

High Security Zones and the Rights to Return and Restitution in Sri Lanka

- a case study of Trincomalee District -



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CENTRE ON
HOUSING RIGHTS
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Cover Photo: Damaged house nearby the last Sri Lankan Army checkpoint before reaching the Kilivetti IDP camp in Trincomalee district (April 2008). The Kilivetti camp was originally a temporary site opened after the tsunami as an interim solution for people who lost their houses on December 24, 2004. Today, it is still open and houses most of the families displaced due to the Sampoor High Security Zone.

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1.

INTRODUCTION

The full enjoyment of housing, land and property (HLP) rights in Sri Lanka has been severely restricted by two decades of war, mass displacement due to recurrent conflict, and a weak policy framework that does not draw an equitable balance between security concerns and the human rights of vulnerable populations. Land plays a central role in the conflict, and eventual peace, between the Liberation Tigers of Tamil Eelam (LTTE), the Government of Sri Lanka (GoSL) and society as a whole. Land and property¹ issues were at the forefront of the peace talks following the 2002 Ceasefire Agreement (CFA). However, with the resumption of hostilities in 2006 and the abrogation of the CFA in 2008, access to adequate housing, and housing and property restitution for internally displaced persons (IDPs) remains out of reach for hundreds of thousands of people. The destruction of housing and property due to conflict, the displacement of hundreds of thousands of people, secondary occupation of private lands by actors including the security forces, police, the LTTE and other armed groups, and the creation of High Security Zones (HSZs), have all adversely affected the ability of displaced persons to access their human rights to adequate housing, return and restitution.

High Security Zones and the denial of access to one's original lands pose intractable ongoing barriers to return, and housing and property restitution. Competing interests have clearly emerged as the ethnic conflict has intensified and the GoSL has gained control of new areas in the North and East. These include: the rights to return and restitution of displaced persons in safety and dignity back to their original lands and homes; the security concerns of the Sri Lankan military forces; and the development of newly opened up areas to solidify Government control through economic prosperity. The lack of policies consistent with human rights obligations has left many marginalized and vulnerable communities no effective remedy to defend their HLP rights in the face of the larger security and development interests of the Government and the military.

Housing, land and property restitution is essential to bringing displacement in Sri Lanka to an end. It is also vital for a sustainable peace process to take hold. The large scale dismantling of HSZs is not likely anytime in the near future, but there are a number of alternatives. The history of HSZs in Sri Lanka highlights three areas where a compromise position between their total removal and the current status quo may be found.

First, the legal status of HSZs varies widely across the island; gazettement the extent of a HSZ may suggest that it is to be a more permanent feature, but it can also make the process more

¹ Property is used to mean all physical assets residing on property and owned by displaced persons including but not limited to: housing, business infrastructure, items necessary to livelihoods and an adequate standard of living.

transparent, permit a degree of legal oversight and could establish a basis for fair compensation to be paid if done carried out under a rights based framework.

Second, the functions of HSZs are not uniform. Although we are most concerned here with HSZs which have resulted in forced displacement, principally in the East, they exist in different ways in various parts of the country and in some areas do not result in any form of displacement, proving that a useful security presence may be maintained with fewer disturbances to the local population. In other instances, principally in the East, dual use of areas as HSZs and Special Economic Zones (SEZs) creates confusion regarding the underlying rationale for land appropriation and intensifies distrust of Government motives.

Finally, the size of HSZs also appears to be flexible. This seems to have been the most profitable focus of negotiations during the ceasefire and there are a number of examples where the military has agreed to a reduction in the size of a HSZ, even during active conflict, thus drawing into question the necessity of certain zones.

If no action is taken to establish equitable criteria and a transparent process for the establishment, maintenance and dissolution of HSZs, there is a very real danger that HSZs will become a quasi-permanent negative feature of the administrative-military landscape of the North and East. This will have very significant costs, in terms of the direct loss of land and livelihoods for displaced people, the normalisation of illegal secondary occupations, the exacerbation of communal tension as temporarily displaced populations become more permanent, and increasing distrust by citizens' in the Government and the rule of law, all of which will need to be rectified if a just peace is ever to be achieved. Maintaining and developing new HSZs will contribute to growing resentment and frustration that could negate any future moves towards reconciliation and peace.

This report presents new primary research on the situation of the developing Muttur (East)/ Sampoor HSZ (hereafter referred to as the Sampoor HSZ) and outlines specific housing, land and property issues IDPs from this area face. The purpose of this report is to highlight the serious housing rights violations caused by the Sampoor HSZ and to offer recommendations for remedies that are consistent with Sri Lanka's human rights obligations under international and domestic law. The first section of this report provides a brief background on Sri Lanka's international and domestic legal frameworks. The second section considers the background of HSZs in Sri Lanka, the development of the Sampoor HSZ, and development projects in the Trincomalee District. The third section provides an analysis of information gathered from those displaced from the HSZ area and the issues they face during displacement, return and possible relocation. Section four offers practical recommendations for protecting the HLP rights of IDPs from the Sampoor HSZ area and ways to ensure the housing rights of all citizens are ensured during the management of the current HSZ and the creation of future HSZs.

Methodology

During the months of June, July and September 2008, the Applied Research Unit of the United Nations Office of Project Services (UNOPS) on behalf of the Centre on Housing Rights and Evictions (COHRE) undertook a household-level survey of 384 families who continue to live in displacement (IDPs) and those already returned (Returnees) in the Batticaloa and Trincomalee Districts as a result of the 2006 military operations in the Eastern Province. The survey was funded by the Office of the United Nations High Commissioner for Refugees (UNHCR) and was developed jointly by COHRE and UNOPS. The aim of the survey was to gather data and experiences during and after displacement to understand the process of compensation for losses, access to remedies by IDPs, highlight the challenges to full restitution as well as to document barriers to return.

A total of 192 IDPs were interviewed during the course of the survey and can be divided into three categories. The first distinction in the categorization of the sample: *Batticaloa IDPs* (N=48) refers to families who are internally displaced *within* the Batticaloa District – in other words when they return “home” they will return to some place within the Batticaloa District. *Trincomalee HSZ IDPs* (N=121) are families either living in the Trincomalee or the Batticaloa Districts who have not been able to return to their original homes and properties due to the Sampoor HSZ. *Trincomalee non-HSZ IDPs* (N=23) are families from the Trincomalee District who live in displacement and are not directly affected by the Sampoor HSZ. This report is mainly concerned with the *Trincomalee HSZ IDPs*. However, in certain areas data from the other groups will be used to highlight differences in assistance and barriers to return.

COHRE undertook fact finding trips to Batticaloa and Trincomalee in March and July of 2008 and conducted interviews with Government officials and agencies working in the area, conducted follow up interviews by phone, and interviewed relevant Government actors in Colombo in 2008 and early 2009. The report is also based on a desk review of literature related to HSZs in Sri Lanka and previous research conducted by COHRE in Sri Lanka.

Note on word usage

The terminology used to describe the return of IDPs and refugees to their original location and homes and the movement of IDPs to new lands and homes varies considerably between the International Community and the Sri Lankan Government. This is especially true with the term “resettlement” which is used to express the exact opposite effect. The GoSL uses the term to mean: the return to one’s original home and lands, while the accepted international usage means: the movement to a home and land different from where one was originally displaced.

To bridge these differences and to avoid further confusion this report will use the following definitions:

Return: the movement of displaced persons back to their original home and lands.

Relocation: the movement of displaced persons to a new location that is not their original home or land.

2.

INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORKS**2.1 Overview of International Legal Standards**

There are no international instruments or norms explicitly dealing with the establishment or maintenance of HSZs. However, both international human rights law and international humanitarian law apply during times of armed conflict and IDPs share the same rights and freedoms as other people in their country. Sri Lanka has ratified numerous international instruments that provide for the protection and promotion of human rights, and more specifically the right to adequate housing. These include the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), among others.² Sri Lanka is also bound by the Geneva Conventions and customary international law which provide the basis for the protection of civilians, vulnerable persons and actors involved in armed conflict. Although Sri Lanka is not party to Additional Protocol II to the Geneva Conventions (concerning non-international armed conflicts), the rules discussed here are part of customary international law and thus are binding upon all parties to the conflict in Sri Lanka.

While not binding instruments *per se*, the *Guiding Principles on Internal Displacement (Guiding Principles)*³ and the *United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles)*⁴ reflect and are consistent with relevant provision of both human rights law and international humanitarian law. The instruments identify the rights and guarantees of international law as they relate to the protection of persons from displacement, the specific needs of IDPs during displacement and during the return and resettlement phase, and relate specifically to the rights to return and restitution. Their basis on international law makes them an authoritative source to assess situations of displacement, return, and housing and property restitution.

² In addition to the ICESCR and the ICCPR Sri Lanka has ratified the following instruments that guarantee housing rights: the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), Art. 5 (e) (iii); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in its article 14 (2) (h); the Convention on the Rights of the Child, Art. 27 (3); and the International Convention on the Protection of the Rights of all Migrant Workers and members of their Families, Art. 43 (1) (d).

³ Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2/Annex. The Guiding Principles are available in Tamil and Sinhala at www.brookings.edu/idp.

⁴ United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc E/CN.4/Sub.2/2005/17/Add.1. The Pinheiro Principles are available in Tamil and Sinhala at <http://www.cohre.org/srilanka>.

All IDPs enjoy the fundamental rights to freedom of movement and the freedom to choose their place of residence.⁵ The *Guiding Principles* state that civilians should be protected from arbitrary displacement from their homes and lands in situations of armed conflict, unless there are compelling security or military reasons to move them.⁶ The authorities of the State (Sri Lanka) responsible for the displacement must “*provide protection and humanitarian assistance to [IDPs]*”⁷ who in turn “*have the right to request and to receive*” such assistance. The State shall try “*all feasible alternatives*”⁸ in order to prevent the displacement. When the displacement is unavoidable the State shall take “*all measures...to minimize displacement and its adverse effects.*”⁹

When displacement occurs in situations of an emergency, the displacement shall be ordered by a competent authority and “*adequate measures*” must be taken to inform the displaced population about “*the reasons and procedures for their displacement.*” The competent authorities representing the State shall seek “*the free and informed consent*” and involvement of the displaced population. If required, laws shall be enforced by the competent authorities, and the displaced civilians shall be afforded their “*right to an effective remedy*”¹⁰ to displacement or violations suffered as a result. The displacement can neither violate the right to life, dignity, liberty and security,¹¹ nor the right to liberty of movement and the freedom to choose a residence.¹²

IDPs also have the right to voluntary return, in safety and dignity, to their original places of residence, and it is the responsibility of the competent authorities to establish the conditions and provide the means to enable such voluntary return.¹³ IDPs have the right to be protected against involuntary return or relocation to any place where the person’s life, safety, liberty and/or health would be at risk.¹⁴ IDPs shall not be arbitrarily deprived of their property and it shall be protected “*against destruction and arbitrary and illegal appropriation, occupation or use.*”¹⁵

The *Pinheiro Principles* state that IDPs also have the right to housing and property restitution. In this case, restitution refers to an equitable remedy by which displaced persons are given the assistance and means necessary to re-establish as far as possible their original pre-loss position. This means that IDPs have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived. If restitution is not factually possible, then IDPs have the right to be compensated for the loss of their housing, land and/or property. Important in this regard is that factual impossibility is to be determined by an independent and impartial tribunal.¹⁶ However, States are obligated to demonstratively prioritize the right to restitution as the preferred remedy for displacement, and ensure that

⁵ ICCPR, Art. 12 (2)

⁶ Guiding Principle 6; Pinheiro Principle 5 (1)

⁷ Guiding Principle 3.

⁸ Guiding Principle 7 (1).

⁹ Guiding Principle 7 (2).

¹⁰ Guiding Principle 7 (3).

¹¹ Guiding Principle 8.

¹² Guiding Principle 14.

¹³ Guiding Principle 28 (1); Pinheiro Principle 10.

¹⁴ Guiding Principle 15; Pinheiro Principle 10 (3).

¹⁵ Guiding Principle 21.

¹⁶ Pinheiro Principle 2 (1).

IDPs do not lose their right to restitution whether return occurs or not, unless they freely consent to it or it's a part of a peace agreement.¹⁷

Circumstances of displacement do not affect or diminish the right of IDPs to adequate housing, as guaranteed in Article 11 (1) of the ICESCR, and reaffirmed in Pinheiro Principle 8. The right to adequate housing obligates the State to provide housing with security of tenure, access to services, facilities and infrastructure which is affordable, habitable, is accessible, in an appropriate location and is culturally appropriate.¹⁸ The right to adequate housing also includes the right not to be forcibly evicted from one's home. Forced eviction is defined by the Committee on Economic, Social and Cultural Rights as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."¹⁹ Evictions can only be justified in "*the most exceptional circumstances, and in accordance with the relevant principles of international law.*"²⁰

In those "exceptional circumstances" in which forced evictions can be justified under international law, the State must adhere to certain procedural requirements. First, the State must ensure, prior to any evictions that all feasible alternatives are explored in consultation with affected persons. Second, evictions should never result in rendering individuals homeless or vulnerable to the violation of other human rights. Finally, in those rare cases where eviction is considered justified, it must be carried out in strict compliance with additional relevant provisions of international human rights law. These include the following:

1. An opportunity for genuine consultation with those affected;
2. Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
3. Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
4. Provision of legal remedies; and
5. Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.²¹

¹⁷ Pinheiro Principle 2 (2).

¹⁸ General Comment No.4 (1991): The Right to Adequate Housing (Art. 11(1) of the Covenant), adopted unanimously by the UN Committee on Economic, Social and Cultural Rights (CESCR) on 12 Dec. 1991, UN Doc E/CN.4/1991/4(1991). The CESCR is responsible for reviewing governments' compliance with the Covenant. General Comments are issued by the Committee to give guidance on Covenant implementation, and the Committee uses them when assessing compliance. General Comments thus provide an authoritative source for treaty interpretation.

¹⁹ Committee on ESCR, General Comment No. 7, *The Right to Adequate Housing* (Art. 11, para.1 of the Covenant): forced evictions, UN Doc. E/C.12/1997/4(1997); Pinheiro Principle 5 (3)

²⁰ General Comment No.4 (1991): The Right to Adequate Housing (Art. 11(1) of the Covenant), adopted unanimously by the UN Committee on Economic, Social and Cultural Rights on 12 Dec. 1991, UN Doc E/CN.4/1991/4(1991).

²¹ Committee on ESCR, General Comment No. 7, paragraph 15; additional procedures are: especially where groups of people are involved, government officials or their representatives to be present during an eviction; all persons carrying out the eviction to be properly identified; evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise.

Derogation

Human rights law, which is binding on States as discussed above, permits some limitation of movement-related rights under very specific circumstances.²² International humanitarian law is binding on all parties to a conflict and can not be subject to any limitation or derogation. Derogation on the right to free movement can only occur in times of a formally declared public emergency, as has existed in Sri Lanka since August 2005, and must be of an “exceptional and temporary nature.”²³ Derogations from movement-related rights are also subject to strict procedural protections. Measures of derogation are limited “to the extent strictly required by the exigencies of the situation.”²⁴ These limitations relate to the duration, geographical coverage and substantive scope of the derogation. Under the principle of proportionality, measures of derogation must be carefully tailored to meet the exigencies of the emergency, and they must not be broader than necessary. Moreover, the derogation may not be inconsistent with other obligations of international law (such as international humanitarian law).²⁵ Finally, the fact of the derogation itself must be formally notified and justified to other State Parties to the Covenant through the Secretary-General of the United Nations, which Sri Lanka has never done.²⁶

While the state of emergency in Sri Lanka meets the criteria for derogation under Art. 4 of the ICCPR, no information has been released to the public explaining how restricting movement to the Sampoor HSZ helps to elevate a threat to the life of the nation. According to all accounts, restrictions on movement into the HSZ is intended to become permanent as proposed relocation sites for former residents have been established, thus violating the criteria for derogation that it be temporary in nature.

Under the ICESCR, there is no derogation clause and thus the prohibition on forced evictions and the right to adequate housing remain in place. However, according to Article 4, limitations on rights are allowed as long as their purpose is to promote the general welfare in a democratic society and are compatible with the rights prescribed in the Covenant.²⁷ In addition, national security may be used as “exceptional circumstances” to justify eviction from HSZ land, as long as there were no other “feasible alternatives” that would meet the security concerns. The burden is on the State to prove that exceptional circumstances exist on a case by case basis and the State must demonstrate that the communities formerly residing in the HSZ must be relocated to meet the security concern. No such justification has been publicly produced, and no other alternative has been explored.

²² International Covenant on Civil and Political Rights (ICCPR), Art. 4. The Covenant also specifies a list of rights that remain non-derogable at all times.

²³ General Comment No. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11 (2001) ¶ 2. Moreover, the “public emergency” must reach the level that it “constitutes a threat to the life of the nation.”

²⁴ ICCPR, Art. 4(1)

²⁵ Ibid.

²⁶ ICCPR, Art. 4(2). Proclamation of a state of emergency prior to the derogation is essential to satisfy the principles of legality and rule of law. In addition, it must be consistent with the constitutional and statutory authority which governs the exercise of emergency powers. Sri Lanka has not notified the United Nations of any existing derogation.

²⁷ ICESCR Art. 4. “...the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society.” See also General Comment 5 for the ICESCR.

Finally, the existence of an armed conflict does not abrogate the prohibition of forced displacement. Customary international humanitarian law provides that “Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.”²⁸ Importantly, those who have already been displaced retain this right against further (secondary) displacement. This means that IDPs still in displacement and not being allowed to return to their former homes retain the right not to be displaced to a new area, such as a relocation site, against their will. This is particularly important for HSZ IDPs as they face longer periods of displacement and there is a history of moving them to new relocation sites for administrative convenience.

2.2 OVERVIEW OF DOMESTIC LEGAL STANDARDS

The Constitution of Sri Lanka includes a Fundamental Rights Chapter that protects the rights to equality and equal protection under the law, freedom of movement, the right to choose one’s residence, the freedom from cruel and inhuman treatment, amongst others.²⁹ The Constitution does not include any provision for safeguarding housing rights in the fundamental rights chapter. However, the Constitution does provide guidance in the Directive Principles of State Policy. Article 27 (2) (c) of the Constitution contains a specific guideline for the State to realise an adequate standard of living for all citizens, including adequate food, clothing and **housing**, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities. The Directive Principles of State Policy³⁰ are not expressly justiciable in a court of law but are intended to guide the State, and the Sri Lankan Supreme Court has used the Directive Principles to interpret and apply other, justiciable provisions of the Constitution in the past.

Some rights, such as freedom of movement, can be restricted through the Public Security Ordinance (PSO) in certain situations, if such restriction is set down in law and is in the interest of national security, public order and the protection of public health or morality.³¹ The PSO empowers the President to declare a State of Emergency and adopt Emergency Regulations if s/he believes they are necessary “in the interests of public security and the preservation of public order.”³² A State of Emergency was declared in Sri Lanka in August 2005 following the assassination of Foreign Minister Lakshman Kadirgamar.

Emergency Regulations were brought into force at that time and have been renewed on a monthly basis ever since. The Emergency Regulations give wide powers to the armed

²⁸ Henckaerts, Jean-Marie, and Louise Doswold-Beck, *Customary International Humanitarian Law*, (International Committee of the Red Cross and Cambridge University Press, Cambridge 2005) (customary international humanitarian law), Vol. 1, Rule 128. This rule is derived from Article 49 of the Fourth Geneva Convention and Article 17 of Additional Protocol II to the Geneva Conventions.

²⁹ The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), Article 14 (1) (h) (i).

³⁰ *Ibid*, Article 27.

³¹ The Constitution, Article 15 (7), identifies the PSO as the law dealing with public security in the event of a state emergency or an imminent state of public emergency.

³² Public Security Ordinance No. 25 of 1947, Section 5 (1)

forces to execute arrests and detentions outside the scope of the Criminal Penal Code. On 30 May 2007, a new Emergency Regulation was adopted which created what was called the Emergency (Muttur (East)/Sampoor High Security Zone) Regulation No. 2 of 2007. The gazette notification created the Sampoor High Security Zone comprising the following 11 Grama Niladari (GN) Divisions in the Trincomalee District: Sampoor East, Sampoor West, Koonitheevu, Kadatkarachenai, Kaddaiparichchan South, Kaddaiparichchan North, Nalloor, Pallikudiyuruppu, Chenaiyoor, Paddalipuram and Nawarednapuram. The regulation named the Trincomalee Government Agent (GA), currently Major General De Silva, as the Competent Authority and gave him full powers to control all movement in and out of the Sampoor HSZ. According to the regulation, no person shall enter the area without the written consent of the Competent Authority.

Although the Constitution allows for *permissible restrictions* to be imposed on the fundamental right to freedom of movement and freedom to choose a place of residence, the Supreme Court has expressed the view that they cannot be imposed with the result of *denying these rights*.³³ Restrictions on freedom of movement are permissible to and within areas where essential services are being carried out. Article 15 (6) of the Constitution allows for the restriction of the right to freedom of movement in the interests of national economy. The restrictions are worded very abstractly and have been interpreted broadly, allowing the Government to put a wide variety of restrictions in place.

The legal framework for restrictions on freedom of movement, and land annexation by the State, has significant consequences for people in Trincomalee where both private lands and State lands are utilized by citizens in the Muttur area. Private land owners with deeds have full ownership rights over their lands, with possible acquisition by the GoSL through the Land Acquisition Act, while State land title holders have possessory rights which entail certain limited rights under the State Lands Ordinance (SLO) and the Land Development Ordinance (LDO).³⁴ Both private land owners and State land possessors are affected by Government land acquisition for the Sampoor HSZ as well as overlapping permanent land acquisition for a Coal Power Plant within the boundaries of the current HSZ. It is therefore important to identify the legal framework that is applicable for land acquisition for HSZ purposes as well as land acquisition for development purposes.

Land Acquisition Act

The Land Acquisition Act No.9 of 1950 (LAA) makes provision for the acquisition of private lands by the State to be used for public purposes. Section 1 provides for the preliminary investigation and declaration of the intended acquisition. Section 2 allows for the Minister of Land to direct the acquiring officer of the district to exhibit a notice pending acquisition in a conspicuous part of/or near the land. Once the acquisition process has started private land owners can make challenges in three ways through the LAA: the acquisition challenge or any other grievances must be made within the period specified in the notice exhibited by the acquiring officer (Section 4); the determination

³³ Sunil Kumara Rodrigo vs. R.K. Chandrananda de Silva, SC.F.R. 478/97.

³⁴ However, both categories enjoy the same protections against forced evictions under international law.

of what needs to be compensated (Section 9); and the award granted for compensation if it is deemed inadequate by the owner (Section 27).³⁵

National Involuntary Resettlement Policy

The LAA only provides for the compensation of land, structures and crops and does not require projects to address key resettlement issues such as; alternative project options, minimizing impacts, compensation for those who do not have a title to their land, consultations on resettlement options, and the social and economic integration and rehabilitation of affected people. To address the lack of social safeguards the National Involuntary Resettlement Policy (NIRP) was approved by the GoSL in 2003.³⁶

It should be noted, that the term “resettlement” used in the NIRP is consistent with the international usage described in the beginning of this report: “the movement of displaced persons to a new location that is not their original home or land”, whereas in the context of conflict displacement, the Government uses the term “resettlement” to mean return. While this report uses the term “relocation” to indicate “resettlement”, this section will follow the usage of the NIRP so as to remain consistent with the original policy document.

The policy applies to all development-induced land acquisitions and recovery of possession by the State, and a comprehensive action plan is required where more than 20 families are affected. This applies directly to former residents of the Sampoor HSZ as much of their land is in the process of being acquired by the State for the development of a Coal Power Plant. The policy applies to all projects regardless of source of funding and applies to all projects on and after the policy comes into effect. The Ministry of Lands is responsible for the implementation of the NIRP and together with the Ministry of Environment and Natural Resources has developed draft amendments to the LAA in order to bring the law in line with the NIRP. However, the amendments have yet to be approved by Parliament and thus a significant gap in protection exists in the current LAA.

It is important to note that the objectives (among others) of the policy are to avoid, minimize and mitigate negative impacts of involuntary resettlement by facilitating the reestablishment of the affected people on a productive and self-sustaining basis in consultation with them; and to ensure that people adversely affected by development projects are fully and promptly compensated and successfully resettled. The livelihoods of the displaced persons should be reestablished and the standard of living improved. Also, no impoverishment should result as a consequence of land acquisition for development purposes.³⁷

The policy principles established in the NIRP stand in stark contrast to many of the findings of the survey (discussed in Section 4), and offer established guidelines for protecting and

³⁵ For a more complete explanation of the act see Annex II.

³⁶ Involuntary Resettlement Policy, Ministry of Environment and Natural Resources, Ministry of Lands, and Central Environment Authority, 2003.

³⁷ Ibid

restoring the rights to return and restitution of HSZ affected IDPs. The policy principles include:

- Involuntary resettlement should be avoided or reduced as much as possible by reviewing alternatives to the project as well as alternatives within the project.
- Where involuntary resettlement is unavoidable, affected people should be assisted to re-establish themselves and improve their quality of life.
- Affected persons should be fully involved in the selection of relocation sites, livelihood compensation and development options at the earliest opportunity.
- Replacement land should be an option for compensation in the case of loss of land; in the absence of replacement land, cash compensation should be an option for all affected persons.
- Compensation for loss of land, structures, other assets and income should be based on full replacement costs and should be paid promptly. This should include transaction costs.
- Resettlement should be planned and implemented with full participation of the provincial and local authorities.
- To assist those affected to be economically and socially integrated into the host communities, participatory measures should be designed and implemented.
- Common property resources and community and public services should be provided to affected people.
- Resettlement should be planned as a development activity for the affected people.
- Affected persons who do not have documented title to land should receive fair and just treatment.
- Vulnerable groups should be identified and given appropriate assistance to substantially improve their living standards.
- Project Executing Agencies should bear the full costs of compensation and resettlement.

State Lands Ordinance

The State Lands Ordinance of 1947(SLO) makes provision for the granting and disposition of State lands in Sri Lanka. It empowers the President to make absolute or provisional grants of State lands, to sell, lease or otherwise dispose of State lands, and to issue permits for the occupation of State lands.³⁸ The Ordinance provides for restrictions to be attached to the disposition of State lands. However, the President may at any time mitigate or release any of the terms, covenants and conditions set out in any lease, permit or license before it is signed.³⁹ Leases are issued for up to 30 years for agricultural, residential or commercial purposes to individuals or cooperatives. Annual permits are given for agricultural purposes to low income families where rent is paid yearly by the tenants. Where a grantee of any permit or lease has failed to observe the conditions specified in the permit or lease document, the GA has the power to cancel the permit or lease. Claims for compensation or damages in such cases are not allowed under the SLO.

Land Development Ordinance

The Land Development Ordinance of 1935 (LDO), provides, under chapter III, for the alienations of State land to citizens of Sri Lanka. Persons to whom State lands are allocated are selected through regional Land Kachcheris and through a two step process.⁴⁰ Firstly, a permit is issued authorizing the person to occupy the land for agricultural and/or residential purposes. A purchase amount is set and the grantee is required to pay off the amount through annual instalments of up to 10 years. Permits can have an unlimited timeframe, but the land cannot be sold or rented out to third parties. In the second stage, the permit holder is issued a grant subject to the fulfilment of three conditions. The permit holder must have paid the purchase price and all other sums, s/he must have complied with the conditions specified in the permit, and s/he must have been in occupation of the land for at least three years for irrigated land, or one year for non-irrigated land.⁴¹ Grants are the closest equivalent to private lands but can only be mortgaged through a licensed commercial bank or an institution specified in Section 43. Grant holders cannot lease or sell the land to any other person. However, the grant can be inherited as governed by Chapter VII.

Special Economic Zones

On 16 October 2006 certain areas in Trincomalee district were declared a Special Economic Zone (SEZ), a Licensed Zone under Section 22A of the Board of Investment (BOI) Act No. 4 of 1978 by the extraordinary gazette notification No. 1467/03. The SEZ covers an area around the Trincomalee Bay from Nilaveli in the North through Trincomalee Town and Gravets, past Kinniya and Muttur into Sampoor and extends towards Kantale.

³⁸ State Lands Ordinance No. 8 of 1947, Section 2.

³⁹ Ibid, Sections 8 and 14.

⁴⁰ Land Development Ordinance No. 19 of 1935, Section 19.

⁴¹ Ibid, Sections 35 and 37.

The SEZ demarcates an area for commercial enterprises. However, it also overlaps with the current Sampoor HSZ thus creating significant uncertainty regarding the purpose of the area and the laws and policies affecting the people who formerly lived within the boundaries of the HSZ. There is no restriction placed on movement or access within a SEZ, although the BOI Law does provide for the alienation of land under the Land Acquisition Act if the BOI considers that it is “required by the Board for any of its purposes.”⁴²

⁴² Article 22 A(1), BOI Law of 1978.

3.

TRINCOMALEE HIGH SECURITY ZONE BACKGROUND

3.1 OVERVIEW OF HIGH SECURITY ZONES IN SRI LANKA

High Security Zones in Sri Lanka evolved from buffer zones around military installations from the 1980s onwards and were first instituted in Jaffna. The obvious international antecedent is the Israeli policy of zoning around particularly sensitive sites. It is clear from the locations of the sites of HSZs in Jaffna that the notion of security is very much the security of the State and several observers lament the absence of human security concerns in their development.⁴³ Given their predominantly military function, the LTTE Peace Secretariat uses the term ‘Military Zone’ to describe HSZs,⁴⁴ although all other sources use HSZ, the official Government term. As well as being the earliest established HSZs in Sri Lanka, those in Jaffna are also the largest and differ from HSZs established elsewhere, in the important respects of access and legal recognition.

The fundamental lack of civilian access imposed in HSZs in Jaffna is the most significant problem and the cause of high numbers of displacement which fits the United Nations’ definition of forced evictions very closely.⁴⁵ Civilians living in areas declared a HSZ are forced to move and, with very few exceptions, those depending on those areas for their livelihoods must seek alternatives. In most other cases elsewhere in the country, such as the HSZ around the official residence of the President of Sri Lanka in Colombo, movement of civilians is highly controlled, but not prevented except at particular times. There are exceptions to this, most obviously the HSZ in Sampoor, but also parts of the Norochcholai HSZ in Puttalam. The second major problem in Jaffna is the total lack of legal definition. Elsewhere it is more often the case that HSZs have been gazetted so their existence and boundaries are clearly established, although in many cases they are lacking adequate security justifications and transparent processes for their establishment. None of the Jaffna HSZs were gazetted, so they have no legal existence. This makes it difficult even to be sure how many there are or how large they are. Throughout the North and the East civilians are forced from homes in close proximity to army camps based on verbal directives by the local military that the areas are now unofficial⁴⁶ HSZs. Such inconsistent usage of the term “HSZ” creates significant confusion and discrepancies over how they are administered and what the rights of civilians are.

⁴³ K. Loganathan and N. Ropers, “Conceptualising a road map for peace in Sri Lanka,” 2002.

⁴⁴ LTTE Peace Secretariat, “Military Zones in the North East,” November 2006 (accessed October 23, 2008); available at <http://www.ltteps.org/mainpages/images/2006/11/MZ.pdf>

⁴⁵ For example, the UN Committee on Economic, Social and Cultural Rights has defined forced evictions as ‘the permanent or temporary removal against their will of individuals, families and/or communities from their homes and/or land without the provision of and access to, appropriate forms of legal or other protection...’ (UN CESR General Comment no. 7, 1997).

⁴⁶ I.e. there has been no legal justification or procedure undertaken to acquire the lands for government purposes.

Given this uncertainty, estimates of the size of HSZs in Jaffna vary considerably, though most sources say there are 18 of them in the Jaffna District. The North East Secretariat On Human Rights (NESOHR) cites a figure of 220 square kilometres in HSZs, a third of the 660 square kilometres of total land area in the Jaffna District. The Internal Displacement Monitoring Centre (IDMC) provides a low end figure of 60 square kilometres which was supplied by the GoSL.⁴⁷ The true figure is undoubtedly somewhere in between. The Humanitarian Info report, commissioned jointly by the GoSL and the LTTE, says 160 square km⁴⁸ and most Sri Lankan media and NGO sources cite a figure of 190 square kilometers.⁴⁹

According to the Government, there are 10,000 houses in this area, with NESOHR estimating just under 30,000 houses.⁵⁰ Estimates of the numbers of people affected also vary widely. According to the Jaffna District Secretariat, 2,339 families (almost 9,000 people) from HSZs were living in IDP camps in November 2005 and there were thought to be a further 16,000 families, (approximately 60,000 people) living with friends and families, so almost 70,000 people in total. Upper estimates suggest 130,000 IDPs in Jaffna.⁵¹ In addition to the direct effects of displacement, restrictions on access also affect livelihoods, principally fishing and farming. According to NESOHR, the existence of HSZs in Jaffna prevents access to 12,937 acres of farmland and 80km of coastline denying livelihoods to 16,557 farming families and 4,436 fishing families. IDMC presents alternative data, suggesting that 17,500 families who depend on fishing, that is nine percent of the population of Jaffna, is affected.⁵² In addition to direct impacts on residence and livelihoods, there are a number of indirect or secondary effects that are much more difficult to estimate, but are undoubtedly significant. They arise from secondary occupations of housing, increased competition in alternative employment markets and increased stress on the friends and families who are supporting an estimated 60,000 people in the area.⁵³

The de-militarisation of HSZs was identified as a key challenge following the Ceasefire Agreement (CFA) signed in February 2002⁵⁴ and the status of HSZs was one of the central issues during the subsequent negotiations.⁵⁵ The LTTE argued in favour of humanitarian principles leading to a gradual dismantling of HSZs and a parallel return of displaced people. The GoSL, on the other hand, refused to countenance any change of policy which may have allowed the LTTE to manoeuvre weaponry into a position to attack army bases. In December 2002, General Sarath Fonseka issued a report insisting that any reduction in HSZs to allow

⁴⁷ Internal Displacement Monitoring Centre, "Civilians in the way of Conflict: Displaced People in Sri Lanka," Geneva, 2007; Internal Displacement Monitoring Centre, "Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) to the Universal Periodic Review mechanism established by the Human Rights Council in Resolution 5/1 of 18 June 2007," Geneva, 2008.

⁴⁸ Humanitarian Info, "Sri Lanka's High Security Zones: Striking a Balance," 2006.

⁴⁹ Bhavani Fonseka & Mirak Raheem, "A Brief Profile of the Trincomalee High Security Zone and other Land Issues in Trincomalee District," *Centre for Policy Alternatives*, May 2008; N. Manoharan, "High Security Zones in Sri Lanka," Article no. 2321 (25 June 2007), Delhi: Institute of Peace and Conflict Studies; D.B.S Jeyaraj, "High-stakes zones," *Frontline* 20(2) (2003).

⁵⁰ North East Secretariat On Human Rights (NESOHR), "Forced Evictions of Tamils in Northeast since 1980s," 2005.

⁵¹ N. Manoharan, "High Security Zones in Sri Lanka," Article no. 2321 (25 June 2007), Delhi: Institute of Peace and Conflict Studies.

⁵² Internal Displacement Monitoring Centre, "Civilians in the way of Conflict: Displaced People in Sri Lanka," Geneva, 2007.

⁵³ Humanitarian Info, "Sri Lanka's High Security Zones: Striking a Balance," 2006.

⁵⁴ K. Loganathan and N. Ropers, "Conceptualising a road map for peace in Sri Lanka," 2002.

⁵⁵ D.B.S Jeyaraj, "High-stakes zones," *Frontline* 20(2) (2003).

the return of displaced people must be accompanied by decommissioning by the LTTE. The LTTE rejected this position and peace talks in the Sub-Committee on De-escalation and Normalisation collapsed soon afterwards.⁵⁶

Both sides agreed on the selection of the retired Indian general, Satish Nambiar, to prepare a special report on HSZs as a basis for further agreement. Elements of this report were leaked to the press in February 2003 and by the time it was published in full, in May 2003, both sides had distanced themselves from it. General Nambiar recognised the priority to return people on their own lands, and his report suggested the gradual return of land within HSZs to civilian control, which was not appreciated by the army. But he also gave some support to General Fonseka's argument that the LTTE had to at least be prepared to put weapons beyond use, to reduce the risk that army camps may face a surprise attack.⁵⁷ Since the report was not supported by either side it quickly faded into obscurity. As the country has returned to conflict some observers have praised its content and called for a return to the principles outlined in the report as a basis for a compromise.⁵⁸

According to Manoharan there are four types of HSZs. Two of these, 'security' and 'high security' zones, are on land and the other two, 'surveillance' and 'prohibited' zones are at sea.⁵⁹ This ties in with the observations of General Nambiar that there are two types which he calls 'type A', encompassing headquarters, barracks and essential services such as the Palali airfield in Jaffna, and 'type B' which have been established to ensure secrecy of troop movement and restrict the operating capacity of the LTTE.⁶⁰ Nambiar did not attempt to come up with a figure for the size of these various zones, referring only to 'vast tracts of land' occupied by HSZs, but it appears that 'type B' HSZs account for a large majority of land occupied. It is in these areas, which are kept empty for the security of nearby bases and only used intermittently by troops, that some compromises have been found.

The land occupied by HSZs in Jaffna has fluctuated quite regularly and although the situation in place in late 2008 is essentially the same as at the beginning of the ceasefire in February 2002, there have been a number of minor changes. In early 2004, for example, 1,000 acres of paddy land and 78 houses were released from the Thanankilappu HSZ.⁶¹ More recently a press release from the Permanent Mission of Sri Lanka to the United Nations in Geneva dated 20 August 2008 stated that 103 acres of land in Ariyalai East HSZ had been released and 73 farmers would be allowed access to their lands. According to NESOHR, there are 225 farming families depending on land in this HSZ, so the numbers allowed to return represents about a third of the affected farming community.⁶² In other instances, the area occupied by

⁵⁶ S. Chandrasekharan, (2003) "Sri Lanka: The issue of High Security Zones has the potential to become a major contentious issue?" Update no. 42 South Asian Analysis Group, January 2003 (accessed October 23, 2008); Available at <http://www.southasiaanalysis.org/notes2/note174.html>.

⁵⁷ S. Nambiar, "The Nambiar Report," *The Daily Mirror*, May 5, 2003.

⁵⁸ N. Manoharan, "High Security Zones in Sri Lanka," Article no. 2321 (25 June 2007), Delhi: Institute of Peace and Conflict Studies.

⁵⁹ Ibid.

⁶⁰ S. Nambiar, "The Nambiar Report," *The Daily Mirror*, May 5, 2003.

⁶¹ Mario Gomez, "Displacement and the Human Rights Commission: an agenda for advocacy and action," 2005.

⁶² North East Secretariat On Human Rights (NESOHR), "Forced Evictions of Tamils in the (?) Northeast since 1980s," 2005.

HSZs has increased, instead of decreased, and in March 2003, the perimeter of Ariyalai East security zone had been extended along the coast, affecting an estimated 1,000 fishermen.⁶³

The legal basis for the Jaffna HSZs is particularly uncertain. The government undoubtedly has the power to take possession of land, under a variety of pieces of legislation as discussed above.⁶⁴ However, individuals are also granted certain rights in the 1978 Constitution and in human rights law and international humanitarian law, notably the right to free movement and freedom to choose their place of residence. Suppressing these constitutionally guaranteed rights requires specific procedures, a degree of judicial oversight which has been entirely lacking in the case of the Jaffna HSZs. This has not gone without challenge and there have been three fundamental rights petitions by residents of the HSZ surrounding Palali air force base, namely Mavai Senathirajah, Sinnappu Sivagnasambanthur and Vallaipuram Rajadurai.

In August 2004, the Supreme Court returned an ambiguous judgment in favour of the rights of civilians to return to their lands and requiring the army to justify requisitioning of land for HSZs, however, it also made it clear that some rights guaranteed in the Constitution are subject to limitations due to national security. It is significant that none of the 60,000 or more individuals displaced from the Jaffna HSZ have received any compensation as required under the Land Acquisition Act, the Involuntary Resettlement Policy and international human rights law.⁶⁵

On 23 June 2008, on the directive of the Chief Justice Sarath N. Silva, a committee was established⁶⁶ to examine possible returns. In August 2008 IDPs interested in returning to their lands in the HSZ were requested to register with the District Secretary with proof of land ownership and other relevant documents. A decision was taken to release a 300 meter section of the 600 meter buffer zone in Tellipalia DS Division. However, at the time of writing no returns had taken place.

High Security Zones outside Jaffna

With the exception of the Sampoor HSZ, displacement from HSZs outside of Jaffna varies. In contrast to the Jaffna HSZs there are a few HSZs elsewhere which are officially gazetted: Central Colombo (around the President's house), Kandy, Katunayake and Sampoor. Of these, only Sampoor is associated with any displacement. However, other areas are called 'high security zones' even without being gazetted and in some cases they are also associated with displacement, especially in the East.

Of the non-gazetted cases, the most significant displacement has occurred around Anuradhapura, though it is not even clear that this is a genuine HSZ. From the beginning of

⁶³ Humanitarian Info, "Sri Lanka's High Security Zones: Striking a Balance," 2006.

⁶⁴ Such as the Public Security Ordinance of 1947, the Requisitioning of Land Act of 1950 or the Prevention of Terrorism Act of 1979

⁶⁵ Internal Displacement Monitoring Centre, "Submission from the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) to the Universal Periodic Review mechanism established by the Human Rights Council in Resolution 5/1 of 18 June 2007", Geneva, 2008.

⁶⁶ The committee was headed by a High Court Judge, and included the GA, the Security Forces Commander, and the Deputy Inspector General of the Police.

2008 the Anuradhapura sacred area was referred to more frequently by local police and more powerful monks in the area as a HSZ, though the legal basis for this is unknown. It had not been gazetted, but the use of the language was linked to the movement of civilians out of the sacred area. The sacred area was identified as early as 1920 and in 1956 the new Sri Lanka Freedom Party (SLFP) Government declared their ambition that everyone living within the area should move elsewhere. Anuradhapura new town was founded a few kilometres away for this purpose. This displacement has continued in stages over the last 50 years. Resettlement from the fourth significant area was due to be completed by May 2008. The resettlement process apparently met with more resistance than early stages however, as land has not been available for those who have had to move. This resistance has been countered by the association of this move with issues of national security, illustrating the use of the HSZ label, whether it is officially or even unofficially recognised or not, where there is no clear security issue at stake and no process has been established to provide one.

The situation around Norochcholai power plant is similar. The area was declared a HSZ in the late 1990s in an attempt to restrict protests at the construction of the plant. However, the displacement of 73 families who were previously living on the planned site of the coal power plant has been much smoother than in Jaffna or the East. All of these families have now moved. Each family received a new house, built at a cost of Rs 850,000 (approximately USD \$7,700) and two acres of agricultural land. Their new land is some distance from the main road, but they are generally content with the arrangements that have been made for them.

The Upper Kotmale Hydropower Project is an example of displacement that included clear process and adhered to domestic and international law. It is important to note that the area was not declared a HSZ where the construction process requires the displacement of 498 families. The process of planning and preparing this resettlement followed the NIRP very closely. The NIRP was written to respond to donor concerns relating to displacement from the Southern Highways Project and was intended for use in all future development projects that involved development induced displacement. In line with the NIRP, grievance committees were established to discuss the prospective move with affected individuals more than a year before resettlement began. All individuals have been provided with a choice of resettlement sites and they will be fully compensated for their loss of land. The first 21 families moved in January 2008 and received houses valued at Rs 1,250,000 (approximately USD \$11,400) and small allocations of land, usually larger than the land they owned before displacement. The contrast between this open process and the lack of one within the HSZ context is stark and can be used to advocate for HSZ displacement to be brought in line with accepted national development induced displacement guidelines.

3.2 THE DEVELOPMENT OF THE TRINCOMALEE HIGH SECURITY ZONE

Initial Displacement and Establishment of the High Security Zone

Despite the Ceasefire Agreement the security situation in Sri Lanka began to deteriorate rapidly from April 2006 with the resurgence of violent conflict in the North and East between

the LTTE and the Government of Sri Lanka. On 29 May 2006, a group calling itself the *Tamil Eelam Motherland Recovery Force* circulated a notification demanding that Muslims leave Muttur in the Trincomalee district, resulting in large scale displacement during the first week of July 2006.

Two weeks later the LTTE closed the irrigation canal flowing from Mavilaru which stopped the flow of water into the southern areas of Trincomalee District. The Sri Lankan Armed Forces (SLAF) launched an air and ground offensive to re-capture the canal and the Sampoor area (controlled by the LTTE at the time). By 31st July 2006 tens of thousands of persons were displaced as the SLAF engaged the LTTE to regain territory. The majority of Muslim and Sinhala families fled within the district and stayed in Kantale; while Tamil families fled south to LTTE controlled areas in neighbouring Koralaipattu area (Vaharai) as well as Government controlled areas in the Batticaloa District.

Shelling in Trincomalee moved steadily south into LTTE controlled areas of Batticaloa. Families facing displacement once again sought refuge in common spaces in Koralaipattu or crossed into Government controlled areas of Batticaloa. On 18 August, 26,700 persons were registered as IDPs in Government controlled areas of Batticaloa, reaching as high as 72,191 by the end of November 2006.⁶⁷

On 4 September 2006 President Mahinda Rajapakse announced the GoSL's capture of Sampoor⁶⁸ and the Media Center for National Security released a statement claiming that, "since Sampoor was now under the control of the Security Forces, civilians could resettle without fear."⁶⁹ However, over the following months, IDPs from Sampoor and the surrounding area were not allowed to return on the basis of security reasons and the need to de-mine the area.

On 16 October 2006, while the inhabitants of Sampoor and Muttur East were still in displacement and before the creation of the Sampoor HSZ, President Rajapakse issued a gazette notification establishing a Special Economic Zone (SEZ) in Trincomalee under the BOI Law of 1976. The area comprises approximately 675 sq. km and includes areas of Muttur and Sampoor.⁷⁰ As indicated earlier, there is no restriction placed on movement or access within a SEZ, although the BOI Law does provide for the alienation of land under the Land Acquisition Act if the BOI requires the land for any of its projects.

On 30 May 2007, while IDPs from the area were still living in welfare and transitional camps, a HSZ was established by President Rajapakse in Muttur East and Sampoor under Emergency Regulations published under Extraordinary Gazette No. 1499/25. The total area covered 11 Grama Niladhari (GN) Divisions in Muttur and Sampoor, including some areas that have been declared a part of the SEZ. All IDP returns into the area were halted, as according to the

⁶⁷ Inter-Agency Standing Committee (IASC), "Conflict-Related Internal Displacement in Sri Lanka: A study on Forced Displacement, Freedom of Movement, Return and Restitution April 2006-April 2007," July 2007. Accessed on 1 November 2008 at: <http://www.unhcr.org/protect/PROTECTION/482ae16b2.pdf>.

⁶⁸ Speech delivered by the President at the SLFP 55th anniversary convention on 4th September 2006.

⁶⁹ Media Center for National Security, "Capture of Sampoor essential for the resettlement of displaced," September 04, 2006. Accessed on 1 November 2008 at: http://www.priu.gov.lk/news_update/Current_Affairs/ca200609/20060904capture_of_Sampoor_essential_for_the_resettlement_of_displaced.htm.

⁷⁰ GOSL, "Gazette Extraordinary No.1467/03 Establishing Licensed Zone," October 16, 2006. Accessed on 1 November 2008 at <http://www.documents.gov.lk/Extgzt/2006/Pdf/Oct/1467-3/1467-3e.pdf>

HSZ gazette no one is allowed into the HSZ area without the express written approval of the Competent Authority; the GA of Trincomalee. According to Mr. R. Sampanthan, TNA MP for Trincomalee, there were 4,249 families, totalling 15,648 individuals who were affected by the HSZ⁷¹. Much of the land in the area is highly fertile and has 88 water tanks that are used for irrigation of farmlands and has grazing land for livestock. There are 19 schools, 18 Hindu temples, one church and two hospitals.

One IDP described his home by saying, “in earlier, ancient times the period of ‘Kulakodan Kingdom,’ the king sent emissaries out to research all the villages of the Kingdom. One researcher came back to the king and told about all the villages and then got to our one and he forgot the village name. So he then said, ‘The name is *Sampooranam*’ (*Sampooranam* means all the resources are in this village). There are more than 40 water tanks in this village. From the sand of this village all kinds of vegetables grow, in fact everything grows up very easily and during all seasons. From the most ancient time, the other Kings in Sri Lanka and from other countries tried to capture this village but they were never successful. But now they [the government] have succeeded in capturing this village. People from our village live in good respect and they need their own land back.” (Field note, 16 July 2008)

Reduction of the HSZ

In early 2008 developments on the ground indicated that the area of the HSZ was being reduced, or at least some IDPs from certain GN divisions were going to be allowed to return to their homes. However, no new gazette notification was issued to shrink the boundaries of the HSZ. The GoSL informed international agencies and I/NGOs in the Trincomalee District that it would begin preparations to return and relocate displaced persons from the 11 GN Divisions stated in the HSZ gazette⁷².

In March 2008 authorities allowed return to GN Divisions in Pallikudiyuruppu, Paddalipuram, and Nalloor. As of September 2008 the following were gradually opened: Kaddaiparichan South, Chenaiyoor, and Kaddaiparichan North. Nawarednapuram has only been opened in early 2009 with the first return scheduled in late March. IDPs from areas where no return was permitted would be relocated to alternative sites in Muttur and not their place of origin. Originally, two relocation sites were proposed at Ralkuli and Pallikudiyuruppu with a third being added in Nalloor. By August 2008, information suggested that four GN Divisions would be treated as a strict HSZ where access by civilians would not be allowed and where IDPs will not be allowed to return or reside. These four include Sampoor East, Sampoor West, Koonitivu, and Kadarakaraichenai (see Map 2 below). Return is currently underway in many of the GN divisions and over 1,000 families returned as of August 22, 2008⁷³.

⁷¹ 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-Sampoor as a High Security Zone, 20th June 2007.

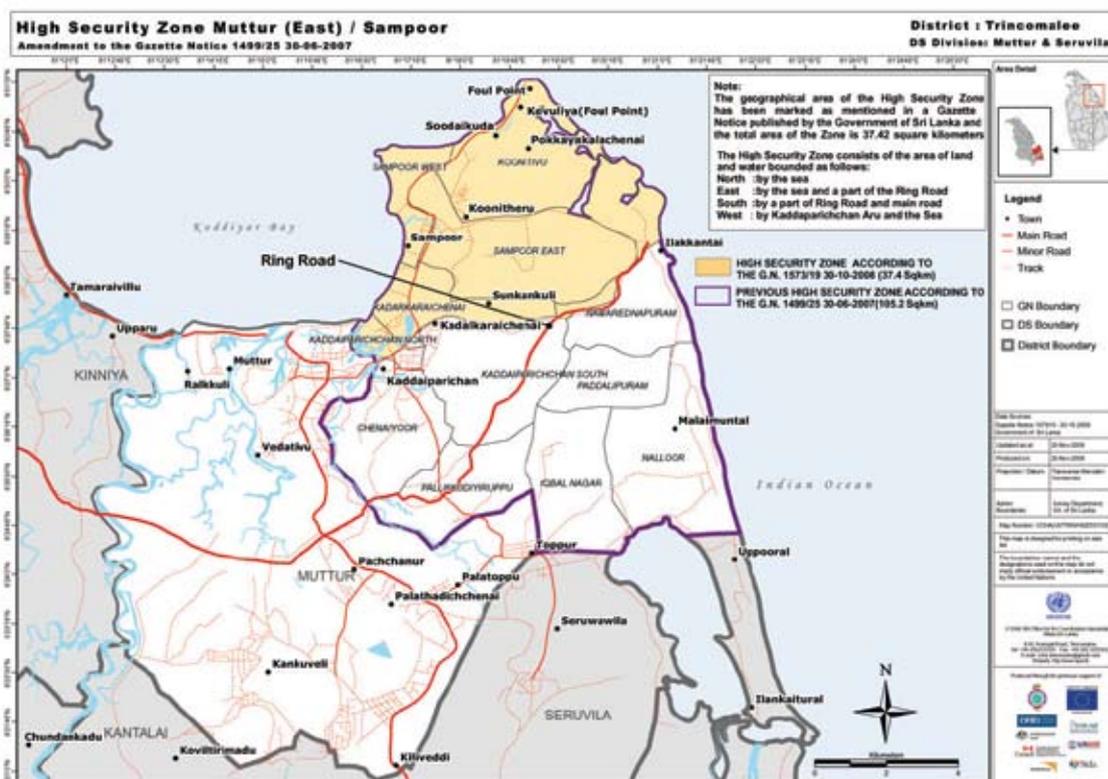
⁷² COHRE Interview, Trincomalee July 2008.

⁷³ UN Office for the Coordination of Humanitarian Affairs (OCHA), *Map of Returnees in High Security Zone Muttur (East) / Sampoor, as of 22 August 2008*, 2 September 2008. OCHA/LK/TRIN/HSZ/001/V2. Accessed on 1 October 2008. Available at: <http://www.unhcr.org/refworld/docid/48be41842.html>

Official Reduction of the HSZ

Almost one and a half years after the initial gazette notification, on 30 October 2008 the Sampoor HSZ was officially reduced in Extraordinary Gazette notification 1573/19 to encompass the GN Divisions of Sampoor East, Sampoor West, Koonitivu, Kadarakaraichenai, and a part of Nawarednapuram. The total extent of the Sampoor HSZ was reduced from 105.2 sqkm to 37.42 sqkm. Despite obvious plans to build a Coal Power Plant within the new boundaries of the HSZ (see below) the new gazette notification used the Public Security Ordinance as the legal framework for annexing the whole area. The reduction allows for increased legal protections for IDPs returning to lands now falling outside of the current Sampoor HSZ which is a positive development. However, those displaced from the current Sampoor HSZ are still subjected to an undefined legal framework that does not allow for an effective remedy, and creates uncertainty about the timing and ability for them to return to their original lands and homes.

MAP 3



Source: UN Office for the Coordination of Humanitarian Affairs (OCHA). LKM0236

IDPs from the five GN Divisions who are currently not allowed to return to their lands face significant challenges to realizing their rights to return and restitution. Currently 6,993 individuals (1,877 families)⁷⁴ will lose their homes and lands if the HSZ is to permanently incorporate land from the five GN Divisions. The majority of these people are living in IDP camps and in a number of instances were relocated to new transition camps through intimidation.⁷⁵ Their status has been complicated by the economic strategy for the Muttur-

⁷⁴ Meeting in Kiliveddi IDP camp with Rear Admiral (ret.) H.R. Amaraweera, Trincomalee District Coordinating Director, Ministry of Resettlement and Relief Services, UNHCR and the Land Registrar on January 13th 2009. The population figures are from 2006, before displacement, and do not take into account subfamilies and new children.

⁷⁵ COHRE/UNOPS Survey 2008.

Sampoor area and the finalization of plans for a Coal Power Plant in Sampoor. While they have been offered a standardized IDP compensation and relocation package of a house, 20 perches of land (0.125 acres), 25,000 rupees (about \$230 USD) for household goods and livelihood assistance, their situation is anything but standard. IDPs from Sampoor surveyed all indicated they had significantly more land than 20 perches.⁷⁶ They have been displaced due to conflict, prevented from returning home due to Emergency Regulations, and have had their land acquired for either security purposes or for economic development. In order for these families to realize their right to full restitution a more nuanced policy must be developed that restores their pre-displacement situation as completely as possible.

3.3 OVERLAPPING DEVELOPMENT ISSUES

Trincomalee District has been identified by the GoSL as a key area for development. However, the multiple development projects and the lack of information available are complicating return and restitution for IDPs in the Muttur-Sampoor area and raises serious concerns about their land and property rights. The Negenahira Navodaya or Eastern Revival Program, a three year development program unveiled in 2007, and the SEZ are two of the most visible development plans for the area. The Eastern Revival Program includes the return of IDPs, revitalization of livelihoods, development of the regional economy and economic infrastructure, strengthening of social services and public institutions, and the development of human settlements in urban areas.⁷⁷ However, neither provides details on projects directly affecting lands located in the HSZ, namely the Coal Power Plant, or projects built to service the area such as the Ring Road, nor what legal framework will be established in areas that overlap with the Sampoor HSZ.

Special Economic Zone

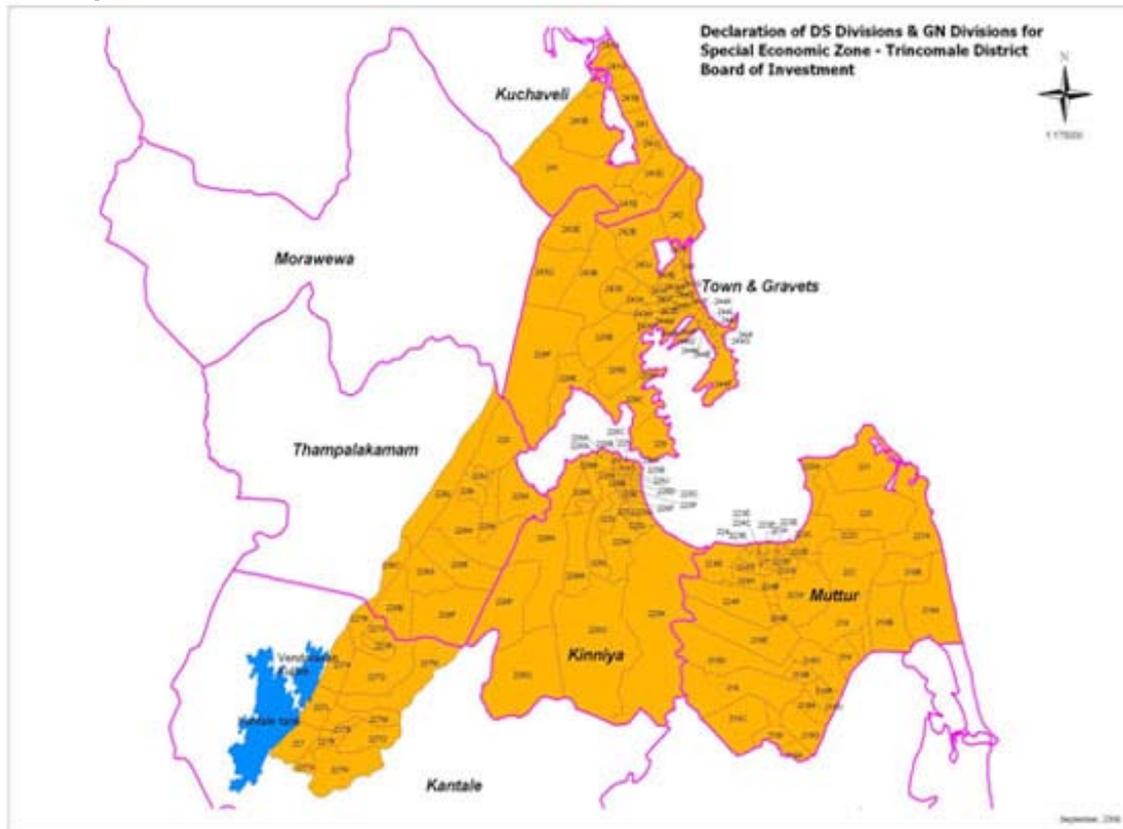
As stated previously, a Special Economic Zone was declared in Trincomalee on October 16, 2006 by President Rajapakse through Gazette Extraordinary No. 1467/03. The SEZ is also referred to as a Licensed Zone, according to Section 22A of the BOI Law No. 4 of 1978. The SEZ covers an area of 675 sq. km (approximately 166,800 acres) in the Trincomalee area and encompasses the whole area of the HSZ as originally gazetted and regazetted (see Map 4). The overlap of these two regions, which have very different justifications (i.e. security vs. development) has caused considerable confusion and mistrust amongst those who have been displaced from their lands. There are reportedly two different economic zones within the SEZ, one for local investment and one for international investment. It is reported that about 500 acres of land has been cleared in Kappalthurai, near Trincomalee Town, for local investors.⁷⁸ It is not clear exactly where the international zone is, however, land is being acquired by the State within the HSZ for the purpose of an Indian built coal power plant.

⁷⁶ See Chart 2

⁷⁷ Official website of The Eastern Revival Program. Accessed at: <http://www.neweast.lk/> on 15 October 2008.

⁷⁸ Interview with Mr. R. Rajarammohan, Chairman, Chamber of Commerce Trincomalee, conducted by COHRE on July 11, 2008.

MAP 4



Source: Eastern Revival Program website accessed at: <http://www.neweast.lk/opportunities.html>

There is little information available on the development plans and the concept of a SEZ is itself new to Sri Lanka and has not been clearly articulated in comparison to established Free Trade Zones and Industrial Zones found in other areas of the country.⁷⁹

Coal Power Plant

In December 2006 the Ceylon Electricity Board (CEB) signed an agreement with the Indian company National Thermal Power Corporation (NTPC) to establish a 500 MW coal-based thermal plant in Trincomalee which was scheduled to become operational in 2011. The project is slated to cost US\$ 500 million with 70% of the costs being covered by foreign aid and the remainder split by the NTPC and CEB.⁸⁰ It is unclear which foreign donors have committed to the project. It is also unclear how the US\$ 500 million is to be spent and if it includes the cost of acquiring land based on a fair market value.

The project site was supposed to have been picked within three months of signing the agreement, however, there was a lack of consensus with the NTPC preferring a site near the

⁷⁹ As of August 2007, all SEZs in Sri Lanka were still in the planning phase and have not been fully executed. Two SEZs are to be established in Horana and Thulhiriya exclusively for the garment industry. Trincomalee, Matara and Puttlam are identified as SEZs for investment promotion according to one Government report, Ministry of Enterprise Development and Investment Promotion, "Performance 2007 and Programmes 2008," August 2007, pp. 25-27. Accessed on October 21, 2008 at: <http://www.edip.gov.lk/Documents/Performance%20-2007%20&%20programmes-2008.pdf>

⁸⁰ R. Muralidhar Reddy, "NTPC power plant in Trincomalee." *The Hindu*, December 30, 2006; Kassapa Ellepola, "Construction of Sampoor coal power plant to begin in three months time." *Daily Mirror*, March 27, 2008.

existing Indian Oil Corporation complex close to Trincomalee Harbour and the Sri Lankan Government preferring a site in Sampoor.⁸¹ It is significant to note that IDPs from Sampoor were in displacement during this time and were unable to return to their lands while discussions about the Coal Plant site was taking place. The Tamil National Alliance (TNA) stated that Tamil civilian lands were taken without consultation and alleged that the Government had a “hidden political agenda.”⁸² Fears in the Eastern Province over colonization schemes for Sinhalese run deep and Government actions are often met with mistrust.⁸³

A potential alternative site was proposed in Velloor, between Uppuveli and Nilaveli, however protests from the tourism sector in early 2008 shifted the focus back to Sampoor.⁸⁴ IDPs from the area were spread out in different transitional camps and were thus unable to effectively exercise their right to protest, take collective action, and have been denied their right to adequate consultation.

“People are saying that the houses in our area have been bulldozed, but none of us really know for sure what has happened and what is happening in our villages. Nobody knows, apparently even the GS has only gone up to Karakadachenai. NGOs say that their entry has also been barred.” (Field note, 9 September 2008)

On 7 July 2008 the Sri Lankan Government issued a Section 2 Notice under the LAA and initiated the process to acquire the land needed for the Coal Power Plant. According to the Notice, an area of approximately 1,717 acres will be surveyed and if deemed suitable will be acquired. However, it is increasingly apparent that the Government is determined to utilize these lands for the Coal Power Plant, which falls within the five GN divisions the Government has demarcated as the reduced HSZ (see Map 5 below). Little information has been provided to IDPs whose land will be acquired other than the offer of new lands in relocation sites, which almost all IDPs have refused as inadequate. Reports indicate that the Section 2 Notification was placed in the Muttur DS office as well as some of the IDP camps. However, there have been no consultations on the meaning of this very legalistic process and some messages have created even greater confusion by offering incorrect and contradictory information.

An undated “Message From Kachcheri Trincomalee” was released around July 2008 which states that citizens of Sampoor, Koonithivu, Kattaiparichchan and Chenaiyoor will not be allowed to return to their lands “because the area is declared as [an] economic zone and also to construct a coal power plant.” It is interesting to note that the reason given for the relocation is due to an economic zone/coal power plant and not due to the legally gazetted HSZ. The relocation package mentioned in the “message” does not address private land compensation under the Land Acquisition Act. Instead it falls under the framework of the Government’s Unified Assistance Scheme (UAS) payment which does not address loss of property or

⁸¹ Kassapa Ellepola, “Construction of Sampoor coal power plant to begin in three months time.” *Daily Mirror*, March 27 2008; Bhavani Fonseka & Mirak Raheem, “A Brief Profile of the Trincomalee High Security Zone and other Land Issues in Trincomalee District,” p.14 *Centre for Policy Alternatives*, May 2008.

⁸² Ibid

⁸³ For a detailed analysis of land colonization and the effects on the conflict see, Asia Report No. 159 “Sri Lanka’s Eastern Province: Land, Development, Conflict.” International Crisis Group, October 15, 2008.

⁸⁴ Bhavani Fonseka & Mirak Raheem, “A Brief Profile of the Trincomalee High Security Zone and other Land Issues in Trincomalee District,” p.14 *Centre for Policy Alternatives*, May 2008.

possessions due to acquisition as it provides a standard package without consideration of actual loss. Further, two of the GN divisions mentioned, Kattaiparichchan and Chenaiyoor, are currently being resettled and thus IDPs will most likely be able to return to their homes unless they are occupied by security forces or fall within the buffer zone of the Outer Ring Road (discussed below).

The Coal Power Plant raises numerous concerns for the housing, land and property rights of civilians in the area. The potential loss of land and property, the lack of consistent and informed consultation and the lack of access to legal remedies for IDPs need to be addressed urgently. Further, if land is acquired for a public purpose, IDPs should be compensated at market rates for the loss of their lands and property under the LAA, in addition to being provided with durable solutions for their displacement.

Ring Road

The development plans for Trincomalee list a number of roads including the Urban Development Authority led Ring Road which is meant to connect Sampoor to Kantale. The road runs partly along the boundary of the southern border of the Sampoor HSZ, as currently gazetted, as well as through the GN Divisions of Pallikudiyiruppu, Chenaiyoor, and Nawarednapuram (see Map 5 below). Reports indicate a buffer zone of up to 300 meters in some areas and 50 meters in others⁸⁵ has been created to protect the road but has not been officially gazetted.

The main HLP issues regarding the road are inaccessibility of the lands that were acquired for its construction and the process of acquisition. The construction has displaced land owners within the buffer zone and others have not been allowed to return to their homes even after they were “returned” to their original GN Divisions. It is unclear what legal procedure, if any, has been followed to acquire the land for the Ring Road. Interviews with those displaced and with aid agencies working in the area indicate that no legal basis has been offered for the acquisition and that no compensation has been paid to land owners who are prevented from returning. The buffer zone has also affected the livelihoods of many returnees, as they arrive home only to discover they are barred from using their lands for agriculture and farming, and in some cases access to their homes.

Muthumma and her family have had their lands incorporated into the buffer zone for the Ring Road:

“The Army is not allowing people to build the houses within 50 meters from both sides of [the] road. These are declared as buffer zone. People who lived within these 50 meters have to find another piece of land themselves. They have not been given any compensation for the land taken as buffer zone.” (Field note, 18 September 2008)”

⁸⁵ COHRE Interview July 2008; Bhavani Fonseka & Mirak Raheem, “A Brief Profile of the Trincomalee High Security Zone and other Land Issues in Trincomalee District,” p.14 *Centre for Policy Alternatives*, May 2008.

Without access to the buffer zone or the ring road construction site it is impossible to judge how many houses have been destroyed due to the project. It also appears that no information has been circulated regarding the construction or which private lands have been utilized. As the above quote illustrates, displaced persons sometimes have to deal directly with the military rather than the Urban Development Authority. In other cases alternative lands have been made available in Thangapuram, Paddalipuram and Sinnakulam for returnees who could not access their lands due to the buffer zone. However, the legal basis for the acquisition of the land and the relocation sites as compensation remains unclear.

MAP 5



Source: UN Office for the Coordination of Humanitarian Affairs (OCHA). LKM0147

4.

PROFILE OF DISPLACEMENT FROM THE SAMPOOR HIGH SECURITY ZONE

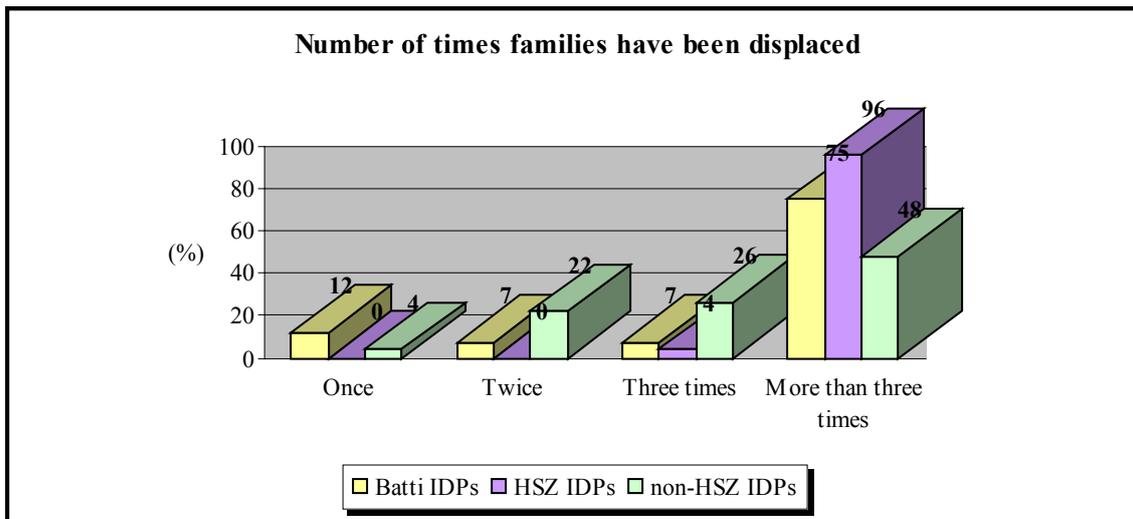
The following information is based on the household-level survey of 384 families who continued to live in displacement (IDPs) and those already returned (Returnees) in the Batticaloa and Trincomalee Districts as a result of the 2006 military operations in the Eastern Province. The survey was undertaken during the months of June, July and September 2008 and the survey team visited 22 sites in Batticaloa and 12 sites in Trincomalee, totalling 15 sites for IDPs and 19 sites for Returnees. While the total number of families interviewed (384) is relatively small compared to the number of displaced persons in 2006 (200,000-300,000 IDPs), the sample group is sufficiently representative to establish trends, corroborated by qualitative data. The statistical reliability increases significantly for the HSZ IDP group as the survey interviewed 121 families out of a total of 1,692 families displaced due to the Sampoor HSZ.

4.1 Displacement Conditions

Displacement disrupts the lives of families and individuals and leads to social fragmentation when people are torn away from their social structures that help provide support during times of crisis. Displacement is often sudden and few are prepared and arrive at crowded IDP camps with few possessions. They bear the mental burden of possibly having lost all of their belongings, including their homes and lands, and occasionally grieving for lost loved ones. As the data from the survey indicates, HSZ IDPs have faced the highest prevalence of repeated displacement (see Chart 1).

Camp life is not a pleasant one as freedom of movement is restricted at times due to security, there is a lack of privacy, housing and sanitation is not adequate, and employment opportunities are nearly non-existent. Sita, an IDP, commented on her situation: *“We live with no partition wall except clothes lines, suitcases and boxes. We cook, eat and sleep in the same place. There is no privacy... (we) worry about young daughters in particular”* (Field Notes, 6 July 2008). Special considerations need to be made to address the gender dynamics associated with displacement and the increased vulnerability women experience. Specifically women in displacement and during and after return face vulnerability due to lack of privacy, and the possibility of losing ownership of their previous lands due to administrative forms requiring the signature of the head of the household which socially is accepted to be the husband.

CHART 1



Displacement also significantly affects the ability of families to maintain a standard of living equal to that of pre-displacement. There is a significant need for quick and appropriate interventions to help people rebuild their lives before they become too dependent on Government assistance and international aid. Many HSZ IDPs have lost not only their ability to return to their former lands but also the livelihood opportunities attached to them, causing them to sink further into dependency on aid and leaving emotional scars that are nearly impossible for government restitution efforts to address.

Manoharan works as a labourer and makes about 500-700 rupees a day if he finds work. He sometimes walks miles to find work and last month he made Rs.5000-6000. One of his arms doesn't bend well, and he finds labour such as lifting sacks and construction site labour difficult. He says he keeps at it because of his pride. He is determined to give his wife and boy a good life even under difficult circumstances, but the money he makes is enough just to get by.

"I want my self respect back. I got married at 19 and made money to educate my children, build a house and business. Now I am begging for work." (Field notes, 6 July 2008)

Registration as an IDP is meant to provide a social safety net or protection system that allows persons to be recognized by the State and to be tracked for assistance purposes. It helps to ensure a family's entitlement to dry food rations, non-food items, the enrolment of children in schools while displaced, and access to information and services for remedying displacement. However, registration as an IDP is not legally binding and the lack of access to support and compensation can not be challenged under domestic law.

The survey found that only 82% of families surveyed that are living in IDP camps in Trincomalee are registered as IDPs, compared with 100% in Batticaloa District. All the families who are currently not registered as IDPs are living in the Alles Garden Welfare Centre. Many were affected by the tsunami, but also have displacement histories that go back decades. Many of the families were originally displaced in 1985 when the SLAF took their land in

Kuchchaveli Ward 1 for the establishment of a High Security Zone. According to them they never received any compensation for their lands. As Leenaratnam noted, “*The army fenced in our land with barbed wire and bulldozed our house many years ago.*”⁸⁶ While some families were given land and will eventually receive houses under the Tsunami Housing Policy, they have yet to be compensated for their original lands being taken. The history of land seizures by the Government for HSZs is not lost on the IDPs and is a root cause of the distrust voiced by many interviewed during the survey.

The SLAF do not always see IDPs as a group in need, but rather a potential security risk. Harassment by the military has been documented in many of the camps and increases the tensions between civilians who are seeking security and the military who seek to protect themselves from the local population out of whom some might pose legitimate security concerns.

The following incidents were reported to the survey team and highlight the fear most IDPs live with on a day to day basis:

People are scared to live at this camp; the armed forces come and arrest many people. They do not know what will happen tomorrow. When relations come to visit they are arrested by the forces. (Field notes, 30 June 2008)

They [security forces] are searching for wound marks or any other marks on the body. Then they will take that man/woman in for an inquiry. They say that these people are LTTE and they would have got these wounds and marks from the training that they have to undergo as LTTE cadres. (Field notes, 30 June 2008)

The conditions of displacement in IDP camps are often humiliating and people are exposed to degrading treatment, leaving them without a sense of safety and security. The results of the survey and interviews find that people live in constant fear of armed groups who can engage in practices of fear and intimidation. The armed forces or members of paramilitary groups can enter IDP camps at anytime, invade someone’s privacy with impunity and take them away from their families without any evidence of wrong doing needed.

One day the Pilliyan group came inside the camp and someone fired at them. Later, the Pilliyan group complained to the army and the army came here and asked who fired. The people did not know Sinhala, so one person who could speak the language spoke to them. The army asked him whether he saw the person who shot at the Pilliyan group. The man told them that he had seen a person run through this fence... but “*I did not know who the person was. I had only seen him run over the fence, but the army hit me hard on my ears and other parts of my body. My wife and other camp people cried out, so after some time they left me, [but] from that day on, my wife has been sick.*” (Field notes 7 July 2008)

⁸⁶ Field notes 13 September 2008.

Conditions outside of IDP camps during displacement can be equally as harsh and insecure. According to one IDP:

“The bus stopped in Seruwila and we all went to the army camp there. They gave us food and a place to sleep, but that night they arrested 14 men including my husband. We did not know where he was taken. After two days they told us that he had been taken to the police station. He was kept there for 1½ months. From there he was taken to the Boosa camp in Galle. He was hit a lot there. They told us that he had been taken on suspicion. We could not visit him. We moved to the Kilivetti school for about 1½ months and then took a bus back to Batticaloa, where we stayed at the Alayampathy camp for more than a year. My husband was finally released after 6 months, and he joined us in Batticaloa.” (Field note, 16 September 2008).

There have also been a few instances of IDPs being relocated from one camp to another either through intimidation or false information. The result of these lapses in proper procedure and protection of civilian rights is the increasing lack of trust between IDPs and the Government, making it harder to return and relocate IDPs in the future. In the case of IDPs returned to Trincomalee District from Batticaloa, 91% of interviewees stated that they signed a consent form to return. However, signing a consent form does not indicate whether people knew what they were consenting to nor if they were fully aware of what would happen to them once returned. The survey shows that 58% of Trincomalee respondents consented to being returned under the pretence of going home, however an analysis of their displacement history shows they were in fact dropped off somewhere else. According to follow up interviews many of the IDPs interviewed signed the consent forms on the understanding that they would be returning immediately to their own lands and houses.

According to Bharathi:

“When we reached Kilivetti they told us to get down. We wondered why they were telling us to get down here instead of taking us home, but we were too scared to ask questions because there were a lot of soldiers in the bus. So, we got down. There were temporary huts already built and we were all dropped off in those huts. We found out later from people in Batticaloa that even the DS there and some NGOs did not know that they were taking us and dropping us off in Kilivetti like this.” (Field note, 10 September 2008)

Subramaniam relates a similar story:

“One morning the army came, unannounced, and forced us into buses. People had sent their children to school, men had gone to work and we were cooking our food. They came at around 7 am. People were confused, so people refused to leave in a hurry. They were hit and put into the buses. The buses had Sampoor written on a board. We were told that we would be taken home. But, early the next morning the buses stopped suddenly and they said this was where we would be dropped. It was the Killivetti camp, there were huts ready for us.when we moved from Kilivetti, we thought it was ok because we were moving closer (to our original place) little by little, but now we have been stuck here (Paddithidal camp- these are IDPs from Karakadaichenai) for 1 ½ years with no possibility of going home.” (Field note, 12 September 2008)

In the latter circumstance, various agencies and INGO staff persons in Batticaloa District asserted during interviews that the relocations happened early in the morning (before 7 am). United Nations staff were unable to travel before 8:30 am due to security restrictions set by the UN and thus were not in the camp during the above event.

While there has been some improvement in transparency in 2008, all future returns or relocations to new camps must be carried out in a transparent manner with adequate notice and consultation provided for affected communities as well as protection workers. To ensure that IDPs' human rights are respected, impartial monitors should be present and movement should occur only during times of mutual agreement. In instances where it is deemed necessary to move IDPs to a new camp, they should be told clearly that they are being relocated to a new camp and provided with adequate information about the new camp and a timeline for a durable solution in advance. IDPs must never be forced to relocate to a new camp and should always be free to reject the relocation.

4.2 UNOFFICIAL HSZs and SECONDARY OCCUPATION

With the reduction of the original HSZ boundaries, both verbally and through written gazette notification, tens of thousands of displaced persons returned to their original towns or will do so shortly. While this report will not focus extensively on returnee issues,⁸⁷ the issue of secondary occupation warrants a discussion as it is closely related to the HSZ rationale and pattern of displacing civilians for security purposes.

Secondary occupation of one's home and lands is a significant barrier to permanently returning IDPs. An area may be open for return, however this is no guarantee that all families are allowed to return to their former homes and property, or that Government buildings such as schools can return to normal use. Many IDPs who were returned to their original towns and deregistered as IDPs found that they were unable to access their lands and houses due to the presence of the military or police and had no support to complete their return or access to compensation.⁸⁸ In many cases the security forces and the police have told the returnees that their houses are now inside a High Security Zone. However, these unofficial HSZs have not been officially gazetted making it difficult for returnees to determine their legal status.

The issues of unofficial HSZs and secondary occupation is a significant barrier to IDP return and restitution in both Trincomalee and Batticaloa. A survey of secondary occupation in just the Muttur DS division revealed that over 350 houses are currently being occupied by either the SLAF or the police. High rates of secondary occupation and unofficial HSZs were also reported in Eachalampattu, Trincomalee and in Kiran, Batticaloa.

⁸⁷ A separate report on displacement and return in the East based on the same data set is currently being written and will be available in May 2009.

⁸⁸ Bhavani Fonseka & Mirak Raheem, "A Brief Profile of the Trincomalee High Security Zone and other Land Issues in Trincomalee District," p.17 *Centre for Policy Alternatives*, May 2008.

“We were told we would get assistance when we returned and also that we would get new houses. They told us till we get the new houses, they had already built temporary shelter for us. When we came here there was nothing, not even the temporary houses we were promised. The only things that remained were the mines. And then we found half of our land was in the army camp.” (Returnee, Poomarathadichenai, Eachalampattu, Field note, 18 September 2008)

According to the survey, 13% of IDPs eligible for return in Trincomalee remain in displacement due to secondary occupation of their homes or land by the military or police. In many of these instances IDPs agreed to return under the context that they would return to their former homes. Follow up interviews with UN agencies and NGOs working in the area suggest the rate may be even higher.

Secondary occupation not only denies a family their land and home, but also their ability to earn an income to recover from displacement. Some IDPs who returned to their former homes are unable to access their lands to provide food and a livelihood for their families. The close proximity of armed forces also increases the sense of insecurity felt by IDPs, armed forces can be the object of terrorist attacks which increases the risk to surrounding communities.

The following quotes demonstrate how people who have returned to their home areas of Trincomalee perceive the military presence and illustrate some of the ongoing barriers to return to their own lands and restoration of pre-displacement conditions.

“We found out that our land had been taken by an army camp only after we came here. They told us to find some other land and that they would not move. We were given 25,000 rupees by CARE for livelihood. We used it to buy some land from a man from the village who we knew. Once we got the land, CARE built us a temporary shelter on it in which we now live.” (Field note, 18 September 2008)

“Our agricultural land is inaccessible because of the army camp; they have set up in that area. We could not go back to cultivating paddy like some of the other families have done.” (Field note, 17 September 2008)

“We don’t feel safe here. My husband is afraid to go into the forests to gather firewood. We can’t go to fish in the river. Once the men went to fish and the army hit them badly, since then nobody goes to fish. Our pumps were all taken so it is difficult to cultivate crops Now it is a struggle.” (Field note, 16 September 2008)

If the State acquires the land and houses according to the LAA, adequate compensation would have to be provided according to the law. However, no instances were uncovered in the East where the LAA has been used or where victims of secondary occupation have been provided with any type of compensation. The result is high levels of IDPs being unable to return to their homes and unable to access assistance because they have been deregistered. A legal framework and a transparent process need to be established to protect the rights of vulnerable citizens and provide them with adequate assistance to bridge the protection gap created by secondary occupation and verbal HSZs.

Unofficial HSZs should be announced in writing, approved by the President's office, and posted publicly for the affected families in order to clarify their legal situation. Instances of secondary occupation should be recorded by the Government Agent and the military, and the owner(s) of the house or land should be able to claim a fair rent for the use of the premises, as has happened in some instances in Jaffna. Displaced persons must also be provided with adequate alternative housing. The Human Rights Commission of Sri Lanka has also recommended that fair and adequate rent should be provided in their assessment of legal challenges facing IDPs in Sri Lanka.⁸⁹

4.3 THOSE WHO CANNOT RETURN

Families who lived within the five GN Divisions of the current Sampoor HSZ where return is not allowed face relocation to new areas outside of the HSZ. As mentioned earlier, it is estimated that 6,993 persons will lose their homes, lands and property with the recently regazetted HSZ. This means that 14% of the original 50,000 persons who were displaced by August 2006, due to heavy fighting in Trincomalee, have yet to find a durable solution to their displacement and may be unable to return to their original lands. The majority of these people are now living in IDP camps in Trincomalee and have been in displacement for over two years, dependent on assistance from the Government and international agencies during this time.

The Government of Sri Lanka is pursuing a policy of relocation for all families from within the Sampoor HSZ. In January 2008 families from Sampoor East, Sampoor West, Koonitheevu, Navaratnapuram, Kadakarachenai and Kaddaiparichan North were asked to fill out consent forms indicating whether they wished to be relocated to Ralkuli or Pallikudiyiruppu. The form provided a simple "Yes" and "No" box above each relocation site to indicate the preferences of IDPs. The form provided little detailed information but stated that families would be provided with land, temporary shelter, livelihoods assistance and permanent housing in the future. Every IDP interviewed in the survey indicated that they chose "no" for both sites. Further interviews with agencies working in these areas indicate that most, if not all, displaced persons did not agree to be relocated and instead expressed their desire to return to their own lands.

"Recently government officials came to the camp and asked us what our decision on moving to Ralkuli or Pallikudiyiruppu was. The GS had come a few months ago and gave us these two options. We refused both. The GA asked the same question, and we told him again that we were not interested and that we got cheated once, we would not get cheated again. We told them that if they brought vehicles to take us away to another place like last time, we would throw stones." (Field note, 12 September 2008)

The proposed relocation sites do not have the same level of natural resources as in the current HSZ. Many IDPs are refusing to relocate as they feel that they will not be able to live a life

⁸⁹ Sundaram Sriskandarajah, Mathiaparanan Sumanthiran, and Ramalingam Karunakaran, "Legal Analysis of Property Issues affecting Internally Displaced Persons and Refugees in Sri Lanka," *Human Rights Commission of Sri Lanka*, p. 63, January 2003. "We recommend, therefore, that a scheme for compensation be devised for the time they were prevented from enjoying their full property rights of occupation and earning. The state should also make provision for alternate accommodation and livelihood until such time as the IDPs are able to return to their own properties."

similar to what they enjoyed before displacement. They complain that there is not enough water for agriculture, or that the areas are too small to accommodate themselves and the current surrounding populations. Further, Pallikudiyiruppu only allows for one harvest of rice per year while their previous lands allowed for two due to the extensive irrigation systems and tanks in the area. According to one IDP:

“Now we have been told that we will not be returned to our villages because they have set up a HSZ. We were offered land in Pallikudiyiruppu and Ralkulli. We refused these locations. There is no water in Pallikudiyiruppu for our crops and you can’t cultivate paddy there. In our village, if you dig 5 meters under the ground there will be water, in Pallikudiyiruppu there is no water even if you dig 10, it is mostly rock. I used to grow vegetables, grains, lentils, corn and peanuts on my land. It was enough for our own food and also to sell for profit. I also used to sell coconuts. Some of it we would exchange for fish, so we never had a problem for food. Here we have to depend on the rice that the World Food Program brings twice a month.” (Field note, 9 September 2008)

The government has been discussing relocating IDPs according to their former professions for over a year, with fishing families sent to Ralkuli and other families sent to Pallikudiyiruppu and a new site in Nawaradapuram. According to agencies working with these communities there has been no clear assessment of all livelihood activities before displacement, or even if a place like Ralkuli is able to absorb an increased number of fishermen without causing tension between the host community and those relocated. While 50 families from Sampoor have reportedly agreed to relocate to Nawaradapuram, go and see visits that took place in January ended less favourably. All fifteen IDPs interviewed declared that they did not agree with the relocation plan proposed, nor did anyone else during the visit.

There has been an increasingly consultative process over the past six months with the Government sponsoring more go and see visits and meeting more with affected communities. On 13 January 2009 new relocation sites were proposed by the Government to IDPs living in the Kiliveddi camp. See the text box below:

Relocation sites identified by the GoSL on 13 January 2009⁹⁰

Location	Extension	Status
Ralkuli	19 acres	152 plots – 2 houses internal roads and electricity lines
Marawattakulam (Pallikudiyiruppu)	58.75 acres	470 plots internal roads and electricity lines
Chenayoor	100 acres	To be cleared
Kaddaiparichchan North	15 acres	To be cleared
Kaddaiparichchan South	50 acres	To be cleared
Nallur	200 acres	To be cleared
Ilakanthai (Navaratnapuram)	150 acres	To be cleared

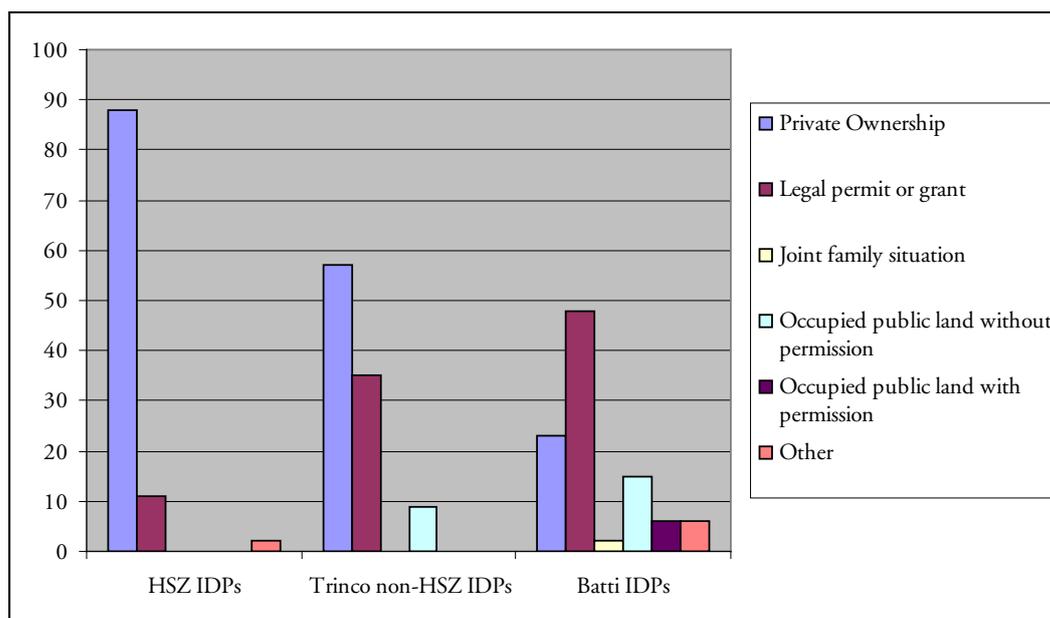
⁹⁰ Meeting in Kiliveddi IDP camp with Rear Admiral (rtd.) H.R. Amaraweera, Trincomalee District Coordinating Director, Ministry of Resettlement and Relief Services, UNHCR and the Land Registrar. January 13th 2009.

While these are positive steps, there is a need for increased participation by communities and a commitment to starting meaningful consultations early in the displacement cycle. The lack of proper consultation and the relocation of families to sites they have deemed inadequate raises serious concerns about the process involved, the legality of the moves, and potential violation of their human right to return and restitution. Further, many families that have returned to areas outside of the HSZ have not received the housing and assistance they have been promised. Many families expressed their discontent with the lack of progress on rebuilding their houses. In many instances there are no funds dedicated to returnee needs past emergency assistance even though they have been promised much more. Some families receive houses from NGOs and the UN, however, rarely are the housing schemes planned before return and often families are returned before the Government has founded dedicated funds to meet their needs.

Compensation received by each family is also a major concern as currently IDPs are only being offered vague identical packages of 20 perches of State land, livelihood support and possible agricultural land, and a future house, that does not take into account the level of housing, land and property left behind. The survey revealed (see Charts 2 and 3) that HSZ IDPs as a group were wealthier than many other IDPs in the East and had higher rates of deeded land, brick houses, and larger areas of agricultural land than other IDPs in the area. Families should be provided compensation not only for their displacement, but also for their loss of housing, land, property and livelihood. This must be through a fair and transparent process that assesses the extent of land and property IDPs owned before with the equivalent provided in compensation for the loss.

CHART 2

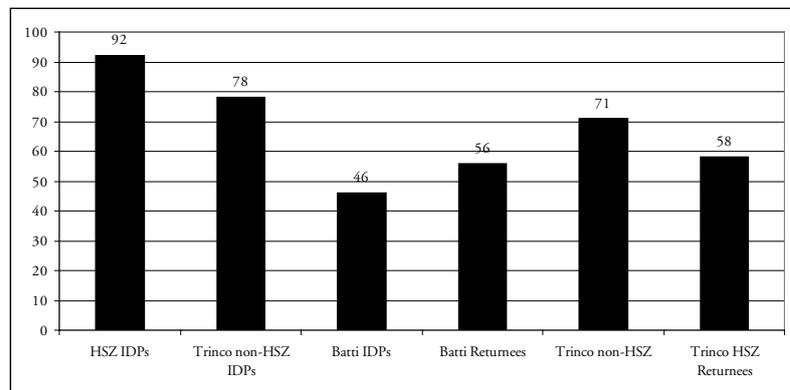
IDP land ownership and possession rights (as percentage of IDP interviewees)



According to Mahendran: *“We are not really interested in the state of our house. We will go back even if it is just to the soil of our land. We made sure we brought back the deeds to our land so that we can prove it is ours.”* (Field note 30 June 2008)

CHART 3**Percent of interviewees who owned brick/cement houses**

Some interviewees did express their willingness to be relocated and accept the Government relocation package. These IDPs mainly occupied State land under a permit and were less affluent than those with deed land in Sampoor East. However, many instances have



arisen where relocation sites have been challenged by others claiming they own the land, delaying and sometimes halting the planned relocations. According to one group of IDPs:

“We would like to go home, but we are ok with the other land we were offered as well. They [the Government] have not told us the status of that new land after somebody claimed it as their own. They say they might give it to us again after the problem is solved. But they have not told us when. If they don’t get the new land back, they might as well let us go back home, because we have land there.” (Field note, 14 September 2008)

The group interviewed consisted mostly of day labourers, woodcutters and firewood gatherers. They did not have large brick houses as discussed in other interviews. They also seemed more inclined to accept the relocation lands, because they were told that they would be given new houses and permits. However, as the quote illustrates there are numerous complications with finding available relocation land in the East that will need to be addressed before any type of relocation can proceed.

Distinctions also need to be made between those who may lose their land permanently due to development activities, and those whose land will be used as a HSZ. With the new gazette notification reducing the boundaries of the HSZ it is still unclear what the relationship is between the proposed Special Economic Zone, the Coal Power Plant and the need for security measures. No public documents state how long the Government intends to utilise land in the HSZ and what criteria will be used to determine when a HSZ is no longer necessary. Before any fair compensation or relocation scheme can proceed, the legal framework for land acquisition needs to be made clear and the right to return by those displaced due to the HSZ (as opposed to development activities) should be explicitly stated by the Central Government.

“They [the Government] say they can’t give us back our land, I don’t understand why they need it. They can take the area near the sea and give the agricultural land at least. They can just take one side and give us the rest, why do they need the entire area if they are not going to use it for agriculture. It is fertile agricultural land, why use it for security?” (Field note, 9 September 2008)

5.

CONCLUSION

The continued existence of High Security Zones remains one of the most intractable barriers to any sustainable solution for individuals displaced by the conflict in Sri Lanka. HSZs prevent individual IDPs from returning to their homes or accessing their traditional livelihoods with no clear idea of the precise reasons why or the likely duration. During their displacement they lack adequate housing and income generating opportunities, adequate compensation for their losses as well as any guarantee that either will ever be restored to them. In this vulnerable state they are frequently victim to other forms of serious human rights abuses such as killings or disappearances.

In any democratic state there are situations when the security needs of the state must take precedence over the certain needs of individuals. In Sri Lanka, the domestic Emergency Regulations govern when and how this takes place as well as Sri Lanka's international legal obligations. However, these must fulfil three important criteria. First, necessity, the very existence of the state as a democratic institution must be threatened before guaranteed individual rights can be suspended and even then only certain rights may be restricted. Second, transparency, the procedures to withdraw these rights must respect the democratic principles they are intended to defend and they must be open to judicial challenge. Third, limitation, if the previous two criteria are met, certain rights may be suspended but never withdrawn indefinitely; suspension must be strictly limited and subject to regular review.

While these three criteria are guaranteed in Sri Lanka by the constitution and a number of other legislation, as well as by commitments the Government of Sri Lanka has undertaken by signing relevant international agreements, all three criteria are most often not enforced in the practice of imposing HSZs. The practice of imposing HSZs necessarily requires a suspension of rights to private property and freedom of movement. Both these rights are internationally recognized as human rights from which governments are able to derogate under exceptional circumstances, for limited periods of time. However, the imposition of HSZs in Sri Lanka is too frequently simply a matter of military convenience or a means to reduce land costs and procedural delays for development activities rather than national security imperatives. The procedures lack transparency, compensation is inadequate or entirely lacking and there are no procedures or objective criteria for the dissolution of HSZs. Inevitably, the populations that the Government has a responsibility to protect, too often feel as if they are the targets of military action.

In the specific case of Sampoor, considered in some detail in this report, the problems are of particular concern. The declaration of restrictions on movement while most individuals were already displaced, the confusion between the HSZ and the SEZ, the lack of consultation and

choice of relocation sites and the continued disruption to IDPs lives and livelihoods even for those able to “return” are amongst the most serious barriers to durable solutions for IDPs displaced by the Sampoor HSZ in the East. Yet the fact that the Sampoor HSZ has been made official by gazette notification, makes the situation clearer than in many other instances of HSZs around the country, particularly Jaffna where there is even less transparency, as in the use of “unofficial HSZs.”

It is unlikely that HSZs will be fully dismantled until a stable peace has returned to the country, but the choice should not be between complete removal and the status quo. There are a number of options which have been widely discussed and even received widespread support, such as those in the Nambiar report, which would allow a gradual reduction in HSZs where circumstances allow. At the very least transparent procedures should be introduced to examine the continued need for such a large scale security apparatus which can potentially causes much suffering, particularly in the light of the recent dramatic territorial gains of the Sri Lankan army in the North which has the potential to render HSZ unnecessary. If HSZs cannot be removed in the immediate future their presence can at least be made much easier to bear from the perspective of those who have been displaced or had their livelihoods threatened for so many years.

6.

RECOMMENDATIONS**6.1 To The Government of Sri Lanka****6.1.1 CLARIFY THE SITUATION OF EXISTING HSZs:**

1. **Define boundaries and purpose of all areas where civilian access to public or private land is restricted for security purposes:** Where there is a continued security reason for restrictions the procedure for establishing HSZs laid out below should be followed.
2. **Distinguish HSZs from other areas where civilian access to land is restricted (i.e. from development activities):** In the case of Sampoor there is still no clear distinction between the HSZ and the SEZ. This distinction should be gazetted, ensuring that the information is publicly available, especially to those living in displacement, and procedures for land acquisition followed.

6.1.2 ESTABLISH A NATIONAL PROCEDURE FOR DECLARING AND DISSOLVING HSZs: ENSURING:

3. **Limited duration:** HSZs should be of limited duration relating directly to continuing conflict in that area. The Government should state specifically that HSZs are of limited duration and that displaced persons will retain their housing, land and property rights so that they may return when the conflict has ended.
4. **A clear definition of boundaries and purpose:** All HSZs should be formally announced in writing, approved by the President's Office, officially gazetted and posted publicly for affected families. Adequate compensation and alternative housing should be provided for all affected persons.
5. **Transparent procedures for temporarily acquiring land:** Land acquisition should follow established processes in accordance with the National Involuntary Resettlement Policy, the Land Acquisition Act and other laws. Ensure that affected persons have clear access to judicial remedies and land and property is returned to original owners as quickly as possible.

6. **An Independent Dissolution Committee:** A Dissolution Committee should be formed in order to establish objective criteria for the dissolution of the HSZ, to regularly examine the situation and to decide when it is safe for civilians to return to the area. The Committee could include representatives of the military and elected officials, affected communities, NGOs working in the area and UN experts.
7. **Gender Equality:** Gender equality and equity should be ensured and adhered to throughout the process of displacement, relocation and return. Specific care must be taken to insure that women are not dispossessed of their lands and property, especially where relocation is necessary. Joint-ownership of State lands should be provided and the Head of the Household concept should be abolished from Government forms.
8. **Consultation with affected groups based on full disclosure of relevant information:** Special effort must be made to consult with affected communities, provide them with accurate information, and insure that their right to remedy is not affected by their vulnerable status as IDPs. All notifications related to land usage should be posted in all IDP camps and disseminated through local Government officials, including to IDPs living with host families. IDPs must be given formal legal guarantees regarding future housing and land before they decide to accept relocation. The identification and selection of relocation sites and the planning of relocation must involve the participation of concerned IDPs.
9. **Principle of Voluntariness:** All relocations and returns must be based on the free, fully informed decisions of IDPs. Decisions must be free from any form of coercion or influence such as, physical force, harassment, intimidation, denial of basic services, misinformation, or closure of IDP camps.

6.1.3 INSTITUTE FAIR AND TRANSPARENT PROCEDURES FOR ALL THOSE CURRENTLY DISPLACED BY HSZ: COMPRISING:

10. **Right to Return and Restitution:** All HSZ IDPs must have the right to return to their former lands and restitution of their property. The Government of Sri Lanka should pay rent for the occupation of land and compensation for the destruction of houses and property based on fair market value and appreciation of land value.
11. **Right to Adequate Housing:** Adequate temporary relocation housing should be made available in a timely manner with clear land title to provide security of tenure. IDPs who had agricultural land should be offered land of equal size and quality near the relocation sites. The specific needs of relocated persons with other livelihoods (such as business men, fishermen, or cattle grazers) must also be taken into account.

12. **A clear choice between return, integration for IDPs:** An independent Commission (see above) should evaluate the necessity of the HSZ on a regular basis to determine both: when the HSZ is no longer needed for national security; and when it is safe for IDPs to return to their lands. At a time when both requirements are met IDPs should be given the free choice to either: A) return to their lands and relinquish their rights to the relocation land; or B) remain in the relocation site with full ownership rights to the land and relinquish their rights to their former lands while being compensated for the value of any land and property exceeding what was received in the relocation package.
13. **Guarantees on property restitution:** A timeline for the rebuilding or repairing of houses should be prepared and agreed to prior to return. This should include agreements on who will rebuild or repair housing and where the funding is coming from. Temporary shelter should be limited in duration and beneficiaries should continue to receive water and food assistance until they have re-established their livelihoods and are living in a permanent house.

6.1.4 INSTITUTE FAIR AND TRANSPARENT PROCEDURES FOR RELOCATION DUE TO DEVELOPMENT ACTIVITIES IN ACCORDANCE WITH DOMESTIC AND INTERNATIONAL LAW:

14. **Legal Status:** The legal status of the SEZ and accompanying development projects, such as the Coal Power Plant and Ring Road, must be officially clarified by the central Government before any permanent relocation plans are made.
15. **Current Relocation Sites:** The current relocation sites should be re-evaluated based on the overwhelming rejection by concerned IDPs and in full consultation with them.
16. **Relocation and Compensation for Private Land:** Relocation housing should be located on State land with clear title of ownership provided to IDPs. Those who had agricultural land should also be offered alternative agricultural land of equal quality and size near the relocation sites, that will afford an adequate and improved standard of living. Acceptance of relocation housing and lands must not be construed as compensation for IDPs' loss. IDPs must be provided with compensation for losses as prescribed by law, and at fair market value, **in addition to the new plot of land and relocation house**. If an IDP chooses not to relocate in the designated areas, this should not affect their right to compensation.
17. **Relocation and Compensation for State Land:** IDPs who were formally living on State land (either with grants or permits) should be provided with relocation housing and land that is equal or greater to their lands being acquired by the government. As a general principle IDPs should never receive less than what they previously possessed, taking into account land productivity.

18. **Support for IDPs lacking clear title and procedure to determine remedies:** IDPs who have lost their documentation should be prioritized and helped by mobile legal land clinics. Documents should be provided to IDPs to ensure their security of tenure and so that they may receive housing assistance. Those who were informal settlers should be provided with State Land and livelihood assistance according to current Government relocation plans.

6.2 TO THE SRI LANKAN MILITARY

19. **Unofficial HSZs:** The term HSZ should only be used for areas approved by the President of Sri Lanka and officially gazetted. Housing and land must not be seized without a transparent legal process that allows legal challenges.
20. **Secondary Occupation:** The security forces must return all land and property belonging to returnees in areas open for return, before returnees arrive. Secondary occupation of land, housing and property should end as soon as the need for it has ceased to exist.
21. **Compensation:** Instances of current secondary occupation should be based on necessity, recorded by the Government Agent and the military, and the owner(s) of the house or land should be able to claim a fair rent for the use of the premises until they are allowed to return. Alternative adequate housing and livelihoods should be provided, without prejudice to the owner's right to return and restitution.
22. **Access to lands:** Civilians should be allowed to access all lands in their communities, especially lands related to their livelihoods. Any restrictions to access, whether the area is formally declared a HSZ or not should pass through the official HSZ commission for approval. In cases where restricted access is unavoidable due to security concerns, livelihood support should be provided as well as rent for private lands that have been declared restricted.
23. **People Friendly Approach:** The security forces need to apply a more people friendly approach in which human security is as important as military security. The security forces should treat the local population not as a threat but as partners in rehabilitation and the maintenance of security.

6.3 TO DONORS, THE INTERNATIONAL COMMUNITY AND CIVIL SOCIETY

24. **Principled engagement:** Insist on a collective basis that the principles outlined above, and more broadly the Guiding Principles on Internal Displacement and the Pinheiro Principles, be accepted by the Government as conditions for Donor support for development projects.

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25. **Resist overlap between Security and Development:** No funding should be provided for development projects for which land has been acquired through the creation of HSZs or use of the Emergency Regulations.

 26. **Minimise development induced displacement:** All development projects in the Eastern Province should seek to avoid and minimise displacement and should not significantly alter the ethnic make-up of a particular area. Donors should insist that adequate compensation and relocation packages are put in place for all development projects including roads, irrigation and power plants.

APPENDIX A

MAP OF SRI LANKA



APPENDIX B

LIST OF ABBREVIATIONS

BOI	Board of Investment	LDO	Land Development Ordinance
CEB	Ceylon Electricity Board	LTTE	Liberation Tigers of Tamil Eelam
CFA	Ceasefire Agreement	NESOHR	North East Secretariat on Human Rights
COHRE	Centre on Housing Rights and Evictions	NIRP	National Involuntary Resettlement Policy
DS	Divisional Secretary	NTPC	National Thermal Power Corporation
GA	Government Agent. The highest-ranking central government official for each district.	PSO	Public Security Ordinance
GN	Grama Niladhari. Local government official.	SEZ	Special Economic Zone
GOSL	Government of Sri Lanka	SLAF	Sri Lankan Security Forces
HLP	Housing Land and Property Rights	SLFP	Sri Lankan Freedom Party
HSZ-	High Security Zone	SLO	State Lands Ordinance
ICCPR	International Covenant on Civil and Political Rights	TNA	Tamil National Alliance
ICESCR	International Covenant on Economic Social and Cultural Rights	UAS	Unified Assistance Scheme
IDMC	The Internal Displacement Monitoring Centre	UNHCR	Office of the United Nations High Commissioner for Refugees
IDP	Internally Displaced Person	UNOPS	United Nations Office Project Services
LAA	The Land Acquisition Act		

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