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**A BRIEF PROFILE OF THE
TRINCOMALEE HIGH SECURITY
ZONE AND OTHER LAND ISSUES
IN TRINCOMALEE DISTRICT**

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May 2008



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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organization that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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PURPOSE

The Centre for Policy Alternatives (CPA) undertook a visit to areas in Trincomalee including newly resettled areas in May 2008 to examine the question of the High Security Zone (HSZ) and other related land issues. The findings in this report are based on interviews with IDPs, people resettled, agencies working in the area and government actors. This report is a follow up to the fact-finding report on Trincomalee in April 2007, other fact-finding reports and visits carried out by CPA from 2006-2008.¹

¹ Reports of the fact-finding visits are available online, www.cpalanka.org

KEY RECOMMENDATIONS IN BRIEF

For the recommendations in full, please go to Page 23.

FOR REDUCING THE HSZ

- The territorial limits of the HSZ needs to be re-examined.
- Gazette exact areas covered by the HSZ and make sure that the information is publicly available.
- Ensure that as many people as possible can return to their original lands and property.
- Land acquisition should follow established processes in accordance with the Land Acquisition Act and other laws.

FOR RESETTLEMENT AND RELOCATION

- The security forces must turn over civilian buildings that they occupy in villages that have been opened up for resettlement.
- Resettlement and relocation should be carried out recognizing the basic rights and the dignity of affected persons.
- Provide alternative land and compensation to those whose lands are being acquired.
- Provide comprehensive assistance to persons who have been resettled and relocated including food assistance, assistance with reconstruction and rebuilding and livelihood assistance.

FOR ADDRESSING RELATED LEGAL ISSUES

- The provision of state land and permits should be in accordance with the legal formalities and done by authorized actors.
- There should be mobile clinics that address the documentation issue, replacing documents including birth certificates, National ID's and land documents.
- In accordance with the Thirteenth Amendment, all powers of the Provincial Councils need to be devolved including land powers.
- The National Land Commission should be established immediately.

FOR THE DEVELOPMENT OF TRINCOMALEE

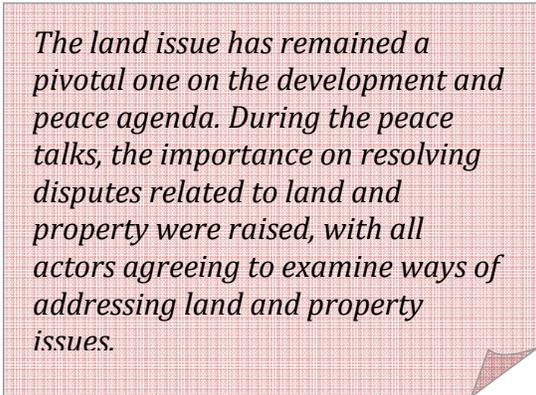
- Make public the development plans for the Trincomalee district and ensure there is public awareness and information sharing.
- Development programmes in the East need to take on board regional needs and concerns, with regional actors taking the lead in the formulation and implementation of projects.

1. BACKGROUND TO THE TRINCOMALEE HIGH SECURITY ZONE

1.1 THE IMPORTANCE OF LAND ISSUES

Land has and continues to be intrinsically linked to the ethnic conflict in Sri Lanka. Issues such as occupation of private land by actors including the security forces, police, the LTTE and other armed groups or by displaced persons, the creation of High Security Zones (HSZ) and other restrictive zones, land colonisation schemes such as the Galoya and Maheweli schemes, arbitrary seizure of land and the eviction of residents such as the Muslims by the LTTE in the North and East in the 1990s, have all impacted access and ownership of land as well the displacement of entire communities from their homes. Access and ownership of land and property play a fundamental role in conflict resolution, governance, sustainable development, economic growth and poverty reduction.²

The land issue has remained a pivotal one on the development and peace agenda. During the peace talks, the importance on resolving disputes related to land and property were raised, with all actors agreeing to examine ways of addressing land and property issues. The laws relating to the access and ownership of land and the HSZ issue were taken up, but no firm commitments in respect of them were made. With the resumption of hostilities in 2006 and the abrogation of the Ceasefire Agreement (CFA) in January 2008, these issues remain unresolved. Sustainable solutions are required to reduce tension, discrimination and deprivation of communities. Unfortunately, the various policies adopted by the authorities have had the opposite effect.



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For many people, land and property are a means of generating a livelihood, as well as accumulating wealth which can be transferred to the next generation. The amount of land and property a person owns is a key indicator and determinant of a person's wealth and status, and of access to economic opportunities. The means of acquiring land and property, ownership trends and the means and modalities of dispute resolution by way of informal or

² CPA has produced a number of reports on land and property issues including Memorandum on Land Issues arising out of the Ethnic Conflict and the Tsunami Disaster, March 2005; Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni, April 2005.

formal mechanisms, have far reaching social and economic effects. Land, therefore, has a bearing on development and poverty reduction. It also is intrinsically linked to the identity of persons, families and communities.

Government policies, regulations and structures impact on how land is controlled, allocated, acquired and regulated by the state. In many cases, principles of good governance such as subsidiarity, participation, transparency, and accountability are lacking. This leads to mismanagement, duplication, delays and corruption. The 13th Amendment to the Constitution provides that land be devolved to the Provincial Councils, but state land and land policy remains centralised.

Trincomalee has many of the problems highlighted above. A number of them date back a few decades, including contested land ownership, problems in accessing land and property, the loss of documentation and communal tensions over land. The district therefore has its fair share of 'normal' land disputes in addition to problems created and accentuated by the ethnic conflict and the Tsunami of December 26 2004.

The hostilities in 2006 between the government forces and the LTTE resulted in massive displacement of all ethnic communities in the Trincomalee district. Since September 2006, there have been several efforts by the Government to resettle IDPs back on their land. In the Trincomalee district there have been several developments in relation to land including the creation of the HSZ in Sampur and the Special Economic Zone (SEZ) in some parts of the district, relocation plans and the lack of clear and coherent policies on land acquisition and compensation. These are briefly discussed in this paper.

1.2 BACKGROUND TO HIGH SECURITY ZONES

High Security Zones are a significant challenge to the resettlement of IDPs in the North and the East. Jaffna has the largest extent of land covered by HSZs. There are 18 HSZs covering roughly 190 sq kms in Jaffna or 18% of the land area. This is an area where 30,388 families lived. With the creation of HSZ, especially from the mid1990s onwards, many people in Jaffna have lost access to their homes and lands. A large number of these affected families currently live in welfare centres in the Jaffna Peninsula and other welfare centres in the Northern Province. Further, an 81.5 sq km sea area is out of bounds for fishermen and 12,259 acres of land cannot be used for agriculture due to the security situation. This has resulted in a serious loss of livelihood. Most of the HSZs are located in and around army camps and key locations such as the harbours and airstrips in the peninsula, and in areas bordering LTTE-controlled areas.³ HSZs have also been created in other parts of the country such as Mannar, Kandy and Colombo, but there are significant differences. The differences include those of a legal nature, as some HSZs such as those in Jaffna have not been gazetted. Further, there is a distinction with access. Most HSZs in Jaffna do not allow civilians entry, let alone residence rights. Those in Kandy, Colombo and surrounding areas, allow civilians

³ CPA, INFORM "Fact finding visit to Jaffna" March 2008, www.cpalanka.org

access and even residential rights.⁴ It is reported that the LTTE too has HSZs in Mullaitivu and hence resettlement of Muslims in particular, was restricted in certain areas during the peace process.

The HSZs are established for security purposes and essentially allow the security forces primary use of the areas in question. Permission is required from the forces for any new developments in the area. In the case of the more severely enforced HSZs in Jaffna and Trincomalee the lack of access allows the security forces to minimize the infiltration of the LTTE. The continuation of the HSZs however creates political problems as it nurtures grievances and intensifies tensions between the affected communities who cannot access their land and property and the Government/Security Forces who are occupying the land and restricting access. It also violates the basic rights of the affected families and communities to access their lands and properties, and their freedom of movement.

1.3 THE ESTABLISHMENT OF THE TRINCOMALEE HSZ

Following the capture of the Sampur, President Mahinda Rajapakse, on September 4 2006

The main reason behind the establishment of the HSZ in Eastern Trincomalee is due to the strategic importance of the area – at the mouth of the Trincomalee Harbour.

stated that “Our armed forces have captured Sampur for the welfare and benefit of the people living there.”⁵ Over the successive months, however, the displaced people from areas in and bordering Sampur were not allowed to resettle on account of security claims including that the land needed demining.

In May 2007, a HSZ was established by the Government in Muttur East and Sampur in the Trincomalee district. The HSZ zone was established by regulations issued by H.E. the President under Emergency Regulations (Section 5 of the Public Security Ordinance) published in Gazette Extraordinary No.1499/25 of 30th May 2007. The HSZ as created in May 2007 covered 11 Grama Sevaka (G.S.) divisions in their entirety. The delineation of the ‘Muttur East/Sampur’ as it was referred to in the Gazette was unclear as it spoke of boundaries established by lines between specific locations, rather than in G.S. terms.⁶ The Gazette specifies that no person shall enter or remain in the area unless written authority is obtained by the Competent Authority. The return of IDPs was reportedly halted

⁴ The Jaffna HSZ issue is presently before the Supreme Court and is discussed later in the report.

⁵ Speech delivered by the President at the SLFP 55th anniversary convention on 4th September 2006

⁶ “All that area of land and water bounded as follows:- East: From a line drawn along the Eastern Coast of Sri Lanka joining the villages of Foul Point, Illankanthai, Kalladichanai and Uppural; South: From a line drawn joining the villages of Uppural, Selvanagar, Thoppur and Pachchanoor; West : From a line drawn along the Western Bank of the Kaddaparichchan Aru, joining the villages of Pachchanoor, Kaddaparichchan South, Muttur and the Kaddaparichchan Aru Estuary; North: From a line drawn along the Southern Beach of Koddiyar Bay, Joining Kaddaparichchan Aru Estuary with the villages of Sampoor, shell Bay and Foul Point;” (Gazette Extraordinary No.1499/25 of May 30 2007)

According to Mr. R. Sampanthan, TNA MP for Trincomalee, there are 4249 families amounting to 15648 individuals who fall within the HSZ as gazetted.⁷ He states that there are 19 schools with approximately 5000-6000 students who were educated in the area and 18 Hindu temples and one Methodist Church. Many of the civilians owning land in the HSZ are Tamil.

The main reason behind the establishment of the HSZ in Eastern Trincomalee is due to the strategic importance of the area – at the mouth of the Trincomalee Harbour. Despite the war Trincomalee Harbour continues to be of economic significance as vital goods such as cement and flour are brought into the country and processed in Trincomalee. In addition to serving as the Eastern base for the Sri Lankan navy, Trincomalee serves as a vital role in providing a supply route for goods, military personnel and civilians to access Jaffna. Sampur also served as a base for the LTTE from which it could launch artillery or Sea Tiger attacks against the navy and strategic resources. Preventing civilian access would make it easier for the armed forces to secure the area at the cost of its original residents.

1.4 LEGAL RIGHTS AND LEGAL CHALLENGES

CPA filed a fundamental rights petition on 29 June 2007 challenging the establishment of the HSZ in parts of Trincomalee district and the subsequent prohibition on entering and residing in lands in the HSZ by residents of the area. Another fundamental rights petition was filed on the same issue by four IDPs who own land in the HSZ.

The HSZ as it presently stands threatens two fundamental rights that are specified in the Constitution:

- Article 12 states that all citizens are equal before the law and ensures that no citizen shall be discriminated against on grounds specified in the Constitution;
- Article 14 provides for the freedom of movement and the right to choose one's residence within Sri Lanka.

The HSZ is also a violation of international humanitarian law. Internally displaced persons (IDPs) have the right to voluntary return to their land in safety and dignity. International law further provides that no person be subjected to arbitrary or unlawful interference with his privacy, family and home.

In its petition, CPA stated that Article 12 and Article 14 have been violated, and also noted that although commercial activity is allowed within the SEZ, thereby enabling commercial

⁷ Speech delivered by Hon.R.Sampanthan, Member of Parliament, Trincomalee District, Parliamentary Group Leader, Illankai Tamil Arasu Kadchi (I.T.A.K) , (TNA) on the Adjournment Motion relating to the declaration of Muttur East – Sampur as a High Security Zone, 20th June 2007.

enterprises to enter and remain in the area, the HSZ prohibits civilians from entering and residing in their lands, leading to discrimination.

The HSZ is also a violation of international humanitarian law. Internally displaced persons (IDPs) have the right to voluntary return to their land in safety and dignity. International law further provides that no person be subjected to arbitrary or unlawful interference with his privacy, family and home. While noting this, the petition also stated that customary international humanitarian law prohibits the displacement of civilians except for the purpose of their own security or military necessity. A key point raised in the petition was that there is no military necessity or security concern provided to justify preventing or hampering civilians access to their land and property.

The two petitions were taken up before the Supreme Court by a bench headed by Chief Justice Sarath Silva in July 2007. The Deputy Solicitor General representing the Government stated that steps were taken for the resettlement of IDPs in accordance with international law and that any person wanting to return can correspond with the Competent Authority through the Attorney General's department. The Supreme Court refused leave to proceed in both cases by stating that "it is in the national interest that resettlement and development should be carried out on a planned basis."

According to media reports the JVP is to take legal action in order to restore the rights of the displaced from Sampur which they insist is due to the land being given over to the India to develop a coal power station.⁸

It should be noted that the HSZs in Jaffna have also been legally contested. There has been no gazette notification or law passed establishing the HSZs in Jaffna (unlike the newly created HSZs in Sampur, Kandy and Katunayake), thereby raising questions regarding the legal basis for the continued displacement of civilians due to security considerations. Two fundamental rights applications were filed in the Supreme Court by Mr. Mavai Senathirajah, Jaffna area Parliamentarian and a farmer of the Tellipalai division who claimed that the Government had violated their fundamental rights by preventing them from entering their own lands and houses, which are located within the HSZ. The Supreme Court had asked the GA Jaffna to look for alternate land for the IDPs who own land within the HSZ area. The Consortium of Welfare Centres for Internally Displaced Persons in the Jaffna area have stated that alternate land is not acceptable because the IDPs wish to return to their own land to cultivate and to reside. The Supreme Court ruled on May 28 that a committee to resettle the families in this HSZ should be established by the Secretary for Defence comprising officials from the Defence Ministry, the Government Agent of Jaffna and the High Court Judge of Jaffna. The case is ongoing before the Supreme Court.

⁸ Propaganda Secretary to the JVP, Vijitha Herath had spoke to the media regarding the proposed case (The Sunday Times, "JVP to fight for rights of displaced Sampur people," June 8 2008; Lanka Dissent, "JVP to challenge Sampur land handover to India," June 8 2008, www.lankadissent.com)

2. SPECIAL ECONOMIC ZONE AND OTHER DEVELOPMENT PLANS

Trincomalee is a key area targeted for development by the Government. The Negenahira Navodaya or Eastern Revival Program which aims to develop the Eastern Province and the establishment of Trincomalee as a Special Economic Zone (SEZ), are the two main development plans relevant for Trincomalee.

2.1 SPECIAL ECONOMIC ZONE

Certain areas within the Trincomalee district were declared a Special Economic Zone (SEZ), a Licensed Zone under Section 22A of the BOI Act No. 4 of 1978 published on 16th October 2006 by an extraordinary gazette notification No. 1467/03. The SEZ covers an area around the Trincomalee Bay from Nilaveli in North through Trincomalee Town and Gravets, past Kinniya and Muttur into Sampur and with an extension towards Kantale. While the basic idea behind a SEZ is to demarcate an area for commercial enterprise, the Trincomalee SEZ seems to be part of a more ambitious program and is closely linked to the Eastern Revival Programme discussed below.

The Urban Development Authority proposal dated January 2007 set out an Integrated Urban Development Plan for 2030 which would establish Trincomalee as a Metro Urban Development Area. While the map suggests that a number of essential requirements of the district including basic infrastructure, water and sewerage systems and new sources of employment would be met, the plans as laid out in the map also raise a number of issues such as people's rights to land and property and people-oriented development. Unlike the HSZ, there are no restrictions placed on movement to and within and SEZ, unless additional legislation is passed which would result in land being acquired by the State. A reading of the two gazettes together clearly indicates that the HSZ would fall within the SEZ. According to the UDA proposal, a significant area which is currently within the demarcated HSZ would be established as a 'Special Zone.' An area which currently falls within the gazetted HSZ has also been demarcated as a utilities zone for a Coal Power Project.

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2.2 NEGENAHIRA NAVODAYA

The Eastern Revival Programme that was unveiled in 2007, is a massive development programme for three years. The strategy for the Eastern Revival Programme includes the resettlement of IDPs, issues related to regional economy, improvement of infrastructure and social services and rebuilding the capacity of public institutions in the Eastern Province. The programme has a budget of Rs. 197,219 million (US\$ 1840 million) for that period.⁹ Of this amount, 52% is meant to be foreign funded. The remainder is to be financed by the Government, private sector and other volunteer organizations. There is no clear break down as to how much each funder has committed to the Eastern Revival Programme. It is also unclear whether existing programs and projects have been incorporated into the Eastern Revival Program. For instance the North East Housing Reconstruction Program (NEHRP) which began providing housing assistance from 2005 and was delayed due to a number of factors is disbursing funds to identified beneficiaries. Has the funding for NEHRP and other on-going projects been included as a part of the Eastern Revival Program or are these additional funds which will help develop the Eastern Province?

Under the Eastern Revival Programme, investors will enjoy up to 20 years of TAX holidays, lands under special concessionary schemes, and a wide range of other benefits. There is no information available regarding what is meant by 'special concessionary schemes' for land, but there is concern that prohibition and restriction regarding access to land and subsequent acquisition, legally or otherwise, may contribute to such programmes. Prior to the election a number of projects were declared open while others were inaugurated. Since the election, there has been little movement in some of the projects, hence people are concerned that the projects will not be going ahead.

Apart from being beneficiaries, it is unclear how local people will be consulted and involved in the Eastern Revival Programme. The improvement in infrastructure that is a key component of the Negenahira Navodaya not only offers better services for the people of Trincomalee but the project also provides

Special attention needs to be paid to assist the local economy which has proved resilient through the conflict but risks being marginalized through the Central Government's development plans.

some employment during the construction phase. It needs to be noted that new construction projects or commercial enterprises in Trincomalee does not necessarily mean that a large number of local people are provided employment. For instance CPA was told of a large Sri Lankan company setting up a new retail store in Trincomalee but none of the staff employed are local, but we were unable to verify this. This anecdote however reveals the fears of local businesses and people that apart from the services provided by these new developments, the existing local economy will be sidelined and may even suffer as they will have to compete with well-established national companies. The local economy has suffered significant losses over the past years and continues to face a number of obstacles including security restrictions that hinder the movement of goods and services, and extortion by

⁹ Official web portal of The Eastern Revival Programme, <http://www.neweast.lk>

armed groups. Special attention needs to be paid to assist the local economy which has proved resilient through the conflict but risks being marginalized through the Central Government's development plans. The ethnic dimension of the development also needs to be acknowledged as the Tamils in particular have been at the receiving end of the violence and restrictions, hence are unsure of whether they will have equal opportunities as other communities.

It is yet to be seen as to what role the Eastern Provincial Council will play in the development of the East or whether the "revival" will be entirely centralised. Although the Eastern Revival Programme provides for the Eastern Provincial Council to play a role, it is clear that the dominant actor will be the Central government with the Presidential Secretariat, Ministry of Nation Building and Estate Infrastructure Development and the Ministry of Finance and Planning steering the project.¹⁰

2.3 COAL POWER STATION

That a coal plant will be established in Sampur has become increasingly clear, although the location of the plant is under dispute. An Indian company - the National Thermal Power Corporation (NTPC) and the Ceylon Electricity Board (CEB) signed an agreement in December 2006 to establish a 500 MW coal-based thermal plant which was expected to commence operations by 2011. With an investment of US\$ 500 million the project was to be implemented through a joint venture company.¹¹ It was also reported that 70% of the US \$ 500 million would be covered by foreign aid and the remainder by the NTPC and CEB.¹² A site was to be picked within three months but there was a lack of consensus on the site, with the Sri Lankan Government proposing Sampur and the NTPC looking at an alternate site near the Indian Oil Corporation complex close to the Trincomalee Harbour.¹³

There are a number of concerns regarding the power plant including the potential loss of land and property for mainly Tamil civilians. The choice of Sampur ran into significant controversy as there were fears that the power plant complex would occupy lands owned by Tamil civilians. The TNA alleged that the project had a "hidden political agenda" and did not take into consideration the rights of the Tamil civilians whose representatives had not been consulted.¹⁴ Velloor, between Uppuveli and Nilavelli was put forward as a potential

¹⁰ Official web portal of The Eastern Revival Programme, <http://www.neweast.lk>

¹¹ The Hindu, R. Muralidhar Reddy, "NTPC power plant in Trincomalee," December 30 2006

¹² Daily Mirror, Kassapa Ellepola, "Construction of Sampur coal power plant to begin in three months time," March 27 2008

¹³ ibid

¹⁴ ibid

site¹⁵ but protests particularly from the tourism sector in early 2008 reportedly resulted in the focus switching back to Sampur. Newspaper reports in March quoted a statement from the Power and Energy Ministry which stated that 700 acres would be taken over for the project in Sampur, following the site being surveyed in April 2008 and that a jetty would be built to unload coal in Sampur. The statement also added that the coal for the project is 99.2% eco-friendly and that it would provide 4000 job opportunities.¹⁶ There are a number of concerns regarding the power plant including the potential loss of land and property for mainly Tamil civilians.

2.4 THE OUTER CIRCULAR ROAD AND THE RELATED BUFFER ZONE

Under the development plans for the district there are several road development plans that have been reported. The Outer Circular Road that would connect Sampur to Kuchchaveli is a major road development that is currently underway. It is visible as one enters Trincomalee Town area near Sardhapura at the six mile post and near Kiranthimunai, along the Somapura and Muttur Road.

A major concern with the ring road centres on the land that was acquired for the exercise and the process that has been followed. We were informed that residents owning land in the area now covered by the ring road, have been displaced and/or not allowed to access their land, as it has been acquired for the road construction. No one we spoke to knew whether land acquisition had taken place in accordance with established laws, but stated that they were not allowed to reside on their land. We were also informed that a buffer zone of 300 meters on either side of the ring road has been created. Reportedly, the buffer zone stood at 500m, but was shrunk to a 300m buffer zone and could be reduced to 100m. This buffer zone is reportedly in existence not just within the HSZ but outside it as well. A similar buffer zone of 50 meters on either side of the road in Eechchalampattu seems to be in existence.

None of the people we spoke to in Trincomalee, including agencies working in the area or residents, were aware of any documentation providing the legal basis for the buffer zone. None of them knew of the process of acquiring the land or if any compensation would be paid to the displaced communities. Reportedly no civilians have been allowed to access the road nor has there been any information circulated as to which private lands and properties have been taken over. No one seems to have been offered alternative land and/or compensation.

¹⁵ The Official Government News Portal of Sri Lanka, "Coal fired power plant construction to be expected," February 16 2008; The Daily News, Wasantha Ramanayake, "Coal power projects to begin in Jne," March 28 2008, page 1; The Financial Express, "\$ 250-m NTPC project in Sri Lanka to kick off next year," February 13 2008

¹⁶ Daily Mirror, Kassapa Ellepola, "Construction of Sampur coal power plant to begin in three months time," March 27 2008

3. THE 'REDUCED' TRINCOMALEE HSZ: OPPORTUNITIES AND CHALLENGES

3.1 REDUCTION OF THE HSZ?

Recent developments on the ground, suggest that the HSZ is being reduced, but there are no gazette notifications or circulars to that effect. In recent months, the displaced from some of the G.S. divisions which were included in the HSZ have been resettled and resettlement is to follow in some other G.S divisions. Resettlement in this paper is taken to mean the return of IDPs to their place of origin. The remaining G.S divisions will not be opened up for civilian entry, at least for the time being. Information regarding the shrinking of the HSZ was gathered from newspaper reports, Government officials and humanitarian agency representatives.

As of May 2008, developments on the ground suggest that of the 11 G.S divisions that fall within the HSZ in their entirety, three divisions will be completely resettled and three others partially resettled. The three G.S divisions which will be completely resettled are Pallikudiyiruppu, Nalloor and Paddalipuram. Some areas in Nawaratnapuram, Cheniyoor and Kattaparichchan South G.S division will also be resettled but the villages and land areas which will be off limit have not yet been made clear.

The information gathered suggests that five G.S. divisions in total will be treated as a strict HSZ where no civilians will be allowed to reside in addition to portions of three G.S. divisions that will be partially covered by the HSZ. The five include Koonitivu, Sampur West, Sampur East, Kadarkaraichenai and Kadarkaraichenai North. One story CPA was told during our visit to Trincomalee was that the new HSZ would be declared a Development Zone, including a coal power station which would be off limits for civilians.

... although resettlement is underway in some G.S. divisions within the HSZ, the reduction of the HSZ through a gazette has not been carried out.

Therefore, although resettlement is underway in some G.S. divisions within the HSZ, the reduction of the HSZ through a gazette has not been carried out. Hence, legally speaking these G.S. divisions remain within the HSZ and therefore the relevant restrictions provided in

the gazette continue which creates significant confusion so needs to be clarified. This begs the question of as to who authorised the resettlement and whether approval of the Competent Authority was obtained prior to resettling people. As stated previously, without written permission from the Competent Authority, no one can enter and remain in areas falling within the HSZ. According to the gazette, any person entering and remaining without written permission is in contravention of the HSZ and therefore guilty of an offence.

3.2 CHALLENGES TO RESETTLEMENT

The need for a more people friendly approach: The manner in which resettlement, not just in the land opened up within the HSZ area, has been treated needs to be addressed. In March 2007, a large number of IDPs from Eastern Trincomalee were forced to move by the Government from welfare camps in Batticaloa to a transitional site in Killivetti and to their homes in Trincomalee. The families received no prior information, in some cases families were separated in the forced resettlement and were put under significant pressure as the Security Forces, TMVP cadres and Government officials visited the camps preceding the movement to ensure that most of the IDPs did move. The latter have been highlighted in a number of reports including the Inter Agency Standing Committee's report on "Conflict Related Internal Displacement in Sri Lanka".¹⁷ There seemed to be clear lack of planning as to how long this transitional period will last - there are families who have been in Killivetti for over a year. Issues such as shelters have been addressed, but there are concerns as these are mainly tin sheet shelters in Padithedal Camp. Both Killivetti and Padithedal are transitional camps originally conceived as a temporary measure to house IDPs for a brief period before they were resettled.

Overall, there appears to be a trend to hastily resettling people by the Government. In a number of documented cases the returns were done without the people being informed that they had a choice if they wished to resettle or live in displacement until the situation improved, without adequate information and displaced persons who attempted to remain in the camps faced the risk of having their rations cut even though these are provided by the World Food Programme and supplemented by international agencies. During a visit to Batticaloa in February 2008 CPA witnessed a resettlement drive from Manpower Camp. The reactions of residents from villagers that were identified for movement ranged from relief that they would be leaving the welfare camp for their homes to fear and an unwillingness to immediately return. While at a policy level IDPs are given the option of staying back in a displacement camp on the ground the IDPs are not told by the Government officials that they have this option and instead face the prospect of being deregistered as a displaced person without access to any rations. In more recent returns the Government has taken steps to ensure that the affected people have more information and increasingly 'Go-and-see' visits have become the norm. This approach needs to be strengthened. People need to be given the option whether they wish to move or stay in displacement for the time being. People need to be treated with dignity and respect, and their basic rights recognized.

Occupation by the Security Forces: Although resettlement is to take place in full, in three G.S. divisions and partially in three, even in these areas that have opened up there are various restrictions. A village may be open for resettlement but houses, property, public buildings may be off limits due to the presence of the security forces. In Thangapuram, which borders the HSZ, 42 families have reportedly returned. Some of those who have returned have been provided assistance with temporary shelters by the NRC. Families whose houses need to be repaired are currently staying in the school in Pallikudiyiruppu. A further 15 families have not been allowed to go to their houses. It was reported to CPA that a number of public buildings and houses are currently occupied by the Security Forces.

¹⁷ Inter Agency Standing Committee, "Conflict-Related Internal Displacement in Sri Lanka: A study on Forced Displacement, Freedom of Movement, Return and Relocation," April 2006- April 2007.

Furthermore, the Buffer Zone of the Outer Circular Road runs through the village, hence some of the residents will not be able to resettle unless the buffer zone is reduced or removed and the security forces shift to a camp. A number of families from Thangapuram are currently residing in welfare camps in Batticaloa.

Army occupation of areas within civilian settlements may not be due to security considerations alone, but also for convenience, in that the security forces can use existing structures instead of constructing new buildings. For the resettled villagers this occupation poses significant problems. In some of the resettlement that took place in the previous months, people were brought back to their original villages unaware that they might be unable to return to their homes. No 'go and see' visits were organized in such cases. The affected families therefore find themselves in public buildings where available, or have to stay with friends. In effect, they have moved from one state of displacement to another. Subsequent to such instances being highlighted to the authorities, 'go-and-see' visits have been organized by the Government and UNHCR. In most of these 'go-and-see' visits, one representative from the main welfare camps in Trincomalee and Batticaloa originally from that village, are taken to visit the site and they in turn pass on the news to their neighbours and relatives living in their particular camp. CPA was told that in these cases where people have been informed that their house is occupied, they are generally more reluctant to return. Areas in Paddalipuram such as Veera Nagar, had 'go and see' visits and we were informed that resettlement will soon take place .

Other obstacles to resettlement: Families and communities who are being resettled in areas which fall within the gazetted HSZ, face similar problems that other resettled villages confront. A number of the houses and infrastructure within the village are destroyed and need immediate repairing. We met with a few residents in Pallikudiyiruppu who had returned to their homes on the 25th of March. There were presently 140 residents in the village and life was slowly returning to what it was prior to displacement. The residents in the village were mostly displaced to Batticaloa. They had refused to leave the welfare camps in Batticaloa if they could not return to their own homes and land. People stated that when they returned, many of the houses were destroyed and that they had lost many of the possessions they had left in their housing compounds. They received limited assistance from UNHCR and NRC to rebuild their houses. In the interviews we conducted, there was little or no mention of assistance provided by the government. They stated that the assistance on the whole has been poor and that many are facing hardships. This is largely due to lack of livelihood options available. In Pallikudiyiruppu, although farming utensils were provided for some of the farmers, they did not have paddy seed and the irrigation canals were not fully functional.

Security restrictions imposed by the Security Forces create additional obstacles for the resettlement process. Some of these security restrictions are specific to the areas currently being resettled while in other instances it impacts the district at large. For instance when CPA visited Trincomalee there was a complete ban on any fishing imposed in Trincomalee following the elections for the Eastern Provincial Council. For almost two and a half weeks fishermen were unable to earn a living. In communities such as Muttur which have a significant number of families who are dependent on their daily catch to feed themselves this meant that the community had to provide food for those most directly affected. In the

last week of May, the ban was reduced to a fishing restriction from 6 am to 6 pm which has alleviated rather than resolved the problem of livelihoods. In addition there are also security fears. We were informed that the SLA and CID visits regularly to question the residents and that residents feared such visits. In Poonagar, Eechalampattum which does not fall within the gazetted HSZ, for instance, farmers make their way home before sunset as they are afraid for their security. De-mining is another critical concern and resettlement is sometimes delayed until areas have been cleared and a Low-Risk Certificate has been issued.

3.3 THE SITUATION OF COMMUNITIES WHO WILL NOT BE RESETTLED IN THE 'NEW' HSZ

Communities who lived in areas that fall within the G.S. divisions where resettlement will not take place, face the prospect of being relocated. Relocation is taken to mean the movement of people from one location to another not of their origin which in the context of displacement means that IDPs will not be resettled but settled elsewhere. It is estimated that at the very least 7,388 individuals from 1,998 families will lose their homes if the HSZ is to incorporate the five G.S divisions. Currently the majority of these people are in welfare camps or with friends and relatives in Batticaloa (3,154 persons) or in Trincomalee (1,340 persons).

In January 2008 families from Sampur East, Sampur West, Koonitheevu, Navaratnapuram, Kadakarachenai and Kattaiparichchan North were asked to fill a form as to whether they wished to resettle in Ralkulli or Pallikudiyiruppu. The form provided very limited additional information. It stated that the relocated families would be given land, temporary shelter, livelihood assistance and that permanent shelters would be provided after one year. When CPA interviewed families who had filled the forms in Manpower Camp, Batticaloa and Padithedal Camp, Trincomalee they all stated that they had not agreed to either, and instead wrote that they wanted to go back to their original homes. A number of actors who work with the displaced confirmed that most of the displaced do want to return to their original homes.

On April 25 2008 a commemoration was held in a number of IDP camps to mark the second year of displacement from Sampur. As a part of the ceremony a letter was read out addressing the President of Sri Lanka appealing for the families from the HSZ to be allowed to return. During our visit to Trincomalee in May 2008, CPA was informed that the forms are now irrelevant and people will not be given a choice but will be relocated according to their professions – fishing families to Ralkulli and other families to another site. Ithikulam is a site that has been proposed for resettlement where 850 houses are to be constructed, while 199 houses will be built in Ralkulli. The location of the other 1,500 required houses is unclear.

Critical issues which need to be take up: It needs to be emphasized that given the demand by most families to return, a serious review needs to be taken of the necessity of

incorporating such a large extent of land into the HSZ. Efforts should be made to ensure that such a review is carried out in order to examine the security and humanitarian dimensions of the issue and the committee involved would include representatives from the Security Forces, the relevant ministries including the Resettlement Ministry, and elected representatives from the affected areas. Dialogue with the affected families would also be a critical step in this regard.

The proposed relocation creates a number of issues. The issue of consent and the legality of such relocation are clearly in question. People's rights of ownership and freedom of movement are in danger of being violated. Related to this is the issue of adequate compensation if the relocation is to proceed. If families are to be granted land in return for their loss of property, the compensation should be decided according to the extent of land which they held earlier, instead of providing a set amount of land for all families. The suitability of the relocation sites is an issue that needs to be addressed, as Pallikudiyiruppu for instance already suffers from a water shortage while Ralkulli's population will be effectively doubled if the relocation goes ahead. There are also concerns that relocated families will be unable to carry out sustainable livelihoods, and will find themselves competing for existing resources such as irrigation water and fishing rights. In addition, the relocation is being carried out without considering critical social aspects including familial and community ties.

The political implications of the relocation cannot be ignored. The overwhelming majority of those who will be displaced by the HSZ/SEZ are Tamils. If their right of return, even at the end of the conflict is not guaranteed then it will feed the perception that the Sri Lankan Government will sideline the rights of the Tamil community. If a coal power station is established and the workers are largely Sinhalese this will feed Tamil fears that the HSZ, SEZ and other development programs are

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also aimed at altering the demography of the East. The political dimension of the HSZ/SEZ has to be addressed by the Government and the political representatives of the area in order to avoid further polarizing communities in the East.

4. CRITICAL LEGAL ISSUES

4.1 LAND ACQUISITION AND REQUISITION

The above sections have dealt with various examples of the acquisition of peoples' land without any legal authority or prior notice. Beyond the gazette, there has been no clarity as to which laws, if any, have been used to acquire the land within the HSZ.

The powers for land acquisition and requisition are provided under the Land Acquisition Act, the Land Resumption Ordinance, the Requisitioning of Land Act, the State Lands (Recovery of Possession) Act and the State Lands Encroachment Ordinance. Land can be acquired for a 'public purpose' as provided in the Land Acquisition Act which sets out the process in which land can be legally acquired.¹⁸ Under the Requisitioning of Land Act, a competent authority can, with the approval of the President, take possession of any land for certain specified purposes including maintenance of essential supplies and services to communities and use or occupation by the armed forces. The police are authorised to use force to secure such land.

4.2 ALIENATION OF STATE LAND

As to whether persons are to be taken to state or private land in the relocation drives, is another issue of concern. As discussed above, private land can be acquired for 'public purposes'. Private land can also be purchased.

State Land can be alienated through permits and grants.¹⁹ Under the Land Development Ordinance (LDO), certain families may be granted state land vested with the Land Commissioner for the purpose of developing the land. State land can only be granted to persons who settled on the land before 15 June 1995, except in the case of special relocation or resettlement programmes. The new development programmes in Trincomalee may be classified as special relocation or resettlement programmes, thereby enabling permits to be issued in accordance with the law. The procedure for granting land begins with a person first obtaining a permit to occupy state land. In order to obtain a permit, a person must

¹⁸ Accordingly, once the Minister decides that a piece of land or a servitude over a piece of land should be acquired for a public purpose, s/he may order the acquiring officer of the area to give notification of such acquisition to the owner of the land. Once the Minister gazettes the declaration of his/her decision to acquire a piece of land or a servitude, notice must be provided so that interested parties have an opportunity to express any objections.

¹⁹ For more information please refer to CPA's report on Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni, April 2005

apply to the Divisional Secretary.²⁰ The vast majority of permits and grants are given to the male in the family as “head of the household”. This issue has been raised by CPA in other reports.²¹ The LDO provides that no person may acquire prescriptive title to permit land. It is an offence to encroach on permit/grant land, and anyone who does so may be required to pay a fine or be subjected to imprisonment or both.

Further, agricultural or estate land may be granted by the President to any citizen of Sri Lanka in accordance with the Land Grants (Special Provisions) Act. This land will be transferred only after being surveyed, and the instrument of disposition must be registered with the GA and with written consent from the Land Commissioner.

The State Lands Ordinance provides for grants, leases, and other dispositions of state lands, as well as management and control of such lands. The President has the power, on behalf of the country, to make absolute or provisional grants of state land, sell, lease or dispose of state land in any other fit manner. Under the provisions of the Ordinance, permits for occupation of state land can also be issued. Where land is vested in local authorities by the state, the local authorities have the powers of granting land or leases.

4.3 THE THIRTEENTH AMENDMENT, PROVINCIAL COUNCILS AND LAND

The Thirteenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka was introduced with the objective of devolving and delegating certain powers of the central government to Provincial Councils. The Thirteenth Amendment sets out the subjects assigned to the central government and the Provincial Councils in three lists: (i) the Provincial Council List which describes the subjects assigned to the Provincial Councils; (ii) the Reserved List which describes the subjects assigned to the central government; and (iii) the Concurrent List which describes the subjects that are assigned to both the central government and the Provincial Councils.

It is generally perceived that the Thirteenth Amendment provides the Provincial Council with powers over land as it is included within the Provincial Council List.²² A fine reading of the Provincial Council List and the Appendix II which set out the details with respect to land under the Thirteenth Amendment suggests there is hardly any devolution of power with regards to this subject. There are limitations in the powers vested within the Provincial Council including state land continues to vest in the Republic and may be disposed of by the

²⁰ Persons who have lost their permits may apply for certified copies at the Divisional Secretariats. Since 1990, Divisional Secretariats are required to keep copies of all permits, grants and leases. This has been problematic in areas in the North and East where many documents have been destroyed due to the conflict. Persons who have lost their grants may apply for certified copies at the Land Registries and the Divisional Secretariats. Only state land granted or leased under the State Land Ordinance is recorded centrally at the Land Commissioner’s Office in Colombo.

²¹ CPA’s report on Women’s Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni, April 2005

²² The extent of devolution is subject to debate and there are varying views on the topic.

central government. This means that any alienation of state land must be done under the seal of the President.

The Thirteenth Amendment provides that where the distribution of allotments of state land occurs, it should be undertaken on the basis of national ethnic ratios.²³ Distribution of state land should avoid disturbing demographic patterns of a Province, and be done in a manner that ensures community cohesiveness in settlements. The Amendment further provides that when state land is distributed under various projects, priority should be given first to those displaced by the project, then to the landless of the area in which the project is implemented, and finally to the landless of the Province.

Even though the Provincial Councils have the power to make final decisions on matters that fall within the Provincial Council List, the central government has overriding powers over all devolved subjects. This has resulted in a situation where, despite land, rehabilitation and reconstruction falling within the purview of the Provincial Councils, in effect, it is the central government that makes the final decision on all matters. The situation is compounded by the financial dependence of the Provincial Councils on the central government.²⁴ The centralisation of powers is also seen with the new projects that have been introduced under the Eastern Revival Programme²⁵ where the Central Government plays a significant role, thereby undermining the Provincial Councils. Further, it is yet to be seen whether the newly constituted Eastern Province will be given land powers as provided by the Thirteenth Amendment and what control the Central Government and agencies will exercise over land matters.

Despite land, rehabilitation and reconstruction falling within the purview of the Provincial Councils, in effect, it is the central government that makes the final decision on all matters.

The Appendix of the Provincial Council List establishes a National Land Commission (NLC). The provisions of the Constitution provide that this body, which will include members of Provincial Councils, will be responsible for the formulation of the National Land Policy. The National Land Policy will deal with the use of state land. The Provincial Councils are intended to exercise those powers devolved on them in accordance with the National Land Policy formulated by the NLC. The NLC has yet to be established despite the Thirteenth Amendment becoming part of the Constitution in February 1988.²⁶

²³ Appendix II, 2.5 of the Thirteenth Amendment

²⁴ Pursuant to Article 154R of the Constitution, the central government may allocate funds to the Provinces on the recommendation of the Finance Commission. The Provincial Councils have no revenue-raising powers of their own under the Constitution.

²⁵ Official web portal of The Eastern Revival Programme, <http://www.neweast.lk>

²⁶ In the *Memorandum on Land Issues Arising From the Ethnic Conflict and the Tsunami Disaster*, January 2005, CPA recommended that the NLC be established and granted the resources necessary to carry out its mandate. However, in order to respect the principle of subsidiarity, CPA has proposed that the NLC's role be limited to the formulation of broad national policies within whose framework provincial and local authorities would have the flexibility to formulate and implement policies and programmes responsive to local needs.

5. RECOMMENDATIONS

FOR REDUCING THE HSZ

- The HSZ needs to be re-examined. While the reduction of the HSZ is a positive move, the necessity of covering 5 full G.S divisions and significant portions of 3 others needs to be reviewed by a Committee which could include, representatives of the military and elected officials from parliament and the EPC representing the affected persons.
- Gazette exact areas covered by the HSZ and make sure that the information is publicly available.
- Land acquisition should follow established processes in accordance with the Land Acquisition Act and other laws.
- Ensure that as many people as possible can return to their original lands and property. The HSZ should be time specific and tied to the continuation of the conflict, which would allow people to retain their property so they could reclaim it when the war ends.

FOR RESETTLEMENT AND RELOCATION

- The security forces must turn over civilian buildings that they occupy in villages that have been opened up for resettlement.
- Resettlement and relocation should be carried out recognizing the basic rights and the dignity of affected persons. The process should be carried out in a manner so as to ensure that affected persons be informed and consulted by the Government. 'Go-and-see' visits, which the Government has helped coordinate, should continue prior to resettlement.
- Provide alternative land and compensation to those whose lands are being acquired. People should be provided with a choice of land, taking on board livelihoods and other issues so as to ensure that people can carry out sustainable livelihoods.
- Provide comprehensive assistance to persons who have been resettled and relocated including food assistance, assistance with reconstruction and rebuilding and livelihood assistance. Infrastructure assistance that addresses the immediate needs of the people is required.

FOR ADDRESSING RELATED LEGAL ISSUES

- The provision of state land and permits should be in accordance with the legal formalities and done by authorized actors.
- There should be mobile clinics that address the documentation issue, replacing documents including birth certificates, National ID's and land documents.
- In accordance with the Thirteenth Amendment, all powers of the Provincial Councils need to be devolved including land powers. The Provincial Council should ensure that it exercises these powers with caution as land is a key source of ethnic grievances and communal tensions.
- The National Land Commission should be established immediately.

FOR THE DEVELOPMENT OF TRINCOMALEE

- Make public the development plans for the Trincomalee district and ensure there is public awareness and information sharing.
- Development programmes in the East need to take on board regional needs and concerns, with regional actors taking the lead in the formulation and implementation of projects. While macro economic projects including major infrastructure and industrial estates are important, the rights of and the needs of local communities, including their basic survival needs, to be adequately addressed. This needs to happen at the planning stage so that immediate local needs are addressed and that local people are not just the subjects of projects but are included in the implementation. Ensuring that the local consortiums such as the Trincomalee Chamber of Commerce are included and consulted on development plans is an important step. Establishing committees at the community level of local community leaders and the G.S to inform villages about current development projects would create more confidence and ensure more public buy in.

4. MAP OF TRINCOMALEE HIGH SECURITY ZONE

For a map of Trincomalee HSZ please visit

<http://maps.google.com/maps/ms?ie=UTF8&hl=en&msa=0&msid=111081221992229558764.00044e368d4e0c68da6c4&ll=8.456072,81.295052&spn=0.134817,0.344696&z=12>.

This map is a visual representation of the HSZ based on available data with demarcations and other indicators.