate that Common Article 3 does not apply to situations of internal armed conflict such as that in Sri Lanka? Is this the rationale to be used in all future internal conflicts where parties want to evade their responsibilities? This form of thinking not only demonstrates how the government attempts to evade its responsibilities to protect its citizens but sets a dangerous precedent in human rights and protection discourse nationally and internationally.

Prospects for the future: ways forward

The military defeat of the LTTE comes as a welcome relief to many who underwent harsh treatment under their control. But things are yet to significantly improve for a large group of people, many of whom are living in deteriorating and detention-like conditions in government-run so called 'welfare camps'. There is no regard for the rights, freedom and dignity of those affected. Those continuing to face hardships and violations ask whether they have actually been liberated and given their freedom.⁶³ There is little or no improvement in human rights protection under the control of government actors. With the increased militarisation and an increasing disregard by the government of its obligations and responsibilities imposed through human rights law and IHL justified by interests of national security. With the present initiatives and statements made by key government figures, it is apparent that there is no political will to genuinely address human rights and protection issues. Unfortunately, the military mind-set is still very much present and given priority. Human rights, principles of good governance and the rule of law are often undermined and eroded. It is critical that the government recognises its obligations to its citizens, starting with the rights framework provided under the Constitution of Sri Lanka, and takes measure to respect, promote and protect human rights.

The government can take practical steps to demonstrate its sincerity in this endeavour; steps such as implementing the 17th Amendment to the Constitution and implementing obligations imposed under international laws and standards including IHL can be taken immediately. Immediately allowing freedom of movement for civilians including IDPs is a starting point. There need to be measures brought in to respect the rule of law and promote human rights in parallel with providing security. This delicate balance can be achieved with the establishment of independent institutions, initiating independent investigations and inquiries and respect for law and order. The civilian administration needs to be fully reinforced, with a reduction of the military control and presence. There needs to be a concerted effort to address durable solutions for the IDPs. With the war won, the government needs to shift from the military mind-set to that of moving forward and rebuilding the country. This means working with all communities, building trust and promoting co-existence.

⁶³ Interview with recently released persons from camps in Vavuniya, July 2009.

The rights discourse has been further weakened because agencies and donors have sidelined its relevance and importance in favour of a more practical solution. The present state of human rights and protection is grim in Sri Lanka. While the primary responsibility to providing for its citizens remains with its democratically elected Government, there is also an onus on the international community, donors, the UN and humanitarian actors collectively to call for the adherence to and protection of human rights and IHL. By failing in their obligation to do this, these actors are complicit in violations. Donors and humanitarian actors need to work in partnership with the government but also be able to collectively take a principled stand on protection issues. The international community and donors need to discuss benchmarks and conditionalities when providing assistance and be able to implement such decisions. As the R2P discussion has progressed, it is paramount that the international community live up to its rhetoric and demonstrate its commitment.

As proven in the Sri Lankan case, the culture of protection cannot be isolated from other areas and is fundamental in the protection and promotion of human rights. It is also something that can only be achieved when there is genuine political will among the key stakeholders. It is time for all actors to demonstrate their genuine interest and willingness to give protection its due place and ensure it is implemented to its fullest extent. It is to be hoped that they take on this challenge in Sri Lanka.

4 'Protection is not a life saving activity'⁶⁴: the politics of protection in practice in Sri Lanka

Ambika Satkunanathan⁶⁵

Ambika Satkunanathan⁶⁶ is a legal researcher and activist whose work focuses on the rule of law and accountability, peace and conflict, gender, and transitional justice issues. She is currently working as a Legal Consultant with the United Nations in Colombo. Previously she worked as a researcher at the International Centre for Ethnic Studies, Colombo and the Law and Society Trust. Ambika holds degrees from Monash University, Australia and the University of Nottingham, from where she has a Master of Laws (Human Rights).

Introduction

The armed conflict between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) came to an end in May 2009. The months preceding the end of the war witnessed the displacement of hundreds of thousands of people who were forced to flee from their areas of residence. When internally displaced persons (IDPs) crossed over to government areas from the areas under LTTE control or when the government gained control of LTTE areas, all persons found in those areas were sent to closed camps in Vavuniya from which they were not allowed to leave.⁶⁷ This created several protection concerns, such as militarisation of camps and the restriction of freedom of movement for the IDPs.

The Inter-Agency Standing Committee (IASC) defines protection as 'all activities aimed at ensuring full respect for the rights of the individual in accordance with international human rights law, international humanitarian law, and refugee law'.⁶⁸ The definition of protection therefore is broad and grounded firmly within the human rights and humanitarian law framework. In Sri Lanka humanitarian agencies have grappled with protection concerns with varying degrees of success, resulting in a tension between addressing the protection concerns and the humanitarian assistance needs of the population. However, rather than use a human rights framework to bridge the divide between the two, many agencies chose to view the rights discourse as a threat to their activities and ability to provide assistance to the IDP population, that is, they feared they would lose access to the camps if they focused on rights issues.

This paper argues that humanitarian agencies were reluctant to work within a rights framework and mainstream protection because protection and rights are inherently

⁶⁴ As stated by humanitarian worker during dialogue on protection.

⁶⁵ The views expressed in this paper are those of the author and do not represent the views of any organisation with which she is affiliated.

⁶⁶ Ambika Satkunanathan can be contacted at ambikasad@gmail.com

⁶⁷ With effect from 1 December 2009 Menik Farm and other IDP sites became open camps but the freedom of movement of the IDPs continues to be controlled.

⁶⁸ *Policy Instructions: OCHA's Role in Supporting Protection: International and Field Level Responsibilities*, September 2006.

political, and agencies believed that engaging with the 'political' would jeopardise their programmes. Hence, by citing the need to abide by the principles of impartiality and neutrality they justified their refusal to factor socio-political realities into their work, which diminished their effectiveness and impact. To illustrate the political nature of humanitarian assistance in Sri Lanka and the disastrous consequences of ignoring it, the impact of militarisation on humanitarian assistance and protection activities is also discussed. The paper arrives at the conclusion that the tension between humanitarian assistance and protection exists as a result of a limited understanding of the concept of protection which does not situate humanitarian work within the human rights framework. This, coupled with the absence of strategy and collective political will, hampered implementation of protection programmes.

The politics of taking 'politics' into account: humanitarianism vs. protection?

The principles of neutrality and impartiality, the foundations of humanitarian assistance, have increasingly become contentious, with 'classicists' such as the ICRC arguing for the insulation of humanitarian assistance from politics, while 'political humanitarians' believe that it is neither possible nor desirable to divorce humanitarian assistance from political realities.⁶⁹ This discourse is informed by the needs versus rights debate. Advocates of the needs approach are of the belief that assistance should be provided regardless of political factors. Proponents of the latter support a rights-based approach to humanitarianism which, they argue, enables 'humanitarians to connect with a 'proper politicisation' that goes beyond humanitarian protection and is grounded in natural rights and justice'.⁷⁰

This paper argues for a rights-based approach to humanitarianism which is informed by political factors. In Sri Lanka, during and after the last phase of the armed conflict between the LTTE and the government of Sri Lanka, although humanitarian and human rights actors sought to alter the manner in which the state and its organs dealt with the IDPs in many instances, their inability and unwillingness to acknowledge the importance of political factors and their failure to undertake a political analysis and situate their activities within the socio-political landscape contributed significantly to the limited impact of their efforts.

As a consequence of refusing to frame interventions within current socio-political realities, the humanitarian community in Sri Lanka has been reactive rather than proactive. For instance, it could have envisaged that IDPs sent back to their places of origin would be subjected to continued scrutiny and severe restrictions on their movements, as evidenced by the announcement by Army commander Lt. General Jagath Jayasuriya that all those returning to the conflict areas should report to police stations once a month.⁷¹

⁶⁹ Thomas. G. Weiss, 'Principles, Politics and Humanitarian Action', Humanitarianism and War Project, <http://www3.interscience.wiley.com/cgi-bin/fulltext/119937963/PDFSTART>

⁷⁰ Devon Curtis, 'The Needs versus Rights Debate', *Politics and Humanitarian Aid: Debates, Dilemmas and Dissension*, Report of a Conference organised by ODI, POLIS at the University of Leeds and CAFOD, London, 1 February 2001, HPG Report 10, April 2001, p. 15.

⁷¹ *Divaina*, Monday Oct 26, 2009.

The increased role of the military in resettlement and development (discussed in the following section) ought to have alerted humanitarian agencies to likely obstacles to the full enjoyment of citizen rights by IDPs in the context of return. Further, due to political exigencies such as the forthcoming elections, and the refusal of international agencies to continue funding closed camps, the humanitarian community could have foreseen that the government would speedily return IDPs home, often in the absence of adequate infrastructure and services, and to locations where the state could continue to keep returnee citizens under surveillance.

At the same time the government increased its efforts to exert control over the protection activities of humanitarian agencies with the intention of preventing protection issues from being publicly discussed. One example of the means employed is the establishment of various fora and structures to discuss protection issues with government participation. For instance, the Minister for Human Rights, speaking at the launch of one such forum, stated that ‘if decisions were taken in a spirit of collaboration and partnership, there would be no necessity for these issues to be canvassed through the media’.⁷² It should be noted that inter-agency mechanisms such as protection working groups already exist both at the Colombo and field level. The aim of these groups is to formulate a common and collective strategy to ensure a coherent and effective response where possible. Whilst in some contexts, the involvement of government stakeholders in the protection cluster/sector is warranted due to the need to engage in discussions about violations committed by state actors, government participation is neither desirable nor feasible in all forums. Although the humanitarian community appeared to recognise the attempts of the state to increase its control over the protection activities of humanitarian agencies, they did not alter their ways of engaging with the government.

In Sri Lanka, the government views protection concerns as distinct from humanitarian assistance. Humanitarian actors have accepted this position by default, in failing to address protection concerns adequately for fear of losing access or jeopardising their presence. Hence, the advocacy strategies they utilised to bring protection concerns to the attention of the government and maintain space for the implementation of protection programmes were ineffectual and showed a lack of will to engage with rights and protection issues. Mahoney terms this ‘anticipatory obedience’, whereby advocacy is silenced by the state actor through ‘vague hints of sanctions or simply by making advocates feel “pushy”’.⁷³ Instead of opening space for continued presence and engagement in the conflict-affected areas, the quiet diplomacy approach employed by the humanitarian community has led to the state placing increased restrictions upon humanitarian actors.

⁷² ‘New Forum to discuss IDP protection issues’, *Daily Mirror*, 22 June 2009.

⁷³ Liam Mahoney, *Proactive Presence: Field Strategies for Civilian Protection*, Centre for Humanitarian Dialogue, Geneva, 2006, p. 95.

For instance, in Mannar all NGOs, INGOs and the UN have been instructed to obtain approval from the Presidential Task Force (PTF) on Northern Development prior to initiating programmes on return and resettlement.⁷⁴ Hence, by adhering to the state's concept of humanitarian assistance, namely only the provision of basic services, humanitarian actors severely diminished their ability and leverage to address protection issues.

Advocacy is one of the primary methods through which humanitarian agencies engage with the government to maintain protection presence and create space for implementation of protection activities. Public advocacy as a means of creating space for protection activities has both benefits and drawbacks. Instead of undertaking a cost-benefit analysis based on political factors prior to engaging in advocacy, humanitarian agencies in Sri Lanka, particularly UN agencies, have actively avoided engaging with the political aspects of humanitarian assistance and have preferred to engage in quiet diplomacy. Even the continued failure to implement commitments made by the government to the UN Secretary-General, the Secretary-General's Special Representative on the Human Rights of IDPs, Walter Kälin, and Under-Secretary General for Humanitarian Affairs, John Holmes, did not lead to the abandonment of the quiet diplomacy approach. In a climate where there is no change in the behaviour of the party in question, strategies which praise that actor will only create the impression that, regardless of the intransigence of the actor, the humanitarian community would continue to provide assistance. 'If violators know that a mission will never or rarely expose them, the power to influence is diminished'⁷⁵. An example of this flawed strategy is an interview given in June 2009 by the representative of UNHCR in Sri Lanka at the time, who said that there was 'rapid improvement' in preparing the camps for the monsoon rains and justified the restrictions imposed upon aid workers by the state.⁷⁶ Similarly, in July 2009, the World Health Organisation representative in Sri Lanka said that during each visit he found the situation in the camps had 'rapidly' improved.⁷⁷ Contrast this with the statement by the Government Medical Officers' Association (GMOA), by no means an organisation sensitive to conflict related concerns, issued around the same time criticising the shortage of doctors, nurses, health workers, midwives and pharmacists in the camps.⁷⁸ Mahoney's warning that if humanitarian organisations reveal that they 'will put up with anything just for permission to stay...(they) have little power left with which to influence'⁷⁹ has proved true in Sri Lanka.

⁷⁴ '180 days after end of war, the much anticipated return of IDPs: An Eyewitness Account', *Groundviews*, 18 November 2009 at <http://www.groundviews.org/2009/11/18/180-days-after-end-of-war-the-much-anticipated-return-of-idps-an-eyewitness-account>

⁷⁵ *Op.cit.* note.9 , p. 93.

⁷⁶ Interview with Amin Awad, Representative UNHCR, *Daily News*, 23 June 2009.

⁷⁷ 'Speculated Deaths in Camps were Exaggerated - WHO Representative', 17 July 2009, Website of The Permanent Mission of Sri Lanka to the United Nations Office at Geneva at <http://www.lankamission.org/content/view/2464/1/>

⁷⁸ Don Asoka Wijewardena, 'Dearth of Nurses at IDP Centres: Docs Run High Risks', *The Island*, 13 July 2009.

⁷⁹ *Op.cit.* note.9, p.96.

Mahoney states that a protection presence must possess a strategy to change the behaviour of a particular group and identify factors the party whose behaviour one is attempting to change is sensitive to, such as image, material benefits etc. He goes on to point out that a clear understanding of potential means of leveraging power and influence is required if protection presence is to be successful.⁸⁰ In Sri Lanka humanitarian actors' limited understanding of the motivation and concerns that drive the state and of the inter-relationships between various state actors has meant that advocacy efforts have been ad hoc and devoid of strategy. Instead, one finds that the state has functioned with a clear policy and successfully utilised factors that the humanitarian community is sensitive to, such as access, to manipulate humanitarian agencies to its advantage. State actors have, for instance, consistently made public statements which, while chastising the humanitarian community for interfering in matters deemed to be outside their mandate, have held out the promise of continued access if they function according to the wishes of the state.⁸¹

Militarisation of humanitarian assistance and its impact on protection activities

Following the end of the war no steps have been taken by state actors to initiate a comprehensive process of demilitarisation that extends beyond LTTE cadres. Instead, there is increased militarisation throughout the country, including militarisation of humanitarian assistance and post-war development.

Due to the security imperative taking precedence, as the report of the Secretary-General on the Protection of Civilians 2009 states, 'even prior to the intensification of hostilities in Sri Lanka, (i.e. before the last phase of active armed conflict) restrictions on the movement of relief items into areas controlled by the LTTE hindered the provision of humanitarian assistance to those in need. Essential items, such as construction materials, were prohibited. The resulting shortages of construction materials affected meeting the shelter and sanitation needs of the affected population, while requests for medicines and for fuel quotas for humanitarian organisations often went unanswered, were only allowed in part, were delayed or were denied. As a result, hospitals were consistently short of essential medicines and lacked sufficient fuel to operate generators, refrigerators and ambulance services'.⁸²

While humanitarian assistance has been militarised as illustrated above, simultaneously the framework of humanitarianism has been utilised by the government to legitimise military action and militarisation. For instance, the military offensive, particularly during

⁸⁰ Presentation by Liam Mahoney at 'Protection in Practice: Strategies and Dilemmas', a roundtable discussion hosted by the Humanitarian Policy Group, Washington, 9 February 2007. Conference report available at http://www.odi.org.uk/hpg/meetings/washingtonroundtable_meetingreport.pdf

⁸¹ While the Minister of Human Rights makes conciliatory statements regarding the involvement of UN agencies (*Daily Mirror* 23 July 2009), the Secretary to the Ministry of Defence, Gotabaya Rajapakse often accuses the international community of exploiting the IDP issue to undertake a campaign against Sri Lanka after failing to throw a lifeline to the LTTE (*The Island*, 17 August 2009).

⁸² Report of the Secretary-General on the Protection of Civilians, 29 May 2009, S/2009/277, p. 20.

the final stages, was characterised by the state as a humanitarian operation to rescue Tamil people from the LTTE⁸³ and used to deflect criticism and keep international interventions at bay. Following the end of hostilities there is increased militarisation in the former conflict areas with the military directing policy and overseeing IDP camps, return and resettlement. Decisions regarding camp management were made by the Competent Authority (CA), Major General Chandrasiri, Chief of Staff of the Sri Lankan Army and, following his retirement in July 2009, by Maj. General Kamal Gunaratne.

Civilian authorities have little decision making power and largely implement decisions made by the CA.⁸⁴ The army commander stated that security in the North would not be reduced but instead temporary army camps would be made permanent.⁸⁵ Further, it was reported that military settlements would be established at strategic points and the IDPs settled amongst them, indicating that continued monitoring and limitation on the freedom of persons is envisaged.⁸⁶ The Governors of the Northern and Eastern Provinces are both former military personnel, as is the Government Agent of Trincomalee. Signalling the increased involvement of the military in post-war development, the Northern Security Forces Commander said that with the elimination of terror in the north 'the security forces in the North will be engaged in a new role of developing the region'.⁸⁷ It is therefore evident that the security imperative takes precedence. In this context the militarisation of humanitarian assistance is inevitable. Hence, agencies face considerable obstacles not only meeting the needs of the displaced population while being subjected to restrictions on their ability to function effectively, such as regulations that require several levels of approvals for entry into camps⁸⁸, but also battling against allowing the security imperative to dictate and manipulate the provision of humanitarian assistance.

The effectiveness of the militarisation is illustrated by the high level of self-censorship employed by the media in Sri Lanka in reporting on IDP-related issues. The lack of access to the IDP camps also contributes to the silence. Since those in the IDP camps have been portrayed as persons who are potential threats to national security and integrity, the

⁸³ 'Foreign Minister hails armed forces for successful rescue mission' 23 April 2009 at <http://www.slmission.com/media-releases/21-ministry-media-releases-/296-foreign-mini>

⁸⁴ According to the minutes of the Northern Forum hosted by the Consortium of Humanitarian Agencies on 17 July 2009, the Head of Office of OCHA stated that the CA was enlisting the assistance of the Government Agent and local authorities to improve drainage and maintain shelters in preparation for the monsoon, clearly illustrating that the civilian authorities are taking orders from the military in dealing with the IDPs.

Report available at <http://www.humanitarian-srilanka.org/CKC/DailyInfo/17th%20Julyminutes.pdf>

⁸⁵ J.A.L. Jayasinghe, 'Security in the North won't be reduced', *Daily Mirror*, 18 August 2009.

⁸⁶ Plan to resettle Tamil IDPs in the midst of Army and Sinhala settlements, Ravaya, 21 August 2009.

⁸⁷ Anath Palakidner, 'Security Forces to Assist Rehabilitation and Reconstruction-Maj Gen Mark', *Sunday Observer*, 30 August 2009.

⁸⁸ 'In Sri Lanka, permission for the entry of humanitarian personnel into the country requires three levels of authorization, including the relevant line ministries and the Ministries of Defence and Foreign Affairs. The result is delays in staff deployments and significant staff hours consumed processing the required documents.' The Report of the Secretary-General on the Protection of Civilians, 29 May 2009, S/2009/277, pg 19.

media is reluctant to report on issues pertaining to their needs and concerns. When pre-monsoon rains led to floods at Menik Farm most mainstream English and Sinhala newspapers failed to report on the matter. As pointed out by citizen journalism website *Groundviews*, ‘SMS news services update cricket scores minutes after a vital catch, decisive over or match-winning stroke. Forty-eight hours after the devastating floods, *Groundviews* has not received even a cursory report of the flooding in Menik Camp via any of the SMS news services it is subscribed to...’⁸⁹ With the availability of information technology that makes it possible to acquire information without being physically present the silence can only be attributed to excessive self-censorship due to fears of being viewed as anti-national or acting against national security.

Within this context, humanitarian agencies should not have been taken by surprise when increasing restrictions were placed upon their ability to engage in protection work, such as prohibitions on entering the tents of IDPs or speaking with IDPs for extended periods of time, which made it virtually impossible to ascertain the concerns of the IDPs or the problems they encountered within the camps. This of course meant that protection activities and strategies of agencies could not be implemented in a manner that addressed the needs of the IDPs. For instance, humanitarian agencies were unable to assist IDPs seeking information about family members who were detained on suspicion of being LTTE cadres.

Mainstreaming protection: merely a pipedream?

Mainstreaming protection is one of the ways in which these shortcomings can be addressed. Although mainstreaming has met with considerable opposition and obstacles it is one of the few methods through which we can ensure humanitarian assistance is provided within a human rights framework.

The UN Secretary-General in his 2009 report on the Protection of Civilians has stated that ‘improving the protection of civilians is not a purely humanitarian task; rather, it is a task that requires focus and action in the peacekeeping, human rights, rule of law, political, security, development and disarmament fields’.⁹⁰ The reasons for the disconnect between the provision of humanitarian assistance and protection work in Sri Lanka are manifold. One of the main reasons, as discussed above, is the long-standing debate on needs versus rights. Those who advocate that humanitarian assistance should not be viewed through a rights lens argue that humanitarian assistance should instead be needs-based, impartial and neutral, and thereby apolitical.⁹¹ The shortcoming of this argument is its failure to appreciate that at times the needs of a population that are being met by the humanitarian community have been artificially created by political actors for purely political reasons;

⁸⁹ Update on Menik Farm flooding: Images and pictures from the ground at: <http://www.groundviews.org/2009/08/16/update-on-menik-camp-flooding-more-images-and-reports-from-the-ground/>

⁹⁰ *Op.cit.* note 18, p.2.

⁹¹ Marion Harroff-Tavel, ‘Neutrality and Impartiality: The Importance of these Principles for the International Red Cross and Red Crescent Movement and the Difficulties Involved in Applying them’, *International Review of the Red Cross*, no.273, (November-December 1989).

the presence of nearly 300,000 IDPs in camps in Vavuniya is the result of the interplay of political factors - the armed conflict between the GoSL and the LTTE.

Since not all aid workers are versed in implementing programmes within a rights framework and because mainstreaming human rights has had only a limited impact this would require the humanitarian community to enlist the assistance and expertise of human rights experts, such as the Senior Human Rights Advisor attached to the UN Country Team. This requires commitment at senior management levels to engage in ways that ensure protection work is carried out while recognising the constraints caused by the political landscape. Thus, it requires the humanitarian community to engage with protection issues from a strategic and principled stance. In the case of Sri Lanka the failure to do so has led to the lack of a coherent strategy on the part of the humanitarian community on issues ranging from when emergency funding for closed camps should end to whether or not to support camps housing separated ex-combatants.

The tension between humanitarian assistance and protection is heightened by the security agenda of the state. At such a juncture humanitarian agencies tend to seek refuge in providing humanitarian assistance divorced from a protection perspective in order to have access to the population and dispense aid. While it could be argued that access and presence could in itself be a form of protection activity it too needs to be undertaken within a framework to be effective. As set out by Mahoney, in order to be successful it has to fulfil three criteria; the presence must be physically located within the conflict zone (or in this case the space inhabited by the IDPs), it must have a conscious strategy for altering the behaviour of the party in question and it should possess a clear understanding of how to leverage power and influence.⁹² In Sri Lanka, humanitarian agencies have not been located within the active conflict zone since September 2008 and have no permanent presence in the vast camps of Menik Farm as their access is restricted to visits during stipulated hours of the day. Hence, presence has not translated into protection.

UN General Assembly Resolution 60/128 reiterates that ‘assistance and protection are mutually reinforcing...’⁹³ The note on ‘Protection Aspects of UNHCR Activities on Behalf of Internally Displaced Persons’ states that ‘[t]he internally displaced, or people at risk of displacement, thus often require not only humanitarian assistance but also protection, including both protection against (further) displacement and protection of their human rights while they are displaced and following their return home’.⁹⁴ Despite such pronouncements, as illustrated by the difficulties encountered in framing and implementing humanitarian activities within the protection framework, mainstreaming protection is extremely challenging, particularly in very political complex emergencies. In Sri Lanka this is illustrated by UNHCR which, regardless of its international protection mandate, is viewed by the state as, and functions as, one of the primary providers of assistance. This can be attributed partly to practical exigencies as well as to a failure on the

⁹² *Op.cit.* note16.

⁹³ UNGA 60/128, 16 December 2006.

⁹⁴ *Protection Aspects of UNHCR Activities on Behalf of Internally Displaced Persons*, UNHCR Executive Committee-Sub Committee on International Protection, UN doc.EC/1994/SCP/CRP.2 (4 May 1994).

part of the leadership to recognise that UNHCR should only be flexible ‘so far as it abides by the fundamental principles of protection’ and so far as its activities ‘do not undermine the integrity, dignity and basic human rights of refugees’⁹⁵ (and IDPs).

The lack of coherence between policies of agencies at the global and local level is a further impediment to mainstreaming protection. A perfect example of this, are the UNHCR recommendations for assessing the asylum claims of applicants from Sri Lanka. The Update Note on the Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka 2009, issued in July 2009, states that ‘[n]otwithstanding the end of the hostilities, the human rights situation in Sri Lanka remains of concern to UNHCR’ and goes on to say ‘[t]he country of origin information indicates that Tamils are significantly and disproportionately represented in the reported incidents of abductions and disappearances, arbitrary arrest and detention, restrictions on freedom of movement, freedom of expression, torture and other inhuman, cruel, or degrading treatment. These human rights violations were widespread in the North during the conflict and to a large extent still are, notwithstanding the cessation of hostilities’.⁹⁶

The note recommends that as ‘UNHCR considers that Tamils who are returned to the North at this time are likely to be exposed to the human rights violations associated with massive displacement and confinement of Tamil civilians in the region...the involuntary return of Tamils to Sri Lanka not be undertaken during this transitional post-conflict period and pending clear indications that the situation of displacement and confinement has significantly improved.’⁹⁷ While this illustrates a clear understanding of ground realities and the rights and protection issues faced by a certain group of persons, the advocacy and activities of the organisation at the field level, as exhibited by its vacillation regarding supporting closed camps and its reluctance to engage in strong public advocacy for the freedom of movement of the IDPs, is a clear indication of the disjunction between headquarters and the field level. This reinforces the importance of institutional support for field presences from the highest levels, without which agencies find it difficult to engage in protection activities in a principled, effective and meaningful manner within a politically complex environment. In Sri Lanka, policy and practice at the highest levels of the UN were tempered by the fact the LTTE was a listed terrorist group that the international community wanted defeated. Hence, the conflict was viewed within the ‘war on terror’ paradigm and the protection of civilians, when weighed against the defeat of the LTTE, failed to garner adequate support amongst UN member states.

It could be argued that mainstreaming protection could both jeopardise essential humanitarian services if agencies such as the World Food Programme (WFP) engage extensively in protection activities and could at the same time result in the dilution of protection activities themselves. The counter-argument is that mainstreaming does not

⁹⁵ Guy. S. Goodwin-Gill, ‘Principles and Protection: Making it Work in the Modern World’, in Dennis McNamara & Guy. S. Goodwin-Gill (eds.) *UNHCR and International Refugee Protection*, RSP Working Paper No.2, University of Oxford, June 1999, p16.

⁹⁶ *Note on the Applicability of the 2009 Guidelines on Sri Lanka*, UNHCR, July 2009, p.2.

⁹⁷ *Ibid*, p.3.

advocate that an agency such as WFP should engage in human rights/protection work but that it should become aware of the protection implications of its activities which would ensure efficiency, maximise benefits to recipients and minimise unwittingly harming the population. The different understandings agencies possess of protection also have negative impacts on programming and advocacy strategies of the humanitarian community, sometimes resulting in contradictory positions being relayed to the state.

Conclusion

In Sri Lanka the failure to accept that humanitarian assistance is political has limited the effectiveness of the humanitarian community and led to its manipulation by the state. The GoSL has consistently looked to the international community for assistance while disregarding their advocacy on rights of the IDPs and restricting their ability to engage in protection activities. As Francis Deng has said: ‘No government deserving any legitimacy can request material assistance from the outside world and reject concern with the human rights of the people on whose behalf it requests assistance. Doing so would be like asking the international community to feed them without ensuring their safety and dignity, an implausible logic’.⁹⁸ Yet in this instance the humanitarian community also has to shoulder the blame for continuing to ‘feed (people) without ensuring their safety and dignity’. As the end of active armed conflict does not denote the resolution of political issues or the end of conflict between the majority and minority communities, meeting the needs of the population without taking into account the political context would only serve to further the partisan agendas of political actors. There is therefore a need to acknowledge the imperative to take political factors into account when providing humanitarian assistance as it would open space for the humanitarian community to engage in protection activities from a strategic position.

⁹⁸ Francis M. Deng., ‘Internally Displaced Populations: the Paradox of National Responsibility’, *Audit of the Conventional Wisdom*, MIT Centre for International Studies, May 2007, p.5.