

Sri Lanka

The Voting Rights of Internally Displaced Persons, Refugees and Economic Migrants

**Political Rights and Enfranchisement System Strengthening
(PRESS)**

Action Plan V

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Executive Summary

Since 1983, fighting between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) has devastated the social and economic infrastructure of the island. An estimated 64,000 people have been killed and over one million persons have been displaced as refugees or IDPs. An estimated 350,000 persons remain internally displaced by the conflict, primarily in the North and East of the country. 120,000 Sri Lankans remain as refugees, significantly in India (60,000), France (15,000), Germany (15,000), Canada (12,500), Australia (10,000), and United Kingdom (6,500).¹ An additional 1 to 1.5 million Sri Lankans reside abroad, primarily in the Gulf States, for purposes of economic remuneration.

Since independence in 1948, Sri Lanka has regularly conducted national elections that return opposition parties and candidates to power. While often accompanied by an unacceptably high level of political violence, abuse of state resources for political purposes, significant disenfranchisement, and manipulation of the public and private media, Sri Lankans are proud of their democracy. Unfortunately, the system has not been able to reconcile the conflicting interests of the country's two predominant ethnic groups – Tamils and Sinhalese.

Sri Lanka held parliamentary elections in 2004 and presidential elections in 2005. Both of these programs included impressive mechanisms designed to provide IDPs with the opportunity to vote. In accordance with best practices, displaced voters are eligible (in theory) to cast ballots while in their temporary homes for either their current constituency or for their constituency of origin. In addition, international monitors and domestic observers were guaranteed unimpeded access to election facilities. Thus, with the exception of some important technical flaws and localized problems of inadequate implementation, the legal framework governing IDP voting could serve as an example of best practices for other countries with substantial numbers of IDPs.

Unfortunately, a number of obstacles continue to impede the ability of Sri Lankan IDPs to realize their full electoral rights. These include:

- The division of the country into areas of control, and the inability of the Department of Elections to administer polling stations or regulate campaigning in areas controlled by the LTTE;
- The totalitarian nature of the LTTE and its intimidation and targeting of opposition Tamil political parties and civil society organizations;
- Broader issues of political and election-related violence that have plagued Sri Lanka's experience with democracy going back to its early years of independence;
- Difficulties that IDPs confront in terms of securing documentation;
- Regional variations in implementing electoral regulations governing IDP voting rights, particularly in relation to obtaining an absentee ballot;
- The marginalization of Muslim IDPs;
- Weaknesses in the compilation and maintenance of the voters register;
- Severe mal-apportionment resulting from population movements and the lack of a functional institutionalized process for re-districting.

Refugees and economic migrants have not been able to vote in Sri Lanka's elections. In the case of refugees, approximately 60,000 Sri Lankan Tamils in India present the most problematic case; India limits access to the Tamil refugees. Neither UNHCR nor any other inter-governmental agency has regular access to camps, which are managed by the Indian government with limited support from a select few NGOs. While returnees from India claimed that their overall treatment in the camps was acceptable, the lack of access is a violation of basic norms of refugee protection.

¹ UNHCR, *UNHCR Statistical Yearbook 2003*, (Geneva, UNHCR, 2005), <http://www.unhcr.org/statistics>, 323.

Needless to say, as long as the current situation is unchanged, it will not be possible to include the refugees in India in forthcoming elections.

Finally, an estimated one million Sri Lankan citizens reside outside the country as economic migrants, primarily in the Gulf States. Sri Lanka is a signatory to the Migrant Rights Convention, which obligates signatories to allow migrant workers to participate in their home country's political life.² A significant movement has emerged in Sri Lanka in support of extending the franchise to migrant laborers, and political parties appear to broadly support such an initiative. Unfortunately, the issue ranks fairly low on the agenda of most political parties, and further mobilization and advocacy will be needed to generate support for legislation to provide an external voting option.

This Action Plan examines the obstacles confronting Sri Lanka's conflict-forced migrants (CFMs) in realizing their enfranchisement rights in accordance with international human rights standards and constitutional guarantees. Part II provides an overview of the conflict between the GOSL and LTTE, reviews the evolution and current state of the country's electoral system, provides a quick overview of the patterns of displacement (internal, refugees, and economic migrants), and identifies the institutional response to displacement. Part III examines the issues and obstacles confronting CFM voting rights. It begins with a review of voting rights, examines the regulatory and legal framework through which the principle of universal and equal suffrage is enshrined in the country's legal and electoral framework, reviews the broader issue of electoral violence in relation to the country's democratic consolidation and identifies the critical regulatory, institutional and political obstacles that continue to hamper IDP participation. These two sections are based on the results of desk research and extensive conversations with government officials, political parties, journalists, and IDPs themselves during the assessment visit in August of 2005.

Part IV suggests a political and operational framework to enhance the voting rights of Sri Lankan IDPs, refugees, and economic migrants. As noted above, the legal framework governing IDPs and elections in Sri Lanka appears, on paper, to be excellent, and the country has substantial experience organizing processes that allow for sophisticated displaced voting programs. Unfortunately, few IDPs have been able to realize their rights as a consequence of the political and security issues they confront, particularly in the contested areas of the country.

While the team was in the country in late August 2005, the Supreme Court called snap presidential elections for November 2005. Given that the mechanisms and operational plans proposed below require substantial lead-times, it was decided to postpone the plan until after these elections were conducted and observer reports were available. The problem of CFM voting rights in Sri Lanka cannot realistically be separated from the broader issues of election violence and the civil war. Given the uncertainties confronting the peace process, the Plan is oriented towards a post-settlement sequence of initiatives and activities. Aside from proposals to link issues of citizenship and voting rights to the peace process, the Action Plan is primarily designed to provide an enfranchisement roadmap for the GOSL, the Election Commission, civil society organizations, and donors after a comprehensive resolution to the conflict is reached.

² See Article 41 of the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families": "Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation." (Adopted General Assembly Resolution 45/158, 18 December 1990, Entered into force 1 July 2003), http://www.unhcr.ch/html/menu3/b/m_mvctoc.htm.

Acronyms and Organizations

CEAV	Committee on External and Absentee Voting
CFM	Conflict-Forced Migrant
CMEV	Centre for Monitoring Election Violence
CPA	Centre for Policy Alternatives
CSO	Civil Service Organization
DE	Department of Elections
EPDP	Eelam People Democratic Party
GA	Government Agent
GOSL	Government of Sri Lanka
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
IFES	International Foundation for Election Systems
IOM	International Organization for Migration
LTTE	Liberation Tigers of Tamil Eelam
MoU	Memorandum of Understanding
MP	Member of Parliament
MRRR	Ministry for Rehabilitation, Resettlement, and Refugees
NGO	Non-Governmental Organization
P-TOMS	Post-Tsunami Operational Management Structure
PAFFREL	People's Action for Free and Fair Elections
RADA	Reconstruction and Development Agency
SLA	Sri Lankan Army
SLFP	Sri Lanka Freedom Party
SLMM	Sri Lanka Monitoring Mission
SRSG	Special Representative of the Secretary General
TAFLOL	Task Force for Logistics and Law and Order
TAFOR	Task Force for Relief
TAFREN	Task Force for Rebuilding the Nation
TAFRER	Task Force for Relief and Rescue
TDZ	Tsunami Disaster Zone
THRU	Tsunami Housing Reconstruction Unit
TNA	Tamil National Alliance
TRO	Tamils Rehabilitation Organisation
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNP	United National Party
UPFA	United People's Freedom Alliance

Part I: Background

Introduction

Since 1983, fighting between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) has devastated the social and economic infrastructure of the island. An estimated 64,000 people have been killed and over one million persons have been displaced as refugees or IDPs. Many have been forced from their homes to temporary shelters multiple times. Vast areas of the north are depopulated, with trade routes shut down, traditional livelihoods disrupted, and much of the housing stock destroyed.

An estimated 350,000 persons remain internally displaced by the conflict, primarily in the North and East of the country. Most IDPs are unable to return to their homes as a consequence of war-damage, continued insecurity, or because their homes are in the “high security areas,” where the Sri Lankan Army prohibits return and re-settlement.³ Many frontline areas are heavily mined and also remain off limits. An additional 553,000 IDPs were displaced by the December 2004 tsunami. Many of these people had previously been conflict IDPs who had recently returned to their homes.

120,000 Sri Lankans remain as refugees, significantly in India (60,000), France (15,000), Germany (15,000), Canada (12,500), Australia (10,000), and United Kingdom (6,500).⁴ An additional 1 to 1.5 million Sri Lankans reside abroad, primarily in the Gulf States, for purposes of economic remuneration.

Since independence in 1948, elections have been held on schedule and regularly return opposition parties and candidates to power. While often accompanied by an unacceptably high level of political violence, abuse of state resources for political purposes, significant disenfranchisement, and manipulation of the public and private media, Sri Lankans are proud of their democracy. Unfortunately, the system has not been able to reconcile the conflicting interests of the country’s two predominant ethnic groups – Tamils and Sinhalese.

Sri Lanka held parliamentary elections in 2004 and presidential elections in 2005. Both of these programs included impressive mechanisms designed to provide IDPs with the opportunity to vote. In accordance with best practices, displaced voters were eligible (*de jure*) to cast ballots while in their temporary homes for either their current constituency or for their constituency of origin. In addition, international monitors and domestic observers were granted comprehensive and unimpeded access to election facilities. Thus, with the exception of some important technical flaws and localized problems of inadequate implementation, the legal framework governing IDP voting could serve as an example of best practices for other countries with substantial numbers of IDPs.

Unfortunately, the decentralized nature of Sri Lanka’s elections administration and the complex patchwork of cleared and un-cleared areas, where the central government exercises differing levels of effective sovereignty, has produced regional variations in how well absentee balloting programs for IDPs are administered. Some IDPs, particularly many Muslim communities, have faced recurring difficulties proving their eligibility, registering to vote, and accessing polling stations.

Furthermore, the Department of Elections (DE) does not operate polling stations in the un-cleared areas. Instead, residents of these territories vote at “cluster stations” established in the government-controlled areas along the line of control. On voting day, the DE works with the LTTE to provide transportation for all voters resident in the un-cleared areas, including IDPs, to the cluster stations. This means that the DE is not able to fully implement all aspects of the election law throughout the country, and many voters are subject to profound pressures from the LTTE political and militia structures. Furthermore, the system requires the cooperation of the LTTE in order to

³ In Jaffna, for example, these security areas cover some 25% of the peninsular territory.

⁴ UNHCR, *UNHCR Statistical Yearbook 2003*, (Geneva, UNHCR, 2005), <http://www.unhcr.org/statistics>, 323.

meet the logistical challenges of moving hundreds of thousands of voters across the line of control on election day; If the LTTE decides not to support a particular election (as it did in 2005), it is able to obstruct and severely limit voter participation.

The Tamil regions (on both side of the line of control) are plagued by intra-communal political violence and intimidation. LTTE-backed parties claim to act as the sole representatives of the Tamil cause and opposition parties are harassed. Murder, bombings, and abductions are regular features of political life in these areas during election cycles and during the interregnums between campaigns. As a consequence, the region feels very much like a one-party totalitarian state. Even non-party civil society and human rights groups operate with extreme circumspection in an environment of paranoia and fear; civil society and human rights networks in the Tamil areas are virtually non-existent.

This problem cannot, unfortunately, be resolved through technical modification to the process of election administration. While the intimidation affects all residents of these regions, IDPs are especially vulnerable as a consequence of their reliance on either the LTTE or the GOSL to meet their survival needs. So long as the Tamil and Sinhalese populations remain unable to finalize a peace agreement based on agreed principles of federalism and equal rights, there is little that outside actors can do to improve the voting rights of IDPs in the un-cleared areas.

Thus, Sri Lanka presents a paradox. For those interested in the political rights of IDPs, the legal framework for administering absentee balloting surely ranks among the better programs in the world. Yet the DE confronts profound problems administering a transparent balloting process as the corollary conditions for genuine elections such as freedom of speech, association, and physical security, do not exist in much of the North and East.

Refugees and economic migrants have not been able to vote in Sri Lanka's elections. In the case of refugees, approximately 60,000 Sri Lankan Tamils in India present the most problematic case; India limits access to the Tamil refugees. Neither UNHCR nor any other inter-governmental agency has regular access to camps, which are managed by the Indian government with limited support from a select few NGOs. While returnees from India claimed that their overall treatment in the camps was acceptable, the lack of access is a violation of basic norms of refugee protection.⁵ Needless to say, as long as the current situation is unchanged, it will not be possible to include the refugees in India in forthcoming elections.

Finally, an estimated one million Sri Lankan citizens reside outside the country as economic migrants, primarily in the Gulf States. Sri Lanka is a signatory to the Migrant Rights Convention, which obligates signatories to allow migrant workers to participate in their home country's political life.⁶ A significant movement has emerged in Sri Lanka in support of extending the franchise to migrant laborers, and political parties appear to broadly support such an initiative. Unfortunately, the issue ranks fairly low on the agenda of the dominant parties in the country, and further mobilization and advocacy will be needed to generate support for legislation to provide an external voting option.

Conflict-forced Migrants and Elections

IDPs and refugees around the world face special challenges in realizing their right to political participation. Their disenfranchisement violates fundamental human rights norms and weakens the

⁵ India is understandably concerned regarding political activity of the Tamil refugees. Nearly 80 million Tamils reside in Southern India and significant cross-border links exist between the Indian and Sri Lankan Tamils. In addition, a Sri Lankan Tamil is believed responsible for the assassination of Indian Prime Minister Rajiv Gandhi in 1992.

⁶ See Article 41 of the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families": "Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation." (Adopted General Assembly Resolution 45/158, 18 December 1990, Entered into force 1 July 2003), http://www.unhcr.ch/html/menu3/b/m_mvctoc.htm.

reconciliation value of the elections. The right of political participation is enshrined in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR), ratified by Sri Lanka in 1980, which states:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free will of the electors...”⁷

The *Guiding Principles on Internal Displacement*, directly address the issue in terms of IDPs. Principle 1 declares that: “[IDPs] shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.”⁸ This language is strengthened in Principle 22, which declares that:

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

If properly organized, the participation of conflict forced migrants in national elections supports the broader objectives of reconstruction, reconciliation, and peace-building. CFM inclusion provides a political voice to those displaced by violence and human rights abuses and can help mitigate issues of political and social alienation. Electoral participation can also re-establish the link between the displaced and their home communities, paving the way for their eventual return and reintegration. Finally, elections provide an opportunity to establish communications among displaced communities so that there is visibility, transparency, and confidence in the election outcome. Together, these outcomes contribute to the value of the elections as one component of a larger peace-building and reconciliation process.

Genuine and inclusive elections provide an opportunity for divided societies to resolve their differences at the ballot box rather than on the battlefield.⁹ In the case of Sri Lanka, however, elections alone will not restore of peace. In fact, the politics of ethnic chauvinism have become so deeply entrenched that recent elections have only served to further alienate the Sinhalese and Tamil communities. The LTTE and the GOSL are locked in a cycle of mutual recriminations and the discourse has become so polarized that serious progress can only be made through high level negotiations preceding the next round of elections.

Furthermore, the inherent complexities involved in administering elections in conflict settings can lead to irregularities and wide-scale disenfranchisement, which only heightens suspicions and lead to further social polarization. When poorly administered, CFM enfranchisement open avenues for electoral coercion, fraud, and the undermining of confidence in the election outcome. First, IDPs and refugees are entirely dependant on the GOSL, the LTTE, or host states to protect their security and meet their survival needs. As a result, they should be considered “subject voters,” as their capacity to make free political choices has been heavily compromised by this dependence.

⁷ *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976. Available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

⁸ UNHCHR, *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2, (11 February 1998).

Available at: <http://www.unhchr.ch/html/menu2/7/b/principles.htm>

⁹ For an overview of the unique considerations and issues surrounding post-conflict elections and their reconciliation value, see: United States Agency for International Development, Center for Development Information and Evaluation. “From Bullets to Ballots: Electoral Assistance to Postconflict Societies (Synthesis Report),” 1997. Available at: http://www.dec.org/usaid_eval

Second, the mechanics of IDP voting in recent Sri Lankan elections has opened windows for electoral fraud. If handled correctly, the registration process can mitigate many of these concerns, and can even represent a link between the displaced and their home community. Unfortunately, the conduct of voter registration in Sri Lanka leaves much to be desired in terms of transparency and ease of access for IDPs and recently-returned refugees. In addition, the lack of a computerized national register has generated suspicion among many voters regarding the potential for double voting.

The problem of CFM voting rights in Sri Lanka cannot realistically be separated from the broader issues of election violence and the civil war. Given the uncertainties confronting the peace process, the Plan is oriented towards a post-settlement sequence of initiatives and activities. Aside from proposals to link issues of citizenship and voting rights to the peace process, the Action Plan is primarily designed to provide an enfranchisement roadmap for the GOSL, the Election Commission, civil society organizations, and donors after a comprehensive resolution to the conflict is reached.

Methodology

The objective of the Sri Lanka Action Plan is to draft a political and operational framework to enhance the voting rights of Sri Lankan IDPs, refugees, and economic migrants. Sri Lanka was selected for an Action Plan because of the unique dynamics at work in displaced voting issues; as noted above, the legal framework governing IDPs and elections in Sri Lanka appears, on paper, to be excellent, and the country has substantial experience organizing processes that allow for sophisticated displaced voting programs. Unfortunately, few IDPs have been able to realize their rights as a consequence of the political and security issues they confront, particularly in the contested areas of the country.

Under a grant from USAID, PRESS Action Plans combine the tested methodology for pre-election technical assessments employed by the International Foundation for Election Systems (IFES) with a specific emphasis on refugee and IDP enfranchisement rights and opportunities. An IFES-style technical assessment involves an evaluation of the following electoral elements: legal framework underpinning the process; the capacity and independence of the responsible Election Management Bodies (EMBs); political parties and campaigning; and media, monitoring, and other nongovernmental participation. Such assessments also examine for civic and voter education. In PRESS Action Plans, the exclusive focus is on the refugees/IDPs. The basic factors considered include assessing the characteristics of the refugee/IDP population (that is, the size and political alignment) and other demographics; determining the host country's role in refugee participation; harmonizing the electoral and peace processes with refugee/IDP movements, resettlement patterns, and other needs; and integrating an electoral perspective in the basic scope of humanitarian concerns for the international refugee/IDP support community, including issuance of documentation, voter registration processes, and access to local systems of governance.

The Action Plan is based on a field assessment to Sri Lanka in August of 2005 that included extensive meetings with political parties, the Department of Elections, Government Agents, civil society organizations, representatives from IDP communities, and national and international humanitarian organizations. Background work and preparation were undertaken through a desk study. While the assessment team was in the country in late August 2005, the Supreme Court called snap presidential elections for November 2005. Given that the mechanisms and operational plans proposed below require substantial lead-times, it was decided to postpone the plan until after these elections were conducted and observer reports were available.

Part II: Conflict, Democracy and Displacement in Sri Lanka

Roots of the Conflict

According to the census office, Sri Lanka has a population of roughly 18 million persons, of whom 74% are Sinhalese, 18% are Tamil,¹⁰ 7% are Muslim, and 1% are classified as “other.” Sinhalese are largely Buddhist and the Tamil largely Hindu. Each community speaks its own tongue. Despite the role that religion plays in fueling the nationalistic discourse, the conflict between the Sinhalese and Tamil communities is primarily ethnic in nature.¹¹

While armed conflict between the Sri Lankan military and the LTTE dates from 1983, tensions and occasional outbursts of inter and intra-communal violence have been a recurring feature of Sri Lanka’s history. Although the Sinhalese and Tamil shared extended periods of cooperation, colonialism introduced an element of ethnic nationalism that has fanned the flames of ethnic chauvinism. According to one report, “Colonialism ... strengthened a deep-rooted feeling among the Sinhalese Buddhist community that over the centuries it had been forced to defend itself and its island against invaders ... who had degraded what had been a remarkable Sinhala civilization. In the nationalist days of the nineteenth and twentieth centuries the Buddhist religion and the Sinhalese language inevitably became the answer to the search for a Sinhalese identity ... Tamil nationalism at the same time grew as a response both to South Indian Tamil and to Sinhalese nationalism. Close linguistic, social and cultural links to South India account for the fact that many Hindus in Sri Lanka have looked there for religious, cultural and political inspiration.”¹²

The two communities worked together for an end to colonial rule. After independence in 1948, however, Sinhalese nationalists assumed power under the United National Party (UNP) and implemented a series of measures aimed at weakening the political rights Tamils. In the early 1950s, the government stripped the citizenship of some 300,000 Tamils in the central highlands (many of whom had lived in Sri Lanka for generations) and attempted to forcibly repatriate many of them to India.¹³ In 1956, the Sri Lanka Freedom Party (SLFP) came to power and implemented legislation making Sinhalese the sole national language and providing state support to Buddhism and the promotion of Sinhalese culture. Moves to reverse his own policies and reach out the Tamil led to the assassination of President S.W.R.D. Bandaranaike (father of current the president) by a Buddhist Monk in 1959. Bandaranaike was succeeded by his wife, who ended any attempts at reconciliation.

In the early 1970s, the government passed a series of laws that restricted the number of places reserved for Tamils in the national universities. In addition, a constitutional amendment declared that Buddhism held the “foremost place” among Sri Lanka’s religions. Tamil protests generated a Sinhalese backlash and violent clashes between the two communities became increasingly frequent. Over the ensuing decades, many Tamils moved out of the Sinhala areas in the South and Sinhalese tended to move out of the Tamil majority areas in the North.

The LTTE

¹⁰ Tamils are divided between the Tamil in the North and East who migrated to Sri Lanka beginning in the 4th Century, and the “up-country” Tamil, who were brought to Sri Lanka in the 1800s to work the highland tea plantations by the British.

¹¹ UNHCR, “Background Paper on Refugees and Asylum-Seekers from Sri Lanka,” (Geneva: UNHCR, 2004), 5.

Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/country?iso=lka>

¹² *Report of the Representative of the Secretary-General, Mr. Francis Deng*, submitted pursuant to Commission on Human Rights resolution 1993/95, Addendum, Profiles in displacement: Sri Lanka, E/CN.4/1994/44/Add.1 Para 19, 20.

¹³ Tamils comprise some 18% of Sri Lanka’s population. However, there are two distinct communities. The majority are the Tamils of the North, who have been in Sri Lanka for thousands of years. Many Tamils, however, are found in the central highlands and are descended from laborers brought by the British colonial administration to work the Tea plantations beginning in the 1860s. The removal of citizenship applied only to these populations. In 2003, the Sri Lankan government adopted Act No. 35 of 2003, “Grant of Citizenship to Persons of Indian Origin,” which reinstated citizenship rights to this population.

By the 1970s, Tamil rebels were organizing paramilitary squadrons and conducting assassinations and other strikes against Sinhalese political figures and the Sri Lankan military. Sinhalese nationalists, meanwhile, continued to fan the flame of sectarian nationalism and generated waves of anti-Tamil riots in Colombo and throughout the country.

During the 1980s, the LTTE, led by Velupillai Prabhakaran, emerged as the dominant Tamil opposition, engaging the SLA directly and unleashing terrorist strikes, including suicide bombings, across the island. The organization's stated goal has been an independent Tamil state ("Tamil Eelam") in North and parts of Eastern Sri Lanka, although the leadership has recently indicated a willingness to consider the principle of decentralization and self-government while remaining attached to the Sri Lankan state. The military wing of the LTTE (known as the Tigers) is comprised of an estimated 3,000-6,000 highly trained fighters, a few thousand more armed irregulars, a disciplined and centralized police force, and a cadre of suicide bombers. While many LTTE forces are highly motivated and dedicated to the cause, the organization has needed to rely on the forced recruitment of child soldiers, primarily from IDP settlements, to buttress its ranks.¹⁴ Despite the modest size of these forces in comparison with the Sri Lankan military, the Tigers have been able to secure control over a significant portion of the North and Eastern provinces.

The LTTE claims to be the premier group representing Tamil interests. Its cadres target opposition Tamil political leaders and other individuals who disagreed with the use of violence as a solution to Tamil marginalization or who challenge the tight control that senior LTTE members hold on the organization. This tactic continues. Since the cease-fire, the level of intra-Tamil attacks has risen dramatically, to the point where very few Tamils are prepared to directly criticize or challenge the LTTE for fear of violence against their person or their families.

As the LTTE consolidated control of territory in the North and East, it established a parallel administration to provide services. It also benefited from a substantial Tamil Diaspora that channels funds and other support to the organization from Europe and North America.

2002 Cease Fire

By 2000, the SLA and LTTE had reached a military stalemate, with large areas of the North and East under the de facto control of the LTTE. In 2001, President Kumaratunga dissolved Parliament and called elections, which were won by the UNP. As a result, a fragile cohabitation government was formed, with Kumaratunga holding the strong executive presidency on behalf of the SLFP while prime Minister Ranil Wickremasinghe led the UNP to a parliamentary majority in coalition with several smaller parties.

In late 2001, the LTTE announced a unilateral cease-fire, which was reciprocated by the government. These moves led to the first direct negotiations between the combatants, helped substantially by mediators from the government of Norway. In February 2002, the government and LTTE signed a formal ceasefire agreement,¹⁵ to be monitored by international observers under the heading of the Sri Lanka Monitoring Mission (SLMM). In addition, the government ended the economic embargo against the LTTE, re-opened roads into the LTTE-controlled areas, and recognized LTTE representatives to travel in government controlled areas.

The ceasefire established demarcated areas, referred to as the "cleared" and "un-cleared" areas separated by the "line of control." The un-cleared areas are effectively governed by the LTTE and the its humanitarian service delivery branch, the Tamils Rehabilitation Organisation (TRO), although Government Agents (GA) are present and conduct many administrative functions in tandem with the LTTE. The boundaries between cleared and un-cleared areas do not necessarily

¹⁴ Human Rights Watch, "Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka," Vol. 16, No. 13(C), (2004).

Available at: <http://hrw.org/reports/2004/srilanka1104/>.

¹⁵ Sri Lanka Secretariat for Coordinating the Peace Process (SCOPP), "Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam," (2002).

Available at: <http://www.peaceinsrilanka.org/peace2005/Insidepage/Agreements/agceasefire.asp>

reflect the ethnic demography of the country, and substantial Tamil populations reside in government controlled areas, including the Jaffna peninsula.

Unfortunately, the agreement remained tenuous, with both parties regularly claiming violations by the other. In early 2003, the LTTE stopped participating in the peace talks and boycotted joint reconstruction programs for the conflict-affected areas. According to the Global IDP project, "Ever since, there has been a tendency to resort to violence, in particular in the ethnically diverse eastern province. The break-away of the LTTE's former eastern commander Colonel Karuna Amman, in April 2004, further destabilised the situation. This split has been a continuous cause of internal fighting and has raised tensions between the main antagonists, with the LTTE accusing the government of supporting Karuna."¹⁶

After three years with no official contacts, the Government and the LTTE held meetings in Geneva in February 2006 in order to discuss issues associated with the implementation and strengthening of the ceasefire and hopefully resolve several outstanding issues. The meeting resulted in an agreed statement that commits both the GOSL and LTTE to respect and uphold the ceasefire; cooperate with the SLMM; and to refrain from acts of intimidation and killing. The parties agreed to meet again in April 2006 to further discuss implementation issues

Electoral System

State Institutions

Sri Lanka is a parliamentary democracy with a strong executive presidency. The President is directly elected, subject to a limit of two six-year terms, serves as head of state, appoints the Prime Minister and the cabinet, and can dissolve Parliament and call new elections at any time after one year has passed since previous elections.

The unicameral national legislature is composed of 225 members elected for a six year term. 196 seats are elected from 22 multi-member constituencies. District magnitude ranges from a low of 4 in Trincomalee to a high of 20 in Colombo. Re-apportionment is rare, with a severe imbalance in the vote-cost per seat resulting from population movements since the last comprehensive re-apportionment in 1985.¹⁷ Several GAs in the North and East expressed the view that re-apportionment is too politically charged to possible at present.

Elections are conducted in accordance with the principle of universal suffrage of all citizens over 18. Limitations on suffrage include those incarcerated and mental competence.

MPs are elected through a preference ballot, whereby voters cast votes for both the party of their choice and for up to three individual candidates from the open party list. There is a 5% percent threshold. Once the party vote is determined, preferences are tallied and MPs elected based on the number of preferences they receive. An additional 29 seats are elected based on the national percentage of the vote captured by each party. These seats are awarded based on a closed list submitted by the parties.¹⁸

Below the state, there are nine Provincial Councils, also directly elected, and 24 administrative districts. Each district is represented by a GA, appointed based on recommendations made by MPs from the district. Each district is further divided into divisions and then towns.

¹⁶ Global IDP Project, "Sri Lanka: Political instability hampers IDP return," 01 September 2005, quoting "S. Lanka stance on renegades threatens peace – rebels," Reuters, 11 August 2005. Available at: <http://www.reliefweb.int/rw/rwb.nsf/db900SID/ACIO-6FTR65?OpenDocument>

¹⁷ An additional seat was added to the Kilinochi district in 2004. The over-representation of Jaffna, however, is not likely to be corrected soon.

¹⁸ The national list system for these 29 seats is opposed by most civil society organizations, who argue that it allows parties to appoint weak candidates, many of whom were previously rejected by voters.

Town councils are also elected, although these elections have not been conducted in the conflict-affected areas since 1996. Government representatives claim that it would not be proper to conduct balloting given the mass displacement. The argument is advanced as a human rights issue; since the displaced would be unable to vote, it would be unfair to conduct balloting until they have returned to their home village.

As a consequence, there is a vacuum of accountable leadership throughout much of the North and East. Political power resides with the government agents, who are appointed by the central government, but who generally find that they must work closely with the LTTE in the uncleared areas. In theory, these positions are therefore somewhat accountable, but appointments are often a matter of politicking in Colombo, and many IDPs and other actors interviewed expressed dissatisfaction with the arrangement.

A more likely reason for the postponement of local elections in the North resides in the anti-democratic attitudes of the LTTE. Given the blatant and widespread manipulation of the 2004 Parliamentary Elections in LTTE regions, local elections would almost certainly witness significant violence, intimidation, and fraud. The results of such an exercise would then be presented as a legitimating of the TNA's claim to be "the sole representative of the Tamil people." Several human rights organizations interviewed expressed concern of the likely effects of such a process. Nevertheless, when asked to weigh the two evils, advocates expressed a wish for some of electoral mechanism to make local political authorities more responsive to constituent concerns. According to one interviewee, "even bad elections would be better than no elections at all."

Election Framework and Administration

Elections in Sri Lanka are governed by:

- The 1978 Constitution and the 17th Amendment of 2001
- Registration of Electors Act No. 44 of 1980
- Parliamentary Elections Act No. 1 of 1981 (as Amended May 1999)
- Presidential Elections Act No. 15 of 1981
- Provincial Councils Election Act No. 2 of 1988
- Local Authorities Elections Ordinance 1989
- Referendum Act No. 7 of 1981

The Commissioner of Elections derives his legal authority from Article 103 of the 1978 Constitution.¹⁹ The 17th Amendment to the Constitution (October 2001) calls for the establishment of a permanent Election Commission, headed by a Commissioner to be named by the President and the Constitutional Council. As of 2005, however, the President and Constitutional Council have failed to agree on an individual to nominate. The current Commissioner, Mr. Dayananda Dissanayake holds his post as per Paragraph 27.2 of the Amendment, which states: "the person holding office ... on the day immediately preceding the date of the commencement of this act shall continue to exercise and perform the powers and functions ... until an Election Commission is constituted..." This situation resulted in a Supreme Court case brought by the Commissioner in 2003, in which he claimed that his civil rights had been violated as he is unable to resign his post. The Supreme Court rejected the argument.

The Commissioner has been widely praised by CSOs and by international observers for his balanced and comprehensive application of the relevant electoral codes in a highly polarized political environment. GAs and registration officials at the district levels also appear competent and well trained on elections procedures, although some the assessment team identified some

¹⁹ Constitution of Sri Lanka available at:
<http://www.priu.gov.lk/Cons/1978Constitution/1978ConstitutionWithoutAmendments.pdf>

differences in the GA's interpretation and understanding of modalities related to absentee voting for IDPs (discussed below).

Election administration in Sri Lanka is decentralized, with the GAs serving as the registration official. Every May, local officials conduct a house to house enumeration to update the register. The procedure is as follows:

1. Government Agents at the district offices are deputized as "Registration Officers;"
2. The Grama Sevakas distribute registration forms to all households in a given area. The forms ask for details on all voting-age members resident in the house, and include a section for changing registration details;
3. Returned registration forms are checked against the current register to ensure that all households have returned their form (registration is compulsory by law);
3. The Government Agent prepares two lists, "List A" containing the names of persons in the register who are dead or have become disqualified for registration for some reason and "List B" containing the list of all new names.
4. Once lists are compiled, the Registering Officer publishes a gazette in each of the national languages, and makes copies available for public scrutiny at the office of the Registering Officer and at such other places in the electoral district as specified in the notice.
5. Eligible voters are mailed a registration receipt once their details are verified. These receipts contain no biometric data and are not required in order to vote;
6. After completing the register, each district forwards a copy to Colombo, where a national list is compiled and maintained. However, primary responsibility for managing and updating the register remains at the district level and no cross checking of registers to prevent duplicate registrations is undertaken.

In theory, a displaced voter who wishes to cast a ballot for their constituency of origin completes the relevant section of the enumeration form. The district returning officer then forwards the names of these persons to the home district, where their eligibility is verified against the register. If approved, the voter is added to a special list and assigned a polling station in their current location. The movement of ballots for IDPs is coordinated between the two districts. In general, IDPs vote by absentee ballot at regular polling stations in their current location, although areas with particularly high IDP concentration may establish special IDP polling stations.

Only two districts are computerized. The DE is currently working with IFES on a project to computerize the entire process, although this will take at least another two years to fully implement. The register is completed by hand and generally takes about one year. As a result, the voters registers used during elections are typically based on the results of the enumeration completed two years prior. During active hostilities, the register in many areas of the North was not updated at all.

Article 95[1] of the Constitution of Sri Lanka, states that the President should appoint a three-member Delimitation Commission. The members of the commission should not be 'actively engaged in politics' and are responsible for drawing the boundaries of electoral districts. Article 96 calls for the country to be separated into 20 to 25 electoral districts. Electoral districts can encompass entire provinces or split them into two or more. Article 96 further elaborates on the formula for which the number of representatives from each district is determined, stressing the importance equity.

However, Amendment 17 to the Constitution eliminates the authority of the President in appointing the Delimitation Commission. The Amendment states that an independent Election Commission should be established in order to ensure transparency and legitimacy. Unfortunately, not all provisions of the 17th Amendment have been implemented due to disagreements between the President and the Constitutional Council. There are no available records regarding the actions of the Delimitation Commission. However, the DE indicated that no re-apportionment has occurred in

the North and East since 1985, which has implications for the fairness and equality of representation between districts.²⁰

Patterns of Displacement

Between the early 1980s and 2002, UNHCR estimates that the conflict displaced over one million persons, the majority as IDPs.²¹ Many individuals and families have been displaced multiple times. Currently, some 350,000 persons remain conflict-displaced IDPs, and roughly 300,000 remain as tsunami-displaced.

Global IDP project reports:

- Tamils displaced from or within government-held areas constitute 79 per cent of IDPs;
- Muslims displaced from Jaffna and Mannar by the LTTE constitute 13 per cent;
- Sinhalese IDPs constitute 8 per cent.²²

Nearly half of the 350,000 conflict-based IDPs could be found in the 3 provinces of Jaffna (64,000), Puttalam (61,500), and Mullativu (58,000). Other areas with high numbers of the displaced include Vavuniya (38,000), Mannar (28,000), Kilinochichi (26,000), Batticaloa (20,500), Tricomalee (19,500), and Anuradhapura (10,500).²³ Additionally, UNICEF estimates that 80% of the LTTE-controlled Vanni is currently displaced as of January 2002. The majority of the displaced – roughly 280,000 – stay with friends and family, while approximately 70,000 reside in the welfare centers. Of the conflict displaced, an estimated 34% are children.²⁴

The tsunami that struck Sri Lanka in December of 2004 more than doubled the number of total displaced to over 800,000. Significant tsunami displacement can be found in the districts of Galle (120,500), Ampara (82,000), Tricomalee (73,000), and Batticaloa (55,000). Colombo (35,000), Kalutara (34,500), and Mullativu (22,500) were also hard-hit. Indeed, between the tsunami and the conflict, nearly every district in Sri Lanka is home to an IDP population of more than 10,000.²⁵

In general, most conflict-forced displacement is found in the North and East, largely in or along the borders and within the LTTE controlled areas. Tsunami displacement is found primarily in the coastal regions, primarily in the South-West, East, and North-East.

Conditions of Internal Displacement

IDP living conditions are far from perfect. Nearly 90% of IDP housing has been damaged by the conflict. An estimated 84% of all IDP-owned housing is located in the North-East, contributing to significant overcrowding. An estimated 50,000 new housing units are needed to meet the overcrowding problem, a problem exacerbated by the fact that the actual number of people living in welfare centers is greater than the registered number. Unfortunately, there is a lack of institutional capacity to direct the necessary construction projects required to meet these needs.²⁶ (see below)

IDP settlements, referred to as “welfare centers,” are generally located on government land or facilities. The centers range in size from 50 to 1500 families. In some cases, the centers are

²⁰ For more on the 17th amendment, see:

European Union Election Observation Mission, *Sri Lanka: Parliamentary Elections Final Report, 2 April 2004*, (2004). Available at:

http://europa.eu.int/comm/external_relations/human_rights/eu_election_ass_observ/sri_lanka/final_%20report04.pdf

²¹ UNHCR, 55.

²² Norwegian Refugee Council Global IDP Database, *Profile of Internal Displacement: Sri Lanka* (Geneva: Norwegian Refugee Council, 1 September 2005), 40. Available at: <http://www.internal-displacement.org/>

²³ Ibid, 42.

²⁴ UNICEF, *Action Plan for Children Affected by War, Progress Report January-June 2004*, (Geneva: UNICEF, 2004), Available at: http://www.unicef.org/media/files/plan_progress_june04.pdf quoted in Ibid, 40.

²⁵ Norwegian Refugee Council, 42.

²⁶ Ibid, 81-83.

located in existing facilities (houses, hotels, schools). In most cases, however, these are new settlements on government land. Temporary housing stock is provided by UNHCR or other NGOs. The IDPs receive food rations and other essential services. Most of the IDPs have access to some form of assistance, however limited.

While most IDPs are able to meet their immediate subsistence needs, Global IDP project reports that, “[d]isplaced people in state-run welfare centres continue to face a precarious existence. Originally designed as a temporary measure, thousands of people have ended up spending a decade living in squalid, overcrowded conditions. As of November 2004, some 78,300 people were still living in such centres facing difficult conditions. Several surveys have shown that the inhabitants of several welfare centres in Trincomalee suffered from malnutrition and psychosociological problems.”²⁷

Many IDPs find shelter and accommodation with friends, relatives, or in spontaneous settlements. This does not affect their ability to receive food support.

In some areas, IDPs find land to tenant farm, work as farm labors, or engage in other employment. There are no formal restrictions on their right to seek employment or to travel outside of the camps, although many IDPs expressed the concern that it is often more difficult to find employment if they are displaced outside of their home district. This is primarily due to employer preferences, rather than government policy. District administrators and NGOs distinguish between centers where employment is available and those where it is limited in terms of providing welfare support.

Most IDPs in the welfare centers have elected leadership committees. In most cases, the process of selecting the committee is through consensus. A public meeting is held with all families attending. The various candidates put themselves forward, and are selected through discussion arriving at consensus. In no camp visited were the committees formed by secret ballot. The camp committee then typically elects a “committee chair,” who serves as the primary liaison with the Grama Sevaka, Government Agents, and, in the un-cleared areas, LTTE parallel administration. Committee chairs assist IDPs in applying for documents and registering for the monthly food rations. In addition, the committees appoint various persons to manage camp sanitation. They also seek to uphold norms of behavior. However, they do not typically include a dispute resolution or policing function, as is the case in IDP camps in many other countries. Overall, the committees appear to play a minor role in camp life.

Most camp residents expressed satisfaction with their relations with local authorities. This sentiment was expressed in all welfare centers visited, whether or not a local official was present during interviews.

Protection

It is difficult to generalize on the protection and treatment of IDPs. There are enormous regional discrepancies in regards to the observance of core human rights norms and the Guiding Principles on Internal Displacement. Both the GOSL and the LTTE have acted in ways unfriendly to the protection of IDP rights. Disappearances and extra-judicial killings at the hands of the Sri Lankan Army, affiliated militias, and the LTTE occur frequently. Tamil IDPs, including children, have been abducted from camps and welfare centres with the knowledge of SLA and police authorities. Many of these children are forced into conscription for the LTTE. Both the SLA and LTTE have reportedly used IDP settlements and welfare centres as shields during military operations. Many SLA bases are near IDP centres.

Tamils IDPs are often suspected of being affiliated to the LTTE and subject to discriminatory arrest and detention without charge or trial. In Colombo, for example, all residents must register their Tamil guests with the local police. There are also numerous reports of wives being arrested in lieu

²⁷ Ibid, see especially pp. 69-72, 97, 145-6.

of their absent husbands.²⁸ Tamils who have sought refuge abroad and were repatriated often face arrest and/or official harassment upon their return.²⁹

While Human Rights observers have complained about the inability of IDPs to gain replacement documents or to register new births, there appears to have been some improvement over recent years. Government Agents issue replacement birth, marriage, and other official certificates, although significant regional variations in access were observed during the assessment. Whether displaced or returned, the majority of the IDP population is registered by local authorities, who maintain decent, if not necessarily coherent, tracking and statistical capabilities. Population movements and repatriations are generally well organized in conjunction with UNHCR and/or IOM.

Government agents and relief agencies believe that most returnees seek to enter into the process in order to receive the resettlement allowances and other social support services available. Some agencies observed, however, that a substantial population of IDPs is unaware of the services available and that programming could be conducted to raise awareness regarding the benefits of registration and to support district capacity to reach populations outside of the major urban centers in the North.

Two exceptions can be noted to the above: First, some IDPs are actually returning refugees from India, while a few are moved by UNHCR, many more have been returning spontaneously since the cease-fire in 2002. The normal route involves hiring Indian fishermen to transport the returnees to the Adam's Bridge chain of Islands stretching off the western coast from Mannar towards India. Once on an island, they are picked up by Sri Lankan fishermen and deposited on the mainland, primarily around Mannar. From there, they generally come into contact with the local police and the district administration, which registers and attempts to return them to their homes. If their home communities remain off-limits, they are settled in temporary shelters throughout the Vanni. Movement of these populations is generally supported by IOM.

A more pressing documentation problem confronts IDP populations in the non-cleared areas. The LTTE's parallel administration also issues documents to the displaced, but the Sri Lankan government does not recognize these as legitimate.

Institutional Response to Internal Displacement

Since the 2002 ceasefire and the 2004 tsunami, the government administered relief structures have been re-organized and expanded. The two major changes include: 1) the creation of the Reconstruction and Development Agency (RADA) to administer relief and reconstruction efforts to the GOSL-controlled areas of the island; and 2) a new multilateral framework of administration in the North and East areas controlled by the LTTE.

RADA functions as a "one-stop-shop"³⁰ for both post-conflict and post-tsunami reconstruction and development activities. It was established to coordinate the temporary task forces that administer short-term post-tsunami support. These task forces include: The Task Force for Rebuilding the Nation (TAFREN), Task Force for Relief (TAFOR), Tsunami Housing Reconstruction Unit (THRU)³¹, Task Force for Logistics and Law and Order (TAFLOL), and Task Force for Relief and Rescue (TAFRER).³²

²⁸ British Refugee Council, *Sri Lanka: internally displaced persons and safe returns*, (September 2003), 46. Available at: <http://www.refugeecouncil.org.uk/publications/pub004.htm>

²⁹ US Department of State Bureau of Democracy, Human Rights, and Labor, *Sri Lanka: Country Report on HR Practices - 2004*, (February 28, 2005). Available at: <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>

³⁰ TAFREN, "Establishment of the Reconstruction & Development Agency (RADA)", (Dec 21, 2005). Available at: <http://www.tafren.gov.lk/portal/>.

³¹ Ibid.

³² USAID Sri Lanka: Local and Provincial Government Assessment: (July 2005), 19. Available at: http://pdf.usaid.gov/pdf_docs/PNADD827.pdf

The IDP administrative structures in the North and East have also been expanded. A multilateral Memorandum of Understanding (MOU) between the GOSL, LTTE, and northern Muslim leadership was signed in 2005 that establishes a Post-Tsunami Operational Management Structure (P-TOMS). The P-TOMS is a multi-tiered structure consisting of three levels of committees. The overall management is governed by a high-level committee, consisting of one representative each from the GOSL, LTTE, and Muslim parties. Decisions in the high level committee are the result of a consensus between the three parties.

Regional administration is carried out by multiple regional committees, consisting of representatives from the GOSL, the LTTE, and the Muslim parties. The chair of each committee is a member of the LTTE, while the two deputy chairs are members of the GOSL and the Muslim parties. Decisions on the regional level are also reached by consensus. If no consensus is reached, then decisions are made by a majority vote. However, if two members of the committee believe that the decision will adversely affect a minority group, they may call for a required two-thirds majority. Finally, local administration and evaluation is organized through district committees, which must include "adequate Muslim representation". These committees identify, prioritize, and monitor the needs of those affected by the tsunami.³³

Finally, it is important to note that all relief efforts in the North and East outside of the Tsunami Disaster Zone (TDZ) are directed by the Tamils Rehabilitation Organisation (TRO). The TRO represents the humanitarian relief wing of the LTTE, and was formed to provide relief, rehabilitation, and economic development to the North-east of Sri Lanka.³⁴ Any NGO assistance to the North or East needs to be channeled through the TRO.

Refugee Displacement and Conditions

Of the 120,000 refugees, over 60,000 reside in India. Of the remaining half, large numbers remain in Germany (15,000), France (15,000), Canada (12,500), Australia (10,000), and United Kingdom (6,500). Some reports indicate that the number of refugees in India may top 80,000. These reports indicate that the UNHCR estimate of 60,000 is based solely on those refugees living in 103 Indian-government controlled camps. An additional 20,000 refugees live outside the camps.³⁵ Those refugees living in camps are provided with access to both educational and health facilities, although there is a quota imposed on the number of refugees who may attend universities. Unfortunately, the basic supplies and small monetary stipend the Indian government provides the refugees is inadequate for survival. Many refugees remain in crumbling short-term housing units, built before the main influx began. Basic sanitation facilities, constructed in the early 1990's, have long since fallen into disrepair.

In part because of the assassination of former Indian Prime Minister Rajiv Gandhi in 1991 by a suspected member of the LTTE, the refugees are treated with a certain degree of suspicion. Restrictions are imposed on their freedom of movement, and the camps have been isolated to prevent contact from taking place between camps. All of the camps have morning and evening curfews. Those who break the rules often find their government aid revoked. Additionally, the Indian government refuses to allow monitoring of the camps by international organizations and aid agencies, including UNHCR.

The vast majority of the refugees have been in India since 1985, and most have remained there since 1990.³⁶ Options for the refugees have been limited, especially given that repatriation is

³³ *Memorandum of Understanding ("MOU") for the Establishment of a Post-Tsunami Operational Management Structure ("P-TOMS")*, Available at: http://www.ltteps.org/mainpages/images/2005/06/final_draft_of_jm.pdf

³⁴ For more on the TRO, see : <http://www.troonline.org/>

³⁵ "Sri Lankan Refugees in India: Hesitant to Return", (Refugees International, 20 January 2004).

Available at: <http://www.refugeesinternational.org/content/article/detail/933/>

³⁶ In addition, 30,000 of the refugees in India are "up-country" Tamils who are not currently recognized as citizens by the Sri Lankan government. See Florina Benoit, "Forgotten People: Upcountry Tamils from Sri Lanka living in refugee camps in India," (Refugees International, 15 September 2004).

complicated by the ongoing conflict, and further complicated by the near doubling of Sri Lankan IDPs due to the tsunami. Still, since the 2002 cease fire, nearly 10% of the Indian refugees have returned to Sri Lanka. The repatriation either occurs with the aid of UNHCR, who will assist voluntary returnees but does not encourage their return due to the ongoing conflict, or by refugees paying southern fishermen to smuggle them back to the island.

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Part III: Issues and Obstacles Confronting Refugee, IDP, and Migrant Voting

Previous Elections

Sri Lanka has been democratic since independence in 1948. Although often accompanied by significant levels of election-related violence, partisan media coverage, and a weak election infrastructure, observers believe that most citizens are able to cast ballots under conditions guaranteeing the secrecy of the vote and meeting the broad criteria for genuine elections. The European Union, Commonwealth, and domestic CSO observations reports indicate that while imperfect in many regards, registration, campaigning and voting have been conducted in a generally free and fair manner.

In addition, Sri Lanka has a vibrant and well-established network of civil service organizations (CSO) dedicated to promoting a peaceful and transparent electoral process. These groups have catalyzed a national dialog on issues of electoral reform, transparency, and violence, monitored the activities of political parties and candidates, and organized extensive observation teams during the elections process, including the registration, campaigning, and voting periods. Groups such as the Center for Monitoring Election Violence (CMEV), a subdivision of the Centre for Policy Alternatives (CPA), and People's Action for Free and Fair Elections (PAFFREL) fielded up to 17,000 national observers during the 2004 and 2005 elections and issued extensive reports and analyses on the process.³⁷ These groups are not subject to official harassment and are allowed to observe almost all elements of the polling process (with the exception of counting centers).

The generally sanguine assessment of recent elections does not hold true in the North and East, where violence, intimidation of voters, and blatant irregularities, including reports of multiple voting and ballot stuffing are common. According to the EU Election Observation Mission Report of the 2004 Parliamentary Elections: "If the election results in the North and East had been a critical factor in determining who formed the government, it would have raised questions about the legitimacy of the final outcome. The events that took place in this part of Sri Lanka during the course of this election were totally unacceptable and are the antithesis of democracy."³⁸

The following issues have been a recurring concern to domestic and international election observers:

- High levels of voter intimidation and election related violence, throughout the country, but particularly prevalent in the Vanni and LTTE dominated areas;
- The failure to create a permanent Elections Commission as mandated by the 17th Amendment to the Constitution;
- Abuse of state resources by political parties for the purposes of campaigning;
- Clear bias on the part of government owned media;
- Instances of official harassment of the independent media;
- Evidence of voter fraud and multiple voting in some regions;
- Instances of non-professionalism evidenced by some polling station staff.³⁹

Election Regulations Governing IDP Participation

³⁷ See: <http://www.cpalanka.org/> and <http://www.paffrel.lk/>

³⁸ European Union Election Observation Mission, *Sri Lanka: Parliamentary Elections Final Report*, 2 April 2004, 3.

³⁹ See: CMEV, *Final Report on Election Related Violence: General Election - April 2004*, (CMEV, 2004); CMEV, *Interim Report – Presidential Election 2005*, (21 November 2005); Commonwealth Secretariat, *Sri Lanka General Election (2 April 2004)*, (Commonwealth Observer Group, 7 April 2004); European Union Election Observation Mission, *Sri Lanka: Parliamentary Elections Final Report*, 2 April 2004, (2004); PAFFREL, *Final Report on Parliamentary General Election 2nd April 2004*, (PAFFREL/MFFE, 2004); and PAFFREL, *2005 Presidential Elections - Reports*, (19 November 2005).

Recognizing the problems that displacement in the North of the country presented to the administration of elections, Parliament enacted the *Parliamentary Elections (Amendment) Act No. 15 of 1988*. The Act provides that:

127B (1) *Notwithstanding the provisions of any other Law, any registered elector who reasonably fears that due to conditions prevailing in the area within which his polling station is situated, that he is unable to cast his vote at such polling station, may make an application to the Commissioner of Elections within one week of the notice of nomination, requesting that he may be allowed to cast his vote at another polling station determined by the Commissioner, in his absolute discretion.*

(2) *The Commissioner shall within a week of receipt of an application inform such elector whether such application is accepted or rejected. The decision of the Commissioner shall be final and shall not be questioned in any Court of law.*

(3) *Where such vote is cast, such vote shall be counted along with the votes of the electoral district where such elector is registered.*⁴⁰

The Act raised several immediate questions. First, it only attains to IDPs who were previously registered as voters in a different district. Those who were unregistered or who attained the age of majority after being displaced are not covered. Second, registrants are required to present documentary proof of their previous registration. Most IDPs, however, had lost their documents during their attempts to flee the fighting.

In 2000, the CPA filed a “Fundamental Rights Application” in the Supreme Court on behalf of IDPs who reached the age of 18 after 1990. The CPA alleged that the Act violated Article 12(1&2) of the Constitution guaranteeing equality before the law and Article 14(1) guaranteeing freedom speech, association and movement. The petition specifically demanded that the Commissioner of Elections enter the names of some 75,000 Muslim IDPs resident in Puttalam, most of whom lacked documentation and were unable to prove their previous registration, onto the electoral register for the Puttalam District.

The Court ruled against the application, arguing that the Act and other regulations regarding voter registration provided “...adequate provisions for the public to scrutinize the revised Electoral Registers, and to object to any irregularities in the Register, as well as to ask the Registering Officer to have a person's name entered in the Register.” The CPA argues that: “What the Court failed to consider was that the internally displaced persons did not have access to the electoral registers of the north, and also that they did not have the documentation which the Elections Department asked for in order to confirm their proper identity. The Courts also failed to take into account the illiteracy and helpless situation of these disadvantaged persons who did not have the necessary knowledge or facilities to adhere to the strict regulations stipulated by the law.”⁴¹

This problem has been subsequently addressed by the DE through administrative measures that simply allow individuals who could not prove their previous registration to be entered on the register in their current location. As a result, these voters may only cast ballots for candidates from their current district and may not apply for an absentee ballot from their home district. However, implementation of these procedures is not uniformly followed at the district level, and some IDPs complained that they continue to confront difficulties establishing claim to vote in their municipalities of origin.

⁴⁰Parliamentary Elections Act No. 1 of 1981, as amended by Parliamentary Elections (Amendment) Act No. 15 of 1988, Parliamentary General Election -05.12. 2001 <http://www.slelections.gov.lk/notices1.html>

⁴¹Rohan Edrisinha and Sundari de Alwis, *The Right to Vote: Its Impact on Election Laws in Sri Lanka*, (CPA, 2000), 14-16. Available at: http://www.cpalanka.org/research_papers_archives.html

Election Violence⁴² and IDP Participation in 2004 Parliamentary Elections

In February 2004, President Chandrika Kumaratunga dissolved Parliament following an acrimonious debate regarding negotiations with the LTTE between herself and Prime Minister Ranil Wickramasinghe of the United National Party (UNP). New parliamentary elections were conducted on April 2 of that year. The election was contested by over 5000 candidates representing 24 political parties and 192 independent groups.⁴³ For the first time, the LTTE proxy party, the Tamil National Alliance (TNA) actively participated in the election.

The election was won by the United People's Freedom Alliance, which was composed of Kumaratunga's Sri Lanka Freedom Party (SLFP) and several other leftist parties. International and domestic observers declared the election to have been broadly free and fair, although this conclusion did not pertain to voting in the North and East. Elections in those areas were accompanied by high levels of intimidation, irregularities, and election violence.

Election-related violence stems from a wide variety of sources: government forces and rebel combatants may seek to intimidate voters in order to ensure that their positions on the battlefield are reflected in the election results; external governments and non-governmental political actors with a stake in the conflict may seek to influence the outcome of the vote; and local populations and actors may seek to extract revenge on returning voters for perceived wrongs committed during the conflict. In general, two types of incidents must be accounted for when planning for election security. Major incidents include murder, assault, arson, robbery, and threats and intimidation; as well as the misuse of state resources. Minor incidents include threats, property damages, and mischief, as well as certain election specific incidents like voter fraud.

IDPs are particularly vulnerable to electoral violence. However, the 2004 Parliamentary elections witnessed a 30% decrease in violent incidents compared to the elections of 2001.⁴⁴ While a substantial improvement, the scale of election violence remained above the threshold required to guarantee free and fair elections.

Major incidents are usually the result of a coordinated effort to send a message to voters and prospective candidates that they should "reconsider" who they will vote for, or whether or not they will run for office. In the Sri Lankan elections, the most common source of these incidents has been the LTTE, which uses intimidation and murder to dissuade Tamil candidates from running on a non-TNA platform.⁴⁵ In fact, the LTTE is the only organization to have successfully committed an election-related murder.⁴⁶ Minor incidents, although they also may be a part of an organized plan, are often simply a result of the emotionally charged atmosphere surrounding the election. Many of these incidents can be minimized by election surveillance and an atmosphere of stability and security.

In the 2004 elections, two distinct patterns emerged that correspond to the distinction between the causes of major and minor incidents. Major incidents were concentrated in the North-West and North-East polling areas, which witnessed over one hundred major incidents of violence. The next

⁴² According to Fischer (2002): "Electoral conflict and violence can be defined as any random or organized act or threat to intimidate, physically harm, blackmail, or abuse a political stakeholder in seeking to determine, delay, or to otherwise influence an electoral process. Election security can be defined as the process of protecting electoral stakeholders, information, facilities, or events." Jeff Fischer, "Electoral Conflict and Violence: A Strategy for Study and Prevention." (IFES White Paper, 2002).

⁴³ Commonwealth Secretariat, *Sri Lanka General Election (2 April 2004)*, (Commonwealth Observer Group, 7 April 2004), 8. Available at:

<http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=39196&int1stParentNodeID=20639&int2ndParentNodeID=39260&int3rdParentNodeID=39079>

⁴⁴ CMEV, *Final Report on Election Related Violence: General Election - April 2004*, (CMEV, 2004), 17.

Available at: http://www.cpalanka.org/publications_cmev.html

⁴⁵ PAFFREL, *Final Report on Parliamentary General Election 2nd April 2004*, (PAFFREL/MFFE, 2004), 8.

Available at: <http://www.lankaworld.com/paffrel/Election2000.htm>

⁴⁶ CMEV, *Final Report on Election Related Violence: General Election - April 2004*, 20. Of the five election-related murders, one was attributed directly to the LTTE, and the remaining four were listed as "Parties Not Given (PNG)."

highest concentrations of major violence were in the south-western and western provinces, both of which reported at least eighty incidents. Tellingly, these provinces are those in or bordering areas controlled by the LTTE. Particular trouble-districts include Digamadulla, which reported 69 offenses and Kurunegala which reported 62.⁴⁷

Those areas with the highest concentration of major incidents were also those areas with the highest numbers of conflict-displaced IDPs. Given that most IDPs live in areas controlled by or bordering areas controlled by the LTTE, they are highly susceptible to intimidation. Additionally, the logistical difficulties involved in coordinating IDP voting ensure that many IDPs will conclude that possibility of violence makes voting a fruitless endeavor – especially if it requires undue effort to reach the polls. According to an IDP interviewee in Kilinochchi, “On the voting day (2004), no bus came. We decided it really didn’t matter anyway as everyone was told to vote for the TNA.”

The combination of logistical and security difficulties led to a low turnout in IDP participation. PAFFREL reports that of the 128,000 to 260,000 estimated IDPs eligible to vote, only 30,000 actually did. At best, this indicates an IDP participation of less than 25%, at worst less than 12%.⁴⁸ These low turnouts contribute to a feeling of helplessness, and significantly undermine the fairness of the elections. Additionally, the perception that elections are not free and fair serves to undermine the public perception of their credibility.

In addition to sponsoring violence against opposition Tamil political parties, the LTTE tightly restricted the print and broadcast media in areas under its control and was clearly capable of intimidating Colombo-based Tamil journalists. According to PAFFREL, “The role of the media was a source of concern throughout the country. For Tamil voters in the north and east, access to independent information about the candidates other than those with the TNA was limited, as few Tamil language news sources were willing to feature challengers to the LTTE’s claim to be the voters’ ‘sole representative.’ One news outlet that did so, the London-based Tamil Broadcasting Corporation (through a hook-up with the Sri Lankan Broadcasting Corporation) received death threats demanding that it stop broadcasting news until after the election. It was also apparent that some private Tamil language media channels were misreporting or misrepresenting events in the east.”⁴⁹

Election Violence and IDP Participation in 2005 Presidential Elections

In August of 2005, the Supreme Court ruled that presidential elections were to be held by the end of 2005. The Commissioner of Elections then established that the elections would be conducted on November 17, 2005. Thirteen candidates contested the election, although only two emerged as serious contenders: Then Prime Minister Mahindra Rajapakse of the SLFP and opposition leader Ranil Wickramasinge of the UNP. As with the 2004 Parliamentary elections, most observers reported that the overall level of election violence continued to decrease.

In response to candidate complaints regarding voting procedures for the un-cleared areas, the Commissioner established measures to clarify how the balloting would proceed at the cluster stations. These included:

- Cluster stations must be at least 500 yards from the line of control and could be established within Sri Lankan Army bases and facilities;

⁴⁷ Ibid, 19. Minor incidents, on the other hand, were concentrated near large city centers. The highest numbers were recorded in Colombo (131), Galle (103), and Gampaha (103). Interestingly, Areas with high numbers of major incidents had low numbers of minor incidents. In Kurunegala and Puttalam, both districts with a high number of major incidents, there were low numbers of reported minor incidents. The pattern continues in the districts of Digamadulla, and Andurahapura, where the proportion of major incidents to minor incidents was also much higher than in other districts. These statistics support the conclusion that most major incidents were the result of concentrated efforts at voter and candidate intimidation, while minor incidents tended to be a result of the emotionally charged atmosphere surrounding the elections.

⁴⁸ PAFFREL, *Final Report on Parliamentary General Election 2nd April 2004*, 6.

⁴⁹ Ibid, 9-10.

- Government Agents were to coordinate transport for voters from the un-cleared areas to the cluster stations;
- Cluster station polling staff were given special instructions regarding identity verification of voters arriving from un-cleared areas,
- Voters arriving from un-cleared areas would be required to produce both a polling card and another identification document in order to prevent impersonation.

On November 9, eight days before the vote, the Supreme Court responded to a petition from two presidential candidates calling for an extension of the distance separating the cluster stations from the line of control by an additional 500 meters, granting the Senior Presiding Officer powers to seek clarification of voter identity, and ordering the preventive detention of persons suspected of impersonation.

More importantly, however, the challengers also complained that they had not been allowed to campaign in the LTTE areas, which violated their constitutionally protected rights as candidates. In response, the court observed that “the external environment and electoral procedures to be adopted highlighted certain elements of a robotic exercise far removed from the freedom and vibrancy of a democratic election.” Nevertheless, the election was allowed to proceed and no action was taken to rectify the inability of candidates to campaign in the LTTE areas.

The election process witnessed a continued improvement in election violence. Although the overall number of violent incidents decreased, two important trends emerged. First, as in 2004, high concentrations of major incidents occurred in regions controlled by, or bordering regions controlled by, the LTTE. Particular trouble districts include: Digamadulla (24), Gampaha (19), Puttalam (17), and Colombo (14). The Eastern provinces of Digamadulla and Trincomalee together accounted for 4 of the 5 successful election-related murders, as well as 5 of the 10 attempted murders.⁵⁰

Although reported incidents of pre-election violence in the LTTE-controlled districts of Vanni and Jaffna were minimal, the LTTE nevertheless staged an effective, although unofficial, boycott. While publicly taking no official position regarding the election, the atmosphere in Jaffna province was characterized by widespread intimidation, coupled with the dissemination of posters and leaflets calling for an election boycott. The TNA and LTTE proclaimed that the “Presidential Election is totally irrelevant to the Tamil people at this juncture,”⁵¹ and observers and journalists noted a behind the scenes campaign to engage in a boycott. According to the CMEV, “... incidents of violence and intimidation in Jaffna and throughout the Eastern Province ... created an atmosphere that was not conducive to the carrying out of a free and fair election.”⁵² The LTTE promise not to disrupt the elections notwithstanding, the reports submitted by CMEV monitors clearly indicates the contrary. In Jaffna, posters and leaflets calling for a boycott were widely disseminated. There were some reports of postmen having polling cards snatched from them, as well as of intimidation of those who had volunteered to be polling agents. According to CMEV, “On the 16th, grenades were flung at several offices of the EPDP in Jaffna. On Election Day, CMEV monitors reported an almost complete shut down of the District, and intimidating surveillance of polling stations by groups of youth. As a result, the proportion of total votes polled in the Jaffna District was 1.21% and 34.03% in the Vanni District.”⁵³

Constraints Facing Refugee/IDP Participation

Sri Lanka presents a unique case to those interested in expanding enfranchisement to those displaced by war, generalized violence, and human rights abuses. On the one hand, the government has made a genuine effort at IDP inclusion, particularly during elections in 2001, 2004,

⁵⁰ CMEV, *Interim Report – Presidential Election 2005*, (21 November 2005), 10.

Available at: <http://www.cpalanka.org/cmev.html>

⁵¹ PAFFREL, *2005 Presidential Elections - Reports*, (19 November 2005).

Available at: <http://www.tamilnation.org/tamileelam/democracy/051119paffrel.htm>

⁵² CMEV, *Interim Report – Presidential Election 2005*, 4.

⁵³ Ibid.

and 2005. IDP political rights are protected by law, and the EC has organized impressive efforts to provide ballot access to the IDPs. On the other hand, the unacceptably high levels of political violence, combined with the lack of effective control over parts of the North and East have resulted in disappointing turn-out rates among IDPs and significant disenfranchisement. Furthermore, no provisions are in place to provide enfranchisement opportunities to either refugees or economic migrants.

Critical issues include: 1) the highly charged and polarized political discourse in the country that makes negotiation and compromise exceedingly difficult; 2) the totalitarian nature of the LTTE and the organization's willingness to use violence against its political opponents, including Tamils, Sinhalese, and Muslims; 3) the lack of control exercised by the central government in the uncleared areas and consequent statutory prohibition on conducting election-related activities; 4) weaknesses in the management of the voter's register; 5) regional discrepancies in arrangements to ensure that IDPs are able to vote freely; 6) the disenfranchisement of refugees; and 7) the disenfranchisement of Sri Lanka's one million migrant laborers.

Election Violence

As international and domestic monitors have observed and documented, election related violence is unacceptably high in Sri Lanka. While the entire country is at risk, the problem is particularly acute in the Tamil areas, whether controlled by the government or the LTTE. Elections in which the voting population has been subject to threats or physical attacks are *inter alia* compromised and cannot reflect the will of the people. While recent elections have witnessed a notable reduction in overall violence levels, voters in the North and East, where IDPs are concentrated, remain especially vulnerable. So long elections continue to witness attacks on voters and other acts of intimidation; the election results will not inspire confidence or contribute to long-term peace building and reconciliation.

Weak Prospects for Civil Society Development in LTTE- Areas

Related to the high levels of election violence is the closed political space in the North and East of the Country. Analysts have described the LTTE as essentially a Leninist-style party that refuses to allow opposition voices to represent Tamil interests. The assessment mission confirmed this view, with many interviewees among the Tamil population hesitant to publicly disagree with LTTE tactics and wishing to remain nameless when agreeing to meet with the assessment team. As a result, there are no visible civil society or human rights groups in the Tamil areas that are able to criticize the LTTE or offer alternative platforms to mediate the conflict. While some inter-ethnic dialogue is sponsored through churches, temples and mosques, even religious leaders will not directly challenge the LTTE or advocate for better human rights protections. This appalling lack of civil society has important social implications for the Tamil areas. Most importantly, it raises serious doubts about whether elections, in the current environment, will be able to help reconcile the deep social and ethnic cleavages in the country. So long as Tamil voters are unable to organize and speak their minds freely, elections will only serve to provide the sheen of democratic legitimacy to a totalitarian political force. This is particularly true at the local level; Political actors and donors should seriously consider whether local level elections in the Tamil areas would actually contribute to the further closing of the political space and harm the chances that moderate Tamil voices will be able to engage in the peace-building process.

Marginalization of Muslim Communities

The Tsunami and government/LTTE response has highlighted the political marginalization of Muslim Communities in the North and East. Already the victim of GOSL and LTTE discrimination, forced population movements, and direct attacks, the Muslim community remains the most politically powerless social group in the country. At least 100,000 Muslims have been displaced since 1990 by the conflict and the Tsunami, and they are generally the last group to receive adequate care and protection. According to the US State Department: "During [2004], the LTTE

continued the intimidation of Muslims in the east, although LTTE extortion of Muslims lessened. It appeared that attacks by the LTTE against Muslims were not religiously motivated but were, instead, part of an overall strategy to clear the north and east of persons not sympathetic to the cause of an independent Tamil state. The LTTE made some conciliatory statements to the Muslim community, but most Muslims viewed the statements with skepticism.”⁵⁴

The Tsunami brought this marginalization to the fore. “The Muslim communities in the Eastern Province suffered massive losses but state assistance has been minimal. This is due both to the inefficiency of state machinery and the weakness of the deeply divided Muslim political leadership. Muslims have begun to interpret state inaction as deliberate discrimination against the Muslim community. The fact that state agencies have provided assistance to Sinhalese communities and the LTTE’s relief agencies have been working primarily with affected Tamil communities, together with the failure to include Muslim political leaders in negotiations for a government-LTTE joint mechanism [to coordinate Tsunami relief], have exacerbated Muslim feelings of exclusion. Muslim political leaders have now come out openly against the government-LTTE joint mechanism on the grounds that Muslim interests will continue to be at risk.”⁵⁵

Voter Identification

While the ability of IDPs to secure replacement documents appears to have improved over the previous five years, there are significant regional variations. Most Tamil IDPs interviewed during the assessment claimed they can easily acquire replacement birth and marriage certificates while in displacement and can thus obtain national identity cards. In a few regions, however, notably in the Anuradapurah District, IDPs claimed that the government agents continue to require them to travel to their home communities to obtain a letter of confirmation required for issuance of a national ID card. These were primarily Sinhalese displaced persons, who felt unable to travel in predominantly Tamil areas. Very few of the IDPs in this area had adequate documentation. Many Muslim IDPs confront similar problems; The GA in Puttalam, for example, claimed that any IDP, Muslim or not, was able to register and receive state benefits. However, Muslim IDPs expressed a belief that registering in Puttalam would threaten their legal status and jeopardize their land claims in the North should they return. They also complained that despite statements to the contrary the GA continued to require a letter of confirmation from their original districts, which is difficult, if not impossible, to obtain.

Irregular returnees from the Indian refugee camps are often unaware of how to replace their documents. While no statistics are available on the extent of this problem, IOM believes it is widespread and is looking to generate information programming for this population.

These discrepancies in access to documents fed into the low turnout rates in the 2005 election. The instructions issued by the DE authorizing polling agents to detain individuals with insufficient documentation certainly instilled a lack of confidence among voters who lacked documents and probably resulted in most of these people not bothering to participate.

Voters Register

Observation reports from recent elections continue to highlight inadequacies in the management of the voters register, particularly in the North and East. Recurring concerns include the lack of computerization, inadequate mechanisms to remove deceased voters or those who have moved, and the long time-lag between the enumeration process and the utilization of the register. As noted above, some IDPs face difficulties in meeting the criteria for entry on the voters register. In addition,

⁵⁴ US Department of State Bureau of Democracy, Human Rights, and Labor, <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>

⁵⁵ Jayadeva Uyangoda, “Ethnic Conflict, the state and tsunami disaster in Sri Lanka,” *Forced Migration Review*, July 2005, 30.

the assessment team observed that GAs did not seem to have a common understanding of how the absentee voting mechanism for IDP voters should be implemented.

In addition, the lack of coordination and communication between different Districts means that some IDPs who are registered to vote while displaced may in fact not be removed from the regular register in their original constituency.

Malapportionment

The last country-wide census was completed in 1981, and no re-apportionment of electoral districts has occurred since 1985. A census of non-LTTE controlled areas was conducted in 2003. GAs and political party representatives noted that re-apportionment is probably not feasible in the current political environment. Nevertheless, the extensive displacement since the early 1980s has resulted in some glaring problems in terms of representation. Most notably, the voters register in Jaffna contains more than 620,000 names, but observers report that during the last two rounds of parliamentary elections in 2000 and 2004, no more than an estimated 300,000 eligible voters reside in the district. Similarly, the Vanni district has an estimated total population of 140,000 persons, yet the voters register contains 226,000 names. Despite the clear instructions issued by the DE to allow for displaced voters to re-register, it appears that no country-wide mechanism is in place to ensure that voters who move or have died are removed from the lists.

Migrant Voting

An estimated one million Sri Lankans work abroad as migrant laborers. Currently, the election law does not provide for absentee voting. Yet migrant workers comprise approximately 12% of the registered voters, and contribute roughly 20% of the country's foreign exchange earnings every year. Almost every family in Sri Lanka has at least one family member who has worked abroad, primarily in the Gulf States, and remittances constitute an estimated 17% of national savings every year. 70% of the migrant labor force is female.

Sri Lanka ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (hereafter the Convention) in 1996. Article 41 of the Convention obligates holds that: "1. Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation. 2. The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights."⁵⁶

Since 1998, a coalition of civil society groups led the Migrant Services Center of the National Workers Congress and joined by PAFFREL and the CMEV has been calling for parliamentary action to amend the election law in order to allow external voting for migrant laborers. Most political parties have been broadly (although not actively) supportive, yet the issue has languished at the bottom of the priority list in parliament. For the most part, this lack of action reflects uncertainty over how such a program would operate, concerns that an absentee voting program would be manipulated, and the potential cost.

While most organizations, including political parties and the DE, expressed support for such a program, the following concerns were often raised:

- The transparency of the process;
- The cost and logistical complications associated with organizing and external voting program.

⁵⁶ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, General Assembly Resolution 45/158, adopted 18 December 1990, Entered into force 1 July 2003. Available at: http://www.unhcr.ch/html/menu3/b/m_mwctoc.htm

- How to manage the voters registers for absentee voting so that double voting is not possible.
- Whether an embassy voting program would be trusted by migrants, since embassy staff are political appointees;

Part IV: Action Plan

Objectives

This Action Plan proposes legal and institutional reforms aimed at protecting the enfranchisement rights of Sri Lanka's IDPs, refugees, and economic migrants under conditions that guarantee their physical security and secrecy of the vote. However, the problem of IDP voting rights in Sri Lanka cannot realistically be separated from the broader issues of election violence and the civil war. Given the uncertainties confronting the peace process, the Plan is oriented towards a post-settlement sequence of initiatives and activities. Aside from proposals to link issues of citizenship and voting rights to the peace process, the Action Plan is primarily designed to provide an enfranchisement roadmap for the GOSL, the Election Commission, civil society organizations, and donors after a comprehensive resolution to the conflict is reached, when Sri Lanka will most need to demonstrate the integrity, transparency, and inclusiveness of its democracy to all its constituent communities.

The Action Plan should unfold in four phases: 1) Consensus; 2) Framework Reform; 3) Planning; and 4) Operations. A roadmap for overseas migrant voting is provided in an Annex III, although elements of migrant voting issues are treated where relevant in the four phases.

Consensus Phase

The consensus phase should be linked to the ongoing negotiations between the GOSL and the LTTE. In February 2006, the parties met Geneva to discuss the implementation of the 2002 ceasefire agreement. While the initial consultations focused on immediate security issues, it is hoped the talks will lead to a sustained dialog on achieving a broader resolution to the conflict.

If regular meetings resume, voting rights should be placed on the agenda in the context of discussions regarding human rights protections. These talks present an opportunity for confidence building between the GOSL and LTTE. Public commitments to protect the fundamental rights of all Sri Lankans would help overcome continued suspicions among the minority populations. Unfortunately, neither party has historically indicated much willingness to place human rights issues at the center of the negotiating agenda. According to the Center for Policy Alternatives, "...there is little reason to believe that either the government ... or the LTTE have any genuine desire to see strong human rights standards enforced as part of any peace settlement. A robust practice of human rights monitoring and enforcement would be a threat to the traditional sources of power of both organizations ... Still, to the extent that the enforcement of effective human rights standards and democratic norms can be shown to be necessary to maintaining the peace process itself - by stemming worries that the LTTE is simply consolidating its power before further attacks, and by acting as a further confidence builder that the Sri Lankan state has learned to treat its Tamil citizens fairly - both the government and the LTTE would seem to have an interest in limiting their own anti-democratic tendencies."⁵⁷

While the nature of any political solution is impossible to predict (i.e., federalism, loose autonomy), placing the issue of voting rights squarely on the negotiating agenda could help build a consensus on how to overcome the legacy of mistrust and suspicion that fuels the conflict. In addition, discussion of these issues offers both sides the chance of making confidence building proposals that could facilitate the broader dialog on a permanent solution

Specific election-related issues to be addressed during the consensus phase negotiations include:

⁵⁷ Sanjana Hattotuwa, "Overview of the Peace Process in Sri Lanka: 2002-2003," Paper presented as part of the conference on Strengthening Cooperation and Security in South Asia-Post 9/11 organized by the Bangladesh Enterprise Institute, Dhaka, Bangladesh, 1-3 July 2003, http://www.cpalanka.org/research_papers/overview_peace_process_2002_2003.pdf.

- Resolving any remaining citizenship issues through a clear statement on the criteria for Sri Lankan citizenship, including moves by the GOSL to fully implement agreements regarding the conferral of citizenship on up-country Tamils in India and any others whose citizenship status remains unclear, donors and interested governments could contribute to this process through establishment of an observation mechanism and technical support;
- Reaching agreement on principles guaranteeing the right of return for those displaced by the conflict, as well as establishing institutions to address property rights issues;
- A commitment by both parties to observe the *Guiding Principles on Internal Displacement* as a core component of their legislative and administrative frameworks;
- A commitment by both the GOSL and LTTE to promote an environment that is favorable to the promotion of fundamental human rights, particularly those related to political rights. This could take the form of a pact that commits each side to respect the right to organize, freedom of speech, and freedom of movement, and to refrain from any activities that threaten the ability of individuals to exercise their right of freedom of thought and franchise;
- Discussion of perspectives on absentee voting rights for Sri Lanka's economic migrants;
- Preliminary discussion of proposed constitutional and legislative amendments and reforms to achieve these particular objectives.

Mediators and other interested third parties should encourage the inclusion of these issues on the negotiating agenda. In addition, donors should consider funding grass-roots meetings and colloquia in which CSOs and political party representatives could develop strategies for pressuring both sides to initiate a dialog on the above principles.

Outside of the peace process, the GOSL should move to strengthen the protection of IDPs in order to signal its commitment to protecting the fundamental rights of all Sri Lankans. First, Parliament should enact a national legal framework upholding the rights of IDPs that reflects the core standards and principles contained in the *Guiding Principles Internal Displacement*. This Act should be complemented by the development of a national policy or plan of action that spells out institutional responsibilities for protecting IDPs and clarifies the roles and responsibilities of the many GOSL and TRO agencies currently involved in delivering humanitarian services.⁵⁸ For technical assistance, the SRSG on Internal Displacement, the UNOCHA IDP Unit, UNHCR, and IOM could be engaged to conduct workshops for parliamentarians on the *Guiding Principles* and how best to integrate them into a national framework.

Framework Reform

The Framework Reform Phase is conceived as a post-settlement period in which the GOSL, LTTE, and political parties undertake measures to ensure that the agreements reached during the consensus phase are anchored into constitutional amendments, statutes, agreements, and political party pacts. In addition, this phase will undertake a broad program of reforming the election law to achieve the full participation of the Sri Lanka's displaced and migrant communities.

During this phase, constitutional amendments and legislative reforms should be made to strengthen enfranchisement rights. Specific legislative reforms would address the following issues:

- Re-affirming the fundamental electoral rights of all IDPs through revision of the current statutory and administrative framework that governs their voting rights, preferably combined with an Act of Parliament that specifically references IDP voting rights;
- Citizenship for upcountry Tamils and those in refugee camps in India;
- Defining eligibility criteria for absentee voting for migrant laborers;
- Defining the rules and procedures to govern absentee voting;

⁵⁸ For more information on national actions to protect IDPs, see Erin Mooney, "National Responsibility and Internal Displacement: A Framework for Action." In *Forced Migration Review*, October 2005, supplement, pp. 11-14. Examples of similar national policies can be found at: http://www.brookings.edu/fp/projects/idp/idp_policies.htm.

- Adopting the *Guiding Principles on Internal Displacement* into domestic law;
- Mandating a comprehensive nation-wide census and voter-registration program, prior to the next national-level election cycle;
- Establishing rules regarding constituency delimitation and seat apportionment resulting from the new census;
- Mandating the establishment of a computerized national registration database and issuance of a national voter's card;
- Defining residency requirements and voting options for those who remain displaced, are in transit, or have recently returned to their home communities on election day;
- Defining rules governing the right of political parties to campaign freely for IDP votes, the management of polling stations, rights of observers to access the stations, and how absentee vote counting will proceed.

This Phase will also produce a political party pact that will operate in conjunction with the revised IDP voting regulations establishing a set of ethical standards with respect to campaigning and soliciting votes from displaced communities. The pact should forbid the parties to engage in any form of electoral intimidation or inducements, such as food for votes, while campaigning in IDP communities. The pact should also guarantee the right of CSOs, human rights groups, and political parties to operate freely and without fear in all areas of the country.

Finally, political parties should be encouraged to support public policies and programs to aid the return and resettlement of refugees/IDPs. Such program initiatives should address the security, housing, health care, and education sectors. Coordination with UNHCR, IOM, and voluntary relief organizations will be necessary to establish trust and deliver services efficiently.

International actors can provide targeted diplomatic, financial, and technical assistance during this phase. First, mediators and donors should remain engaged in pressuring all stakeholders to undertake the necessary reforms. Second, donors should continue to fund grassroots meetings and colloquia to generate broad public understanding and support for the reform initiatives and to provide input to the reform process. Third, donors should support technical assistance to the reform process in order to ensure the proper sequencing of the various initiatives and that the resulting electoral framework reflects accepted best practices and standards for displaced and absentee voting. Finally, donors should recognize that some elements of the reform process will require significant resources, particularly the national census and computerization of the voters register and should be prepared to respond to requests for financial assistance to achieve these programs.

Planning Phase

During this Phase, the CE, Foreign Ministry, delimitation commission and other agencies will devise a joint and integrated operational plan to organize the following processes:

- Conducting the census;
- Reapportionment and boundary delimitation;
- Computerization of the voters register;
- Conduct of a national voter registration (perhaps in conjunction with the census);
- Issuance of a national voters identity card;
- Conduct of an international voters registration process for migrants who will be voting abroad and implementation of measures to ensure the external voters register can be checked against the national list;
- Harmonizing procedures allowing those who change districts between the registration and the next election to change their registration details;
- Revising the operational plan for voting facilities for those who remain displaced on election day, incorporating recommendations made by the Supreme Court and by CSOs;
- Planning for the conduct of external voting operations;

- Clearly delimiting various roles and responsibilities governing SLA and police activities to protect the freedom of movement and security of voters during the campaign season and during polling day.

The operational plan should identify a timeline and delegate the roles and responsibilities of various government agencies and other actors. Resource requirements such as staffing, equipment, vehicles, and materiel should be identified. The plan should propose a realistic budget and funding strategy for obtaining the people and materiel to operate the process. The plan should also include provisions for domestic and international observation of all registration, campaigning, and balloting activities, both within Sri Lanka and abroad. The Department of Elections could consider any services that IOM might be able to provide in this regard.

Operational Phase

In the Operational Phase, the CE, in cooperation with the Ministry of Foreign Affairs and Registration Officers will conduct the census, voter registration, campaigning, balloting and certification of results. This phase requires the development of formal and informal institutional structures in order to implement the actual conduct of absentee balloting.

Institutional Structures

The DE should organize an internal **Committee on External and Absentee Voting (CEAV)**. This committee would be headed by a Commissioner and include representatives from the legal, budgetary, civic education, and logistics departments of the DE. Representatives from the Delimitation Commission (once operational) and the Ministry of Foreign Affairs should also be included as ex-officio members. The committee should meet weekly to ensure that the operational aspects of the external and IDP voting programs are accounted for in the election planning. The committee would ensure regular communication with Government Agents and with relevant embassies in countries where migrant voting might occur. In addition, the CEAV should establish regular channels of communication with other relevant GOSL agencies, including the Ministry for Rehabilitation, Resettlement, and Refugees (MRRR), the Ministry for Eastern development, and the Ministry for Assisting Vanni Rehabilitation, as well as the TRO.

IOM, UNHCR, UNOCHA, and other international agencies could provide useful services to the proposed CEAV's work, particularly in regards to monitoring population movements and facilitating an external voting program.

At the district level, District Secretaries should establish and chair **Absentee Registration and Voting Consultative Groups**, comprised of the Registration Officers, local police and security forces, and Grama Sevakas. In addition, CSOs and political party representatives should be invited to observe the Group's meetings. These Groups would coordinate the census and registration programs, implement the absentee components of the registration and voting process, and work with CSOs, camp leaders, and political parties to provide registration and election related information to the public.

Parliament should enact legislation allowing for a comprehensive update and review of the activities of **Delimitation Commission**. Articles 95 – 98 provide the basic framework through which delimitation occurs, assigning seats in parliament based on district-level voter's registers. However, no comprehensive re-apportionment has occurred since 1996, and several constituencies are grossly malapportioned. Special consideration should be given to the issue of internal displacement, perhaps by appointing a representative from the IDP communities to the Commission. In addition, the work of the Commission should be sequenced with the census and voter registration process to ensure that the electoral map accurately reflects the post-conflict demographics of the country. Detailed information on considerations and best practices regarding

the process of electoral boundary delimitation can be found online at the ACE Project.⁵⁹ IFES can also provide specialized expertise and guidance on the process.

Implementation

Once the above institutional structures are in place, the stakeholders will need to organize and administer each of the major steps in the electoral process as defined by the relevant constitutional and statutory regulations developed during the Framework Reform Phase. These include: 1) confidence building and information; 2) census and registration; 3) political campaigning; and 4) balloting and results. From the outset, the process of IDP and migrant enfranchisement should be subject to a dedicated international/local observation effort. The monitoring effort would involve PAFFREL, CMEV, the EU, the Commonwealth, and political parties.

Voter Education and Confidence Building

Despite Sri Lanka's long democratic tradition, elections continue to be accompanied unacceptably high levels of political violence and intimidation; Programs will be required to support grassroots efforts to combat political violence, conduct public information campaigns on voting rights and procedures, and generate political party pacts and agreements regarding the conduct of campaigning in IDP camps and other areas where social tensions remain high.

Voters require access to three types of election-related information:

1. Process information covering the when, where, and how of registration and voting, should be made available by the EC and distributed through registration officers, media outlets, posters, and CSOs;
2. Sensitization information, which covers the political rights, responsibilities, and practices related to sustainable democracy, should be the special focus of the donor supported initiatives in the North and East; and
3. Political platform information, including candidate-specific platforms, should be produced and distributed by the parties and candidates, either directly through paid advertisements, posters, rallies, and debates or indirectly through press coverage and editorials. However, the activities of political parties vis-à-vis campaigning in IDP settlements and camps should be subject to special regulations and a political party pact covering agreed best practices.

Confidence building measures, including a focus on IDP voter education, should begin during the Consensus Phase and continue throughout the electoral process. Overall responsibility for voter education and broader democracy sensitization programming should rest with the DE, in consultation with the proposed CEAV and with CSOs and IGOs where applicable.

Unlike many countries hosting extensive IDP populations, Sri Lanka's administrative infrastructure has a strong presence in the IDP settlements. Thus, primary responsibility for delivering process information should be through the existing GOSL humanitarian infrastructure and coordinated via the Government Agents. A special effort should be made to engage camp leadership structures as conduits for voter information, as they are widely respected and understand the unique local dynamics of each camp. Some capacity building and training for the camp leadership structures would be useful and could be organized under the leadership of the DE via the District Offices. Information on registration and voting for IDPs should be produced and distributed through radio advertisements and in the print media, through distribution of posters and flyers in the IDP camps, and by engaging and sponsoring CSOs to conduct election related training activities in the camps.

⁵⁹ www.aceproject.org

Reaching migrant voters with process information will present a special challenge. The EC will need to work closely with the Ministry of Foreign Affairs regarding appropriate modalities to provide registration and voting information to voters residing abroad (See Annex III on modalities for absentee voting).

Census and Registration

Sri Lanka needs to conduct a comprehensive national census, linked to the creation of a district-level civil registration, issuance of a national identity card, and a nationally maintained computerized voter's register. Twenty years of population movements and death caused by the conflict and the Tsunami have strained on the record-keeping capacity of the Government Agents. Many of the IDPs lack official documentation and there is no centralized repository of information on the country's total population and distribution of individuals by district. While most district secretaries maintain fairly complete records and regular contacts with residents through the Grama Sevakas, the information is compartmentalized at the district level; resulting in duplications on the voter's registers. Many IDPs are listed on multiple registers; others are listed on none. In addition, information on the home district of displaced populations is often unavailable, making it difficult to plan for post-conflict returns. A census and registration would provide critical data to election organizers and to the humanitarian community to help plan for the post-conflict reconstruction.

The census and registration could be roughly modeled on the Kosovo civil/voter registration in 2000, where the voter's register was extracted from the results of civil registration, avoiding costly duplication of efforts. All Sri Lankans (including those residing abroad) should take part in the process, and a national ID card should be issued to all registrants over the age of sixteen. Those under sixteen should be included in the civil register database, together with their parent or guardian, in order to prepare for their eventual registration under normalized procedures after the election.

The registration should be structured to capture the following data:

- Name
- Biometric Thumbprint
- Age
- Current Residence
- District of Birth
- Intended District of Permanent Domicile
- Other information based on consultations with the social service agencies and the humanitarian community (occupation, skills, incomes, etc.)

The census and registration should be conceived as two separate undertakings, but could be conducted through a common process. Thus, the Grama Sevakas, with assistance from temporarily recruited enumerators, should make individual contact with all Sri Lankan households. Two forms would be completed; a census form, designed to collect basic demographic information, would be completed for each household. After collecting the household census data, the enumerators would complete individual civil/voter registration forms. These forms should be bubble-scanned and include more specific questions designed to capture data related to residency and other voter eligibility criteria. Each registration should also include the capture of biometric data (fingerprints and photograph) for use on the national identity card. Once captured, the information would be digitized at the district secretariat and a link established between the biometric data and the bubble-form information. Once the process is complete, the computerized records would be moved to Colombo for cross-checking against duplication. The final register would then be returned to the district level, where identity cards would be printed and distributed.

IDPs should continue to be provided the option of registering to have their ballots count in their original or their current district. Because of weaknesses in the administration of the IDP absentee

balloting program, it is not always possible for IDPs to receive the correct ballot. In addition, many IDPs who have registered for absentee voting apparently wind up listed on two different registers as the removal from the home list is not automatic. Thus, creating an electronic register and designing a mechanism to check for duplicate registrations is essential.

Many IDPs, however, cannot substantiate a district residency as a result of lost documents. This is a common problem in post-conflict elections and presents special difficulties to political leaders and election organizers; In order to minimize the potential for fraud, strict documentation criteria should be implemented. Unfortunately, the stricter the criteria, the more likely it is that IDP applicants will be unable to prove they meet the residency requirements and will thus be disenfranchised through no fault of their own. A social verification mechanism will be required in order to establish eligibility criteria for entry on the appropriate district register.

In order to maximize the enfranchisement opportunities of Sri Lankan IDPs, the GOSL will need to develop a special process for voters to replace lost documents from outside of their home districts. This will require a system to allow transmission of replacement document requests between the Government Agents in different districts. The current process is not transparent and not uniformly implemented throughout the country. A unique country-wide initiative with clear procedures and mechanisms for requesting replacement documents should be subject to a national-level information campaign to ensure that all IDPs are able to participate. The process should include mechanisms for persons who are rejected by their claimed home-district to appeal the decision, and, in the event the appeal fails, to use the mechanism of "social verification" to re-establish their official identity and eligibility to vote. These IDPs would swear an affidavit in front of a judge, notary, religious leader, or other notable and reputable person. Obviously, the integrity of the officials involved will prove the key element in ensuring that the process is not open to exploitation or fraud.

The Ministry of Foreign Affairs, with assistance from IOM and/or UNHCR, should operate registration programs for absentee voters and refugees. The external registration could take two different forms. In-person registration could be conducted at embassies, linked to a global information campaign regarding the process and dates. Alternately, a by-mail registration process (no census) could be operated out of Colombo. Details on the issues and infrastructure of such a process can be provided by IOM, which has extensive experience in organizing by-mail registration and voting programs.⁶⁰

Balloting and Security

The DE will need to account for population movements between the completion of voter registration and the date of elections. If the next national elections take place in the context of genuine movements towards consolidating the peace, election organizers should assume significant population movements to occur in tandem with the election calendar. A system will need to be in place to account for these movements, and ensure that those who move are able to change their registration details. As with the process of providing replacement documents, a uniform program should be devised and a national level information campaign conducted to inform returnees regarding their voting options upon return home. Regional discrepancies in administration will only undermine confidence in the election process.

Since this Action Plan is designed to manage a post-peace agreement election cycle, the DE will be to integrate various elements of the election with the spontaneous and organized population. It is invariably true that returns do not occur as quickly as expected at the end of hostilities, and election organizers frequently make unrealistic assumptions regarding how many of the displaced will have returned by election day. Thus, close coordination between humanitarian agencies will be required to track population movements, update the voters registers, and ensure the proper

⁶⁰ More information on documentation and social verification issues in the context of post-conflict elections can be found at: www.geneseo.edu/~iompress.

distribution of ballots. UNHCR, IOM, and other agencies could be engaged to track refugee and IDP returns and integrate their data with the registers maintained by the Registration Officers.

In terms of the conduct of IDP balloting, current mechanisms will require only minor modifications to adapt to the post-conflict environment. Most importantly, assuming the peace is genuine, the DE will no longer need to operate the cluster stations along the lines of control. Instead, the results of the registration program, combined with ongoing reporting on population movements and IDP locations should be used to establish IDP-only polling stations in areas with particularly high concentrations of displaced populations. These stations should be available only to IDPs and special training and procedures should be in place to facilitate the smooth functioning of the stations. In order to re-assure voters regarding the secrecy of the ballot, special procedures for counting IDP ballots should be implemented.

Annexes

Annex I: Estimated Population and Registered Voters ⁶¹

District	Estimated Pop. From 2003 census.	Registered Voters as of 2004	Seats	Total Displaced from Tsunami and Conflict (2005)
Colombo	2,305,000	1,467,751	20	37,964
Gampaha	2,089,000	1,327,145	17	3,469
Kalutara	1,077,000	746,138	10	35,513
Kandy	1,307,000	880,632	12	12
Matale	453,000	312,556	5	2,743
Nuwara Eliya	714,000	436,236	7	n/a
Galle	1,011,000	716,608	10	121,130
Matara	780,000	550,503	8	12,888
Habantota	533,000	384,361	7	13,374
Jaffna	589,000	664,229	9	70,964
Vanni	140,000	226,604	6	n/a
Batticaloa	536,000	303,928	5	75,228
Digamadulla	605,000	379,044	7	n/a
Trincomalee	377,000	224,307	4	92,381
Kurunegala	1,475,000	1,089,482	16	3,115
Puttalam	722,000	450,057	8	n/a
Anuradhapura	764,000	514,149	8	10,552
Polonnaruwa	368,000	254,061	5	2,815
Badulla	801,000	511,115	8	239
Monaragala	405,000	262,742	5	n/a
Ratnapura	1,036,000	647,035	10	138
Kegalle	789,000	570,299	9	41

⁶¹ Voter #'s & Seats granted from EU Parliamentary Election report 2004; IDP #'s from Internal Displacement Monitoring Center, Sri Lanka Website [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/3DB90653137C2B9E802570B8005AAF43?OpenDocument#d](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/3DB90653137C2B9E802570B8005AAF43?OpenDocument#d) isclaimer; Population Trends from 1967-2003: <http://www.statistics.gov.lk/censusofpopulation/Mid%20year%20Population%20Statistics%20by%20District.pdf>

Annex II: Election Rights Contained in the Guiding Principles on Internal Displacement

The following table summarizes the political rights relevant to elections contained in the guiding principles. The first column identified the core standards necessary for a genuine election and column 2 identifies the obligations identified by the Guiding Principles.

Election Standard	Relevant Principle
Non-Discrimination and universal suffrage	Principle 1: Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
Election Security	Principle 12: Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
Freedom of Movement, right to travel to election facilities	Principle 14: 1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence. 2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.
Re-establishment of official identity	Principle 20: 1. Every human being has the right to recognition everywhere as a person before the law. 2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
Right to Political Participation and auxiliary rights related to "fair" elections	<p>Principle 22:1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression; ... (c) The right to associate freely and participate equally in community affairs; (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and</p> <p>Principle 29:1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.</p>

Annex III: External Voting Scenario⁶²

Background

An estimated 1 million Sri Lankans are abroad for purposes of economic remuneration. These migrant workers comprise approximately 12% of the registered voters, and contribute roughly 20% of the country's foreign exchange earnings every year. Almost every family in Sri Lanka has at least one family member who has worked abroad, primarily in the Gulf States, and remittances constitute 17% of national savings every year. 70% of the migrant labor force is female.

Sri Lanka ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (the Convention) in 1996. Article 41 of the Convention holds that:

- 1) Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation;
- 2) The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.⁶³

Since 1998, a coalition of civil society groups led the Migrant Services Center of the National Workers Congress, and joined by PAFFREL and the CMEV, has been calling for parliamentary action to amend the election law in order to allow external voting for migrant laborers. Most political parties have been broadly (although not actively) supportive, yet the issue has languished at the bottom of the priority list in parliament. For the most part, this lack of action reflects uncertainty over how such a program would operate, concerns that an absentee voting program would be manipulated, and the potential cost.

In 2002, the Human Rights Commission of Sri Lanka recommended that the government "take the necessary steps to amend the [electoral] legislation to incorporate the necessary provisions to enable the grant of franchise to migrant workers and take all other steps to accomplish the implementation of the same."⁶⁴ The Commission recommended that the right to vote be granted for Presidential and Parliamentary elections, and for national referenda. In addition, it proposed that only those who have migrated for labor purposes and who intend to return to Sri Lanka should be provided the absentee ballot option.

External voting for economic migrants presents a number of logistical and political difficulties and is thus treated in this Action Plan as a separate but parallel process. While an increasing number of countries provide absentee voting services to economic migrants, legal frameworks and procedures vary widely and it is more difficult to identify an inherent "right" to participate in a country's election process while resident abroad. In the case of Sri Lanka, there is significant domestic support for extending the franchise to this population. However, the assessment visit revealed a number of concerns regarding the cost and transparency of such a program.

The key considerations surrounding external voting for migrant laborers can be divided into three general questions: First, who should be eligible to vote from outside of their home districts? Second, what sorts of systems of representation should be established for these voters? Third, how can the secrecy of the ballot and election transparency be protected and costs contained if election activities occur on the territory of a foreign state? The first two questions are political,

⁶² Much of the discussion in this section is derived from Jeremy Grace, "Challenging the Norms and Standards of Election Administration: Standards for External and Absentee Voting." Available at http://www.ifes.org/files/Grace_absentee_standards_final.pdf

⁶³ Available at: http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm

⁶⁴ Human Rights Commission of Sri Lanka, "Recommendation to Minister of Labor re national Workers Congress on Migrant Worker's Voting Rights."

requiring a consultative process between parliamentarians and stakeholders. The final question is technical, requiring the application of best practices by DE.

Eligibility Requirements

Parliament will first need to make a determination on who should be eligible to vote from abroad. The two key considerations relate to citizenship and residency requirements. In terms of citizenship, the constitution clearly articulates that only Sri Lankan citizens are eligible to vote. While it is not recommended that Sri Lanka move to enfranchise non-citizen members of the diaspora, parliamentarians should consider whether dual nationals should be eligible to vote through such a program.

The more complex question centers on residency requirements. Should external voters be required to demonstrate a linkage with a particular constituency during a defined period of time in order to be eligible? Most countries that allow absentee voting generally condition eligibility on the length of a citizen's absence:

“Canadian voters, for example, may vote by absentee ballot for up to five years following their departure from Canada, so long as they intend to resume permanent residence at some point in the future. In the United Kingdom, voters are automatically removed from the electoral rolls 15 years after moving abroad, regardless of their intent to return. In Germany, voters may reside abroad up to 25 years before losing eligibility, although German nationals residing in member states of the Council of Europe retain their voter eligibility indefinitely. New Zealand maintains no fixed time-away threshold but does require that citizens return to their home constituency at least once every three years in order to remain on the voting rolls.”⁶⁵

For Sri Lanka, the determination of an appropriate time-period to remain eligible needs to be subject to parliamentary consideration and the adoption of necessary statutes.

Representation

If a decision is taken to enfranchise external voters, Sri Lanka must determine how to translate the will of the absentee electorate into the country's system of representation. Every electoral district in the country would be affected by an external voting program, and the calculation of seats could be strongly impacted by the participation of those abroad. Thus, the decision to enfranchise absentee voters will require parliamentary action in order to determine how these votes will effect the apportionment of districts. In addition, a determination will need to be made on whether to provide absentee voting for both national and sub-national elections (i.e. local councils). Once these determinations are reached, the delimitation commission will need to account for these votes in any future re-apportionment process.⁶⁶

Transparency and Organization

Recent post-conflict elections have utilized two basic approaches to enfranchising those abroad: in-person voting and/or postal voting.⁶⁷ Sri Lanka already utilizes a postal voting system for soldiers

⁶⁵ Ibid.

⁶⁶ See Ibid for more information.

⁶⁷ One additional mechanism has been developed for refugees referred to as “facilitated repatriation,” which involves building refugee returns into the election timeline, and linking the election management body with the UNHCR and other refugee protection agencies. These programs were employed in Namibia in 1989, Cambodia in 1993, and Liberia in 2005. The advantage to facilitated repatriation is that no separate elections procedures must be designed for refugees except to ensure that they are registered and able to vote upon their return home. The process also can help contribute to the rapid return and reintegration of displaced populations. This approach has a number of disadvantages. First, facilitated repatriation is only suitable to environments where security conditions warrant large-scale refugee returns. Furthermore, it

and civil servants who are outside of their home constituency on election day, so it might make sense to simply broaden this mechanism to include external voters. On the other hand, postal voting, particularly on a global scale, presents several challenges to the transparency of the election and to ballot secrecy.

In-person external voting programs require election organizers to establish a physical presence inside the host country where migrants register and vote in person at an embassy or official elections facility. If expanded beyond the embassy, this process requires formal agreement with the host-country in order to conduct operations in its territory. The advantage of in-person voting is increased transparency; election organizers directly interact with each voter, can examine documents first-hand, and can respond to questions and issues immediately. The drawback is cost. Facilities must be identified and rented and local staff must be hired. In addition, in-person programs increase the exposure of elections staff to security threats.

By-mail programs utilize postal and facsimile communications to interact with registrants and voters. Eligibility criteria and application forms are made available through a wide array of media and distributed through refugee and migrant clubs and associations. The applicant must submit the proper form along with supporting documentation by mail to a centralized processing facility. The applications are checked by staff and either confirmed or denied. If confirmed, the voter is sent a registration receipt, and eventually a ballot (see below for more detail on the procedures).

The benefit of by-mail voting is related to economies of scale. If all external votes are processed in a centralized operational center there is no need for separate facilities and staffing in host countries. As a result, the operation is significantly cheaper per vote cast than in-person voting. In addition, by-mail programs can reach potential voters in countries that may not wish to allow election operations on their soil. They also provide more security to election staff. In-person programs require that elections staff operate with a high degree of visibility in a wide range of locations. While security planning and cooperation with host-government security agencies can minimize threats, they can never be eliminated.

One major problem with postal voting is that the election management body does not retain full control over the ballots. During in-person polling, elections staff lose control of the ballot only momentarily, when it is handed to the voter for marking. Even then the staff can ensure that only the qualified voter enters the voting booth, marks the ballot according to his/her free will, and deposits it in the ballot box. Sending a postal ballot to a voter results in a period of time in which the ballot is completely outside the supervision of elections staff. Thus, the voter could be subject to a wide range of pressures that compromise his/her freedom of choice.⁶⁸ In some instances, for example, husbands may seek to control how their wives mark the ballot. Normal balloting procedures prohibit third parties from entering the voting booth (unless invited by the voter due to specific disabilities) and generally demarcate a space around a polling station where electioneering (handing out political platforms, posters urging a particular candidate or option) is prohibited. It is impossible to implement these rules in a postal system.

A related problem is the difficulty of convincing voters that their ballot is truly secret. Most postal voting systems require voters to return the ballot inside a sealed "secrecy envelope" together with their registration receipt inside a larger second envelope; Many voters are apprehensive that the system could potentially allow election officials to match the voters name with the marked ballot,

only addresses the issue of refugees. Finally, facilitated repatriation links the election schedule to the process of returns, complicating the implementation of the in-country elections.

⁶⁸ Even consolidated democracies are not free from attempts to manipulate postal balloting. A report on postal voting by the UK Electoral Commission found that: "We have received reports of party workers seeking to influence how votes are cast by exerting pressure (or even, in a handful of reported cases, completing the ballot on behalf of the voter). Practices such as these clearly raise concerns ..." The Electoral Commission (UK), "Absentee Voting in Great Britain: Report and Recommendations," 2003: 27. Available at: <http://www.electoralcommission.org.uk>.

compromising voter secrecy. Despite these objections, postal voting is the only cost-efficient mechanism for enfranchising a large and geographically dispersed migrant electorate.

Recent elections have employed a combination of postal and in-person balloting, and this option might make sense for Sri Lanka if an agreement were reached with India to allow for refugee voting. Typically, the in-person operations occur in states with high concentrations of voters and political actors with a strong stake in electoral outcomes. In these environments, maximum supervision of the registration and voting is required in order to ensure that the vote is not manipulated. Voters elsewhere in the world are provided a postal ballot.

Planning & Administration

DEs often fail to account for the lengthened timelines required for external voting operations. Sri Lanka is fortunate that, barring a constitutional or parliamentary crisis, no national elections are due until 2009. External voting requires a significant lead time over in-country operations and should drive the election timeline. If possible, the entire electoral schedule should be first tested against the external requirements. Late decisions, particularly in regards to eligibility and documentation requirements, will significantly affect the participation rates of those abroad.

Information Gathering

The exact number and locations of Sri Lankans abroad is unknown. Early work on external voting should include a number of assessment missions to major host-countries, including those in the Gulf Region, Western Europe, and North America. This information should be compiled in a report to be made available to the DE and the CEAV. Key questions include:

- How many Sri Lankan citizens are each country?
- Is the country's foreign ministry interested in cooperating?
- What is the geographic dispersion of Sri Lankans within the country?
- What status do they hold?
- What documents do they hold?
- Are there well established expatriate clubs and associations?
- What media and information sources are available to the population?
- What are security conditions like in the country?
- Is the country suitable for an in-person voting program?

Sub-contracting

In several recent post-conflict elections, election administrators have sub-contracted the actual implementation of the external vote. The logic of subcontracting is that DE staff are elections specialists, not migration specialists. By bringing a refugee/migration agency such as IOM on board, the DE benefits from a pre-existing network of field missions that support the program.

Under this scenario, the DE would contract an implementing partner under a Memorandum of Understanding (MoU) detailing the respective obligations of each party. The GOSL retains authority over the elections framework, while the contractor operates the voter registration centers and balloting operations out of country. IOM has been the lead organization in this regard. Its experience in providing election assistance to refugees extends back to the Namibian elections of 1989, and it played a central role in elections in Bosnia, East Timor, Kosovo, Afghanistan and Iraq. IOM's status as an inter-governmental organization also provides it with diplomatic avenues that are not always available to national governments or to NGOs.

External Voting Timeline

External voting should drive the overall elections timeline. All segments of election planning (including database development, forms and materials design and ordering, and the registration

and voting schedule) should be conducted with an eye to the fact that a by-mail program requires an earlier start than in-country operations and may require the capturing of unique data from external registrants. The DE should consider how an external voting program would relate to regular voting operations and ensure a workable plan to guarantee the right of access to the electoral process. Technical assistance along these lines could be provided by IOM and IFES.

Building Confidence in an External Voting Program

The above discussion is intended only to sketch the broad issues that Sri Lanka will need to address should a decision be taken to provide external voting opportunities for migrant workers. Once the political decision to proceed is taken, detailed operational planning will be required to ensure that the program is administered transparently and is able to meet all election deadlines. Technical assistance and advice could be provided through donor funded programs that link the DE with other country DEs that operate external voting programs (i.e., the Philippines, Mexico) and with specific organizations that can provide detailed advice and assistance on planning, budgeting, and implementation.

In order to build popular understanding and support for such a program, IOM proposes to organize a conference in Colombo to discuss the political and implementation issues. The Assessment team held fruitful discussions regarding such a program with the Migrant Services Center and PAFFREL, who are interested in assisting with a conference to address questions of expanding and protecting voting rights in Sri Lanka. The conference would bring together domestic civil society organizations, parliamentarians, representatives from the Commissioner of Elections, and international experts to share experiences from the November 2005 elections and discuss strategies for improving the voting rights of those outside their home constituencies.

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Annex V: About the PRESS Project

IOM considers the establishment of democratic electoral processes to be an essential component of peace building and vital to the creation of sustainable and credible democratic structures. In those cases where populations are displaced and without opportunities to register and vote, a mechanism for their enfranchisement is warranted. To the extent that these groups are left outside of the electoral processes, the legitimacy of these processes is compromised.

IOM has extensive experience organizing programs to ensure refugees and other displaced/migrant populations are able to participate in post-conflict elections and referenda. IOM has administered these programs for elections in Bosnia and Herzegovina, Kosovo, East Timor, Afghanistan, and Iraq. The administration of these programs, through which millions of conflict-forced migrants have been able to vote, has contributed to IOM's unique institutional capacity and expertise with election technical issues as they relate to external and absentee voting programs.

Through the USAID-funded Participatory Elections Project (PEP), which was completed in July 2004, IOM assessed existing electoral practices; identified the obligations, standards, and best practices concerning the enfranchisement of conflict-forced migrants (CFMs); and established a Web-based information resource (www.geneseo.edu/~iompress), providing documentation and case studies on CFM enfranchisement

Under a follow-up grant from USAID, IOM has recently launched the Political Rights and Enfranchisement System Strengthening (PRESS) project in order to further work towards genuine and inclusive elections. This Uganda Action Plan is the first under PRESS. The project has uniquely positioned IOM with global expertise in both research and practice on migrant political rights.