Post-Tsunami Relief and Rehabilitation: A Violation of Human Rights

South Asia Regional Programme

Report of a Fact-Finding Mission to Tamil Nadu, India and Sri Lanka

Executive Summary

After receiving reports on the inadequacy of relief and rehabilitation measures for tsunami-survivors in both India and Sri Lanka, especially in terms of housing, the Housing and Land Rights Network (South Asia Regional Programme) decided to undertake a visit to the areas to investigate the conditions. The fact-finding mission to Tamil Nadu, India and Sri Lanka was conducted in the months of June and July 2005. The primary aim of this mission was to evaluate whether human rights standards were being used and enforced in developing adequate housing for the survivors. Our study not only confirmed what we had heard, but further revealed glaring discrepancies between what was being reported and what was actually happening with regard to relief and rehabilitation in the tsunami-impacted areas.

Main Findings:

1. Relief and rehabilitation processes across Tamil Nadu and Sri Lanka have been carried out with a glaring disregard for the human rights of all survivors, including their right to equality/non-discrimination, right to livelihood, right to food, right to health, right to participation and information, right to adequate housing, right to dignity, and the right to security.
2. Despite the outpouring of aid, benefits had not reached all affected people.
3. Relief assistance and compensation had not entirely been based on a comprehensive needs assessment.
4. Women suffered the greatest brunt of the tsunami disaster, but relief and rehabilitation policies instead of addressing their concerns often served to increase discrimination against them. Most relief and rehabilitation has been carried out in a gender-neutral manner. Furthermore, violence against women was a common complaint at many sites.
5. Relief and rehabilitation policies had not taken into account special needs of vulnerable populations including women, children, migrants, refugees, internally displaced persons, minorities, and disabled people. Further, most measures lacked cultural sensitivity and were often not suited to meet local conditions.
6. Affected people’s right to participate in relief and rehabilitation planning and implementation was not being respected. People were not being provided with adequate and timely information. Confusion regarding relevant government policies and appropriate responsible agencies was rampant.
7. There was no effective mechanism to ensure timely implementation and monitoring of the disbursal of relief assistance and compensation, and to ensure accountability of government and non-government agencies.
8. Government efforts in Tamil Nadu and Sri Lanka seemed focused towards rebuilding infrastructure, rather than on restoring people’s lives and livelihoods.
9. The right to adequate housing of the survivors was being violated in most places in Tamil Nadu and Sri Lanka, not just by the government, but also by international and other relief and voluntary agencies. Temporary housing shelters had been constructed with poor and inadequate materials, and with a lack of consideration for adequate location, habitability, sanitation, security and culture. Seven months later, in some areas in Sri Lanka, people were still living in tents and had not moved in to temporary housing. Plans for permanent housing in most parts of Tamil Nadu and Sri Lanka had still not been initiated.
10. Livelihoods of affected people had still not been restored, and in many areas, people had not been able to resume work. This had resulted in despair, frustration, and insecurity.
11. Hunger and malnutrition were severe among many survivors. Poor health conditions were rampant in almost all temporary housing sites. Most of these arose from the faulty construction of settlements, and included heat-related boils and skin rashes, chicken pox, respiratory disorders, fever and insect bites.
12. Services including food, water and sanitation for the affected people had been severely compromised. Post-disaster trauma and depression were widespread, but adequate counselling facilities, especially for children, were missing.
13. Overall, a holistic approach and response mechanism to the tsunami disaster was lacking.

There is an urgent need for all agencies to be government, non-government, international, local or faith-based to adhere to internationally accepted human rights standards and develop a strong rights-based approach to relief and rehabilitation work. The right to humanitarian relief must also be recognised and upheld as a basic human right.
Post-tsunami rehabilitation efforts need to urgently focus on the provision of adequate permanent housing and on comprehensive livelihood restoration. Holistic and long-term solutions must be integral to all rehabilitation packages. Furthermore, tsunami survivors should not be merely viewed as helpless victims but should be actively included in all decision-making processes that concern them. Concerted efforts must be made to ensure that their needs are met, that their human rights are protected and fulfilled, and their dignity is upheld.

**Introduction**

The earthquake and resulting tsunami of 26 December 2004 that hit 12 countries of the Indian Ocean reportedly killed over 285,000 people (reported buried or missing), negatively affected the basic needs and livelihoods of five million people, and caused extensive damage to infrastructure. The majority of the people affected by the earthquake and the tsunami had fisheries and farm-based livelihoods or was employed in associated enterprises. While fisheries were hit the worst, crop and livestock also suffered substantial losses. About five million people are reported to be homeless, while according to the Red Cross, more than 1.6 million people have been displaced.

In South Asia, the tsunami brought devastation all along the coast of Sri Lanka, while in India the worst hit were the state of Tamil Nadu and the Andaman and Nicobar Islands. Coastal Andhra Pradesh and Kerala also experienced significant damage. In Tamil Nadu, 1.5 lakh (150,000) people in 33 fishing hamlets in 13 districts have been directly and indirectly affected by the tsunami. Loss and damage to housing is an estimated USD 228 million.1 At least 647,556 persons were displaced and moved into emergency shelters.2 In Sri Lanka, the tsunami killed over 35,000 people, destroyed over 99,000 homes, left over 800,000 people homeless, damaged natural ecosystems, and caused widespread destruction and devastation. Vulnerable groups, such as fisher communities living close to the shore, bore the brunt of the tidal waves. 3 By striking the conflict-ridden northeast area of the country, the tsunami compounded previously existing vulnerabilities and tensions. Sri Lanka has never faced a natural disaster on the scale of the December 2004 tsunami, and the country was still trying to come to grips with the devastation, loss and complexities unleashed by it.

**Fact-Finding Mission to Tamil Nadu, India and Sri Lanka**

The purpose of this fact-finding mission undertaken by the Housing and Land Rights Network’s South Asia Regional Programme (HLRN-SARP) to Tamil Nadu in southern India and coastal Sri Lanka was to specifically look at temporary housing conditions and plans for permanent housing. While it is impossible to separate the critical issues facing tsunami survivors, we tried to focus on analysing whether their right to adequate housing was being upheld.

Our main goal was to assess whether human rights standards were being used and enforced in developing temporary housing for the survivors and if not, how these could be incorporated in permanent housing plans and future rehabilitation work. As explained later in the report, the benchmark used is that of adequate housing, which goes well beyond the perception of housing as a mere roof and four walls. The right to adequate housing has been developed using the indivisibility of rights approach. It incorporates multiple related elements and is integrally related to the rights to life, livelihood, food, health, sanitation, participation and information, and land and natural resources.

The fact-finding mission to the tsunami-affected areas of Tamil Nadu, India was conducted from 24 June to 1 July by Malavika Vartak and Shivani Chaudhry from Housing and Land Rights Network and R. Sreedhar from Environics. The Sri Lankan mission took place from 25 to 31 July, and the team consisted of Malavika Vartak and Shivani Chaudhry.

In Tamil Nadu the team visited the following sites: Tazhanguda, Devanampattinam, Sonamkuppam, Chidambaram, Surya Nagar, MGR Thittu and Pillumedu, in Cuddalore District; Palayar, in Pudukottai District; Akkaraipettai, Serudhur and Velankanni, in Nagapattinam District; Nagercoil, Melamanakudy, Keezhmanakudy, Veerabagupathy, Kottilpadu and Mutom, in Kanyakumari District; Kargil Nagar, Pattinapakam and Srinivasapuram, in Chennai District; Pudu Nemellikuppam and Sadras, in Kanchipuram District.

In Sri Lanka we visited the provinces of Galle in the south, and Batticalao and Ampara in the northeast. The sites visited include: Magalle, Akurala, Galagoda, Katugoda 5C Camp, and Peraliya, in Galle province; Thiraimadu and Paddy Marketing Board in Batticalao province; and Kalmunai, Akkaarlipattu, Periyaniavalai, and Kannagiramam, in Ampara province.
We visited relief camps, “emergency” shelters and temporary housing “settlements” as well as two permanent housing sites. Discussions, conversations and interviews were held with survivors including affected communities and displaced people, and with activists, members of social movements, NGO representatives, local government officials and representatives of international agencies. In Sri Lanka, we held three workshops with civil society groups where participants shared experiences and the team explained the elements of the right to adequate housing with the aim of strengthening local advocacy efforts.

The first part of the report presents some of the overarching concerns in post-tsunami relief and rehabilitation. It then assesses housing and land conditions at the sites visited in Tamil Nadu and Sri Lanka against standards articulated under the human right to adequate housing. Finally, it makes specific recommendations toward ensuring that the human rights and dignity of individuals and communities are upheld in all rehabilitation programmes with a view to informing plans relating to permanent housing and livelihood restoration.

Recommendations

The report has tried to highlight some of the flaws in the current operative mechanisms of governments and non-government agencies involved in relief and rehabilitation in the tsunami-affected areas of India and Sri Lanka. The aim of this report, however, is not merely to identify shortcomings, but also to pose concrete suggestions that promote solutions through the application of the human rights framework in all relief and rehabilitation work. Since reconstruction in both countries is at the temporary housing stage, we hope that the following recommendations are incorporated to remedy some past mistakes and ensure that they are not repeated when plans for permanent housing are made and implemented.

In order to address many of the concerns raised by this fact-finding mission, it is absolutely necessary that all the actors accept that the rehabilitation efforts, particularly those involving temporary shelters and the accompanying facilities, have violated human dignity. It is this admission that will enable the agencies to learn and seek appropriate solutions. The agencies involved in rehabilitation should also accept the fact that the fisher community has evolved its mores from a sea-based livelihood and culture that, in many senses, differs from the mainstream thinking of the administration and other agencies. The relief agencies must recognize that durable and culturally appropriate solutions can only be achieved through greater participation of the affected communities.

All agencies must also recognize that so far rehabilitation efforts have been more to their convenience and competence than what is actually needed. Needs and rights-based efforts would require far greater changes in their own thinking and practice.

Recommendations to Government of India, State Government of Tamil Nadu, and Government of Sri Lanka:

All relief and rehabilitation plans must meet national and international human rights standards, in particular the rights to life, livelihood, health, food, information, dignity, equality, freedom of association and movement, and adequate housing.

Based on these standards, every person irrespective of race, class, caste, linguistic group, ethnicity, sex, sexual orientation, marital status, disability and age, at every rehabilitation site/permanent housing colony for tsunami survivor must have:

- Adequate housing;
- Adequate food and resources to access food;
- Adequate health care facilities, including psychological counselling;
- Access to education;
- Access to livelihood options;
- Opportunity for participation and representation;
- Access to protection against violence;
- There should be women police personnel in every resettlement site;
- Access to judicial remedy;
- All other rights normally available to citizens of the particular country.

Government efforts in Tamil Nadu and Sri Lanka seem focused toward rebuilding infrastructure, rather than on restoring people’s lives and livelihoods. Equal attention must be given to
rebuilding people’s lives and livelihoods and to addressing the environmental, psychological and social dimensions of the tsunami, apart from the physical infrastructural losses.

The government should ensure that relief assistance and compensation is based on a comprehensive needs assessment that takes into account a holistic assessment of the losses incurred:
- Men and women should be equally eligible for the collection of compensation money;
- Refugees and internally displaced persons affected by the tsunami must be given special attention;
- Special measures to address children’s needs, especially of those who have lost one or both parents in the tsunami, should be incorporated in all relief and rehabilitation plans. It is imperative that these measures are primarily based on the perspective of children’s rights.

The government must provide people with adequate and timely information on:
- Relief and reconstruction plans and processes;
- Funds received and amount disbursed;
- Responsible authorities/agencies in the relief and rehabilitation work.

Information must be made available in local languages and through appropriate media with a view of reaching the maximum number of people in every community:
- Special steps must be taken so that all information reaches marginalized sections, including women, children, minorities, the elderly and the disabled.

Affected people’s right to participate in relief and rehabilitation planning and implementation must be respected and promoted:
- Relief and rehabilitation requires assessment as well as monitoring and should involve local governing bodies. Joint task forces comprising of affected people and members of the implementing agency should be set up for the purpose;
- Existing bodies of local governance should be remodelled with a view to ensuring proportionate representation of all sections of society, including women, religious and ethnic minorities and dalits;
- Where older governing bodies have dispersed, the government should create new governing bodies for every local community on the lines mentioned above.

The government should set up special mechanisms to ensure timely implementation and monitoring of the disbursal of relief assistance and compensation:

Grievance redress mechanisms should be set up at the lowest administrative levels with adequate powers to address problems that may arise in the course of the relief and rehabilitation process; Special mechanisms to assess relief and rehabilitation work of government and non-government agencies vis-à-vis human rights standards should be set up.

A National Disaster Policy that specifies responsible government agencies and their functions should be passed in both countries to ensure timely and coordinated response to future disasters. Disaster management committees should be set up at state and district levels with their powers and responsibilities duly explained.

General Recommendations to NGOs, International Relief Agencies, Donors, other Voluntary Agencies and Multilateral Development Banks:

The HLRN team appreciates the intentions of most of the actors involved in relief and rehabilitation, and commends the efforts of some. Nevertheless, despite an apparent display of goodwill, on the whole, there is much to be desired and improved. Below is a general list of recommendations to local and international NGOs and relief agencies:

Relief and rehabilitation must be recognised and upheld as an inalienable right of all affected people.

Access to relief and rehabilitation should not be contingent upon gender, caste, class, race, age, proof of residence and location of the original house, etc.
Survivors must not be viewed merely as helpless victims but as people responsible for their future and must be included in all plans and processes for rehabilitation.

All relief and rehabilitation work must be based on a comprehensive assessment of needs, factoring in the special needs of all marginalized groups including women, children, ethnic and other minorities.

For international agencies, it is imperative to understand local cultural dynamics and socio-political interactions before engaging with the communities.

Agencies must follow internationally accepted human rights standards and principles in their work. A rights-based approach must underlie all relief and rehabilitation work and the principles of non-discrimination, equality, and gender-sensitivity must be upheld. Rehabilitation should look into the long-term needs and rights of individuals and communities.

Rehabilitation policies must be culturally sensitive and well suited to meet local conditions. The special concerns of women must be met, and relief and rehabilitation must be gender-sensitive. While keeping in tune with the local culture, agencies should not perpetuate discrimination against women and other vulnerable groups such as minorities and migrants. Language must be given due attention. All information must be made available in the local language and through media that will reach the largest number of people.

Information should be made available on food packets and medicines that are distributed, so that people are aware of what they are consuming.

When relief and aid workers visit a site, adept interpreters must accompany them. When dealing with women, agencies must ensure that the interpreter is also a woman.

Equal access to aid must be ensured by registering men, women and children individually. Women should be able to collect food and other aid independently from male heads of household.

All agencies involved in reconstruction and rehabilitation must develop a code of operation for all their staff and workers. This must include accountability to the people they are working for. In cases where temporary shelters have been built by agencies, they must be responsible for follow-up, inspection and regular checks of the sites. A staff person should visit the site regularly and establish a grievance mechanism for the people to use.

NGOs and international agencies should ensure that the human rights framework informs all government guidelines and stipulations on relief and rehabilitation.

All agencies must operate on the principle of cooperation. This should involve regular meetings and information sharing as well as coordination to ensure that their policies are not conflicting, duplicative or negating of one another. There is a clear and urgent need to come up with guidelines based on the international human rights framework that go beyond the SPHERE Guidelines and articulate certain minimum standards on space, facilities and infrastructure for post-disaster relief and rehabilitation work. There is also an urgent need to define concepts such as temporary and permanent housing not only in terms of their attributes but also in terms of a broad timeline for their provision.

Recommendations to Governments, NGOs, International Relief Agencies, Donors, other Voluntary Agencies and Multilateral Development Banks, to Address Problems in Temporary Housing:

While we believe that application of the human rights framework can address the variety of issues and complaints that have come to our notice, the following recommendations are targeted toward redressing some of the major grievances of people living in temporary houses:

Human rights standards must be used while building temporary shelters to make sure that they meet the conditions of adequacy enumerated above. Where temporary shelters are still being constructed, especially in Sri Lanka, consultations must be held with the communities involved to make sure that their needs are incorporated into the design and material used.
In shelters that are already being subject to wear and tear, leakages, breakages and cracks, repair should be immediately undertaken and the materials should be improved. For instance, where possible, tar sheeting should be replaced with thatch in Tamil Nadu, especially if people are expected to stay there longer than a month.

Space provided in temporary shelters must be increased after consultations with the particular community.

Every shelter should have a partition to provide some space and privacy for women. Temporary shelters should not be built in areas that are low-lying and susceptible to flooding. Wherever built in such low-lying areas, the inhabitants should be relocated before the winter monsoons.

Temporary shelters should not be built on private land where the residents are vulnerable to eviction.

All temporary shelters must have access to water, sanitation, and solid waste management and electricity facilities.

Separate toilets should be built for women closer to the shelters, lighting in temporary camps should be improved, and fuel and water sources (for which women and girls typically are responsible) should be provided in the camps.

Outlets for subsidised rations through the public distribution system should be located in the vicinity of the temporary housing colony.

Healthcare facilities and protocols that ensure privacy, safety and confidentiality must be provided. Women healthcare providers should be present where possible, and women or gender-sensitive interpreters should accompany doctors and nurses who do not speak the local language.

Trained psychological counsellors must visit all temporary housing sites on a regular basis. Temporary housing sites should not be located too far from the town and in case this is inevitable, the site should be connected by subsidised and regular public transport. Crãches should be established at all resettlement sites.

All resettlement sites should be located not more than 2 kilometres away from a primary school and should be connected by subsidised public transport to local schools and colleges.

Government agencies and NGOs that construct temporary shelters must visit them regularly and perform site inspections while following a comprehensive checklist to ensure that people are living in habitable conditions, and also to hear their complaints and redress them.

Recommendations to Governments, NGOs, International Relief Agencies, Donors, other Voluntary Agencies and Multilateral Development Banks regarding Permanent Housing and Land:

1. It is of utmost importance that permanent housing meets international housing rights standards and provides for security of tenure, affordability, accessibility, habitability, access to public goods and services, access to land, location, cultural adequacy, and physical security and privacy.

2. Timely and clear information must be made available to all in the local language and through a variety of media with a view to reaching all marginalized sections of the community.

All decisions regarding the size and design of the house and layout of the colony should be taken after consultation with the community. Care should be taken to ensure meaningful participation of the marginalized sections of the community including women, those belonging to ethnic and religious minorities, dalits, the elderly and the disabled.

Construction and design of the permanent house should allow for extensions if the family so desires at a later stage.
Number of family members in a house must be considered when building and allocating new houses. Extended families that lived in one large house cannot be given the same space meant for a single family. Instead, it should be adequate for their needs.

Communities should not be arbitrarily divided on the basis of the 50 houses per agency norm as proposed by the Tamil Nadu government.

In Sri Lanka, special concessionary provisions should be made to support vulnerable families who may not be able to carry out construction of their homes within six months (as stipulated by the Assistance Policy and Implementation Guidelines on Housing and Township Development), especially women-headed households.

The issue regarding the buffer zone (200 metres in India; and in Sri Lanka, 100 metres in the west and south, and 200 metres in the north and east) needs to be resolved through a process of close and intensive consultation with the affected communities.

Efforts must be made to ensure that members of fishing communities are able to live close enough to the sea to be able to continue their livelihood and to have access to their boats and nets.

Since most of the post-tsunami resettlement will take place on state land, it is imperative that the state takes urgent steps to amend outdated patriarchal land laws and the administrative practices carried out under them, so that women can have equal access to land ownership. Women must be granted joint ownership for state land allocated and state land must not be allocated only to the head of household (currently defined as the male). If the land was in a manâs name before the tsunami, new property rights must be given in joint ownership. Similarly, if the land and house was in a manâs name before the tsunami, certificates given to households for the purpose of reconstructing damaged houses should be given in joint ownership to him and his wife (or daughter if the wife has died);

Customary law in the east of Sri Lanka should be respected as it allows for property to be inherited from mother to daughter. Given the inherent inequality and discrimination that women suffer, it is recommended that in cases where land was owned by a woman before the tsunami, the resettlement land titles should be given to women.

a. If the land belonged to a woman who died, the land in resettlement areas should be given to the daughters.

b. If the land and house was in a womanâs name before the tsunami, certificates given to households for the purpose of reconstructing damaged houses, should be given in the womanâs name.

People who were living outside the buffer zone, without permit or land titles, or on rent for many years, should be eligible for a house or other assistance.

Those who were living in rented accommodation must also be provided alternative housing. The community should be involved in construction activity. District level committees should be formed to monitor all construction work, including the quality of material used and to check for discrepancies.

Houses must be constructed using socially and culturally appropriate processes and infrastructure designs, and should be disaster-sensitive and eco-friendly. Local materials favoured by the people should be used as far as possible.

All new housing should be accessible to people with disabilities and to senior citizens. Permanent housing must look into socio-cultural dynamics and issues of ethnicity.

Recommendations to Governments, NGOs, International Relief Agencies, Donors, other Voluntary Agencies and Multilateral Development Banks regarding Livelihoods:

1. Compensation for lost livelihoods must be based on a comprehensive needs assessment and must be well coordinated and well planned to minimise duplication, to avoid arbitrariness and negligence, and to ensure that benefits reach the needy so they are able to resume working and earning again.
2. Opportunities should be provided not just to help people regain their pre-tsunami levels of living, but also to improve their lives where possible.

3. The government must provide not just boats or just nets but both to the affected fishers in order to enable them to resume their fishing activities. According to the Fisher Peoples’ Movement’s Tsunami Relief and Rehabilitation Programme (FMTR&RP) of Tamil Nadu, two to three tonnes of fishing nets will be needed in each village to initiate fishing activities. Boats provided must be suitable to the waters that they will be used in.

4. Livelihood restoration must also consider support and alternatives for surviving female family members of fishermen who will not continue with fishing as their main livelihood.

5. Rehabilitation and reconstruction must also benefit economically active women of all ages and social groups.

6. A gender analysis should be included in all empirical assessments.

7. Women’s income generating options should be incorporated in livelihood rebuilding plans. For instance, provision for self-employed/home-based women workers must be incorporated in rehabilitation plans.

8. Measures to support women’s multiple responsibilities as economic providers and family workers should be supported.

9. Access to grants and loans to re-build lost livelihoods and to replace damaged or destroyed tools, workspace, equipment, supplies, credit, capital, markets and other economic resources must be made available.

10. Special guarantees must be given to orphaned boys and girls to be recognised as separate and independent units and to enable them to receive entitlements to land and compensation so that they are not merely absorbed into the family units who have temporary guardianship.

11. Coordination bodies should pay particular attention to how the needs of the tsunami-affected population are being addressed in the different districts. The principles of equity and avoidance of increased tensions should guide how these needs are addressed, particularly in Sri Lanka.

12. Security of social support systems should be restored to enable people to work collectively as communities.

13. Instead of penalizing the poorer villagers and settlements close to seashores, governments should protect all coastline populations by establishing reliable early warning systems using the most recent technologies and communications systems.

14. Fishing communities should have free access to the coast and be able to leave their equipment on the beach.

15. Rehabilitation and resourcing of local boat builders should be emphasized.

16. Bicycles should be provided to families living in remote sites where there is no public transportation, and to women to facilitate their fish sales.