

# **Protecting or Facilitating?**

A review of the humanitarian response to IDP  
detention in Sri Lanka, 2009

# **When Humanitarian Response Facilitates State Abuses:**

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**Should we deliver assistance to desperate people even when we know we are facilitating human rights abuses? What if it is our actions and support that make the abuse possible? Should we refuse to participate, withholding our support from those in need? Do we speak out about the horrors we see, risking expulsion from the country? Or do we keep quiet to maintain our presence and our access? These were some of the questions humanitarians struggled with in Sri Lanka in 2009 when they were asked to support the creation of “closed” militarised IDP camps. These camps would ultimately detain 300,000 people for nearly six months.**

**The paper below is based on an independent review of the decisions and considerations made by NRC in early 2009. The opinions expressed are the author’s and do not necessarily reflect the position of NRC.**

## **1 Introduction**

After more than 25 years of sporadic fighting, the Sri Lankan civil war reached an apocalyptic climax in May 2009. Nearly three hundred thousand people were displaced by the last spasms of conflict, emptying the entire area formally controlled by the Tamil Tigers (LTTE). These people had been subjected to sustained shelling from the Sri Lankan army and held captive by the LTTE. When they crossed the front lines they arrived in government-controlled areas exhausted, dehydrated, injured and in shock, often unaware of the fate of missing family members.

The displaced population was forced into massive, overcrowded and under-prepared camps. These camps were military-controlled places of internment, surrounded by barbed wire and with complete restriction on movement in or out. Conditions in the camps were life-threateningly poor, especially at the outset and were made poorer by the sheer numbers of people. Although many of the internally displaced persons (IDPs) had family they could have stayed with and other possible sources of support, they were unable to leave the camps to access them. It was only six months later, after major donors began to threaten withdrawal of support, that significant improvements were made towards freedom of movement for the IDPs.

These detention camps were funded, created and maintained almost entirely by international humanitarian assistance. Shelter, water, food, sanitation, cooking implements and almost everything else were provided through an enormous and expensive humanitarian operation that provided seemingly open-ended funding and support to a government policy of illegal mass-internment.

It would have been very expensive and very difficult logistically for the government to maintain the camps on their own. Food would have been almost impossible to provide on the scale required while it would have been extremely damaging to Sri Lanka's reputation to detain so many people without the legitimacy provided by international support. As one donor representative expressed it, "This was a humanitarian crisis being maintained by the humanitarian imperative".

Was this an example of the humanitarian community doing harm? How did it happen that the international community bankrolled the indefinite detention of nearly 300,000 people? What were the alternatives? How did the humanitarians find themselves in this dilemma in the first place?

Questions like these prompted the Norwegian Refugee Council (NRC) to commission an independent review of its support for the Sri Lankan IDP camps during 2009. This comprehensive review was based on first hand experience in the camps as well as interviews with IDPs, NRC staff, local and international NGOs, UN, donors and Sri Lankan political analysts. It aimed to help NRC be better prepared to face dilemmas about engagement in future complex situations. It examined the decisions of the NRC team, the overall context they found themselves in as well as the structural factors that played out in Sri Lanka.

The present paper is a shorter summary of the key points raised by this review.

## **2 Facing the dilemma: to participate or not**

In January 2009, preparations began for the expected displacement of civilians from the Vanni. The Sri Lankan Government had begun clearing land and building shelters for the expected IDPs around the edges of the conflict zone in the north of the country. The government presented a plan for camps in Vavuniya, Mannar and Jaffna and asked NGOs and the UN for commitments of assistance. NRC was one of many organisations that were asked to declare whether and how they would support the camps.

Humanitarian organisations knew that the conditions in the camps would likely be poor, and that there would be genuine and substantial material needs that they would be in a position to address.

Although the government was not explicit about the conditions under which the IDPs would be accommodated, prior history suggested that IDPs would be detained against their will as IDPs in Mannar district had been forced to reside in closed camps since early 2008. The installation of checkpoints and a barbed wire perimeter around the new camp sites confirmed these suspicions.

Individual humanitarian organisations were thus faced with a dilemma: **How could they best assist IDPs in need, when direct assistance would also legitimise and facilitate their ongoing detention?**

### 3 NRC's decision

NRC came to a decision after substantial deliberation. At a conceptual level, they recognised that “the wellbeing of the IDPs should be the primary concern, but within the general framework of ensuring the government of Sri Lanka fulfils its own obligations under international humanitarian and human rights law.” They also identified that:

- NRC had an obligation not to exacerbate displacement or legitimise unlawful practices.
- NRC's response should always incorporate a rights-based approach
- Short-term withholding of assistance should be carefully considered if it could improve IDPs rights in the long term.

On balance, however, NRC decided to engage in the camps, basing the decision on the overriding “humanitarian imperative” with little further elaboration. Nevertheless, NRC set limitations and restrictions on its involvement:

1. Only “emergency activities” were to be carried out, the most significant of which were shelter, NFRI distributions and protection monitoring.
2. Three minimum conditions needed to be fulfilled, although they were not defined in detail:
  - a. Safety and security for NRC staff and beneficiaries
  - b. Access
  - c. Direct implementation by NRC

As part of its decision to engage, NRC also committed to continue to advocate for the civilian and humanitarian character of the IDP sites.

NRC planned to review the policy of engagement after three months, stating that “If the situation deteriorates and the administration of camps [does] not improve or to the contrary grow[s] worse with continued restrictions of freedom of movement, NRC must consider closing operations in the camps.”

#### 3.1 Analysis of NRC's January 2009 position

The NRC position of January 2009 was an understandable but flawed compromise by which NRC attempted to have the best of both worlds: engaging in the camps, yet also maintaining its principles and respect for the long-term interests of beneficiaries. The overwhelming “humanitarian imperative” existed alongside a commitment to “ensure we are not exacerbating ... displacement or legitimising unlawful practice”. However NRC *was* facilitating and prolonging the IDPs illegal detention, both by providing physical camp infrastructure (shelter) and by muting its public criticism in exchange for access. The contradictions inherent in this position were visible at the time, and played out in predictable ways over the next months.

#### **The conditions were never fulfilled, but work went ahead anyway.**

There was never any confidence in the security of the beneficiaries who remained under military control with independent monitoring heavily restricted. Nor was NRC ever able to rely on unimpeded access for its staff. Instead visas and access permits were routinely delayed and implicitly contingent on being

“well-behaved”. This was true before the camps were even opened, yet there was no serious review of NRCs support for the camps until August, three months beyond the original intended review date.

### **Continuing work in the camps undermined the main advantages of limiting its engagement.**

During the period of IDP internment, NRC was extremely active and articulate in raising the issues faced by IDPs in the camps including the overwhelming need for freedom-of-movement.

Yet this work only involved communicating with other international actors. NRC did not engage in public advocacy, nor in direct advocacy with Sri Lankan authorities - which it delegated to the UN. While NRC’s continued presence in the camps supported the credibility of NRC’s voice, the risk of losing this presence constrained them from being more outspoken.

NRC also failed to clearly articulate to others that it was taking a principled stance at all, and its engagement in the camps, however limited, made it more difficult to do so. A clear position of non-engagement by a major NGO would have been a significant advocacy point and a strong example to others. The continuing work in the camps reduced the power of NRC’s message to the point where few others today remember that NRC made any kind of principled stand at all.

### **The logic of the decision was unclear**

NRC further undermined the clarity of its stance by the internal explanations of its decision. Although the potential negative impacts of supporting the camps was explicitly acknowledged in its internal communication, NRC’s position seemed to be that the humanitarian imperative simply trumped other rights-based concerns and the risk of doing harm, without any apparent detailed evaluation of specific trade-offs.

### **Failure to frame detention-related suffering as rights abuse**

NRC’s position failed to challenge the accepted orthodoxy that individuals suffering prolonged detention in Sri Lanka were simply victims of a “humanitarian emergency”.

A substantial proportion of detained IDPs would have had the resources to care for themselves if they had been allowed to access their existing support mechanisms such as staying with friends and family. While the inhabitants remained detained, meeting their day-to-day needs was simply the logistical requirement of a security policy of indefinite mass-detention. Only if the camps were open was it possible to even know the scale of the actual humanitarian need. In this way, lack of freedom of movement was not merely a “protection issue” facing detained IDPs: it undermined the entire rationale that assistance to the camps was humanitarian in nature.

Describing the deprivation in the camps –not just the movement restrictions - as human rights abuse would have made it clearer that the problem was primarily in the human rights and political domain. Describing the needs as simply

humanitarian, however, supported the idea that the responsibility was with the humanitarian agencies rather than the State.

#### **4 Broader humanitarian failures**

More than once during the research for this study, external respondents commented on an irony that it was NRC carrying out an internal review of its actions, as from their perspective NRC is “the one organisation that probably doesn’t need to”. NRC was amongst the most principled, conscientious and questioning of all international actors in Sri Lanka in January 2009. They were well aware of the dilemmas and weaknesses of the humanitarian response and were extremely active and articulate in their national and international advocacy. The January 2009 position of engagement with the camps was more thoughtful and considered than many other actors of the time.

And yet there were serious logical flaws in their position. Considering the broader Sri Lankan context of the time, it is apparent that these weaknesses were not due to any particular failings in NRC - they were replicated, often to a greater degree, by other humanitarian actors operating at the time. NRC serves as an example of how dominant the logic of supporting the camps was at the time and how few organisations were able to challenge it.

The primary argument used by humanitarians to explain their support to the camps was that the IDPs were experiencing clear hardship and demonstrated need and that the role of humanitarians is to address need where they find it. Most humanitarian actors believed there was nothing they could do to influence the prolonged detention of IDPs. There were three key assumptions underlying this belief:

1. The Sri Lankan government was not sensitive to external pressure
2. The humanitarians had no leverage over the camps
3. The institutional costs would be high for any INGO that did not agree to be part of the government’s plans

The first of these three beliefs was manifestly incorrect. Although the Sri Lankan government went to great lengths to project an aura of strength and imperviousness, its sensitivity to world opinion was proved by the enormous amount of energy it consistently expended on quelling criticism.

The second belief was similarly flawed. The humanitarians were funding and providing all essential maintenance in the camps and had enormous influence if they chose to use it. The failure to see this possibility reflected the lack of creativity, courage and unity among the humanitarians.

The third belief was absolutely true – at least in the short term. The Sri Lankan government had proven itself to be extremely adept at creating costs for institutions that challenged its programmes, primarily by leveraging its multiple systems of discretionary control. Organisations it perceived as being “uncooperative” had learnt to expect long delays and occasional denial of visas, projects, office establishment, travel permission and sometimes complete denial of access to conflict-affected populations.

The Sri Lankan Government's controlling attitudes and behaviours have been greatly strengthened by the methods of the humanitarians themselves. The submissive approach of humanitarian organisations in Sri Lanka over more than 20 years has taught successive Sri Lanka governments that bluster and threats can be effective in keeping internationals in line.

This pattern reached a somewhat surreal nadir in the IDP camps in 2009, during which the international humanitarian community ceded operational control of the humanitarian activity in the camps to the Sri Lankan military – even while they were still fighting the war. The local commander, Major General Chandrasiri, chaired daily meetings with the humanitarian actors in Vavuniya, issuing instructions as to what they should do. These meetings were notable for the unquestioned dominance of the military, the disdainful attitude shown towards the humanitarians, the compliance of the humanitarian actors and the absence of any space in which rights-oriented concerns were raised.

The Sri Lankan example reflects a common and seemingly reflexive humanitarian response to these kinds of situations. Humanitarians are generally much more familiar with delivery of materials and services than they are with calculation of long-term influence of humanitarian assistance on state abuses. Options of principled non-engagement can be under-examined, and advocacy efforts are often limited to those that will not put access at risk. When delivering assistance is seen as the only way to reduce suffering, maintaining access can appear to be a goal that can justify almost any compromise. But humanitarians should not be passive and reactive actors delivering materials wherever there is need and funding – they have an obligation to invest in serious analysis of the ultimate results of their interventions.

#### 4.1 Alternatives

In Sri Lanka, humanitarian organisations were not faced with a binary decision of either supporting a mass-internment or turning their backs. Support could have been conditional on demonstrated compliance with international law and specifically conditioned on freedom of movement for IDPs. It could have been explicitly time-bound to only cover “reasonable” screening periods, or only delivered under loud and escalating protest.

Humanitarians could have made more use of the Sri Lankan government's sensitivity to criticism and concern for its image. They could have vociferously and consistently pointed out that care for detained IDPs is a purely state obligation since logistical support is not the appropriate response to human rights abuse.

Most importantly, humanitarian organisations in Sri Lanka should, over decades, have established patterns of engagement in which the government would *expect* criticism and non-cooperation as the logical response to its abuse of civilians – and would not believe that criticism can be avoided by intimidation of humanitarian organisations.

It was only in October after donors flagged that they would no longer fund food for IDPs while they remained detained that major steps were made towards

restoring freedom of movement for IDPs<sup>1</sup>. This could have happened much earlier. The need for the donors to take the lead was an indictment of the general passivity of the humanitarians, who should have been far more proactive in this process.

So why were these alternatives not chosen? Why did so many humanitarian organisations fail to challenge the military cooption of humanitarian efforts? There are underlying causes for the common failings that go beyond any weaknesses in the organisations and individuals involved. The Sri Lankan pattern has been followed in a broad sense in many other situations because of underlying unresolved tensions within the standard humanitarian model. Until these underlying challenges are substantially addressed, humanitarians will continue to struggle when faced with dilemmas that require sophisticated and impartial analysis to determine whether the most familiar means of reducing suffering – delivery of material goods – is also the most appropriate. The rest of this paper briefly surveys some of these issues.

## 5 Underlying Issues

### 5.1 The “humanitarian imperative”

In deciding to engage in the camps, many INGOs referred to the “humanitarian imperative” to respond to a clear case of need. This expression is derived from ICRC/IFRC principles, which state that:

*“The humanitarian imperative comes first ... The need for unimpeded access to affected populations, is of fundamental importance. ...[Provision of ICRC humanitarian aid], is not a partisan or political act and should not be viewed as such... The prime motivation ... is to alleviate human suffering”<sup>2</sup>*

The prominent linkage between the twin needs of “access” and “alleviating suffering” is often taken to imply that providing material supplies to victims is to take priority over advocacy, principled disengagement and other forms of alleviating suffering.

This logic falls down in situations where providing assistance may not be, over time, alleviating suffering but is instead exacerbating and prolonging it. The frameworks of Do No Harm and conflict sensitivity - among others - emphasise the need for humanitarians to look beyond the immediate impact of assistance, and consider the unintended and longer-term consequences – including accepting the possibility that *the negative impact of providing assistance can outweigh the positive*. The literature is full of examples in which assistance has fuelled the dynamics that drive the problems. Humanitarianism is not the same thing as delivery of material supplies and the expression “humanitarian imperative” cannot substitute for a sophisticated analysis of the other possible impacts of alternative courses of action.

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<sup>1</sup> To this day, freedom of movement has not been fully restored to IDPs, who continue to have many restrictions placed on them.

<sup>2</sup> *The Code of Conduct Principles of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes*



The discussion of “humanitarian imperative” often carries with it an implicit model of humanitarians responding to suffering that is somehow “just there”. But humanitarians are not small players arriving after abuses have already happened. Instead they are now part of the dynamics of crises themselves. States are increasingly anticipating likely humanitarian response when they make their plans. Abuses are more likely when states can anticipate responses of funding and logistical support rather than critical exposure of their acts.

## 5.2 Relationship with the state

Cooperation with the host state is almost an axiom of humanitarian work. After all, it is the state that has ultimate responsibility for its population. Conversely, challenging the state can result in obstruction of programme implementation.

Yet there is a fundamental contradiction when the state is manifestly breaching its obligations to its own citizens. There are many cases where states are *not* primarily concerned for the interests of displaced populations – often the case in situations of ethnic internal conflict. In these cases automatic cooperation is inappropriate.

In Sri Lanka the international humanitarian community appeared to have internalised the government position that it was their job to fund and support the government’s planned response to the IDPs almost under any conditions, no matter what that response was.

Sometimes approaches that attempt to influence state planning are criticised as being overly “political” and outside the humanitarian ideal of impartial intervention. In reality, there is often no option for humanitarian action to be “apolitical” in this sense. The control of humanitarian relief in Sri Lanka was a central element of an oppressive and illegal political/military strategy of population control, and contributing to it was just as political as refusing to.

Humanitarian organisations need the analysis skills to be able to evaluate deeply and independently what actions are in the interests of the beneficiaries, and they need the time, skills and attitude to be able to carry out those actions even when that means challenging the state.

## 5.3 Divergence of interest between humanitarian organisations and beneficiaries

Even when states are not acting in the interests of their populations they retain the power to obstruct and ultimately block humanitarian projects. This creates the potential for powerful conflicts of interest within humanitarian actors – their avowed focus on the welfare of their beneficiaries can be in tension with their own institutional interests.

In Sri Lanka, the authorities had a very clear attitude that organisations were there to provide support under their direction, and those who challenged this had no place at the table. The posture was based on a model of humanitarian organisations fighting for pieces of the funding pie. Sri Lankan authorities had control of visas, access permits and a full tool-kit of administrative obstacles. Organisations that didn’t play by the government rules, couldn’t do projects and

wouldn't get funding. Where a percentage of project funding is used to fund headquarter expenses, abstention from assistance programmes can have bigger institutional implications.

A humanitarian actor is intended to work purely for the welfare of their beneficiaries, but it has a clear conflict of interest when an oppressive state has indirect control over its funding. There are thus major structural pressures on institutions to prioritise access and project continuation *even when other courses of action would be better for the intended beneficiaries*.

This conflict of interest is rarely discussed, yet it is an undeniably strong force that creates systematic incentives for humanitarian actors to implement state agendas.

#### 5.4 Principles v Pragmatism

Much of the debate in Sri Lanka was framed in terms of “principles versus pragmatism” with the implication that any limiting of support for the camps would be an empty gesture, paid for by the suffering of the IDPs.

Although the trade-offs and challenges of maintaining access are real, this overly simple phrase mischaracterises the nature of the dilemma. In many ways principles represent the accumulated wisdom of past mistakes - mistakes that have often had direct and serious consequences for target populations. Lack of impartiality has often threatened the ability of humanitarians to work in difficult contexts. Diversion of aid to support armed actors has prolonged conflict. Support to oppressive state agendas facilitates them. All available evidence suggests that camp internment in Sri Lanka was not just uncomfortable: it was deadly. Principles are not abstract - the whole point of having them is for the very pragmatic effects they will have.

“Pragmatism”, on the other hand, is a term often used to mean doing what is necessary to secure access in order to maximise short-term impact, usually by cooperating with the agenda of authorities. Although frequently effective for immediate outcomes, this approach can lead to very un-pragmatic results over time.

In Sri Lanka, the application of a so-called “pragmatic” approach to humanitarian assistance has meant that immediate access and programme delivery have been regularly prioritised over independence, beneficiary rights and principled response. It was the many small concessions made by humanitarians in the name of “pragmatism” that *created* the extraordinary expectation of the Sri Lankan government that it could detain 300,000 people indefinitely inside internationally-funded IDP camps.

## 6 Conclusion

The Sri Lankan Government's oppressive policies towards the IDPs during 2009 were viable due to the humanitarian support they received. NRC wrestled actively with the dilemma of whether to work in the camps, firstly engaging and eventually withdrawing in September. In contrast, senior management of the

biggest humanitarian actors saw little practical alternative but to work where they were requested.

The consistency of the humanitarian failure to consider alternatives goes beyond the institutions and individuals involved and is reinforced by the entrenched ways of working or “habits” of the humanitarian system.

Few humanitarian actors had the institutional infrastructure to challenge state planning. Delivering assistance in a conflict context was complicated enough and was made even more difficult by the controlling measures of the Sri Lankan government. Humanitarian organisations generally didn’t have spare time in their schedules to cope with additional state obstruction of visas, permits or access. They didn’t have analysts with dedicated time to evaluate the long-term consequences of compliant approaches to delivering assistance. They didn’t have institutional practice holding them to account and forcing them to address such questions. The present was challenging enough.

Humanitarians were not assisted by the vocabulary used to frame the debates. Both “humanitarian imperative” and “principles versus pragmatism” are simplified expressions that fail to capture important elements of the relevant arguments and act to squeeze the complex range of possible options into misleading false dichotomies.

In comparison, the institutional interests of continuing delivery were the elephant in the room, rarely mentioned but deeply embedded in organisational practice. The severe consequences for programme delivery of upsetting the Sri Lankan authorities were clear to all and much discussed.

The appropriate humanitarian response to suffering – both present and anticipated – is to act in a way that minimises that suffering. This can be through provision of goods and services, but it can also be through dialog, advocacy or disengagement. Ultimately humanitarian organisations need the capacity to make complex assessments, sophisticated analysis and evaluate delicate trade-offs in order to decide how they can most effectively alleviate suffering over the long term. Such judgements cannot be reduced to absolutes by over-simplified rhetoric.

All too often however, humanitarian organisations were poorly equipped with the time, skills and attitudes to address a situation where the state was not representing the interests of the population. In these cases, supporting the vulnerable means contesting state agendas, even where there are institutional costs. Only by nurturing the capacity to maintain their independence will humanitarian organisations be able to ensure their work is really serving the interests of their beneficiaries - rather than the political interests of others.

These lessons continue to have relevance in Sri Lanka today where assistance to conflict-affected communities remains tightly controlled by the military and subject to manipulation for political ends.

## About the Author

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