

Land in the Eastern Province

Politics, Policy and Conflict

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Centre for Policy Alternatives

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

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Abbreviations

CPA	Centre for Policy Alternatives
CFA	Ceasefire Agreement
DS	Divisional Secretary
FDL	Forward Defence Lines
GA	Government Agent
GN	Grama Sevaka
HSZ	High Security Zones
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
LTTE	Liberation Tigers of Tamil Elam
NGOs	Non Governmental Organizations
NIRP	National Involuntary Resettlement Policy
NLC	National Land Commission
NTPC	National Thermal Power Corporation
OCR	Outer Circular Road
PS	Pradeshiya Sabha
PLC	Provincial Land Commissioner
RDA	Road Development Authority
STF	Special Task Force
SEZ	Special Economic Zones
TMVP	Tamil Makkal Viduthalai Pulikal (Tamil Peoples Liberation Tigers)
TNA	Tamil National Alliance
UDHR	Universal Declaration of Human Rights
UDA	Urban Development Authority
UXO	Unexploded Ordnance

Executive Summary

Most individuals in Sri Lanka will identify land as a fundamental element that defines their life. Ownership and control of land, including the location of and the extent of land owned indicate a person's wealth and social status. The respect that flows from this has a number of other repercussions including access to schools and marriage prospects. Secure land rights imply economic security and provide surety for loans and thereby facilitate income generation and improve livelihoods.

In Sri Lanka, land has been a critical factor in the ethnic conflict that intensified and resulted in the outbreak of a war that spanned over two decades. State aided land settlement projects under development and irrigation schemes, the failure in addressing key land and development related issues, violence against particular communities that resulted in the abandonment of properties, and the establishment of *ad hoc* security restrictions in areas all contributed to the increasing tensions that ultimately led to the outbreak of war in Sri Lanka. Over the course of the war, the land problem was exacerbated by increased displacement of entire communities from their land, occupation of land belonging to private individuals by the military and LTTE, arbitrary seizure of land belonging to Muslims by the LTTE in the North and East, the establishment of High Security Zones (HSZ), Special Economic Zones (SEZ) and the loss of documentation.

Although discussions on land and related issues and attempts to resolve disputes at a community level did run concurrent to the conflict and heightened during the Ceasefire Agreement (CFA) and post-tsunami period, there were no concrete steps taken by the State or any other actor to fully address the root causes of grievances, provide sustainable alternatives and introduce modalities that could have reduced some of the underlying problems and disputes.

In a post-war context, with the defeat of the LTTE in May 2009, the Government, political parties, civil society and citizens at large are faced with an unprecedented opportunity to address the root causes of the ethnic conflict and long-term grievances faced by different communities. Although there is an opportunity to address a fundamental issue such as land through looking at both the constitutional, legal and policy framework and the problems on the ground, very few initiatives have been put forward by the different actors. Nearly a year after the end of the war, with two national elections held and the current Government enjoying an overwhelming majority in Parliament, this is clearly the moment to unveil concrete proposals for constitutional and political reform and a roadmap that introduces changes to the current set up. There are, however, unconfirmed reports of impending constitutional reform including changes to the Thirteenth Amendment and the role and powers of the Provincial Councils. Whether such a framework will guarantee the rights of all citizens or only a certain group or none at all, are yet to be seen. What is noteworthy is that though a significant time period has passed since the end of the conflict, there has been little public information, discussion or debate on Government proposals for possible ways forward. In the current post-war climate, there is no information as to whether the numerous HSZs will be dismantled; whether all IDPs will be able to return to their land; and furthermore, whether there would be a restitution and compensation policy. The lack of transparency and due process with regard to Government procedure into the post-war context are issues of grave concern and need to be reversed.

Land and the Eastern Province

The present report explores the complex web of land issues in the Eastern Province. At the outset, CPA states that this report only highlights key land issues in the Eastern Province in the post war context and is not a historic study of the use, management and control of land in the area. The specific time period in focus spans 2007-2010. It provides an overview of the situation soon after the Eastern Liberation to that of the post war context in Sri Lanka and the status of land within a three year period.

The Eastern Province was militarily liberated by government forces in 2007, following which the region has seen a host of developments related to land. The military liberation of the East and the resulting process of normalisation have provided the context for the return of the displaced and land reclamation, the provision of resettlement, reconstruction and development assistance by humanitarian agencies, donors and the Government. This has had a dramatic impact on the quality of life for civilians, even while they continue to deal with the long-term repercussions of the war, including the loss of lives, destruction and damage to property, the loss of livelihoods and incomes, and the disruption of community ties.

Some of the critical land issues and problems in the Eastern Province and their impact on larger political and governance issues are highlighted in the report. For instance, access to land is a critical aspect to land use and control. In the East, security restrictions and military occupation have somewhat curtailed full enjoyment of land rights. Furthermore, obstacles to accessing land have resulted in disputes and grievances which if left unresolved can lead to a multitude of problems. Another complicating factor is the manner in which the subject of land has been approached by both state and non-state actors to fuel as well as mitigate ethnic tensions, to facilitate development projects and economic growth, to develop particular communities, dispossess and displace others, establish new administrative divisions and settlements and change ethnic demographics - all of which have had long term implications.

Land as a highly politicised and ethnicised issue was an underlying cause of the war. The report examines the post-war context of new land settlements and land grabbing, landlessness, encroachment on state land, illegal land sales and the implications of the loss or destruction of land documentation in the East. These have all aggravated issues of ownership, access and control of land between land users/owners. There have been reports of communal violence breaking out as a result of land disputes. There are also sporadic reports of intimidation and even assaults, indicating the real potential for violence over land disputes. A number of land disputes were reported to CPA some of which were described as land colonization, but these are claims that CPA could not verify, even though there was a significant level of political and military involvement in some of these cases. Nonetheless, CPA repeatedly encountered a strong perception among many of the interviewees at the community, district and administrative levels of State actors being partial to particular ethnic communities when dealing with land. Hence even when the State is acting in good faith in advocating particular policies there is strong mistrust and fear on the ground. Rather than ignoring these fears the Government needs to ensure greater transparency, information and participation in order to address these perceptions.

The present report also explores the constitutional, legal and policy framework that governs land in the region. The issue of land is further compounded by the different levels of government involved - the Centre, province and district and the powers vested in them. Although the Thirteenth Amendment to the Constitution was intro-

duced with the goal of devolving powers to the Provincial Councils including in the area of land, as discussed in the report, the Central Government overrides provincial council decision-making and policy implementation on land and continues to be the major actor.

Even though the number of ministries, including those dealing with land, has been cut in the current cabinet, there continue to be multiple actors at the different levels of administration, especially in the case of the Centre with several departments and authorities overseeing various issues related to land. The lack of progress made in resolving land disputes and the inability to introduce and amend much needed laws and policies demonstrates the ineffectiveness and inefficiency of a bureaucracy and a multiplicity of actors with some overlapping functions. Though CPA has met several government officials who within their limited mandates are attempting to address the grievances of the communities and land conflicts, a common problem documented by the CPA team is the inertia and lack of initiative among some senior political appointees and the disturbing trend of the high levels of politicisation. Though this is not a new phenomenon regarding land and the Eastern Province, the provision of secure land entitlements and development requires that this systematic problem is addressed without delay. A fundamental problem is the lack of political will and political imagination to address the ground realities and grievances of the affected communities and to engage in policy reform.

The report recommends possible solutions to the problems and gaps highlighted. It calls for reform at the constitutional, legal and policy levels. While the issue of power sharing and a political solution needs to be addressed and any solution has to grapple with the subject of land, there are areas which the Government can move on without delay, including the strengthening of the powers of the Eastern Provincial Council (EPC) and consulting the EPC on key land related issues. Despite the twenty year lag, it is not too late to constitute the National Land Commission (NLC) which would strengthen the process of establishing a fair land policy. Developing a policy framework on land could be advantageous for long term development provided that it ensures greater transparency and inclusiveness in decision making and formulation of policies. Existing land related legislation has to be amended, including the Land Development Ordinance and Prescription Ordinance. Specific initiatives to provide land for the landless as discussed in this report or compensation and restitution to those whose land and property has been affected by the war, need to be strengthened, taking into consideration the issues on the ground which are set out in the following chapters.

In responding to the problems on the ground, CPA recommends a two-track approach of developing a policy framework and establishing/strengthening community-oriented mechanisms and processes. Land disputes and conflicts which have intensified in the post-war context, probably in relation to an increased feeling of personal security, improved freedom of movement and a greater number of returns, need to be addressed through clarification of the legal status of individual cases. This also requires community-oriented and mediated solutions, be they land kachcheris, land task forces or mediation boards/committees.

The Government, political parties and bureaucrats also need to ensure that governance is made more effective and sensitive to community needs. Existing issues such as the confusion over divisional boundaries for instance need to be clarified so as to improve administration. In dealing with issues of military restrictions such as high security zones and occupation of individual properties that obstruct civilian access, there has to be a commitment to review security requirements in the post-war context, and accordingly provide a time line for withdrawal. There should be rent schemes for continuing occupation and compensation/restitution in the case of permanent occupation which should be kept to a minimum.

While the cases and issues discussed in the report are very specific to the Eastern Province, these are not isolated issues and trends peculiar to the East alone. These issues and trends have resonance in other parts of the

country, but more so in other conflict affected areas such as the North. The latter is presently going through a phase of rebuilding and development and will face similar as well as unique problems with land. If 'the Eastern model' is to be used in the North, best practices and solutions in the East need first to be developed and implemented before they can be replicated elsewhere. For Sri Lanka to move forward in a post war context, where fundamental grievances including land issues are addressed there needs to be larger political and constitutional reform. An underlying theme in the report is that this and the policies and programmes it produces must be underpinned by a people-centric approach – one that is pivotally representative of the needs of the people in the area. Such a shift will not only addresses grievances of the affected communities but could also mitigate conflict and ethnic tensions.

Chapter I

Introduction

This report highlights the gaps and shortcomings in the existing constitutional, Legal and Policy framework, the practical challenges to accessing land, land disputes and conflicts as well as boundary issues between administrative divisions and current initiatives addressing landlessness and compensation/restitution. While profiling existing problems in the post-war context, through this report, CPA hopes to increase public understanding of the nature of the land problem in the East and to provide alternatives and solutions. The report is also meant to increase engagement of the public and policy makers on land issues, to ensure that future initiatives take into consideration present problems and to contribute toward a rights-based policy framework for land issues.

There are a host of recommendations which can be made with regards to each aspect of the land problem, but most importantly there has to be a two-fold transformation in approach. Firstly, the need for policy reform has to be acknowledged. There needs to be full implementation of existing provisions in and amendments to the Constitution and ordinary law, and a comprehensive land policy introduced by the Government setting out State policy. Secondly, the focus has to shift from national level requirements of the State to a people-centric and community approach. This would ensure more responsive governance and strengthen the Government's initiatives on re-building trust between communities, promoting development and strengthening peace in the East and in the country at large.

SECTION I

Policy and Politics of Land

Chapter II

Constitutional, Legal and Policy Framework

This chapter briefly discusses several constitutional and policy related issues which impact, with specific reference to land in the Eastern Province. The present report demonstrates the complexity of issues related to land and that a fundamental factor contributing to this complexity is the lack of comprehensive, coherent and clear constitutional and policy frameworks on land which sets out the Government position on land and its plans for its use and management. As discussed in this chapter, a fundamental problem related to land in Sri Lanka is the failure to fully implement the Thirteenth Amendment to the Constitution which was meant to devolve powers including land powers to the Provincial Councils and the lack of a comprehensive government policy.

The lack of a comprehensive and coherent framework should not be taken to imply that there are no provisions in the Constitution, laws and policies that focus on land. On the contrary, as the report demonstrates, Sri Lanka has a rich collection in this regard. What is missing is the clarity on Government plans for the use, management and control of land. The confusion is further compounded by the contestation of roles of the different levels of government and the lack of implementation of existing provisions which facilitate greater devolution and participation, and the respect and protection of rights. The lack of legal reform is an additional area of concern. Laws pertaining to both state and private land need to be reformed either at the national level as in the case of joint ownership for grants or with specific reference to the East as in the case of the Prescription Ordinance.

The Government needs to give priority to setting out its policy on land and related topics, spelling out what it has in mind for state and private land and its plans for fundamental areas such as governance, control, ownership, access and dispute settlement over land. Without this, the problems documented and highlighted in this report will continue, creating further conflict and ethnic tension. The present focus of the Government seems to be economic development as indicated in the various policies, plans and programmes discussed briefly in this section. The priority given to economic development begs the question of how issues such as land, human rights, rule of law and other key areas will be managed by the present regime and whether key principles of governance would be sidelined or disregarded in fulfilling the goal of economic development.

2.1 Constitutional Framework and Powers over Land

This chapter briefly discusses the constitutional framework, the powers devolved to the provinces and obstacles faced due to the failure to fully implement the Thirteenth Amendment. The Constitution of Sri Lanka does not provide for the right to land or property, but the Fundamental Rights Chapter has a provision on the individual's right to equality,¹ freedom of movement, choice of residence,² and other rights. The Directive Principles of State Policy further advocate the “realisation by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and the continuous improvement of living conditions.”³ The cumulative effect of all these provisions may suggest a right not to be arbitrarily denied the right to land, housing and property.

Reading the above provisions and the existing guarantees provided by the Constitution, it may be interpreted that the right to land, property and housing fall within the broad definition of equality and other provisions enshrined in the Constitution.

2.1.1 The Central Government, Provincial Council and Land Powers

An on-going area of confusion and contestation is related to the devolution of land powers, or lack thereof from the Central Government to the Provincial Council. The Thirteenth Amendment was introduced with the objective of devolving and delegating certain powers of the Central Government to Provincial Councils. The Thirteenth Amendment sets out the subjects assigned to the Central Government and the Provincial Councils in three lists: (i) the Provincial Council List, which describes the subjects assigned to the Provincial Councils; (ii) the Reserved List, which describes the subjects assigned to the Central Government; (iii) the Concurrent List, which describes the subjects that are assigned to both the Central Government and the Provincial Councils.

The Thirteenth Amendment reserves certain land powers for the Provincial Council. Rights over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement are listed in Appendix II to the Provincial Council List, Land and Land Settlement. State land continues to be the property of the Republic, and may be disposed by the Central Government at its discretion and on the advice of the relevant Provincial Council.⁴ This means that any alienation of state land must be done under the seal of the President. What is important to remember is that though state land is the property of the Republic, it is held in trust by the Government for the people.⁵

¹ Article 12(1)

² Article 14(1)(h)

³ Article 27(2)(d)

⁴ Land Commission Bill, S.D Nos 26-36/2003

⁵ Land Commission Bill, S.D Nos 26-36/2003 and *Bulankulama and others v. Secretary, Ministry of Industrial Development and other*, (2000) 2 Sri LR 243

Even though the Provincial Councils have the power to make decisions on matters that fall within the Provincial Council List, the Central Government maintains overriding powers over all devolved subjects. This has resulted in a situation where, despite land, rehabilitation and reconstruction falling within the purview of the Provincial Councils, in effect, it is the Central Government that makes the final decision on all matters. This is a problem created by the Thirteenth Amendment where it provides powers for the Central Government to play the predominant role on issues including on land. Furthermore, the Thirteenth Amendment also states that inter-provincial projects involving several Provincial Councils come within the purview of the Central Government. In addition, there are other areas that come under the Central Government. For example, CPA was informed that major irrigation works also falls under the purview of the Central Government, while minor irrigation works rest within the purview of the Provincial Councils. This means that major irrigation projects as well as inter-provincial irrigation projects all come within the purview of the Central Government. This has been the case with the Mahaweli River related irrigation. Furthermore, state land is vested with the Central Government and hence decisions related to state lands are made by actors in the Central Government unless provided for as in the case of Provincial land. For example, powers related to Provincial schemes, which were previously vested with the Land Commissioner, are vested with the Provincial Land Commissioner. The level of control by the Central Government is compounded by the financial dependence of the Provincial Councils on the Central Government.⁶ These are some of the examples that demonstrate the extent to which the Central Government plays a critical role in the governance and control of State land and powers devolved to the Provinces.

The Central Government's failure to empower the Eastern Provincial Council- which is ruled by the governing alliance and headed by an ally of the Government - particularly on the subject of land, has raised serious questions as to the commitment and political will of the incumbent in addressing the ethnic conflict. It is yet to be seen whether the situation will improve with the possibility of constitutional reform in the near future.

2.1.2 The Allotment of Land and the National Land Commission

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

The Appendix of the Provincial Council List establishes a National Land Commission (NLC). The provisions of the Constitution provide that this body, which will include members of Provincial Councils, will be responsible for the formulation of the National Land Policy. The National Land Policy will deal with the use of State land. The purpose of the NLC is to develop national land policy through consultation between multiple actors, including from the provinces. The Provincial Councils are intended to exercise those powers devolved on them in accor-

⁶ Pursuant to Article 154R of the Constitution, the Central Government may allocate funds to the Provinces on the recommendation of the Finance Commission. The Provincial Councils have no revenue-raising powers of their own under the Constitution.

dance with the National Land Policy formulated by the NLC. The NLC has yet to be established despite the fact that the Thirteenth Amendment became part of the Constitution in February 1988.⁷

Since the introduction of the Thirteenth Amendment and the introduction of the Provincial Councils, certain issues and powers have been devolved. As highlighted in this section, the existing devolution of powers has been limited, with the Central Government maintaining control in the form of policy decisions and financial management. There has also been much debate as to whether the Provincial Council system works and as to whether it is a necessary in the present day. There are unconfirmed reports of moves by the Government to change the Provincial Council system and give greater powers to the District by way of introducing District Councils and other mechanisms such as Jana Sabhas. Though CPA has yet to see any plans in this regard, such moves to do away with the Provincial Councils and in effect make the Thirteenth Amendment to the Constitution redundant, will raise larger constitutional, political and governance questions. The Parliamentary Elections held in April 2010 provided the Government of Mahinda Rajapaksa with a sufficiently large majority in Parliament to pass a constitutional Amendment and make fundamental changes to the constitutional framework of Sri Lanka. In the event that Provincial Councils are done away with and constitutional changes introduced, CPA urges that such changes are introduced in keeping with fundamental principles of good governance and done so in a transparent and participatory manner.

2.2 Legal Framework over Land

The Sri Lankan legal framework for land and property rights consists of statutory law, Roman-Dutch Law (which is the common law of Sri Lanka), and principles of English Common Law. Land and property rights relating to marital property and inheritance are also subject to Sri Lanka's system of personal or customary laws, consisting of the Tesawalamai, Kandyan Law and Muslim Law. These customary laws seek to protect the traditional rights and customs of religious or ethnic groups.

When focusing on land, it is imperative to examine the governance issues related to the subject. As discussed in the previous section, although land is a devolved subject under the Thirteenth Amendment to the Constitution, the Central Government exercises executive control over how state land is alienated and used. It is further complicated by the numerous laws and policies that are relevant to both state and private land, and numerous processes involved in the various functions of land. Land laws cover both state and private land and Appendix 1 lists out some of the relevant laws for land in the Eastern province including laws governing ownership, control and access. Appendix 1 lists out key concerns and gaps and provides suggestions including the amendment of certain laws so as to ensure joint ownership of State land. It recognizes the difficulties in owning and accessing private lands due to the obstacles created during the conflict, specifically with regards to the Prescription Ordinance.

⁷ *In the Memorandum on Land Issues Arising From the Ethnic Conflict and the Tsunami Disaster*, January 2005, CPA recommended that the NLC be established and granted the resources necessary to carry out its mandate. However, in order to respect the principle of subsidiarity, CPA has proposed that the NLC's role be limited to the formulation of broad national policies within whose framework provincial and local authorities would have the flexibility to formulate and implement policies and programmes responsive to local needs.

2.3 Land Policy

In addition to various form of legislation, there is also state policy governing land and land-related issues. It has already been stated previously in this report, that the NLC provided under the Thirteenth Amendment was envisaged to formulate national land policy. More than two decades after the passing of the Thirteenth Amendment, the NLC has yet to become reality, resulting in the lack of a comprehensive national land policy in Sri Lanka. The lack of a national land policy not only impacts land rights and issues in the Eastern Province, as discussed in the present report, but has an impact nationally. In a post-war context, it is imperative that the Government fully implements all amendments to the Constitution and other laws including the creation of the NLC. However, the possibility of constitutional reform, including possible changes to or the removal of the Provincial Councils, inspires uncertainty in these matters. CPA urges the authorities to set a road-map in place to indicate the future direction of state policy including what plans are in place for land and related issues. Some policies, including the draft land policy, are briefly described in Appendix 2.

The policies, including the draft land policy discussed in Appendix 2. demonstrates that the present and previous Governments have introduced various policies to address land issues including land use and management and involuntary resettlement. There is at present a draft land policy and draft housing policy,⁸ which if enacted can provide a guide to what the Government envisages for the future on these issues. Though the above documents provide a glimpse into how land can be utilized and into the priorities of the Government, these fail to clearly provide a clear picture of what the present Government has planned for land in Sri Lanka.

The Mahinda Chintana documents of 2005 and 2010⁹ are a guide to plans proposed by the present President and his government over land and related issues. There is specific mention of the Eastern Province by reference to the Nagenahira Navodaya or Eastern Revival Programme. In the 2010 document there is frequent reference to the development projects that were undertaken post Eastern Liberation in July 2007 including the construction of roads, bridges, schools and hospitals and the assistance provided for agriculture and livelihoods. In many of the development projects completed and envisaged including the construction and renovation of roads, land is a critical factor. There is no mention in the 2005 or 2010 documents as to whether it is state or private land that is to be used for development projects and for providing land to those in need. As highlighted in this report, land construction in the East has in fact taken place but there are issues with process including discrepancies in the land acquisition process, transparency and compensation. The 2005 and 2010 policy documents do contain specific references of providing land to the landless and the need for land policy, but both these policies need to be actualised.

Another factor that needs attention is that as stated in the 2010 document, land and houses will be given to those who fought in the war. There is specific mention of 50,000 new houses being built under 'Ranaviru Gammana' which is for officers and soldiers in the forces but no mention of how the recipients will be selected and where the land will be situated. This report documents several cases where local communities fear changes to demographics through new settlements taking place. In some cases these changes are due to state sponsorship or through the intervention and influence of political actors and key administrative officials. The 'Ranaviru Gammana' further exacerbates these fears and it is crucial that the Government provide information on the programme, including the nature of land being provided as well as ensure transparency in the selection process.

⁸ Please refer to Appendix 2 for more information

⁹ Please refer to Appendix 2 for more information

Agriculture and livelihoods are key aspects of the 2005 and 2010 documents. Likewise, the Eastern Revival Programme. According to the 2010 document, under the Mahinda Chintana project of giving agricultural land to 100,000 farmers, 20,195 allotments have already been given away and permits have been issued for a further 32,063 allotments, while other documents have been issued to yet another 38,277 farmers. The document further adds that agricultural land will be given to 100,000 farming families in the Northern and Eastern Provinces though no information is currently available on whether the land would be state or private land. Nor does it mention any selection criteria.

The Eastern Revival programme sheds more light on plans for the Eastern Province. According to the Eastern Revival there are three areas for the period 2007-2010. They are as follows:¹⁰

- Restoring and guaranteeing socio-economic and personal stability and safety to the people and communities of the Region through resettlement of displaced persons, building reconciliation, and consolidating the capacities and fundamental rights and responsibilities of all people and institutions.
- Revitalizing basic livelihoods through revival and expansion of the productive sectors and the regional economy.
- Improving economic infrastructure, strengthening social infrastructure and fostering social services and development of human settlements and improving the internal and internal connectivity of the Region.

The above areas and the programmes implemented to date in the East demonstrate that economic development and revival are benchmarks influencing Government programmes and policy. The recent creation of the Economic Development Ministry, which includes previous ministries such as the Ministry of Nation Building and the Ministry of Tourism and headed by Basil Rajapaksa, further demonstrates the importance given to economic development in the present government.¹¹ Though it is too early to comment on plans and programmes of the new ministry, the amalgamation of several key ministries in the previous government, the weight given to development by the present government and the fact that it is headed by the brother of the President and a key architect of the policies, plans and programmes of the Mahinda Rajapaksa administration are indicators of the Government's prioritisation of economic development. While CPA recognises that economic development and revival are important, they should not be at the cost of people's rights, the absence of a due process and the centralisation of decision making and powers. The Government should take into account issues on the ground and formulate a national land policy which is based on a rights framework and the needs of local communities.

2.4 An Agenda for Reform

As this chapter reveals, there are several problems and gaps with the constitutional and policy framework related to land in Sri Lanka. Although the Provincial Councils do have their inherent flaws and weaknesses, a key problem is that the Provincial Councils cannot enjoy complete devolution of powers since the Central Government retains power and control. Any future proposals need to address this issue and ensure that there is full

¹⁰ Eastern Revival, *Three Year Master Plan*, <http://www.neweast.lk/3year/introduction.html#policy>

¹¹ (Daily News, "President assigns subjects, functions of Ministers," May 5 2010). In addition to the several ministries that come under the Economic Development Ministry, all regional development programmes including District Development programmes and the Board of Investment which were previously under the Enterprise and Investment Promotion Ministry also fall within the new ministry.

devolution, not a half-hearted attempt that fails to address the grievances of the communities. CPA recommends that consultations are conducted across the country and among relevant stakeholders to ensure that any process of constitutional change is participatory, transparent and inclusive. CPA also recommends that land is fully devolved to the Provincial Councils.

CPA notes that by fully devolving land powers to the Provincial Councils as provided in the Thirteenth Amendment, responsibilities and powers over land are taken closer to the people. An additional, important factor in having another tier of governance and not relying solely on the authority of the Central Government is the checks and balances thereby provided to minimise the abuse of power. For example, decisions pertaining to land cannot be unilaterally made by the Central Government but must be done in consultation with Provincial Councils. For example, when the Land Ordinance Bill 2009 was present in Parliament by the then Land Minister Jeevan Kumaratunga, an objection was raised by JVP MP Anura Kumara Dissanayake that the Bill was not discussed and approved by the relevant Provincial Councils.¹² In this context it must be noted that the Provincial Council also has a duty to act responsibly and in a transparent manner, including when dealing with land issues, so as to avoid repeating the mistakes of the Central Government.

Further, there needs to be a land policy that takes on board the needs of the people and one which is therefore located within a rights framework. The full implementation of the Thirteenth Amendment will ensure the constitution of the NLC, which in turn could facilitate the formulation of national land policy. As highlighted in this report, current government policy seems to give priority to economic development over other issues and this seems to be the trend on land. While economic development is critical in moving forward to a post conflict setting, other areas highlighted in the report also needs to be given consideration.

Finally, the problems documented in this report highlight the need for reform. Land reform, be it constitutional, legal or policy, is necessary to move forward towards peace, reconciliation and national unity. This report recommends several steps that need to be taken to ensure that success in these areas is sustained and effective and that grievances of the communities are addressed.

¹² Daily News, "Land Ordinance Bill before Standing Committee," January 23 2009

Chapter III

Politicisation and Ethnicisation of Land Problems

Land disputes are by no means unique to the Eastern Province. In fact, land disputes may be the most common issue for litigation in the Sri Lankan legal system, in particular, cases of intestacy and inheritance between family members and associates, as well as boundary disputes between neighbours. In the Eastern province, land has an overt political and ethnic dimension. With the intensification of the ethno-political conflict during the post-independence years, the issue of land in the East became a sensitive issue with charges of State colonisation, communal riots and land settlements as well as demographic changes. These tensions were exacerbated during the war, both in terms of existing disputes and the emergence of new problems such as displacement and violence over the control of and access to land. This report attempts to document some of the different and distinct land conflicts and disputes. It will highlight key trends, demonstrating that issues such as politicisation and ethnicisation are critical factors in land issues.

3.1 Politicisation

A fundamental component of land is its relationship to political and constitutional arrangements. As discussed in this report, land is a devolved subject under the Thirteenth Amendment to the Constitution, resulting in both the Central and Provincial Governments playing a role. Furthermore, land is a central issue in the struggle for power between the Centre and the Province. Land along with police powers continues to be one of the sensitive subjects which the Central Government is refusing to hand over to the Eastern Provincial Council. Politicians, including those who have entered Parliament from the districts of the East, also attempt to play a dominant role and can influence land related issues either through the cabinet, the relevant ministry or department, or at the district level.

There are also district level actors and local authorities who play a crucial role in land administration (discussed in Appendix 3). As a result, in many instances there are a host of actors at the different levels of government who play a role and may further complicate the issue. Several of the cases documented in this report, highlight the role of political actors in influencing and deciding land projects and policy including resettlement drives and assistance schemes.

The escalation of violence in 2006/7 resulted in the displacement of tens of thousands of people in the Eastern province and a significant number resettled in the last few years. CPA has in previous reports commented on the resettlement drives, noting the desire of the displaced to return, while raising questions as to whether the rights

of IDPs were violated during the process.¹³ These drives have also raised a question on the status of the land of those affected. Those displaced from their homes situated in the HSZ in Sampur (discussed in detail later in the report) returned to their districts of origin but were unable to return to their own land due to restrictions as a result of the HSZ. Several administrative and political actors have been involved with this group of IDPs and their land, including the Eastern Provincial Council, the Trincomalee Government Agent, and local members of Parliament. The various actors who were involved and interested in the resettlement process and continue to be involved in the HSZ and SEZ in Sampur demonstrate the political interest given to the issue.

It is difficult to talk about the administration of the East without referring to the military. In addition to the current Trincomalee GA, the current Governor of the Eastern Province and the former Resettlement Authority official for the East are retired Navy personnel, attesting to the critical decision-making role in resettlement and land issues in the region. The increase in military actors responsible for governance and development in the East is a trend witnessed after the liberation of the East in 2007 and now evident in the North.¹⁴ Politicisation consequently refers to the roles and actions of elected officials as well as former military officers who have been appointed to administrative positions. As a consequence, the culture of politics and governance could change accordingly.

This report also highlights several land cases where those displaced previously have returned to claim their land but face problems as others are occupying the respective land as seen with the Irakkandy case in Kuchchaveli in the district of Trincomalee; boundary disputes in the Kathankudy-Arayampathy Divisions in Batticaloa; and the fencing off of land in areas in Muttur. The latter are some of the cases discussed later in the report and the cases themselves demonstrates the complexity of land in the Eastern Province including the degree of politicisation and ethnicisation that could fundamentally change land ownership and ethnic demographics.

While it does not necessarily follow that every land dispute between members of different ethnic communities is presented and pursued in exclusively or even predominantly ethnic terms, there is a higher potential for this to be the case in disputes between ethnic communities. Even when the disputants themselves do not necessarily seek to use the communal card; politicians, State officials and political activists may do so. The refusal of the police to take down a complaint when members from the Tamil speaking communities want to complain about obstruction and assault by Sinhalese farmers adds an ethnic dimension, as does the refusal by a Muslim Divisional Secretary to give a hearing to Sinhala returnees attempting to reclaim property they left in the 1980s. Like in any other area in the East, political actors are involved in land issues through either pushing for State officials to grant land to individuals or companies or through highlighting cases of dispossession. The history of the ethnic conflict adds a complicating aspect to this involvement as 'minor' disputes may get magnified and incorporated into a sweeping chronology of events documenting discrimination, suffering and violence. The involvement of high profile political actors, including the Central Government and the Provincial Council, as well as politicians representing each of the ethnic communities increases the profile of and the stakes in the case. Even within ethnic communities there is a high potential for politicisation. In particular, cases of disputes between Tamil land users, one party or both may have appealed previously to the LTTE or the dominant Tamil militant group which would result in greater involvement by powerful political actors.

¹³ CPA, Bhavani Fonseka and Mirak Raheem, *A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District*, May 2008, CPA, Bhavani Fonseka and Mirak Raheem, *Trincomalee High Security Zone and Special Economic Zone*, September 2009

¹⁴ For example, the Northern Province Governor is Major General G.A Chandrasiri and all resettlement, reconstruction and development work needs approval from the defence establishment

Case Study: Irakkandy

The Irakkandy case is illustrative of the politicisation and ethnicisation of land in the East.¹⁵ Irakkandy is presently a largely Muslim village located a few miles North of Nilaveli, in the Kuchchaveli Division, Trincomalee. Some of the land in the village is privately owned (deed land) while other residents have secured permits from the Government. With the intensification of the conflict particularly from 1985 onwards, the Sinhalese in the village began to flee to Sinhala majority areas including Trincomalee Town, Anurdhapura and to cities in the Southern Province. During the numerous and short-lived ceasefires, especially in 1994-5, some of the Sinhala residents visited their village and attempted to secure financial arrangements over their land with their Muslim and Tamil neighbours. This is at the heart of the current land conflict in Irakkandy-Valaiuttu. The Muslim and Tamil residents claim that the Sinhalese sold their lands, while the latter claim that most of these lands were rented out.

Many of those who claim ownership to the land in question are Muslim but there are also a number of Tamils. Some of them have land ownership documentation, which they claim they obtained through the original owners handing over their land back to the State after which the DS of Kuchchaveli at the time provided permits to the land for the new owners. Some of the original Sinhalese owners and their relatives insist that the DS at the time was acting on behalf of the minorities. This case reveals a high level of ethnicisation of land issues, which is briefly discussed below, as both parties see the other as representatives of an ethnic community with the backing of their political representatives.

Soon after the end of the war in May 2009 several Sinhalese returned to the area and attempted to claim back their property. The DS of Kuchchaveli, the Provincial Land Commissioner (PLC), the GA of Trincomalee and other politicians have been involved in this particular case. CPA was also informed that the Sinhalese were encouraged to return and have been provided assistance by politicians in the Central Government and the GA who is also Sinhalese. The Sinhalese are also provided protection by the Navy and the Police. CPA was informed that several Muslim politicians have taken up the case of the Muslims in the area. Given the involvement of all these political actors and given that the Irakkandy case has also been raised in parliament.¹⁵ The clear ethnic schisms around the issue of land and the patronage system based on ethnicity are clearly demonstrated in the Irakkandy case.

3.2 Ethnicisation

The ethnicisation of land is seen in several cases in the East and Chapter Six discusses the ethnic dimensions of administrative divisions in the East. The ethnic tensions and insecurity during the war made this a necessity but the trend has continued in the post-war context. Therefore in the East, several administrative units are ethnic based. In these ethnic based administrative units, individuals in most cases reside on either private or state land. Those residing on state land are dependent on the local Divisional Secretary who has the power to issue permits. Therefore, permits issued in a specific division may be ethnic based, depending on local dynamics and the role played by the various actors including local politicians. Though this trend is difficult to prove due to the complexity of land and administrative issues, and the increased politicisation which has stopped the reporting of grievances due to the fear of reprisals; CPA notes that the powers given to the Divisional Secretary leaves open

the possibility of permits to be issued to specific ethnic groups over others, increasing the ethnicisation of land in the East. Although there is space for abuse of the powers given to the Divisional Secretary, CPA also notes that the office of the Divisional Secretary plays an important role in administrative issues at the local level. Therefore CPA recommends that powers provided to the Divisional Secretary and other local officials need to contain checks and balances to avoid abuse.

The ethnicisation of land issues was further highlighted by the 2008 Government initiative to provide state land to the landless. CPA interviews with both government officials and communities indicated that there were fears that this new initiative may result in changing ethnic demography in the area by giving land to those outside of the division and from a different ethnic group. Though there is no evidence to prove this has taken place, the fears of the different ethnic communities that the new initiative was a tool to undermine other ethnic groups and change the ethnic composition of certain areas in the East through the distribution of land are indicative of the complex nature of ethnic relations, land and politics in the East.

Ethnicisation or at least charges of ethnicisation under the cover of national security and development are also made as there is a perception that under these projects the Central Government is planning to facilitate new Sinhala settlements. The report also captures trends where Sinhala politicians and Buddhist clergy have entered areas in the East and erected new buildings and fenced off land, intimidating minorities in the area and creating tensions among the different communities, as well as reinforcing minority fears about the use of land to effect demographic change. Several cases in the Trincomalee district that are highlighted in this report demonstrates the role of powerful Sinhalese politicians who in the name of cultural heritage and environmental protection, have provided support to initiatives by locals, including the Buddhist clergy, to take over state land to build a Buddhist temple and to fence off the farming land of minorities, creating fears among the minorities in the area that state land is being used as a tool to introduce new settlements and thwart minority community access and control. The report also looks at other reported cases of land grabbing by powerful political actors from the Tamil and Muslim communities in other areas in the East.

Even where the Government is aiming to promote development with an eye towards addressing local needs, it will have to tackle the issue of perceptions, where development programs are perceived to advantage a particular constituency or community. While it is too early to comment on these issues and its impact, there could be serious implications for the future plans for peace, reconciliation and national unity if there is a continuation of the politicisation and ethnicisation of land. CPA recommends that future reform initiatives should take these issues and trends into consideration as well as ensuring that legislation and policies are formulated that abide by the key principles and concerns documented in this report.

SECTION II

Ground Realities

Chapter IV

Land Disputes and Conflicts in the Eastern Province in a Post-War Context

Land is a highly contentious issue in the Eastern Province. As noted earlier there are multiple factors which have contributed to it being such a highly politicised and ethnicised issue. A series of developments which took place with regard to land in the East during the post-independence years, particularly relating to land settlement, have resulted in land being viewed as a root cause for the conflict and the war to which it gave rise. In addition to the other impacts of the thirty-year old war, civilian use and control over land use has also directly suffered. In effect, the war complicated and exacerbated existing land issues and even created new problems on the ground, which has made addressing land issues in the post-war context a highly challenging process.

It needs to be noted that many of these disputes are not “new” but they are affected by the dynamics of a post-war situation. A post-war context is most often identified with the return of displaced people and re-establishment of land control by owners and users. However, the perceptions and suspicions on the one hand, and on the other, the changes on the ground during the conflict relating to the individual land plots as well as the space to reclaim land provided by the post-war context, create a heady cocktail for intensifying land disputes. A post-war context may, in fact, see more overt inter-communal tensions over land as individuals are generally more able and willing to voice their land claims, but it also offers an opportunity to address these issues provided there is a concerted effort to approach the problem in a systematic and sensitive manner. While developing a policy at the Central Government level to handle competing land claims, documentation and landlessness issues, there has to be a concerted effort to develop mechanisms at the community and divisional level in order to address and mediate these issues. Given the suspicions and mistrust over land built up over time, there has to be a concerted effort to deal with the issue of perceptions.

At the outset it needs to be noted that the land conflicts and disputes highlighted in the media and those raised with CPA during its field visits tended to be those which were highly ethnicised and politicised. It cannot be inferred from the cases below that there are very few disputes between members of the same ethnic community, or that these disputes do not become politicised. There have been some initiatives to map land claims and conflicts. One of the most comprehensive initiatives was undertaken by the Muslim Rights Organisation (MRO) in 2003 to document land owned by Muslim forcibly occupied by Tamils. MRO recorded 14,872 cases covering some 62,670 acres.¹⁵ While such extensive land mapping may not be required nor practical, there has to be an effort to understand the extent and nature of the current land problem in order to design an effective response.

¹⁵ Muslim Rights Organisation, *Register of Muslim Lands Forcibly Occupied By the Tamils in the Eastern Province of Sri Lanka*, Volume – I, November 2003

4.1 Conflict and Land

Land is widely perceived to be central to the intensification of the ethno-political conflict. In particular, state sponsored land distribution schemes are seen to be a driving force in the aggravations of tensions and fears of the minority communities. During its visits to the three districts, CPA repeatedly confronted minority concerns in the East, particularly the fear that Government is facilitating and supporting schemes which have the hidden agenda of changing demographics in the area. In contrast, the Sinhala community feels that they do have a right to land ownership, so the State has an obligation to grant them land and to facilitate those displaced during the conflict to reclaim their original land. The tension usually arise over the manner in which land and assistance is provided as well as the role of State and political actors in responding to these competing claims and the claim of 'new settlers.'

Post-independence governments initiated a number of irrigation and land settlement projects in areas including the East to provide land and livelihood opportunities for people from across the country. Some of the major schemes included Gal Oya in what is now Digamadulla District and Allai-Kanthalai in Trincomalee District. For the Tamil-speaking communities who formed the majority of the population in the East, these government-sponsored projects were, in turn, viewed as state-driven colonisation projects which favoured the Sinhalese from outside the Province, and dramatically impacted the demography of the region. Since independence, the Sinhala population in the East has sharply increased from 20.5 % in 1963 to 24.8% in 1981.¹⁶ Accordingly a widely-held perception among the Tamil and Muslim Communities is that the Government favours the Sinhala Community and under the guise of development is attempting to increase the Sinhala population in the East. There is an abiding concern that the State is continuing its attempts to provide more land for the Sinhalese in the Province, even in a post-war context.

For the Sinhala Community the granting of land is seen as a positive process aimed at distributing land to the landless. There is also a perception among the Sinhalese that they are not 'stealing' land from the minorities but are actually merely re-claiming land which they abandoned centuries ago- especially given the historical sites and references to the East in historical narratives. Sinhala nationalists point to individual settlement projects of Tamils and Muslims, as evidence of colonisation by minorities. While these dynamics do not necessarily filter down at the community level, they fuel animosity and suspicion, especially at the macro-level.

During the conflict, violence was used to establish control over territory by the various armed actors. At the community level the violence led to significant changes as entire communities were forced into displacement and/or lost access to their land. Massacres, individual killings, destruction of property, riots and intimidation all impacted land use and control as well as relations between communities. During the war, many areas in the East saw an 'exchange' in populations as particular communities fled vulnerable areas and instead moved to areas which were dominated by their respective community, or even fled to other Provinces. Batticaloa District, which was home to a small Sinhala population, now has barely a fraction of that community, while towns such as Ampara which had a small Tamil population are now almost wholly Sinhalese. While in some cases properties were abandoned and occupied by armed actors or even other civilians, in other instances these individual plots may be unoccupied. There were also property sales, sometimes high prices were offered, while in other instances direct intimidation was used to pressurise sales at low prices. In some instances the overall context of fear and insecurity encouraged individuals who were members of minority communities in particular areas (be

¹⁶ Department of Census and Statistics, "Special Enumeration, Trincomalee District 2007," October 2007; Department of Census and Statistics, "Special Enumeration, Batticaloa District 2007," October 2007; Department of Census and Statistics, "Special Enumeration, Ampara District 2007", October 2007.

they Tamil, Sinhala or Muslim) to sell to individuals from the community that formed the majority in that area. In a post-war context even land sales, especially those lacking documentation, are contested with original owners or their descendents claiming that there was no land sale or that it was made under duress.

4.2 Causes of the Land Conflict

Listed below are some of the key challenges which demonstrate how the various administrative, legal and access issues contribute to disputes on the ground:

- **Issues over land documentation:** The loss of land documentation means that land users and the State are unable to prove land ownership. The loss of documentation could be due to a number of reasons such as the individual losing official documents and/or the destruction of official records due to the war. In addition a common problem with land documentation is that land users may have obtained inadequate documentation through lawyers such as declarations that do not amount to legal ownership or have no documentation at all. This situation may arise out of ignorance and a lack of awareness over the process of obtaining ownership, including that long-term occupation over generations, without regularisation amounts to ownership. There is significant room for conflict especially in a context where land is provided to 'new' users and those who used the land previously but lacked documentation to prove ownership.
- **Failures in effective and fair administration:** The land documentation problem is complicated by the role of the authorities, especially if they are ineffective or partial. A significant complaint made to CPA was that the relevant authorities were not granting land rights despite applications being filed by the potential land owner and low ranking officers. There have been various claims of corruption and ethnic partiality in the district administration system which have resulted, in previous cases, in permits or grants not being issued to particular groups. During the war, effective administration proved difficult for a number of reasons including low manpower in certain areas, limited movement by officials, the threats to officials as well as the de facto administrative role played by armed actors. In some instances it is difficult to identify the principal cause for the failure to provide documentation; whether it was lack of awareness and gaps in proving ownership by the user or the neglect or lack of interest on the part of the responsible administrators or even corruption. For instance, several complaints have been reportedly made to the Batticaloa Human Rights Commission stating that the original deeds in the Batticaloa Land Registry are either lost or destroyed, but there are fears that this could have been deliberate.¹⁷ The restoration of civil administration remains a critical challenge in the post-war context, especially in areas which were formerly controlled by the LTTE and are being de facto administered by the military.
- **Landlessness:** While a significant proportion of people in the East may occupy a piece of land, they may not necessarily own it. As noted in this report, there is a population of landless families in the East who do not have legal titles. Their efforts to secure land may result in disputes either with other land users or the authorities. Previous owners of land may now find themselves landless due to policies of the Government which have earmarked the land for other purposes. Alternate land may be provided in such circumstances but those affected may not necessarily accept these plots due to the fact that they are not suitable. As a result of State occupation and acquisition of land, there is a population in the East who may be unable to secure sustainable livelihoods and economic security, that in turn intensifies ex-

¹⁷ Veerakesari, "Several complaints made to the HRC that original deeds in the land registry purposely lost at destroyed in Batticaloa – Co-ordinator," April 21 2010, pg. 14

isting tension between civilians and the State. In particular DS divisions there is an acute shortage of available land, hence the only option is to find land in neighbouring DS divisions which may be dominated by another ethnic community. In Ampara, the coastal belt where the majority of Muslims and Tamils live is densely populated. While Kalmunai Muslim has approximately 1,512 person per sq km, Padiyathalawa DS has 33 and even Ampara DS has only 168.¹⁸ This leads to a situation where ethnic communities have differing land resources available to them, creates resentment. The Muslim Community in the East in particular live in some of the most densely populated divisions with limited land areas, whereas Sinhala majority divisions tend to sparsely populated.

- **War related abandonment or non-usage:** Land owners and users were forced to abandon the use of their land due to the war. The use of direct violence against individuals or community members either resulted in displacement or communities being unable to access particular areas. Those displaced may have ended up occupying someone else's land in another area, creating secondary occupation and thereby creating another land problem. As detailed in the Chapter Six, particular areas were marked off limits by the armed actors. In the post-war context, some of the restrictions imposed by the military such as High Security Zones (both official and unofficial) continue to thwart access and are a source of conflict between those who owned the land and the authorities. The context of insecurity also led to land sales. In the post-war context, there is contestation as to whether these land sales were fair or whether they were under duress, especially where there is no official documentation of the sale.
- **Encroachment:** Defined as the illegal occupation and use of either State or private land, encroachment is a key cause of land conflicts. In certain instances the 'encroachers' may contend that they may have secured ownership and may even have documentation to prove it. In some instances there are political and other factors that facilitate encroachment. For example, an irrigation officer informed CPA that there has been illegal encroachment of land between Maduru Oya and Punnani, System C.¹⁹ These farmers have even been illegally constructing dams in the water ways so as to divert water. In the middle of 2009 officials from the Irrigation Department had reportedly visited the area with the police and had taken action to remove water pumps but the police was instructed to release these water pumps by a prominent politician.²⁰ As noted in the Appendix 1, Sri Lankan law grants the rights to long-term encroachers on private land and no policy or law has been enacted by the Government which would recognise the specific circumstances in conflict affected areas which would make prescription inapplicable. The specific contexts of displacement (especially long-term) and the use of violence against civilians led to the abandonment of land and secondary occupation. While giving due recognition to the context, special attention needs to be paid to the competing claims of land ownership and ensure that amicable settlements are reached in keeping with the legal framework.
- **Land Grabbing and the involvement of powerful actors:** Land grabbing can be carried out by private individuals who seize abandoned or even occupied land by chasing away the owners/users, or by militant and other armed actors who may use violence and intimidation to secure control over land. Efforts to grab land can take many forms such as financial incentives where high prices are offered for individual plots; a mix of intimidation of and financial; or where the price offered may either be at or below market but owner prefers to move out due to overall context of fear and uncertainty; or even through the use direct violence. Armed actors may get involved in land grabbing and in some cases

¹⁸ Foundation for Co-Existence, UNHCR, Shahul H. Hasbullah, P. Balasundarampillai and Kalinga Tudor Silva, *Addressing Root Causes of the Conflict: Land Problems in North-East Sri Lanka*, November 2005, pg 33

¹⁹ CPA field visit to the area, January 2010

²⁰ Interview with officer from the Irrigation Department, January 2010

provide the land to communities they are associated with. Hence the LTTE was accused of taking land from Muslims who had fled and of handing it over to landless Tamil families, while State actors such as the Army were accused of assisting Sinhala farmers to secure lands previously cultivated by Tamils.²¹ There are also allegations of land grabbing by the State on the grounds of military necessity, development, tourism and land settlement.²² While the State may follow legal processes including land acquisition this process may amount to a land grab from the perspective of the permit and deed holders, or long-term users, especially when due process is not adhered to, including providing adequate information and alternative options to those affected. This chapter also sets out examples of land grabbing, where intimidation has been used by key religious and political actors, sometimes with the support of the police and the military.

Case Study of Irakkandy: The Dynamics of a Land Dispute

The Irakkandy case is illustrative of some of these issues. Irakkandy is presently a predominantly a Muslim village located a few miles North of Nilaveli, in the Kuchchaveli Division, Trincomalee. Some of the land in the village is privately owned (deed land) while other residents have secured permits from the Government. The adjoining village of Valaiuttu was a mixed village with Sinhalese, Tamils and Muslims. Many of the Sinhalese claim to be from the Southern Province and had settled in the post-independence period. While there are some deed lands, there were also some lands distributed under permits.

With the intensification of the conflict particularly from 1985 onwards, the Sinhalese in the village began to flee to Sinhala majority areas including Trincomalee Town, Anuradhapura and to cities in the Southern Province. During the numerous and short-lived ceasefires, especially in 1994-5, some of the Sinhala residents visited their village and attempted to secure financial arrangements over their land with their Muslim and Tamil neighbours. This is at the heart of the current land conflict in Irakkandy-Valaiuttu. The Muslim and Tamil residents claim that the Sinhalese sold their lands, while the latter claim that most of these lands were rented under a lease.

Most of the land in question is permit land which cannot be sold and the only transfers that can take place is what is provided under the land law of the State. Many of those who claim ownership to the land in question are Muslim but there are also a number of Tamils. Some of them have land ownership documentation, which they claim they obtained through the original owners handing their land back to the State after which the DS of Kuchchaveli at the time provided permits to the land for the new owners. In some cases the land was given to these individuals as grants under the Jeyabhoomi Scheme signed by the then President of Sri Lanka Chandrika Bandaranaike Kumaratunga. One of the land owners showed CPA copies of the letter from the original Sinhala land owner giving up his land and the official letters from the DS of Kuchchaveli as well as the land grants, as documentation to prove their ownership. Some of the original Sinhalese owners and their relatives insist that the DS was acting on behalf of the minorities.

There are other cases where individuals claim to have come to a private arrangement, where money was exchanged with the Muslim and Tamil claimants insisting that the land was sold to them, and the Sinhalese who want their land back insisting it was a long-term lease.

²¹ ICG, *Sri Lanka's Eastern Province: Land, Development, Conflict*, October 2008

²² An example is the Sampur HSZ discussed in this report

In these cases, the Sinhalese claim that there is no paperwork, not even a letter, that would suggest such an exchange and are even claiming money from the current residents citing the benefits from the land, such as the cultivation of coconut. The Sinhalese claim that there are a number of Up Country Tamils who settled on their land during the late 1980s. In addition, the Sinhalese themselves claim to have settled in the village in the post-independence period from the Southern province.

Barely a few days after the end of the war, on the 25th of May 2009, a number of Sinhalese attempted to claim back their properties and a few have even moved back to the village to do so. During CPA's visit in late 2009 they were housed in three public buildings in Valaiuttu until they could get their property back. Most humanitarian agencies have not come forward to give them assistance due to the controversy, but food has been provided by WFP through the DS. According to the Sinhalese who are presently residing in the public building, not all of them who were previously residents in the area have returned, due to the fact that families who have children in school do not want to interrupt their children's education as the Sinhala stream school is no longer functional.

Following their return to the area, the Sinhalese attempted to claim back their land and had complained to the GS that they had not sold their land but that it had been taken from them by force. This in turn led to the DS of Kuchchaveli writing a letter dated September 16th which was put up at the Mosque to all the current occupants of the land to produce documents detailing their proof of ownership and to halt any developments on the land. Muslim and Tamil families handed over their documents and inquiries were made. The Provincial Land Commissioner (PLC) looked at the land documents detailing proof of ownership and then reported back to the DS who subsequently stated that all deeds and permits of the current owners of the land should be cancelled. In effect this meant that according to the PLC, the transfer of ownership of properties signed off by the previous DS are illegal. In response, 23 Muslim and Tamil families filed action in the Trincomalee District Court on the 23rd of October. The Judge issued a stay order on the DS's decision. The Muslim and Tamil occupants of the land complained that the Sinhalese continued to attempt to enter the land and that the police refused to do anything, stating that they did not know anything about the stay order. Subsequently, Muslim politicians had to get involved to ensure that the police in Trincomalee followed the stay order.

The Sinhalese are very confident that they will be able to reclaim their land. They appear to have significant political backing from the machinery of the State to which they alluded. They stated that the Government helped them to return and has provided them assurances. They informed CPA that several politicians in the previous government of President Rajapaksa encouraged them to return and facilitated their return. CPA was also informed that the GA of Trincomalee is in close contact with them and has even instructed them to call him with the contact details of anyone who visits them. They also have protection from the neighbouring Navy camp and the Police. Opposition Muslim and Tamil politicians have got involved in the case, raising it in Parliament and with the local authorities, while Sinhala politicians both at the national and provincial level have also got involved, further raising the stakes. The involvement of the State on the part of the Sinhalese community is a deeply worrying factor, especially given the history of State assisted land colonisation. The role of the State, especially at the level of districts, should be to provide the legal position and to arbitrate a workable solution and not to pit one community against another.

4.3 Land Grabbing in a Post-War Context: Is it ‘Colonisation’?

Land grabs were associated with the war years, as the various armed actors including the Military, LTTE and other Tamil militant groups seized public and private property for their own use and in some cases turned them over to civilians, not the original owners. The LTTE took over significant tracts of land abandoned by Muslim land owners and users and gave them to Tamil civilians. With the end of the war, there is an expectation that land grabbing will be reversed, although in some cases the secondary occupation means that a solution will have to be mediated for those currently using the land. Civilians were also engaged in land grabbing – especially that of abandoned land. In some cases such as Irakkandy the current user and occupier may insist a land sale did take place, while the previous occupant may insist that it is a land grab. With regard to State land, the State may merely seek to evict the encroachers. For instance, in February 2010, the Kuchchaveli Police filed cases against 300-400 persons for encroaching on State land and ordered them to vacate the area.²³

Following the military liberation of the East, there have been reports in the media and statements by politicians claiming that there are new land grabs and colonisation projects in the East. During its visits and engagement with actors following the situation in the East, CPA has received a number of reports of land colonization – where Sinhalese from outside the East are reportedly attempting to secure land in the region with the facilitation of the Government and other political actors. Some of the key cases raised with CPA during its field visits included Pullalmullai on the Amapara-Batticaloa border, Vakaraï coastal areas, Kuchchaveli, Muttur Town and Eravur Town. It has proven extremely difficult to individually verify these cases and prove that a) these are outsiders who have no land claims or ownership to the areas in question and b) that there is State assistance to bring in new families and individuals into these areas.

However, as seen with the cases discussed below it is difficult to dismiss the claims outright as in a number of these cases there appears to be a partisan role being played by the Central Government. There have been allegations that certain actors within the Central Government are playing an active role in facilitating new Sinhala settlements or in assisting Sinhala returnees to evict Tamils and Muslims occupying land. The most detailed reports of increasing Sinhala settlements in the East have been made by TNA M.Ps. Trincomalee M.P R. Sampanthan speaking in Parliament in October claimed that:

there has been widespread unlawful occupation of State land by members of the majority community acting with total impunity; that such unlawful occupation is a continuing process; that no action has been taken up to date by the Government in regard to such unlawful occupation, and that unless stopped forthwith, would multiply manifold and result in all vacant State land being grabbed and unlawfully occupied in complete violation of the laws of the land.²⁴

The four areas he referred to included (i) on both sides of the Trincomalee-Horowpothana Road between the villages of Vepankulam and Mudaliyarkulam up to Pomkulam within the Morawewa-Muthalikulam DS's Division; (ii) on both sides of the newly constructed Seruwila-Polonnaruwa Road within the Seruwila DS's Division; (iii) in

²³ The Daily Mirror, Dilini Algama, "Police evict state land encroachers," February 27 2010

²⁴ Statement by R. Sampanthan in Parliament, October 23 2009

several areas along the Trincomalee-Habarana Road, up to Kithuluthu, the district boundary within the Thampalakamam and Kanthalai DS's Divisions; and (iv) on valuable land by the beach in the villages of Irakkandy and Kumburupiddy within the Kuchchaveli DS's Division.²⁵ Sampanthan went on to highlight cases where the Sinhalese have evicted the current occupants and that "in some instances, such eviction has occurred and that such efforts by the members of the majority community are supported by certain sections of the Government" and that "the RULE OF LAW [emphasis added] would become dysfunctional in regard to members of the minority communities." The areas which Sampanthan claims this is happening include: (i) at Villankulam within the Trincomalee Town and Gravets DS's Division; (ii) at Irakkandy within the Kuchchaveli DS's Division; (iii) at Palampodder-Pathinipuram within the Thampalakamam DS's Division.²⁶ TNA MP, P. Ariyanenthiran has also claimed that there were efforts to "colonise" Tamil lands in the Batticaloa District including in Kevuilyamadu with 170 families,²⁷ and in Kachchakkodi Chuvaami Malai with 230 families.²⁸ The M.P claimed to have brought the issue to the notice of the President and district level actors but no action has been taken to deal with these alleged encroachments.²⁹

While the President's Office has reportedly called for Divisional Secretaries to investigate these claims³⁰ there is a perception that the Government is not sensitive to the concerns of minorities particularly over land and demographic changes. In fact, there is a suspicion that the Government is using a host of arguments including resettlement, development, national security and conservation to dispossess minorities and to encourage the Sinhalese to populate the areas.³¹

As noted in the Irakkandy Case the Sinhala returnees cited a range of State actors including the GA, a Minister, the Police and the Navy who were all providing them support to return. While the political actors have a role and duty in assisting war affected communities, this approach needs to be revisited when this involvement becomes partial and antagonistic towards other communities in the area. The Trincomalee HSZ/SEZ is another prime case where the inhabitants of the area feel that the war and direct violence against the community, national security and development are being used to dispossess them of their land.³² State actors need to be aware of ethnic sensitivities and avoid acting in a partial manner towards one community or another.

²⁵ Statement by R. Sampanthan in Parliament, October 23 2009

²⁶ Statement by R. Sampanthan in Parliament, October 23 2009

²⁷ Veerakesari, "Sinhala colonisation continues at Kevaliyamadu in Batticaloa," February 28 2010; Muslim Guardian, "State lands in Tamil areas encroached in Batticaloa District," November 16 2009

²⁸ Tamilnet, "TNA MP complaints of Sinhala colonization in Batticaloa," January 9 2010

²⁹ Muslim Guardian, "State lands in Tamil areas encroached in Batticaloa District," November 16 2009; Tamilnet, "TNA MP complaints of Sinhala colonization in Batticaloa," January 9 2010

³⁰ Thinakaran, September 17 2009, pg 15

³¹ CTMPC, "Territorial Claims, Conquests and Dispossession in the 'New East': The growing concerns of the Muslims of Ampara," June 29 2007; UTHR(J), Special Report Number 26, "Can the East be won through Human Culling?," August 03 2007

³² Interview with displaced from HSZ in Muttur Division, January 2010

4.3.1 Role of the Police and Military

There are allegations that the armed forces and the police are also involved in such 'colonisation projects.' Sinhalese returnees will often appeal to an actor in the area who is Sinhalese. In areas where the bureaucracy, local government and the population are from the Tamil or Muslim Communities, the Police and armed forces by contrast are most often wholly Sinhalese. In certain areas these armed actors will provide protection and even act unilaterally and inform the relevant authorities of the needs of the community, without necessarily playing a neutral role. In the case of the Eravur Market where Sinhalese traders have returned from displacement and are claiming back their shops from the Urban Council, the Police is viewed as playing a partial and threatening role.³³

As noted in the Chapter 5, there are reports that the military is occupying land and properties in the East. There were reports in the Tamil media quoting TNA MP P. Ariyanenthiran alleging that the Army was attempting to secure State and private lands in areas captured from the LTTE in Vellaveli, Paddipalai, Vavunatheevu, Karadiyanaru, Pulipanchakal and Vakaraï to set up permanent camps. The MP claimed that the military had asked the Divisional Secretaries to register both public and private lands to the military and had put pressure on civilians living close to the camps to give their consent.³⁴ CPA has been unable to verify that this is the case. There are concerns that lands are being acquired by the armed forces for the purpose of setting up resorts in Trincomalee where the issue of sales and acquisition of beach land has become increasingly controversial.³⁵ It is unclear if the land for these projects will go ahead and if the land has been acquired. CPA was also informed that special housing projects for former military personnel are being planned and while interviewees indicated that sites on the Kanthale-Trincomalee Road or in Ampara have been selected it was difficult to confirm. The State has a duty to ensure adequate assistance for ex-military personnel and ensure their successful reintegration into civilian life, but at the same time needs to avoid creating new problems such as increasing anger that the land is being given to people from outside the district while the landless in the district continue to be marginalised.³⁶ While there are security requirements, the Government needs to ensure that private and public lands owned and used by civilians are released.

4.3.2 Role of Religious Actors

In some of the cases, religious actors have been involved and the protection of religious sites has been used as the grounds to prevent minority communities accessing and occupying land. According to a media report in Morawewa Division, Tamil farmers from Chaanthipuram alleged that they could not cultivate their paddy land in the 13th Unit in Maha Vilaangukulam because a Buddhist priest had told them that the land is part of an ar-

³³ CPA interviews with community members and Pradeshiya Saba members, January 2010

³⁴ Thinakural, "Attempts to encroach government and private lands to establish permanent army camps in Batticaloa: Ariyanethan complains," April 4 2010

³⁵ Army Chief Lt Gen Jagath Jayasuriya claimed that a holiday resort would be established in Nilaveli (The Island, "Land acquired at Yala and Nilaweli for 'army resorts,'" February 15 2010) but interviewees in Trincomalee are also concerned that Sampur would be taken up for a Navy resort.

³⁶ CPA interviews in Trincomalee, October 2009 and Ampara, January 2010

chaeological site.³⁷ When CPA visited the Sinhala Village of Samagipura in Serunuwara after the killing of 5 farmers in January 2008, the field team was informed by the priest that the Navy was providing inadequate security and that he would call Colombo in the evening and have the army reinstated in the area. Such a statement by a religious actor demonstrates the influence and power he wielded in the area. CPA was also informed by the priest that steps would be taken to stop Sinhalese being attacked. Such a statement by a religious leader not only demonstrates the power wielded by individuals and but also the polarisation within communities.³⁸

In another land case in Ampara, the power and influence of local religious actors and other local actors over land in the area is documented and demonstrates the plight of minorities who have limited options due to political and other interference.³⁹ In Karango which is just out side Ampara Town, an attempt by a Muslim farmer who claims to own paddy land in the area to access the land resulted in him being assaulted in December 2009. The land in question, amounting to roughly 400 acres is claimed by Tamils and Muslims who fled during the early years of the conflict. According to some of the farmers CPA interviewed, some land was permit and deed land, while another 44 acres belonged to the Kovil which was rented out to mainly Tamil farmers before the war. These farmers claim that their land has been encroached by Sinhala farmers. The Muslim farmers also gave an example of the neighbouring village of Navagamgoda, where a Buddhist priest reportedly encroached on the land. A police complaint by the farmers led to a temporary result with all cultivation prohibited. The Sinhalese farmers who have encroached in Karango have reportedly ploughed the land and planted seeds on it. CPA has informed that the GA had visited the land and decided in favour of the original claimants, but they claim that nothing has happened with regards to that decision. A police complaint was also made, and they had arrived at a solution whereby the encroachers would leave the land after they had completed their cultivation. Some of the encroachers had however requested compensation for developing the land. CPA was also told of a recent incident where a Buddhist priest had reportedly told Tamil farmers from Shanthipuram in Moraweve Division that they should leave the area which has raised fears in the Tamil village.⁴⁰

The role played by religious actors in the community, and their influence on land and ethnic relations is best captured by the Deegavappi case. Deegavappi in Ampara District is perhaps the most controversial site where housing units constructed as a part of tsunami project for tsunami-affected Muslim families were re-distributed to neighbouring Sinhala families under direction of a Supreme Court Ruling. The Norochcholai Tsunami Housing Project falls within the Akkaraipatu DS division but the petitioners were able to successfully argue that houses should be provided for other communities, even though they are not tsunami affected. This case serves to prove a nexus between religion, the State and even 'independent institutions' such as the Judiciary.⁴¹ The involvement of the Jathika Hela Urumaya and other Sinhala ultra-nationalist groups in the Deegavapi Case makes clear that there is a strong lobby within the Government in a position to influence and determine land related issues. The case also shows how when outside forces intervene in local issues, disputes can escalate and resolution becomes increasingly difficult. There are also claims from other areas in Ampara that the JHU has used the Ministry of Environment to engage in restricting minority access to land through demarcating areas as forest areas.⁴²

³⁷ Tamilnet, "Buddhist monk threatens Tamil farmers in Trincomalee," April 1 2010

³⁸ CPA field visit to area, April 2009

³⁹ CPA field visit, January 2010

⁴⁰ CPA interview, May 11 2010

⁴¹ TamilNet, "JHU files court action against giving 300 tsunami houses to Muslims," May 18 2008; Daily Mirror, S.Selvanayagam, "Deegavapiya housing project – Court issues stay order," May 27 2008

⁴² Peace Secretariat for Muslims, PSM Monthly Bulletin, "Land grabbing: New Method," Volume 2 Issue 1, January 2008

The involvement of the JHU leadership in land issues was raised in Samanthurai, Ampara and Pottuvil divisions.⁴³ Champika Ranawaka, a prominent JHU politician, was also then the Minister in charge of Environment and Natural Resources and therefore had a mandate to oversee forest protection but his direct involvement in some of the cases, including Deegavapi⁴⁴ has raised fears among the the Muslim Community that there is an ethnic and religious motive that goes beyond forest protection.

Given the rich history of the East with multiple religious and archaeological (largely Buddhist and Hindu, but also some Muslim and Christian) sites, there is a clear need to protect these areas for both the people of the province and the country at large. The main challenge is how this is to be done, avoiding the politicisation of the issue and the involvement of armed actors. CPA recognises that to move forward on this issue, the rights and views of all communities needs to be respected and there has to be a consultation and participation of local communities who could be affected. Issuing directives from Colombo that effectively declare protected areas and insisting that government actors at the district level implement these decisions without informing and consulting local people, increases fears, suspicions and tensions. This is not a practice to be promoted and should be halted immediately. Instead, decisions should be made through local level consultation, involving all stakeholders and thereby ensuring that the process is inclusive and transparent.

4.3.3 Role of Other Actors

CPA has also received reports of land grabbing by other communities and involving other powerful actors. Aalankulam is a largely Muslim village outside Eravur and is located next to the villages of Pallai Nagar and Thiyawattuan in the Batticaloa District. Following the large scale displacement of Tamils from Vakarai and Vakaneri in late 2006, IDP shelters were established in Aalankulam in close proximity to the army camp. The TMVP maintained a very active presence and there was speculation that it was the TMVP which encouraged the displaced Tamil families to mark out individual plots. This resulted in tensions with the neighbouring Muslims who feared that a new Tamil settlement was being established. Over 2007 and 2008, vacant land along the main road towards Thiyawattuan was flattened with the use of heavy machinery and individual plots were distributed to Muslim families who built temporary structures. CPA was informed that this process was supposedly being backed by a Muslim parliamentarian from the area. Interviews with people in the area made clear the claim that there were attempts by both the Tamil and Muslim Communities to grab land, supported by powerful political actors and there were expectations that these land grabs would be regularised. While almost all the Tamils seem to have returned to Vakaneri and other areas from which they were displaced, the Muslim settlement appears to be more permanent. Some of the Muslims had reportedly lived in these areas previously but had fled during the war to more secure areas. However, CPA was unable to verify these claims or their ownership rights.⁴⁵

The issue of Tamil displaced permanently settling or being settled in other areas by the TMVP was a concern raised in late 2006 and 2007. Muslim communities from border villages such as Ollikulam and Palamunai were

⁴³ CPA interviews in Ampara District, January 2010

⁴⁴ Bottom Line, Kushali Athukorale, "Champika to throw Muslims out of Deegavapi," August 29 2007

⁴⁵ CPA has made repeated visits to Aalankulam since 2007 and also spoken to other actors working in the area and following the land issue in that area. See also CPA, INFORM Human Rights Documentation Centre, Law & Society Trust and Women & Media Collective, Fact-Finding visit to Batticaloa, April 10-1 2007

concerned that they would lose their lands as a result,⁴⁶ but this does not seem to have happened as the displaced have since returned. While the issue of land grabbing hangs overhead, talking to the individuals concerned- be they Sinhala, Muslim or Tamil- it is clear that there is a strong desire for claiming or re-claiming land rights. It is apparent that a close examination of individual cases is required including that of the relevant documentation and competing claims before changes are effected on the ground. Failure to do this will only contribute to individual land disputes and wider ethnic tensions.

There were some allegations that the TMVP/Karuna Group has grabbed land following the military -liberation. In the East, CPA has not received specific reports of individual plots being seized by the TMPV/Karuna Group but it appears that it continues to occupy plots (such as some of the political offices) and now influence areas which were under the LTTE. In the post-war context there are expectations that civilians would be able to reclaim their properties. In some areas such as Vakaraï there was a mass resettlement of the IDPs displaced during the fighting of 2006 in January 2007. There are older categories of IDPs including Sinhalese and Muslims who fled as early as 1985. Their process of return has been piecemeal largely due to their security concerns in areas they formerly inhabited. The presence of the TMVP has been a key factor in slowing down return to certain areas where Muslims owned land. While at the level of leadership, the TMVP has a conciliatory approach to dealing with inter-communal issues, on the ground this is more problematic. Since the military liberation, Muslims from villages such as Kirimichchi have been able to visit areas from which they were displaced, but they have not yet been able to claim back their lands. Interviews with these displaced persons revealed that they have been told by the local politicians in the area that there were no Muslims in the village, hence their claims were reportedly dismissed. The Muslims claim these local politicians from the TMVP in the village are too young to remember and that some of the older Tamil residents of the village remember them and that they have documentation to prove the ownership.⁴⁷ A special committee was created by the Chief Minister S. Chandrakanthan and the then Minister for Relief Services Ameer Ali to look into the issue of Tamil-Muslim land issues in Northern Batticaloa. The committee reportedly met a few times but no consensus was reached on the matter.

The competing claims of land users and the various charges against various actors can in some land cases become so complicated that it is difficult for an outsider to fully grasp the fundamental issues and the ramifications in particular land cases. For instance, Vattamadu is an area lying in Thirukkivil DS Division but a number of farmers and cattle owners from Akkaraipattu claim land there. It is made up of two main areas, 'Old Vattamadu' which is 681 acres and largely cultivation land owned primarily by Muslims, and 'New Vattamadu' which is used by both Muslims and Tamils for cultivation and cattle grazing. There are a number of issues in 'New Vattamadu' between the cattle breeders who claim that there is a gazette demarcating the land for grazing and the cultivators who claim they have been farming for decades. A number of political actors including Inniyabharathy⁴⁸ have reportedly made public statements saying that farming will not be allowed in the area. This is an area where in 2008, 4 farmers – 2 Muslims and 2 Tamils were killed and there is no clarity as to who carried out the killings and the exact reasons for the murder.⁴⁹ The land is in a highly militarised area where entry is only through a pass

⁴⁶ CPA interviews in Batticaloa and Kathankudy January 2007 and April 2007. See also Peace Secretariat for Muslims, PSM Monthly Bulletin, "Land grabbing: New Method," Volume 2 Issue 1, January 2008

⁴⁷ Interview in Eravur with Muslim displaced from Koralaipattu North and Koralaipattu West, including from Kirimichchi, October 2009

⁴⁸ Inniyabharathy is the former TMVP leader for the area and presently Presidential Coordinator. He also contested unsuccessful in the Parliamentary elections in April 2010 from the UPFA in the Ampara district.

⁴⁹ TamilNet, "STF shoots dead 2 Tamils, 2 Muslims in Ampaa'rai," October 16 2008; UTHR(J), Special Report:31, "Pawns of an un heroic war," October 28 2008.

issued by the military. When CPA visited in January 2010 it was clear that the affected farmers suspect larger political forces are at work, though there were fears about naming the possible actors.⁵⁰

4.4 Addressing Land Disputes

Faced with land disputes, land owners and users approach multiple mechanisms including the District administration and other administrative officials, police, the Courts, politicians, armed groups, I/NGOs, community and religious leaders in order to find sole resolution in their favour. Given the competing claims it may be difficult in the current context for administrative officials to provide solutions which would both provide a fair judgement and address the land needs of the disputants. It is clear that when compared to two years ago, more people are willing to use the legal system to address land disputes - even those deemed to be controversial. While the confidence of the general public in the legal and judicial system needs to be strengthened, there have to be alternatives. The involvement of politicians, armed groups and even community leaders on behalf of one party may provide a 'solution' but the dispute itself may continue to simmer.

While there is a potential for land occupations and contestations over property to be intractable, there is room for mediated solutions between the original owners and the current occupants, or between community and political leaders. This requires an approach based on understanding and a commitment to rebuilding relations at the community level, going beyond the use of patronage politics to influence decisions favourable to one side or the other. As noted in this report, in a post-war context there has to be a concerted attempt to ensure an overlap between the utilisation of land and land rights, which could provide the overall framework for addressing the land problem in the East. Mechanisms aimed at mediating between communities and disputing parties to address the large number of land disputes need to be created. While the Committee created by Chief Minister Chandrakanthan and ex-Minister Ameer Ali has yet to be successful, this model needs to be revisited. It is a good example of the combination of community level mediation and political support to such a process can be effective. . This has to be supplemented by a clarification of land ownership and documentation. The State, for its part, has to adopt a more sensitive approach to dealing with land related issues both in terms of addressing existing land disputes and problems, and in ensuring that the policies of the State and actions do not cause new tensions and conflicts.

Various other actors have established land dispute mechanisms but the jury is still out on their success. The Foundation for Co-existence established land committees during the ceasefire period for this purpose. While some consensus was reached at the community level, it did not necessarily result in the release of large land tracts to civilians particularly in LTTE-controlled areas. Over the last three years other NGOs have set up mediation mechanisms but more research is required into the effectiveness of these particular models, including the Land Task Forces which was supported by a World Bank Project. There is also potential for the Land Kachcheris which are used for various land administrative purposes including identifying landless persons (discussed in the 'Encroachment and Landlessness in the East' Chapter), to be adapted and used for mediating land issues through the inclusion of leading civil society community leaders.

⁵⁰ CPA field visit, January 2010

Chapter V

Accessing Land, Ground Realities and Challenges

The problems and gaps in laws and policies relating to land are critical challenges confronting civilians in the East and the rest of Sri Lanka who are attempting to secure land tenure and control. In addition, on the ground there are a number of problems which prevent or restrict civilians from being able to use and regain ownership and control over their land and property. There have been and continue to be significant improvements with access to land since the military liberation of the East in 2007 and the end of the war in May 2009 which have enabled civilians to return and reclaim their lands. The intensification of violence, in particular ground operations and bombardment resulted in mass displacement of entire areas, especially areas which were controlled by the LTTE. In the wake of the military liberation, mass resettlement of new IDPs and the opening up of areas to civilians allowed both new and old IDPs, and others who lost access to their lands over the course of the conflict, to secure access.

However, there continues to be serious obstacles to accessing land and property. These challenges include military restrictions and occupation, occupation by other armed actors, other forms of secondary occupation including by civilians, zoning off of public and private land by the Government for economic, cultural or environmental purposes, and land conflicts. With the end of the war, the expectation on the ground was that these problems would dramatically diminish as part of a larger post-war recovery. De-militarisation, amelioration of ethnic tensions and the restoration of administrative and judicial processes are generally assumed to play a key role in the post-war context to bring about normalcy, including efforts to restore access to land. However, there has been limited success in these areas, with some of these problems still persisting and in need of attention.

Access to land and property is critical both at the family and community level. Families who cannot access their homes are forced to undergo continuing displacement and suffering, as they are unable to return and rebuild their lives. Others who cannot access their farming or grazing land may be unable to recommence and re-build their livelihoods, which could result in a variety of problems, including being unable to support families and find durable solutions. Land also has tremendous economic and social value, so families whose access to their lands are restricted or curtailed may be unable to take out bank loans by using land as security or use it for dowry purposes. At a community level, various restrictions on land could hamper the local economy, making it less self-sufficient and effectively disempowering communities. Obstacles to accessing land and property can also be an infringement of the rights of people.

The challenges to land access also hamper the post-war recovery process as restrictions by armed actors or ethnic tensions would make clear to the affected civilians that normality has not been restored. These problems could in turn create undue suspicions, fears and tensions among civilians and between actors such as the State and different communities. This could also off-set key processes such as confidence and trust building. Thus,

there is a very clear necessity to deal with this problem of access to land at the macro and community level. While a number of restrictions are based on security requirements, this needs to be re-evaluated according to the changes in context and balanced against the rights of the citizens of this country. Increasing information, including a time line relating to the future plans for the areas affected by these restrictions would significantly benefit those affected by the restrictions.

5.1 Military Restrictions on Land Access

During the conflict, both the Government and the LTTE declared significant portions of land in the East off limits for civilian resettlement and use.⁵¹ Citing security concerns, land in proximity to forward defence lines (FDL), military camps, other sensitive centres or those which were classified as being of strategic interest, were declared off limits by the authorities. With the military liberation of the East by the Government forces in July 2007 there was a gradual relaxation in terms of overall militarisation, including the release of lands previously occupied or declared off limits by the military.⁵² After the end of the war in May 2009 this process has speeded up. Yet, nearly three years after the East was militarily liberated and a year after the war ended, there continues to be extensive areas where restrictions still apply. This has obviously prevented civilians from returning to their homes and in some cases to entire villages.

There are a variety of military restrictions which prevent civilians from accessing their land including official high security zones which cut across entire GS divisions and unofficial HSZs which also cover extensive areas. CPA and other actors make a distinction between official and unofficial restrictions. The former have been legally established and are officially acknowledged, whereas the latter do not have a legal basis, nor is there an official acknowledgement that these specific areas exist. Other restrictions by the military are apparent with regard to significant land areas or individual properties. Restrictions tend to be concentrated in areas which were formally controlled by the LTTE. Other areas have been declared as restricted areas which could be due to a variety reasons including security concerns or the presence of UXO.

5.1.1 Official HSZ

Sri Lanka has a number of High Security Zones (HSZs) established throughout the island. Some of these HSZs have been gazetted while others have no real legal basis but nonetheless are for official purposes categorized as HSZs, effectively cutting off access to large swathes of land.⁵³ Following the military liberation of the East, the Government declared a HSZ in Sampur, Eastern Trincomalee under the Emergency Regulations.⁵⁴ Initially established across eleven GS Divisions in East Muttur in May 2007, the HSZ effectively prevented the return of some

⁵¹ CPA, *Land and Property Rights of Internally Displaced Persons*, February 2003

⁵² CPA, INFORM, LST, WMC, "Fact-Finding Visit Batticaloa," April 10-11 2007; CPA, IMARD, "Trincomalee Fact Finding Missions," April 2007; CPA, *Policy brief on humanitarian issues*, December 2007; CPA, INFORM, IMADR, LST, "Batticaloa Field Mission," May 2007; CPA, *A brief profile of the Trincomalee high security zone and other land issues in Trincomalee district*, May 2008; CPA, *Trincomalee High Security Zone and Special Economic Zone*, September 2009

⁵³ The HSZs in Jaffna are not officially gazetted

⁵⁴ Gazette Extraordinary No.1499/25 of May 30 2007

15,648 IDPs.⁵⁵ The HSZ was subsequently reduced to 4 GS divisions in October 30 2008 by gazette.⁵⁶ The HSZ in Sampur has similar restrictions to those in Jaffna where the land is taken up almost exclusively by the military, resulting in no civilian movement in the area.

Civilians were left with little options and very few agreed to the Government offer of relocation.⁵⁷ While the Government offered uniform plots of land in a number of relocation sites including Raalkuli and Pallikudiyirippu, it called on humanitarian agencies and donors to provide shelter and other forms of assistance. The Government initiated the process of land acquisition. While some of the affected civilians were willing to relocate, the vast majority did not take up the offer and seem determined to return. Those who agreed to relocation opted for one of two sites Raalkuli and Veeramanagar. When CPA visited Raalkuli in March 2009 people were still living in transitional shelters and had no news when they would get their permanent shelters. Two fundamental rights petitions, one by residents of the area and another by CPA were filed in 2007 challenging the establishment of the HSZ but the Supreme Court deferred the issue on the basis of national security.⁵⁸ On capturing Sampur in September 2006, President Mahinda Rajapaksa declared that “Our armed forces have captured Sampur for the welfare and benefit of the people living there.”⁵⁹ The people of the area are still waiting for the President to fulfill his promise. Even though the process appears to be legal, this is a clear infringement of the rights of the people of Sampur who for decades have suffered some of the worst consequences of the war including full scale fighting, targeted attacks and various threats to human rights, and restrictions on goods and movement. The Government needs to immediately review its post-war security requirements and make clear that it is committed to the rights and needs of civilians (See also the Case Study on the Sampur HSZ/SEZ in Section 5.5.1).

5.1.2 ‘Unofficial HSZs’

In addition to the ‘official’ HSZs, there are ‘unofficial HSZs’ which have been established in areas formerly controlled by the LTTE where civilian movement is severely restricted. There are reports that an unofficial ‘HSZ’ had been established in Periyavelli GS division, in Kiran Division. A military camp has been reportedly established where the LTTE had a large base. Reportedly 56 families from two villages, 6th Mile Post and Tharavai, are unable to return due to the ‘unofficial HSZ.’ Reportedly, other land including a tank and an adjoining forest tract has been taken for the HSZ. Humanitarian agencies have been asked to assist with relocation in late 2009. CPA was informed that transitional shelters were provided by UNHCR and NRC. WFP had provided a 6-month ration and agencies had also provided NFRIs.⁶⁰

There are a number of issues which arise from this ‘unofficial’ HSZ. The legality of this entire process is very much in question including the establishment of a military camp without acquiring the land or following due

⁵⁵ Speech delivered by Hon.R.Sampanthan, Member of Parliament, Trincomalee District, Parliamentary Group Leader, Illankai Tamil Arsu Kadchi,(TNA) on the Adjournment Motion relating to the declaration of Muttur East Sampur as a High Security Zone, June 20th 2007

⁵⁶Extraordinary Gazette notification 1573/19 of October 30 2008

⁵⁷ CPA, *A brief profile of the Trincomalee high security zone and other land issues in Trincomalee district*, May 2008; CPA, *Trincomalee High Security Zone and Special Economic Zone*, September 2009

⁵⁸CPA, *A brief profile of the Trincomalee high security zone and other land issues in Trincomalee district*, May 2008

⁵⁹ Speech delivered by the President at the SLFP 55th anniversary convention of 4th September 2006

⁶⁰ CPA interviews with humanitarian agencies in Batticaloa, January 2010

process. That Government Officials including respective DSs are taking action to ‘enforce’ these unofficial HSZs, including looking at relocation sites, is highly problematic. A second issue, also applicable to the Sampur HSZ, is as to why relocation is being proposed by the authorities as a permanent as opposed to a temporary option, when it is by no means clear that these unofficial HSZs are permanent and may be removed or at least reduced. With the end of the war, the focus should be on ensuring the restoration of the rights of civilians and on scaling back militarisation. This process of de-militarisation and restoration of land to their original occupants needs to be done in a transparent and informed manner. Thirdly, the fact that humanitarian agencies are involved in attempting to provide assistance that could have long-term implications for those impacted, such as providing permanent housing, is a matter of concern given the lack of clarity over the HSZ and the rights of the beneficiaries. While finding durable solutions including relocation is important, it should be carried out in a transparent manner through which the Government makes clear what its long term plans are for territory and people. Furthermore, these plans should be compliant with a comprehensive and durable rights framework.

CPA has been informed of other ‘unofficial HSZs’ but it is difficult to verify the exact status of some of these restrictions. Community leaders and affected persons however made specific references to particular areas being high security zones in their interviews with CPA. During a field visit to Trincomalee in October 2009, CPA met with the Muslim residents of Nawaladdy Village, near Raalkuli in Muttur Division, Trincomalee District claimed that they could not go back to their village due the area being declared a ‘high security zone.’ In response to the upsurge in violence in 1990, fifteen families had fled Nawaladdy to Muttur Town. Living for almost twenty years in displacement and currently numbering 80 families, this community attempted to secure approval and assistance from the DS’s office and then attempted to enter their village but were informed by the Navy in October 2009 that the village was out of bounds and that they would be given alternative lands.⁶¹ The military and civilian authorities need to devise a means of identifying and addressing these security restrictions so that normalcy for war-affected communities can be restored. Every effort needs to be made by the authorities to provide reasons why land owners are not able to access their land and information should be shared on present security restrictions as well as on whether alternatives are being provided for those affected. It has been several years since the liberation of the East in 2007 and answers need to be provided to the affected and the community as to why their lands continue to be occupied.

5.1.3 Other Restricted Areas

While most areas captured from the LTTE were opened up for resettlement between 2007 to 2010, particular localities remained off limits. In some cases the restrictions could be due to the presence of mines, but there was also speculation that it could be due to the military’s continuing security concerns. As of April 2010, Kan-chikudichchiaru in Thirukkivil Division, Ampara has not been opened despite the Government’s repeated announcements including in July 2009 that over 1,000 displaced families would be resettled.⁶² CPA spoke to government actors, humanitarian agencies and local NGOs in January 2010 but no one was able to provide the exact reason/s for the delay in resettlement.⁶³ Iralakulm in Chenkalady DS division is one such area where more

⁶¹ Meeting with community leaders from Navaladi in Muttur, October 2009

⁶² Official Government News Portal, “All displaced in the East resettled,” September 30 2009

⁶³ Interviews in Ampara September 2009 and January 2010

than 89 families have not been able to return. A time frame of another two months from August 2009 was given by the authorities but the resettlement continues to be delayed.⁶⁴

5.1.4 Security Restrictions on Agricultural Lands and Fishing Waters

Restrictions also apply to particular areas which have made it difficult for communities to access the sources of their livelihoods, such as paddy, grazing (for cattle) land, fishing waters (maritime and inland) and for other income generation activities such as collecting firewood. In the months following the military liberation and the end of the war, a number of restrictions that impacted the lives and livelihoods of families have been relaxed, which has rapidly increased the post-war economic recovery process of families and communities. Following the military liberation, the Government eased the fishing ban on the Eastern coast and even removed the night ban on fishing in most areas.⁶⁵ Muttur is a coastal community in the Southern portion of Trincomalee Bay where up to 2,400 families are directly involved in fishing as their main livelihood. They use both catamaran and engine boats. Despite an official announcement after the military liberation of the East that the fishing ban would be removed, the Muttur fishermen were not allowed to do any fishing beyond 2 km from the coastline and only during the day time. In the lead up to the Provincial Council Elections in May 2008 all fishing restrictions were removed but a night ban was re-imposed which remained till July 2009. While the motor boats are able to access the sea outside the bay, fishermen who use canoes are severely affected as they cannot use the entire bay. In addition to sea fishing there are also other fishing restrictions such as on Ganga (a tributary of the Mahaweli River) along the section where it flows into the Trincomalee Bay. Fishermen were not provided access to these waters by the Navy, as of November 2009.⁶⁶

In terms of farming land outside the official and unofficial HSZs, most security restrictions have been removed although there are limited restrictions around particular camps such as the STF Camp in Sasthiravelli near Pottuvil Arugam Bay.⁶⁷ To access certain areas farmers need to submit identification. To access paddy and grazing land in Vattamadu in Akkaraipattu Division the military require farmers and grazers to submit their identity cards when they enter the area. In the latter, particular areas are still off limit.⁶⁸

5.1.5 Military and Police Occupation of Property

Over the course of the war, the military and police occupied a number of private properties and public buildings throughout the East including properties in major towns. In most cases these properties were used as camps or sentry points by the forces. Following the end of the war, occupied private properties adjoining military camps

⁶⁴ Interview with humanitarian actors in Batticaloa, November 2009

⁶⁵ Daily Mirror, "EP fishing restrictions removed," June 15 2009

⁶⁶ Interview with community leaders in Kinniya and Muttur, September 2009

⁶⁷ Interview with community leaders in Pottuvil, Akkaraipattu and Samanthurai, January 2010

⁶⁸ Interviews with farmers and community leaders in Akkaraipattu and Pottuvil, January 2010

have been gradually released. However, there continue to be private properties under occupation. In Eastern Trincomalee, it was estimated that 500 private properties were occupied by the military.⁶⁹ This includes properties outside the perimeter of the Sampur HSZ where owners are reportedly being prevented from returning. While the military has released a number of buildings that it previously used as camps and sentry points, the relevant government authorities need to identify buildings and properties which are currently being occupied so that rent and alternate shelters may be provided to the owners and the military find alternate sites. While this issue is more intense in areas formerly controlled by the LTTE, in other areas too this is a lingering issue. Large buildings such as cinemas and multi-cooperative stores in a number of towns have been occupied by the security forces for a number of years.

5.2 Non-state Actors' Impact on Access

The Tamil militant groups, especially the LTTE, that controlled almost one third of the East, prevented civilians from accessing their land and properties in particular areas. In other areas there were no 'official' restrictions but the LTTE did little to assist and ensure the return of civilians - particularly when the returnees were non-Tamils. The defeat of the LTTE has allowed a number of civilians who were unable to access their land and properties to return. An example of this is in Arafa Nagar which is a small Muslim village just South of Muttur which was part of the LTTE's FDL. Muslims fled the village in 1985 and their efforts to return, particularly during the ceasefire period were thwarted as the LTTE had military positions in the village. In late 2007, the residents were able to return and attempt to re-build their lives.

As in the case of Arafa Nagar, the defeat of the LTTE and the overall improvement of the security situation have allowed civilians to return to areas that were vulnerable. There are returns to other areas which are still taking place. Sinhala residents from 'border villages' such as in Moraweve DS division in Trincomalee District or in Maha Oya DS Division in Ampara who fled following the upsurge in LTTE attacks on Sinhala settlements in the 1980s and 1990s are now attempting to return and reclaim their land.⁷⁰

In the current context, the dominant Tamil armed actors are the TMVP and the Karuna Group but there are no reports that they occupy vast sections of land like the LTTE. However, in particular areas and cases they act as barriers to reclaiming individual properties. The occupation of buildings by Tamil militant groups including the TMVP is a continuing problem. Over the decades of the conflict, various Tamil militant groups such as EPDP, the Razeek Group and the LTTE occupied private and public properties to set up their party offices and camps. In some cases, the militant groups paid some form of rent but in others no rent had been paid. Unpaid utility bills may be passed on to the private owners who are understandably unwilling to pay these expenses incurred by the armed groups.

5.3 Secondary Occupation by Civilians

As a result of the conflict, civilians were forced to abandon some of their properties and their land which is being currently occupied by others. This can be occupation by armed actors including the military, police and Tamil

⁶⁹ CPA, *Trincomalee High Security Zone and Special Economic Zone*, September 2009

⁷⁰ Interviews with returnees and villagers In Maha Oya Division in January 2010 and in Moraweve Division in March 2010

militant groups, or even by other civilians. In some areas displaced civilians moved into existing houses and properties. The legal status of these properties differs according to the specific circumstances. In some cases, the secondary occupants on private properties have been living on these properties for over a decade which would mean that prescription may apply. As noted in Appendix 1, this issue of the non-applicability of prescription due to the war needs to be officially clarified. As will be highlighted in the following section on Land and Conflict, in some cases the occupation may be contested as the current occupants will insist that they have ownership through purchase while the original occupants may in fact claim that no such sale of land took place.

5.4 Unexploded Ordnance

Unlike the North, the density of mines and unexploded ordnance (UXO) in the East were low and largely restricted to areas where fighting had taken place or in proximity to military camps or FDLs. In the last three years mines were a problem in former LTTE controlled areas that were captured by the military and then opened up for resettlement. In Vakarai the mines were concentrated in areas in close proximity to no man's land. In areas on the A5 road there was a heavy presence of mines. Given the focus on the North, de-mining agencies moved their operations to the Vanni but there are reports that at least one de-mining agency will resume its activities in the East which should speed up the process and increase civilian access.

5.5 Land for Economic Development and Cultural and Environmental Protection

The Government has commenced a number of initiatives with the aim of promoting development and of protecting cultural sites and the environment- some of which have impacted civilian access to land. The Government has put forward these initiatives as being for the benefit of the people at large. However, there have been serious concerns raised relating to the impact these initiatives have had and will have on the families and communities who are directly affected and the process followed for such initiatives. The impact on access as a result of these development, ecological and cultural proposals has in turn a direct negative impact on ethnic and State-civilian relations. Hence due attention needs to be paid to both the impact of proposed initiatives and their operationalisation of such initiatives.

5.5.1 Development

Reports of State and private land being taken for various development projects, resulting in civilians losing access to these lands have intensified over recent months. While the State has the legal right to appropriate public land which has been given to individuals and private land for 'public purposes'⁷¹ it has a duty to ensure that the individual and community rights, as well as needs are balanced against the larger development requirements. In addition, the State has to ensure that due process is followed. The onus is on the State in such circumstances

⁷¹ Land Acquisition Act referred to in Appendix 1

to ensure that the adequate consultation of communities affected by development projects takes place, especially in situations where individuals are likely to lose access to their land. While the State has the responsibility of ensuring adequate compensation and to ensure that those affected are provided alternate homes, livelihoods and social support to re-build their communities, the focus, at the same time, should be on trying to minimize development induced displacement/relocation.

As highlighted in a forthcoming report by CPA on the Eastern Province,⁷² the construction and expansion of roads is a top priority for both the Government and communities in the East, but there are issues with regard to the process of construction. In a number of urban settlements the expansion of major roads has meant that shop fronts and houses have had to be demolished. In towns such as Kanthale in Trincomalee and Ottamavadi in Batticaloa, residents acknowledge that most of the constructions on houses and shops or at least extensions to the original construction on the main street have been done illegally or that approval to construct beyond the road markers put up by the Road Development Authority (RDA) was secured by politicians rather than from the relevant authorities. In Kanthale, residents along the main road pointed out that they did not have documentation or legal ownership of their land and properties, hence they have very limited choices or legal rights to protest.⁷³ In Ottamavadi, the road construction has resulted in at least three businessmen losing their shops entirely. It is expected that the Pradeshiya Sabha will provide them alternate plots away from the main road.⁷⁴

A case in point in terms of the lack of due process and transparency in development projects is the Outer Circular Road (OCR) in Trincomalee District. Constructed by the military in 2007-8, the OCR links Sampur to Kuchchaveli via Thampalakamam. The exact purpose of this gravel road remains unclear as members of the general public are not permitted to use this road. CPA met farmers from Muttur and outlying villages who are concerned that the road runs through their paddy land.⁷⁵ As of April 2009, there has been no official initiative to take land owners from the area to examine the road in order to verify whether it has taken up private or permit land so that compensation and/or alternate lands can be identified and provided. It needs to be noted that even in private land sales residents could end up having limited choices, especially if they come under pressure from political or military actors.

The construction of special economic projects or economic zones has also meant that land owners face difficulties or may lose their ownership of land. Be it a private or state sponsored project, a key issue faced by residents of the area is that the State requires land and has the power to seize it. Under the acquisition process those affected are compensated but very rarely at market value. However, in some cases there may be a more concerted effort at providing alternate land and even housing to those losing their homes. With the construction of the Oluvil Port a number of households have been forced to move. Alternative housing has been provided with more than 58 houses built by the Danish Contractors and a further 55 by the Port Development Authority.⁷⁶ Oluvil will become a commercial port which will also allow the docking of larger fishing vessels. Local residents

⁷² This publication is to be produced in May 2010

⁷³ CPA interview with Kanthale residents and officials from the Pradeshiya Sabha, March 2010

⁷⁴ CPA interview with Ottamavadi Residents, November 2009

⁷⁵ CPA interview with farmers and community leaders from Muttur, November 2009 and April 2010

⁷⁶ Interview with researcher studying Oluvil Harbour Project, January 2010

fear further displacement from the port project and restrictions on fishing as many of the fishermen have small fishing boats which may not be allowed to dock at the new harbour.⁷⁷

The OCR case and Oluvil Port case both raise serious questions as to whether there is a uniform state policy on consulting local communities who will be impacted by development projects and on compensation. With regard to the provision of timely and adequate compensation- it appears that this depends on donor requirement rather than on any State policy, even though there has been destruction and displacement throughout the conflict, there is yet no comprehensive State policy on restitution and compensation.

Case Study Sampur HSZ/SEZ: Losing Land and Rights for Development

The Government has attempted to promote greater development growth through demarcating particular areas exclusively for industrial, service or agricultural purposes. One such area is the Special Economic Zone (SEZ) in Trincomalee. A SEZ was declared in Trincomalee District in 2006 – a license zone under Section 22A of the BOI Act No. 4 of 1978 – but this SEZ is more extensive covering most of the coast around Trincomalee Bay from Nilaveli past Trincomalee Town to Sampur and with an extension towards Kanthale.⁸⁰ Part of this area also falls within the Sampur HSZ and has over the last few months been referred to as a SEZ although there has been no official statement or re-gazetting to change the status of the HSZ. Residents from these four GSs covered by this HSZ/SEZ were unable to return or even visit their lands since they were displaced in 2006 until late 2009. While Sri Lanka has other SEZs, the Sampur SEZ seems to be the most stringent in terms of access, including for civilians who own land in the area. A key project being pursued by the Government is the construction of a 500 MW coal power station by an Indian Company - National Thermal Power Corporation (NTPC) - supervised by the Ceylon Electricity Board.⁸¹ It is reported that 1,700 acres of land have been acquired but it appears that there are delays in the construction.⁸² The status of the Environmental Impact Assessment which is required by law for power plants of this scale is also not clear.⁸³ The power station will cover only a portion of one of the GSs and it is unclear how the remaining land area will be used.

Most of the civilians from this area are living in displacement in welfare camps or with host families in Trincomalee, while a few families have opted for relocation over living in displacement.⁸⁴ Many of the residents are either farmers or fishermen and are determined to return to their properties, communities and to the land to which they are culturally attached.

Given the Government's determination to build a coal power station in the area, the residents have repeatedly suggested that the remaining land area should be opened up and that those affected by the coal power station would move to adjoining lands, but the Government has not yet responded positively to rolling back the restrictions. In the lead up to the Presidential election of January 2010, there were a number of developments including verbal assurances by government politicians, the opening up a portion of Kattakarichchenai for resettlement and allowing the cultivation of 400 acres within the HSZ. In the lead up to the General election there were further assurances with even a 'go-and-see' visit to the Kalli Kovil and permission was granted to begin fishing for those in areas immediately next to the HSZ.

⁷⁷ National Fisheries Solidarity Movement, "Oluvil Harbour displaces thousands of fishermen," <http://nafsoonline.blogspot.com/2010/04/oluvil-harbour-displaces-thousands-of.html>, April 27 2009

While a process of land acquisition is taking place, a number of residents that CPA interviewed stated that they did not want to apply because of the low level of compensation. They also viewed compensation as a form of capitulation. The lack of transparency in creating this SEZ and the lack of information to the people of the area is a serious concern, and has intensified fears that the purpose of the SEZ is not for developing the communities in the area but to serve big business and illustrative of the discriminatory politics of the State.

5.5.2 Ecological

Steps taken towards ecological protection have also impacted access to land. While the East has a number of wildlife parks, reserves and sanctuaries, and there is an institutional framework including laws and bureaucracy to protect this rich biodiversity, poor capacity coupled with the impact of the war has curtailed preventive and reactive action in response to illegal felling, encroachment of forest land and poaching. There have been serious challenges in ensuring that these forest areas and the wildlife are protected from poaching, illegal felling and clearing. Recent reports indicate that Kokillai Sanctuary located in Northern Trincomalee and Southern Mullaitivu is being encroached on at its southern boundary.⁷⁸ There are also reports that Somawathi National Park is also being encroached upon with the backing of a local politician.⁷⁹ The response to forest protection by communities neighbouring forest areas may differ from those who have lived in these areas for many decades, have used the land and have had to cope with some of the risks- including fatalities and damages due to elephants. While some may even report to the authorities of forest encroachment and poaching, others may not always understand the prioritisation of nature over human beings, while others may understand the need for forest protection and sustainable practices.

Following the military liberation of the East, one measure actively pursued by the authorities was to construct electric fences. The fences are meant to prevent elephants from entering settlements and land that is being used for cultivation, and thereby reduce the human-elephant conflict. The fences are electric and are generally constructed close to wild life parks, forest reserves and thickly forested areas inhabited by elephants. While farmers are generally supportive of the construction of elephant fences, in some instances the fence ends up cutting off or severely limiting access to their fields. There are a number of cases reported from Ampara District in particular and more recently from Trincomalee District where farmers fear that they are losing access to their cultivable lands due to the construction of electric fences. An article in the Peace Secretariat Monthly in January 2008 claimed “the Forest department is engaged in transforming and/or converting paddy lands and residential lands into forest lands selectively at its whims and fancies.”⁸⁰ As an example it cited the example of Ashraff Nagar in Addalaichennai DS division where reportedly residents fear of being evicted from their homes and paddy lands on the orders of Forest Department officials.⁸¹ There were also reports of an electric fence being con-

⁷⁸ The Sunday Times, Malaka Rodrigo, “Destruction of sanctuary new chapter in war on Kokkilai,” May 9 2010, pg 3

⁷⁹ The Sunday Times, Malaka Rodrigo, “Destruction of sanctuary new chapter in war on Kokkilai,” May 9 2010, pg 3

⁸⁰ Peace Secretariat for Muslims, PSM Monthly Bulletin, “Land grabbing: New Method,” Volume 2 Issue 1, January 2008

⁸¹ Peace Secretariat for Muslims, PSM Monthly Bulletin, “Land grabbing: New Method,” Volume 2 Issue 1, January 2008

structed in Kuduwil in Irrakamam DS Division which was cutting off Muslim and Sinhala farmers from their paddy lands.⁸²

The electric fence is a particular issue for members of the Tamil and Muslim Communities who see it as an attempt to create de facto borders based on ethnicity that end up limiting the land available to them. In Muttur Division, farmers who own land in 15th Vaykal, Sambada Aru and Kaddai Vilunthan fear that with the construction of an electric fence they may be unable to cultivate over the coming months. The elephant fence was constructed on the request of the farmers. They presented a basic plan which plotted out the area which needed to be protected at a meeting held in December 2009 with Minister S. Punchinilame to discuss issues affecting Muttur. A consultative committee was also set up at this meeting involving relevant officials of the State and a farmers' association. However, the posts for the electric fence were put up without the consultation of this committee and the DS of Muttur. Instead of running parallel to the river, the fence now turns abruptly westwards which means that some of the paddy land is outside the fenced area. Efforts by the farmers to negotiate with those constructing the fence failed as they stated that they are just contractors and are acting on government instructions. In addition, there are concerns among the farmers that this construction is part of a larger plan to limit Tamil and Muslim farmers from accessing their lands and to give Sinhala farmers more land.⁸³ Under the Thirteenth Amendment to the Constitution, forest land remains under the Central Government and only residual forests fall under the PC. Nonetheless, the central government has a duty to ensure that regional, district and local stakeholders all have a say on the issue of forest protection so as to ensure more effective and sustainable environmental protection.

5.5.3 Cultural Protection

The East has a rich cultural history with a high concentration of archaeological and historical sites which are venerated by both the Sinhala and Tamil communities. The East also has important historical and religious sites associated with the Muslim and Christian communities. As a result of negligence, natural degradation, political violence and vandalism a significant number of these sites have fallen into a state of disrepair. These are a number of initiatives including through the Negenahira Navodaya to restore such sites.⁸⁴ Various State institutions have attempted to document these sites and ensure protection for these sites. As will be discussed in the 'Land Conflict' section, some of these attempts at cultural protection have overlapped with wildlife protection and have resulted in adjoining land used by civilians being declared off limits, but CPA did not receive many such cases.

The Deegavapi Temple complex is a site venerated as one of Solosmasthanas locations visited by Lord Buddha. The Chaitiya is said to date from the 2nd Century B.C. It is a site of significant religious and historical value. In February 2008 the President instructed that measures should be taken to develop the temple as a "sacred site."⁸⁵ While legally the temple has control over 585 acres, some Buddhists claim that there are monuments and ruins spread over 12,000 acres.⁸⁶ The site is the focus of controversy and contestation as it is surrounded

⁸² Peace Secretariat for Muslims, PSM Monthly Bulletin, "Muslims in East fear losing lands to state project," Volume 3 Issue 1, September-October 2008

⁸³ CPA interview with farmers and community leaders from Muttur November 2009 and April 2010

⁸⁴ <http://www.neweast.lk/heritage.html>

⁸⁵ Daily News, Rohan Mathes, "Deegavapi to be made a sacred site," February 21 2008

⁸⁶ The Sunday Times, "Digavapi: Digging deeper," October 10 1999

by farmers, mainly Muslim but also a few Sinhalese living in surrounding villages. While 500 acres around the Chaitiya were taken over in the late 1960s as sacred land, there are reports that more land, including paddy land some of which is on grants and permits, are being reputedly taken over.⁸⁷ CPA received a number of reports from Muslims villages neighbouring Deegavapi who are finding it increasingly difficult to access their paddy lands.⁸⁸ Muslims from the area also claim that when a Buddhist monk came to the temple in the middle of the last century it was Muslims who assisted him and provided him with his dhana. Ties between local Muslims and Sinhalese remain close, despite the land issues.⁸⁹ Local communities also need to be included in the process of cultural protection. In addition, measures need to be taken to provide information and restitution or compensation where property is taken over for cultural preservation.

In another controversial case where Buddhists and Hindus contest a site on a rock by the sea temple was constructed on the ruins of a Hindu Temple in an area called Illankathurai-Muhutuvaran by Tamils and Lankapattana by Sinhalese, local Tamils had to go to court in order ensure their access to the sea for an annual religious ritual.⁹⁰ While the Tamil claim is that a Buddhist temple was built after the war on the ruins of a Hindu temple, the Buddhists allege that the LTTE destroyed an old Buddhist shrine and built a kovil.⁹¹ There are other sites of reported destruction such as the Augustia Stavanam in Kanguvelli which is a site associated Lord Shiva where a foundation stone was laid to build a kovil during the CFA period. Villagers from the area stated that when they visited the site in 2009 the site had been smashed up.⁹² Adequate steps need to be taken to ensure protection for cultural and historical sites, while making sure that in the case of disputed sites efforts are made to protect all aspects of the site and not protect only one religious community's heritage.

5.6 Steps Towards Providing Access and Restoring Land Rights

In order to address the issue of access in a comprehensive manner it is important to identify the obstacles and the extent to which these obstacles have impacted access. This is particularly relevant in the case of military restrictions. There has to be a process through which the impact of HSZs (official and unofficial), military and police occupation of properties and other restrictions are taken up by policy makers and a phased process for de-militarisation developed. The Defence Secretary Gotabaya Rajapaksa visiting Jaffna in April 2010 stated that the army would gradually withdraw from private properties in the Jaffna Peninsula.⁹³ A similar commitment

⁸⁷ Peace Secretariat for Muslims, PSM Monthly Bulletin, "Sinhalaization of East continues," Volume 2 Issue 1, January 2008

⁸⁸ CPA interview with community leaders and farmers in Ampara, Samanthurai and Karango, January 2010

⁸⁹ CPA interview with community leaders and farmers in Ampara, Samanthurai and Karango, January 2010

⁹⁰ Daily Mirror, "Devotees granted permission to perform religious rituals in FR case," 30 July 2008; ICG, *Sri Lanka's Eastern Province: Land, Development, Conflict*, October 2008

⁹¹ Daily Mirror, "Devotees granted permission to perform religious rituals in FR case," 30 July 2008; ICG, *Sri Lanka's Eastern Province: Land, Development, Conflict*, October 2008; http://www.lankanewspapers.com/news/members/space/news_archive.jsp?year=2007&month=1&id=stopterro

⁹² Interview with residents from nearby villages to Kanguvelli, April 2010

⁹³ Daily Mirror, "Phased out army withdrawal," http://www.dailymirror.lk/index.php?option=com_content&task=view&id=3439&Itemid=425, April 30 2010

should be made in the East. Following the identification of current sites of occupation, rent should be paid to the owners while alternate measures for temporarily housing military personnel and security points need to be pursued. These are all relevant components in moving forward on more general measures towards demilitarising the East. While issues of security have to be adequately addressed, there should be efforts to ensure that they are balanced against the rights of civilians in order to ensure trust and confidence building and strengthening the opportunity for the post-war recovery of war-affected families and communities.

Placing centre stage the needs and rights of local people has to become a central guiding principle for governance in a post-war context. Particularly on development initiatives which will impact access to land and property, there has to be careful consideration of the impact on local communities. There has to be a process of consultation to provide information on the initiatives to the local people. The focus should be on limiting the loss of access and, in cases where it is likely to take place, sustainable alternatives need to be found in terms of restitution and compensation. This principle also needs to apply for ecological and cultural conservation projects likely to impact land access.

Chapter VI

Administrative Boundaries, Land Allocation and Border Disputes

A key contributory factor to land disputes relating to state land has been the confusion over administrative boundaries. In a number of land disputes the confusion over the administrative boundary, be it the district or the division, has meant that it has been very difficult for claimants whose ownership is being challenged by the administrators and others to find easy solutions. The most common example of this is when there is contestation of an administrative boundary by two divisions and where an individual who claims land in the border area is attempting to secure documentation. As will be detailed below, there are a whole range of problems either resulting from or aggravated by confusion and disputes over administrative boundaries and issues. In April 2010 a new initiative to re-demarcate DS and GS boundaries has been put forward by the Government. As will be discussed below, the call for public submissions should be welcomed but there has to be greater attention to ensuring that the process is inclusive, transparent and consultative.

6.1 Divisional Secretariat Boundaries

Sri Lanka's administrative map has been constantly changing, including in the East. The island inherited the district administration system from the British. It was further developed with the creation of ARO divisions within the district (later called divisions) and Grama Sevaka Divisions within the ARO divisions. The Eastern Province during the time of independence was made up of two districts – Trincomalee and Batticaloa. The Ampara District is a relatively recent creation that came into being in 1963 by truncating the majority Tamil Batticaloa District and attaching Sinhala areas from the neighbouring districts of Moneragala. Ampara is the only Muslim majority district but there were demands for a smaller Muslim majority district to be created that would comprise of Kalmunai, Pottuvil and Samanthurai electorates, while the Sinhala majority divisions in the interior would either be established as a separate district or incorporated into another district in the Uva Province.⁹⁴ While more vocal demands for a re-demarcation of the district have abated, it is not clear that the demand has completely faded.

The rationale for new administrative units rests on the improvement of services to the community. However, political and ethnic agendas intrude. Often these units are based on attempts to secure services to one ethnic community or even to meet the needs of communities from a particular area who feel discriminated by members of their own ethnic community. The administrative map of the East, at least at the divisional level, makes clear that ethnic communities tend to be concentrated in particular areas. Parallel to the intensification of the conflict,

⁹⁴ Sunday Leader, D.B.S. Jeyaraj, "Tamil insecurity and Kalmunai District," July 8 2001

there was a process of ghettoisation with regard to administration whereby government servants especially at the divisional level had to match the ethnicity (not just the language) of the community they served. During the war years, Muslim communities found that accessing paddy land in Tamil majority areas was difficult and dangerous, and in certain instances found that the relevant divisional administration was not responsive to their requests, including in securing annual permits. Hence, there emerged strong lobbies on the part of not just Muslims but also Sinhalese and Tamils in 'border areas' to create new administrative procedures and divisions in order to address their concerns. The ethnic tension and insecurity during the war made this more of a necessity, but even in the post-war context there continues to be strong advocacy for more ethnic-based administrative units. It is noteworthy that in the post-war tsunami context a special Tsunami Additional Government Agent position was created. In Batticaloa two officials were appointed -one in charge of the Tamil areas and another in Muslim areas - demonstrating the level of ethnic segmentation in administration.⁹⁵

A few new DS divisions were created during the war. For example, in Batticaloa District a new division emerged during the war years – Koralaipattu Central. As a predominant Muslim division, this unit was created so as to ease the challenges faced by residents who had to travel to government offices in Tamil areas, which was seen as both a risky and ineffective process to address administrative issues.

There continue to be demands for the establishment of new divisions. Kalmunai DS division is a mixed Muslim and Tamil division with some 12,000 Muslim families and 8,000 Tamil families. A sub office was established with an ADS for the Tamil Community in Kalmunai, but issues related to land and finances is administered by the DS, who usually is a Muslim representative. In recent months the political campaign for separating Kalmunai into two separate DS divisions has intensified with a proposed Kalmunai North Division with 27 GS divisions separating from Kalmunai, which will be left with 29 GS divisions. When CPA conducted interviews in November 2009 Muslim staff members of the DS office argued that there is no need for such a separation and that there is no language barrier that prevents Tamils from accessing the services of the DS office, even though some Tamils argue that the public find the dual administration inconvenient and discriminatory. Tamils who support the separation also argue that if Aaliadivemby has only 22 GS divisions but was declared a DS division, there is a strong case for a Tamil Kalmunai division.⁹⁶ In November a cabinet paper was put forward and received formal cabinet approval, but on December 14th the issue was shelved on the request from Muslim Ministers from the East.⁹⁷ However, the issue is likely to be raised once more.

A key cause for land conflict is the confusion and contestation over boundaries not just between individual land-owners but also between administrative units. During the conflict some of these divisional borders tended to become ethnic boundaries, particularly during times of violence or when the issue of land allocation came up. However, divisional demographics reveal that there are very few divisions in the East that are homogenous. An analysis of land ownership and usage reveals an even more complex and integrated living pattern with ethnic communities using land in areas where other ethnic communities form a majority. As will be discussed below the lack of clarity on administrative boundaries has compounded the land problem in the East. Furthermore an analysis of demographics, land extent and divisional boundaries reveal tremendous asymmetry between ethnic communities which effectively amounts to Sinhalese divisions having large extents of land where the Muslim

⁹⁵ CPA interviews with Tsunami ADSs, August 2005

⁹⁶ Interviews in Kalmunai with officers in the DS office, October 2009

⁹⁷ The request was made by Minister Ferial Ashraff (See http://www.peacemuslims.org/Kalmunai_TamilDS_divsn_tobe_renamed_as_Kalmunai_North_DS_divsn-20-1371.html)

divisions are densely populated and have a severe land crunch. Hence, their call for reforming administrative boundaries is also keenly tied to the demand for land.

Case Study: Boundaries and Borders

The boundary of the Kathankudy DS Division which lies between Batticaloa to the north and Arayampathy DS division to the south is contested and is both a bureaucratic hassle and a source of tension. With the expansion of the A4 during late 2009 which goes through Kathankudy, the signature welcome board had to be torn down and re-built. It was decided that the structure should be moved towards the north of the area, but the Batticaloa Municipal Council objected citing that the structure would be built on municipal land area. The maps used by the two authorities are contradictory as they both claim ownership over a boundary area between Deen's Road and Fareena's Lane. There have been periodic appeals to the Government's Survey Department but it has not been taken up. The Kathankudy Urban Council secured money from the Kathankudy Mosque Federation in order to carry out a survey. According to the map the boundary runs diagonally across the road, hence the Urban Council agreed to construct the welcome board at the southern most point of the Batticaloa-Kathankudy boundary.

The border that is located south of Kathankudy, has also been caught up in boundary disputes with Arayampathy DS division which has a majority Tamil population. A Muslim GS division within Arayampathy, Karbala was temporarily annexed for administrative purposes during the war to Kathankudy. This has only complicated the issue of the provision of land documentation and the need for clarifying ownership. Muslims from 'border villages' such as Karbala, who fled their homes, are now returning and attempting to rebuild their lives. One such village is Siharam also in Arayampathy Division where Muslims are attempting to reclaim their land ownership. Muslims from the village attempted to recommence use of a disputed Muslim burial site. The Arayampathy Pradeshiya Saba claimed that this burial site never had formal approval and that it should not be used. In two separate incidents the bodies of two young children who were buried in this disputed site were dug up by an unknown gang. In the first case the body of the baby was partially burnt and left by the site, while in the second the body of a child is still missing of April 2010. The police arrested a few individuals in Arayampathy, but tensions have continued to intensify within the two communities. Recognising the potential for violence key actors including an international agency, activists, and religious authorities attempted to use mediation to come to an agreement on the burial site.

As noted above, the steps taken during the conflict to address practical problems such as transferring the administration of particular GSs to a neighbouring division of a similar ethnic community have added to the administrative boundary confusion. This issue does seem to be on the agenda of the district policy makers. The Digamadulla GA S. Kannangara announced in July that 4 Sinhala villages (Gemunupura, Mangalagama, Kavulliyamadu and Pulkukuluwa) that were detached from Batticaloa District and administered in Ampara from 1991, have been re-attached to Batticaloa.⁹⁸ The issue of re-annexing the Sinhala villages to Batticaloa did, however, provoke some agitations with concerns being raised of Sinhalisation.⁹⁹

⁹⁸ Daily Mirror, "Ampara villages to be attached to Batticaloa," July 22 2009

⁹⁹ TamilNet, "Sinhalese colonization of Tamil village in Eastern Province" May 03 2009; Virakesari, May 03 2009, pg 6; Thinnakkural May 03 2009, pg 8; Virakesari, "Sinhala colonization continue at Kowliyamadu in Batticaloa – Ariyanenthiran" February 28 2010, pg 2

In other areas there are demands for and reports of particular GS divisions being separated from the DS they are currently a part of and annexed to another DS division. Reportedly a letter was sent by the Pradeshiya Sabha Chairman of Lahugala to the President requesting that three Gramasevaka divisions, Sarvodaya puram, Sinna Ulle, and Pasarichennai, (Periya Ulle) in the Pottuvil Division to be annexed to the Lahugala Division, citing discriminatory practices of the officers against minority Sinhala and Tamil villagers.¹⁰⁰ The composite demographic breakdown of the three GS divisions are as follows: 91.5% Muslim, 4.7% Sinhala, 3.8% Tamil. Hence, the Muslim community who form the overwhelming majority of the population argue against such an annexation. This allegation was made in 2007 but there have been no such changes. It does however, illustrate the fear around arbitrary boundary changes.

Electoral boundaries have also been altered in certain areas in the post-war context and there are efforts in this regard. In September 2009 two GS divisions which were in the Damana Pradeshiya Sabha were annexed to Irrakamam Pradeshiya Sabha. The two GS divisions are largely Sinhala and Irrakamam PS is mainly Muslim, hence it could have a significant impact on ethnic representation in the PS.¹⁰¹ Irrakamam PS itself was recently established, in 2009, as it was previously part of Samanthurai PS. The PS was created to address local demands for the people of Irrakamam to have a greater say in local government.¹⁰² Even though Irrakamam and Samanthurai are both largely Muslim, there is a feeling of marginalisation. Hence, electoral boundaries should not be based purely on ethnicity, but need to look at other factors including population size.

CPA was informed of a recent development in 2010 in Trincomalee District where a survey was undertaken on the border of Padavisiripura and Kuchchaveli DS division by the Padavisiripura DS and allegedly supported by the GA of the district. In this particular case, there was an attempt to move the DS border three miles into Kuchchaveli DS thereby attempting to expand the Padavisiripura DS and shrink the size of the Kuchchaveli DS. CPA was informed that the move was halted but there are fears that it may be revisited due to political influence. If the boundary change is implemented it will in effect expand the land mass where Sinhalese communities in Padavisiripura reside and take over lands occupied by Muslims in Kuchchaveli. CPA was also informed that there was an attempt a few years ago to establish a new district that was to incorporate some divisions from Mullaitivu and Trincomalee Districts including the areas from Padavisiripura, Pullumudai, Thiriyaya, Kokilai, which was intended to act as a buffer between the Northern and Eastern Provinces; an attempt possibly to break the territorial contiguity of the 'Tamil homeland.'¹⁰³ CPA was informed that this issue had been raised by politicians in the area with the actors in the Central Government who denied the claim. There is no evidentiary proof of this development but the recent incident in Padavisiripura in 2010 has intensified fears that such a move was underway and maybe revisited by agents of the Central Government in the future.

In at least one case, CPA was informed of villages and the neighbouring land reportedly taken over from the Eastern Province and transferred to another province. Thonithattamadu is an area that was part of Vakara Division in Batticaloa District. Administrative officers claim that this village is now part of Polonnaruwa District which comes within the North Central Province. CPA was informed that the border of the village has been demarcated by the military and that through demarcation the village has been moved from the Batticaloa district and brought under the Polonnaruwa district. There are apparently only three families living in the village, while a further 70

¹⁰⁰ Coalition of Muslims and Tamils for Coexistence, "Territorial Claims, Conquests and Dispossession in the 'New East': The growing concerns of the Muslims of Ampara," June 29 2007

¹⁰¹ Daily Mirror, "Two G.S. divisions go from Damana PS to Irakkamam PS," September 2007

¹⁰² Daily News, "New Pradeshiya Sabha for Irakkamam," June 30 2009

¹⁰³ CPA interview, May 11 2010

families are living with host families in the neighbouring GS divisions of Kathiravelli and Putchankerni. The tank which is close to the village has also been transferred to Polonnaruwa.¹⁰⁴ This case not only highlights the various factors and actors involved in possible boundary issues and changes, but also the inability of administrative actors in divisions, districts and Provinces to raise these issues due to political and military interests and interferences. Further investigations are needed with this case and possible other cases where there are claims of external actors including the military changing borders of not only divisions and districts but also Provinces. This results in existing boundaries being changed which could also result in fundamental changes to land ownership patterns, demographics within divisions and Provinces and the electoral map of Sri Lanka.

6.2 Divisional Secretaries and Boundary Issues

Land continues to be a subject that is administered by the Central Government through the office of the District Secretariat and the Divisional Secretaries. During the late colonial period and the first four and half decades of the post-independence period, the Government Agent performed the task of land allocation in each of the districts. In 1992 this task was decentralised whereby the Divisional Secretary was given the powers to take on this role. In such a context and given the ethnic competition for land and the far-reaching powers of the divisional secretary, s/he plays a sensitive and decisive role.

While creating new divisions may provide some solutions to particular land problems, at the same time it could essentially fail to address and may even complicate existing problems. For instance, one such problem highlighted in this report is the case of land in one division being owned by individuals from another administrative division, which is the case in a number of areas in the East. This is an issue seen particularly among the Muslim Community. Given the issue of land shortage and high population density in Muslim majority divisions in the districts of Batticaloa and Ampara, Muslim farmers are heavily dependent on lands outside their divisions. Koralaipattu Central Division is one of the smallest in the Batticaloa district but also one of the more densely populated, which means that there is a severe shortage of land. Farmers from this divisions own significant areas of land in other boundaries, including in Koralaipattu West and Koralaipattu South. When CPA interviewed Muslim farmers who own land in these two divisions they explained that one of the DS officials had been uncooperative and seemed to be biased.¹⁰⁵ Complaints relating to the bias of DS officials from other ethnic communities and the resulting problems in securing and maintaining land rights, especially permits, are by no means uncommon. Land rights issues relating to the clarification of land ownership and the landless need to be immediately addressed. This has to be conducted in parallel to an improvement in good governance and equality in treatment by government officials and locally elected bodies. Given the considerable powers of the D.S there has to be a concerted effort to ensure efficient and fair service by the officers in the Divisional Secretariat to all people who live in the area and own land there.

¹⁰⁴ Interview with administrative officer in Batticaloa, January 2010

¹⁰⁵ Interview by CPA in Ottamavai and Kathankudi, October 2009

6.3 Addressing Boundary Issues

The recently appointed Minister for Public Administration and Home Affairs, John Seneviratne announced that the Government would re-demarcate the boundaries of Divisional Secretaries and Grama Niladhari divisions. In a newspaper interview the Minister claimed “At present there are many AGA divisions which are finding it difficult to cope with the increase in population in certain electorates, while on the other hand there are too many Grama Niladhari divisions for certain areas. The idea is to streamline the present boundaries in order to make it more workable.”¹⁰⁶ Given that the Government is attempting to introduce electoral reforms, including a return to the first-past-the-post and the ward system, this measure will have both electoral and administrative repercussions. In an additional move the Ministry of Public Administration and Home Affairs published an advertisement on April 29 2010 calling public and civic organisations, public officers and the general public to send suggestions for the establishment of new DS or GS divisions, and for the revision of existing divisions by May 30th 2010.¹⁰⁷

While this call for public suggestions is welcomed in that it offers the public the opportunity to raise their concerns with existing administrative divisions, the entire process should be made more transparent. A 13-person committee has been established to make recommendations “after taking into consideration requests and proposals” made by the public,¹⁰⁸ but it remains unclear as to whether there will be further room for the public and elected representatives to have input into the final recommendations or whether the recommendations will be made public. The 13-member committee is chaired by H.B. Dissanayake, former Governor of the Central Bank of Sri Lanka and 12 other members from “the public service and retired officers.”¹⁰⁹ An ethnic balance is clearly required.

The Constitution calls for the establishment of a Delimitation Commission for the purpose of demarcating electoral divisions. This provision seeks to avoid political interference from the incumbent government and aims to strengthen a consultative and cross-party approach,¹¹⁰ but the commission falls under the currently non-operational 17th Amendment. Given that the current initiative is expected to have implications for electoral boundaries and reform including the return to electoral constituencies, this process needs to be carried out in a transparent and consultative manner in keeping with the Constitution, instead of establishing extra-constitutional mechanisms. Following a participatory process in keeping with the law of the land could ensure more effective governance while strengthening public confidence in governance and the rule of law.

As stressed in the case study, there is a clear need for survey maps which will help ease the challenges faced by administrators on the ground. This is a task which has to be taken up by the Survey Department of Sri Lanka.

¹⁰⁶ The Sunday Times, Leon Berenger, “Govt. to re-demarcate DS and GN divisions,” May 2 2010

¹⁰⁷ Daily News, Business Section, pg III, April 29 2010

¹⁰⁸ Daily News, Business Section, pg III, April 29 2010,

¹⁰⁹ Daily News, Business Section, pg III, April 29 2010,

¹¹⁰ Article 95

Chapter VII

Encroachment and Landlessness in the East: A Commentary on a New Initiative

As discussed previously in this report, there are various forms of documentation to demonstrate control and ownership of both private and state land. Various forms of legislation discussed previously ensure that the legal owner or occupier obtains the documentation to prove ownership and control. As highlighted in this report, not all the people occupying and residing on lands are legal owners. There are those who are displaced due to conflict or natural disasters and others who have encroached on land owned by another party. Such situations result in further problems including land disputes, as discussed in the chapter on Land Conflict.

A regular problem that was encountered during the research is that not all those residing on land are aware of the relevant processes for securing and maintaining ownership of the land. Many have stated that they and their families have resided in a specific plot of land for decades, assuming that residency on the said land for decades automatically ensures ownership. Many are unaware of whether the land is private or state land, further complicating the status of ownership and control.

More than two decades of conflict, the tsunami, destruction of documentation and continuous displacement have led to complications pertaining to the status of land in the Eastern Province. The paucity of available documentation, often a result of improper issuing practices or destruction, means it is extremely difficult to prove ownership or the extent of boundaries. In some cases, there are ways of facilitating proof of ownership. For example, neighbours and others who resided in the area for many years can in some cases attest to the veracity of claims but, as seen in the past, neighbours were often among the large numbers displaced in the Eastern Province. The issue of long-term displacement of entire villages or sections of the village population further compounds this problem. There is also the added development of encroachment of state and private land by those who do not have land or are unable to reclaim their own. With time encroachments become permanent and many who have lived on encroached land treat the land as their own. This chapter discusses an initiative presently underway in the Eastern Province to address the issue of landlessness and those who have encroached state land.

Initiatives to address landlessness are welcome but as documented in this Chapter, there are concerns with regard to motive, goal and process of the present initiative. A fundamental area of concern is whether the present

initiative is *bona fide* or whether it is a front for other objectives of the Government which if stated at the outset may result in an outcry by affected parties and challenges to the Government. As documented in this report, a credible threat to minorities in the East is whether new initiatives, settlements and policies contribute to changes in ethnic demographics in the Eastern Province, creating and sometimes exacerbating existing ethnic tensions. While this initiative is welcome, the Government must clearly avoid any abuse of or deviation from the objective – the provision of state land to the landless and the regularisation of encroachment.

In addition to a scheme distributing state land to those who are landless and who have encroached on to state land, there is also another scheme underway that aims to transform land ownership. This programme is called the Bim Saviya project, and it addresses the issue of titling for private land, which is discussed in Appendix 1.

7.1 Providing State Land to Those in Need

Landlessness is a critical issue not only in the Eastern province but also elsewhere in Sri Lanka. As a result, several initiatives have been introduced by the Government to provide state land to those who do not own any other land.

The previous sections dealt with land ownership and the legal and policy framework dealing with both private and state land. CPA documented that not all those who reside on land are the legal owners of the land. A new initiative was introduced by the Government in 2008 to assist in the provision of land to the landless and to regularise encroachment. It was initiated in the Eastern Province, and then later introduced across the country. It commenced with notices issued in the Divisional Secretariats (DS) and newspapers.¹¹¹ According to interviews conducted in the Eastern Province and information gathered from the notices, there are specific criteria for eligibility to acquire land under the project. These are broadly categorised as:

1. Permanent residency within the Eastern Province
2. Persons not owning land

Persons residing on lands owned by their parents, or who own or are set to inherit land anywhere in Sri Lanka are not eligible. Though these criteria are stipulated and can in theory deny eligibility to obtain land, in practice there are concerns as to how a DS and other government officials are able to verify whether or not someone does own land elsewhere in Sri Lanka. Interviews conducted in the East raised concerns about whether people who claim to be landless and apply for the scheme may in fact own land elsewhere. The current system is not able to identify this. Furthermore, as discussed below, the stringent rule of not being eligible for the present initiative if one is residing with parents and/or family discriminates against many people in the East who, for cultural and economic reasons, still reside with their families on the same plot of land.

Several steps must be followed to ensure eligibility for this programme. As well as registering encroachers, these include registration in the list of applicants and submission of the application on a specified date to the relevant government official, such as the DS or the Deputy Land Commissioner of the area. The process is such that after the application is made, a public inquiry is held by the DS or other government official to determine whether the applicant is eligible to receive land. Stipulating an exact process and involving several government

¹¹¹ Dinamina, September 20 2008; Thinakaran, September 17 2008; Daily News, September 17 2008; Thinakaran, October 18 2008

actors ensures the transparency of this mechanism and reduces the possibility of unjust and unfair selection and provision of land. Although there are checks and balances in the process, as discussed below, gaps still remain within the process which can be abused by either government actors or applicants who may not fall into the categories stipulated.

Land under this initiative is distributed through the LDO and the State Land Ordinance. A unique character of this process is the use of Land Kachcheri's which was introduced under the LDO.¹¹²

7.2 The Process under the Landless Initiative

The circular for state land alienation was issued by the Land Commissioner General of Sri Lanka, on the 20th of August 2008.¹¹³ Although this circular applies to the entire country, it is yet to be fully implemented.¹¹⁴ Based on the circular issued by Land Commissioner, the Provincial Land Commissioner of the East issued a subsequent notice inviting applications.

The present initiative has several aims that can be summarised as the following:

1. A new initiative to regularise encroachment of state land
2. Alienate state land with transparency and choose the most suitable people for the ownership of land
3. Identify the actual people who do not own land within the respective divisional secretariats
4. Establish a transparent selection method
5. Avoid encroachment of land

Registration of people who are suitable to acquire a piece of land will be done through the applications made by those in need of land. After applications are received, those eligible will be categorised as follows:

- People eligible under the farmer category of the LDO,
- People eligible under the sections of low income level, high income level and educated youth of LDO,
- People eligible under the tax basis of the LDO and
- People eligible under the State Land Ordinance.

Applications are called from those who fall within the criteria set out in the circular, including those who are resident in the area and those who are landless. Following the applications, a Land Kachcheri is held in the area. Under the LDO, the land owners should be chosen by using only the Land Kachcheri methodology. Since encroachment is cancelled by the government as a policy, selection under special ordinance could only be done when it is mentioned in Section 20(a) of the LDO. It is essential to get the consent from the Land Commissioner with regard to conducting a Land Kachcheri.

¹¹² Land Kachcheri according to the LDO refers to a meeting held in the prescribed manner for the purpose of alienating state land. Under the Land Kachcheri system an announcement is made inviting people to apply for a block of state land.

¹¹³ This is based on the circular LD-1-34-(1) 2008 issued by the Secretary to the Ministry of Land and Land Development on June 13 2008. The circular was based on the Cabinet decision on March 21 2008

¹¹⁴ CPA was informed that though the circular was issued in 2008, this initiative is yet to commence in certain provinces such as the Southern Province and therefore is not fully implemented in Sri Lanka, interview conducted on April 26 2010.

After the completion of the Land Kachcheri, a preferential list is prepared by the Divisional Secretary. There is a period of 14 days for proposals and appeals to the list to be prepared by the Divisional Secretary. Objections can be sent to the Provincial Land Commissioner and the Land Commissioner who can review the selection list. The final list should be published after certification by the Land Commissioner. This process is intended to take place annually.

It is evident that people living in areas that have sufficient land to alienate have received the maximum amount of land possible. Some families have occupied large areas of land by means of illegal encroachment. Encouragement of this process might lead to a situation that effectively prevents giving land to legal encroachers and stops future encroachment. The landless people registered in divisions that do not have land to alienate might have to register in another division. Their names should be reported to the Provincial Land Commissioner (PLC) by the respective divisional secretary/ deputy land commissioner. The PLC can then assess where land is available and inform the relevant divisional secretary of the need to provide land from their areas.

7.3 Key Issues with the Landless Initiative

The main reason for the issuing of the circular of 20th August 2008 was to provide land to the landless and land alienation to those who had encroached on state land, in effect putting a stop to future encroachment. Since the Government had previously decided to prohibit the policy on regularization of encroachment, this new initiative was meant to regularise encroachment and also to provide state land to those who are landless.

Although this initiative is a step forward in addressing land issues and disputes, there are several concerns with the process. Significant powers are given to the Land Minister, both at the centre and the provincial level, to decide on the extent of land to be given to an individual.¹¹⁵ This power can lead to possible abuse where Ministers may favour his or her supporters and target any opponents through this initiative. To ensure there is no abuse of power, it is recommended that the decision making process is made the responsibility of a committee that includes actors from the Provincial Council.

The initiative makes no mention of those who have been displaced. In the Northern and Eastern Provinces, and other areas, there have been large numbers of IDPs, some displaced multiple times. There still remain around 6,000 IDPs in Trincomalee due to the HSZ in Sampur. Though displacement has been a factor in the Sri Lankan context for several decades, this initiative does not take on board hardships caused by displacement and the fact that IDPs may not be aware of such initiatives. The Government needs to ensure that any such initiative in the future takes on board situations of displacement and provide facilities for IDPs and affected communities to be informed and make applications.

There is also the issue of boundaries demarcating the different DSs. In the Eastern Province there are several instances where boundary disputes arise with different DSs in all three districts. According to the 2008 circular, land is to be given within a specific DS but if there are disputes on boundaries, there is a possibility of related problems that may impact this present scheme and other land related issues discussed elsewhere in the report. A comprehensive effort needs to be made to survey and gazette such boundaries and ensure that the commu-

¹¹⁵ For more information on this initiative, please refer to Peace Secretariat for Muslims, "Comments on the procedures devised by the Land Commissioner General to implement the government policy on control of encroachment and alienation of State Land," October 2008

nities are kept informed of the process. If there are discrepancies in the boundaries that have been gazetted or are about to be gazetted, there needs to be a process where communities and those interested can appeal and be heard. Such a process that demarcates the boundaries in a transparent and informed manner is essential not just for this initiative but for other issues highlighted in this report.

Further, this initiative states that those who own land are not eligible. In the Sri Lankan context, there are instances where extended families build a house and live on the same plot of land, though only one person may own the land. According to the circular, those who reside in a house on a plot of land, though they may not own the land, are not eligible to apply. This needs to be amended to ensure that all those who are landless are able to apply, regardless of whether they have a house on another person's land. In the Eastern Province it is common for extended families to reside on the same plot, and if the present criteria are not amended, many people will be discriminated against, and not be eligible to receive state land.

The circular does not detail whether certain groups of people should receive priority. People who do not have land to build a house or for cultivation including those who do not belong to the farmer category should be put on the register in order of priority, and this register should be updated every year.

7.4 Commentary on the Initiative in the Eastern Province

CPA was informed that the provision of land under the present initiative is underway in the Eastern Province. The announcement was made in 2008 and applications received in 2009. Though the notice was issued in 2008 and information was made available through local government offices and news papers, there were concerns as to whether all those who are landless were aware of the initiative. Concerns were also raised as to why the initiative was introduced in 2008, so soon after the liberation of the Eastern Province, when there were still considerable problems with displacement and in the provision of information to those affected by the conflict. CPA was assured by government officials that though there still remained problems and all those who are landless may not be able to apply the first time round, the initiative will be repeated annually to ensure that those who were not able to apply in the first round would be able to apply the following year. CPA was also assured that with time, a better information system would be in place to disseminate the message.

The first round of applications, received with the 2008 announcement, is presently being processed. CPA has been informed that the Land Kachcheris were conducted in certain areas including Muttur. In the Muttur Division, recipients have been selected and documentation is presently being issued in one GS division. The process of documentation will be carried out in other GS divisions over the course of 2010. Though this initiative was meant to be done annually, it is still in the first round of applications. The second round is yet to commence.

Landlessness leads to many problems including those related to income generation and livelihoods, economic security and identity. While it is welcome that the government is taking steps to address landlessness in Sri Lanka and providing state land to those in need, questions remain with the present process. As already highlighted, there were gaps with the information flow of the announcement. This is an area that needs improvement in order to ensure that a larger group of people are able to apply. There is also the issue of knowing whether those who are applying are genuinely in need of land. For instance, it is extremely difficult for DSs to find out whether applicants own land elsewhere in the country, which is a disqualification. Furthermore, some people have expressed fears that this initiative will be used to introduce new settlements in the Northern and Eastern Provinces, possibly changing the demographics. Several locals in Trincomalee voiced concern that this initiative

could result in giving land to those from outside the district.¹¹⁶ Several persons belonging to the minority communities in Trincomalee felt that this could be used to give land to the Sinhalese majority community, thereby changing the demographics in the area.

Some of these concerns are genuine and credible at a time where there are concerns about the Government using various methods to increase the Sinhalese population in the Eastern Province. Highlighted elsewhere in the report are cases of land dispute and conflict which demonstrate the ethnic dimension to accessing, owning and controlling land in the Eastern Province. Land constitutes a fundamental issue in civil, political, socio, economic and cultural affairs, and also plays a critical role in a person's life; land can strengthen self-sufficiency, security, and connections to the community. It can also cause disputes. Elsewhere in the report, cases are highlighted which demonstrate how land has been used to change the dynamics in communities and exert political influence, thereby risking problems into the future.

7.5 Strengthening Initiatives to Address Landlessness

In the Eastern Province, which has witnessed more than two decades of war and problems related to land, this new initiative was viewed with tremendous expectation, curiosity and caution. Though CPA has yet to receive any credible reports of this initiative being used to introduce new settlements and instigate changes in the demographics in the area, these concerns must be noted and steps taken to prevent any abuse of the system.

CPA recommends that while this initiative is necessary to provide land to those who are landless and can in the long-term resolve disputes by ensuring ownership, there needs to be clarity in the process and in its development. Steps also need to be taken to ensure that this initiative is used for its original purpose of addressing the needs of the landless and halting encroachment, rather than as a political tool. For this purpose, CPA recommends that there is transparency in the system of selection and that reasons be provided if land in the Eastern Province is given to those outside of the area. Other gaps highlighted in this section must also be addressed. Information related to all of the above needs to be widely disseminated and to reach the affected communities and host communities.

¹¹⁶ CPA field trip to Trincomalee April 2009

Chapter VIII

Land Restitution and Compensation

In a post war context, Sri Lanka needs a comprehensive restitution and compensation package for those affected by the conflict. Restitution is meant to restore to the rightful owner something that has been taken away, lost, or destroyed. Compensation is providing assistance including financial assistance for the loss or destruction of land, housing, and other property affected by a disaster. Restitution and compensation is critical in addressing the grievances of those who have lost land, property, houses and livelihoods and an essential component of reconstruction, rebuilding and reconciliation efforts. In the present context in the East and North, where resettlement is still ongoing and there are drives for reconstruction and development, it is essential to look at how to restore what has been lost by the communities affected and where restoration is not possible, to adequately compensate such loss and destruction. Not having a restitution and compensation package impacts short and long term development plans and political and social stability.

Housing, land and property restitution is one of the key factors in stabilising returns and settlements and promoting sustainable growth after conflicts. Restitution is one of the key tools available to mitigate post war and post conflict disputes over housing, land and property as IDPs return to their land and houses. For those returning to their houses and land and to rebuilding their lives, there needs to be evidence of problems and issues they faced previously being addressed, including the loss and destruction of property, houses and documentation, secondary occupation, HSZs and high security areas and obstacles to ownership and control of land, housing and property. Where restitution is not possible, compensation needs to address the loss and destruction, ensuring that there is conflict sensitivity, equity and transparency in how it is done. In addressing both restitution and compensation schemes, greater attention needs to be given to vulnerable groups including single headed households, widows, the physically handicapped and those injured by the conflict.

8.1 National and International Framework

International laws and principles provide for housing, land and property restitution. In August 2005, the Principles on Housing and Property Restitution for Refugees and Displaced Persons known as the Pinheiro Principles were introduced. The Principles ensure that "All refugees and displaced persons have the right to have restored to them any housing, land or property of which they were arbitrarily or unlawfully deprived..."

There is also further provision in the Guiding Principles of Internal Displacement, the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on

Economic, Social and Cultural Rights (ICESCR) and other international instruments that ensure citizens are treated equally and not discriminated, provided basic services and with specific focus on IDPs whose return needs to be voluntary, informed and follow internationally accepted standards.

Under the Constitution of Sri Lanka, Article 12 of the Fundamental Rights Chapter also provides for citizens to be treated equally and Article 14 ensuring that citizens have freedom of movement and the right to choose their residence. There are other national laws such as the ICCPR Act of 2007 and The Resettlement Authority Act of 2007 that provide greater protection in movement and other rights of those returning to their houses and land, with the latter setting up the Resettlement Authority that oversees issues pertaining to resettlement. It is also important to examine government policy on return, rebuilding and reconstruction efforts. Though there was an initiative to formulate a Resettlement Policy in 2009, this was cut short by the Government without any formal reason being given. Related to land, there are several laws that provide for safeguards and some have been discussed in this report. The Land Acquisition Act, provides for compensation to be paid when private land is acquired for a 'public purpose', providing for a framework to decide on the payment of compensation and an appeals process for those who are aggrieved by the compensation package.

8.2 Ground Realities

Though the existing Sri Lankan legal and policy framework can provide for limited respite, there is no comprehensive national restitution and compensation scheme that is in force to provide the assistance and support needed. As a result, these issues have not received the attention they deserve, with those affected and aggrieved not being provided the assistance and support they need. It is unclear if the Government believes that the provision of temporary and permanent shelter, the six-month ration and livelihood support for returnees largely provided by international and national humanitarian agencies as constituting adequate compensation. The discussion on compensation as an issue, leave aside restitution, is very limited in the current post-war context and is largely restricted to housing assistance and to non-government actors highlighting the need for compensation for individuals killed or disappeared.

As discussed in previous chapters, several obstacles are faced in enjoying full access, ownership and control over land. These are diverse problems related to land including secondary occupation, HSZs and high security areas, disputes with ownership and control and the destruction of houses and property. Furthermore, these problems are compounded by the loss or destruction of documentation. As a result, returns and resettlement drives have not been sustainable and have resulted in further problems including those returning being displaced yet again¹¹⁷ and not having adequate housing and livelihood assistance. Therefore, while there are several projects and programmes underway, involving Government, donors and agencies, challenges remain with durable solutions of IDPs and those returned. A notable absence with such return and resettlement projects is the absence of a restitution and compensation policy or action plan.

There are others whose houses and property were destroyed during the conflict and tsunami. With the multiple disasters that plagued the East in the recent past, there have been numerous actors and programmes that provided assistance to those affected. Though large numbers of affected have been provided assistance including some form of assistance with their housing, property and livelihoods, this assistance has been *ad hoc* with no

¹¹⁷ An example is the case of the IDPs from the Sampur HSZ who were displaced to Batticaloa district and returned to the district of origin but unable to return to their own land due to the existence of the HSZ. As a result thousands still remain in transit camps and with host families, more than three years after their initial displacement. For more information, please refer to the CPA, *Trincomalee High Security Zone and Special Economic Zone*, September 2009

uniformity on how the assistance was to be provided. The same applies to compensation. With the influx of funding and agencies that arrived soon after the tsunami, those affected by the natural disaster were provided assistance and compensation much faster than those affected by the conflict. Due to political interference, lack of will and bureaucracy, those affected by the conflict have in some cases yet to receive compensation for their loss. For example, those affected by the HSZ in Sampur and unable to return to their lands, are yet to be provided with durable solutions, alternative land and compensation, even though their land is meant to have been acquired for the HSZ. Similarly, farmers in Muttur have confirmed that though their land was acquired to build the Outer Circular Road (discussed previously), not all of them have been provided information of the process, and although alternate land has been offered, there have been concerns both with the extent of land offered and the sites themselves due to issues such as water shortage and suitability for livelihoods. In addition, there are larger questions relating to the purpose of the land acquisition and the dispossession of so many families.¹¹⁸ Though development seems to be proceeding unhindered in the East, those who have been affected by the conflict and development, those that have lost land and housing, have yet to be provided support to rebuild.

In a post war context, with the Government moving forward with possible constitutional reform and development programmes, it is hoped that the Government, policy makers and donors will give priority to the often forgotten but significant issues of restitution and compensation. Without a national policy on this and due recognition being accorded to this by the relevant actors that this is an integral element in the resolution of ethnic tensions, the prospects for rebuilding a Sri Lanka in which the rights of all of its citizens are respected and protected, will be undermined.

¹¹⁸ CPA, Bhavani Fonseka and Mirak Raheem, *Trincomalee High Security Zone and Special Economic Zone*, September 2009

Chapter VIII

Conclusion and Recommendations

Land is a critical issue in the Eastern Province which continues to act as a stumbling block to normalisation, rebuilding of trust between communities and between the civilian population and the State, as well as to ensuring economic security and development for the people of the province. As highlighted in the report there are a series of challenges and problems relating to the constitutional and legal framework and its implementation on the one hand, and problems on the ground resulting from landlessness, land disputes and conflicts, administrative confusion and restrictions to access on the other.

During the war there were severe challenges in implementing the law related to land. The resulting problems cannot be resolved merely through strengthening staff capacity and procedures. There also has to be a reform agenda to tackle problems in the law, including on issues such as joint ownership and prescription. Furthermore, land administration and powers need to be reviewed so as to ensure that existing institutions can play the role envisaged in the Constitution and in law, and are not undercut by the Central Government. For twenty years successive governments have failed to appoint a National Land Commission, now is the time to realise this significant gap in policy making in Sri Lanka. In terms of policy, the Central Government has to adopt a consultative approach and devise frameworks on key issues such as a national land policy that takes into consideration the needs and the rights of the citizens of this country. While the Government has put forward particular initiatives to address issues such as landlessness, it has to take into account the particularities on the ground from various areas rather than assume that one model can fit all.

Devising a people-focussed approach to dealing with land is essential. As highlighted in the access section, rather than relying on national security and national development as the primary motivating forces, the Government has to look at the impact of these policies on people's lives and the subsequent political fall out. In addition, the Government has the responsibility to review problems faced by people and come up with solutions that address administrative short falls such as the lack of clarity of administrative boundaries. While the legal system needs to be more widely used, there also need to be alternate mechanisms that could mediate solutions such as Land Kachcheris, Land Task Forces and Mediation Boards/committees with a focus on land issues. The responsibility for addressing land disputes, however, extends beyond the Government to other political and civil society actors. Cognizance of this will avoid the compounding of problems and ensure that disputants reach amicable and mediated solutions in keeping with the law.

Given this historical experience, there is one very clear lesson. It is that land is a highly controversial issue and needs to be approached in a very sensitive manner. The State in particular has a primary responsibility to take this into consideration in its formulation of policy and law on land and related issues such as resettlement or development. Otherwise it will risk exacerbating tensions and undermine the peace and unity it has actively sought to promote.

If these issues are tackled in a comprehensive manner sensitive to the needs of the communities in the area, it could strengthen peace and allow communities to rebuild their lives. In addition, as there are potential land problems in the province, it could serve as a model for the North which is presently opening up areas for resettlement. The failure to acknowledge the full scale of the problem and to devise solutions at the national and community level could, however result in off-setting the movement towards stability and security. As noted above, land has a tremendous potential to serve as a source of suspicion and hostility, and could stir up communal tensions and even violence. If there is the political will to respond to the challenges and devise policy solutions, while encouraging local actors to take up a pro-active role, then the East could become a model, not just in Sri Lanka but for other post-war contexts.

Recommendations

Central Government

- Full implementation of the Thirteenth Amendment to the Constitution which devolves land powers to the Provincial Councils and the constitution and functioning of the National Land Commission.
- Formulate a national land policy which sets out the Government policy for land in keeping with good governance principles and in a rights based framework. The Government should conduct consultations with all stakeholders to ensure that the process is participatory, inclusive and transparent. While CPA recognises the vital importance of economic development, it should not be at the cost of people's rights, absence of a due process and centralisation of decision making and powers.
- Amend legislation to ensure that it reflects ground realities and addresses difficulties caused by the conflict and other disasters, while dealing with lacunae in the laws including joint ownership and the applicability of prescription over private land in a conflict context.
- Have a clear demarcation of functions and powers among state institutions to ensure the reduction of bureaucracy, confusion and duplication.
- Introduce Land Kachcheris, Mediation Committees and other models to resolve land conflict and disputes at the divisional and community level which are composed of administrative officials and community leaders representative of the communities in the area. There should be an effort to ensure that political, military and other actors are informed of and support the process.
- Introduce regulations and policies immediately to halt interference and influencing by political and military actors over land and other subjects. Land administration should remain with the civilian administration and steps need to be taken to ensure that there is no interference or influencing by external actors.
- A security assessment needs to be conducted for the post-war context that takes into account civilian concerns and rights. Priority should be given to dismantling existing high security zones/areas and to the removal of restrictions to access by original land owners and residents. Following on from this process, areas and individual properties which are currently being occupied and where civilian access is obstructed, need to be identified. In the event an area needs to remain as a HSZ due to security reasons, there should be information given as to the reasons and time period identified for the longevity of the

HSZ. Any area that remains a HSZ should be gazetted and those affected given information. The provision of rent and compensation for occupation of property also needs to be addressed.

- The Government needs to introduce plans and programmes to address secondary occupation and ensure that those whose houses and land are occupied are provided information and assistance.
- Information should be given on development plans for the East including future plans for SEZs and other development areas. This information should clearly state how land is to be utilized and whether land is to be acquired for such purposes.
- Acquisition of private land should be in accordance with existing laws and affected communities should be informed as well as compensated.
- Future initiatives to provide land to the landless and any other government programmes to address state and private land that may have an impact on the residents and owners in the East, should be done in a transparent, participatory manner with information shared with all those affected. Such programmes should also consider ground realities and other issues such as cultural and religious practices as raised in this report.
- Information should be provided on further plans for changes to boundaries in the Eastern Province and all *ad hoc* attempts to change boundaries should be halted immediately. Any such changes need to be done through a transparent process and must take into consideration the needs and views of all communities.
- Survey maps should be provided to the administrative units with the assistance of the Survey Department of Sri Lanka.
- The Government needs to formulate a comprehensive restitution and compensation scheme and policy, and ensure that affected communities are provided assistance equitably.

Provincial Councils

- Ensure that powers provided under the Thirteenth Amendment are fully exercised including powers over land.
- Handle issues devolved to the Provincial Council, including land, responsibly and in a transparent and inclusive manner.

District and other Government officials

- Provide information to all residents in the districts of all existing and new plans and programmes, for land in the respective areas.
- Ensure that information relating to proposed changes and initiatives relating to land are shared in all three languages and displayed in public places which are easily accessible to residents and others.

- DSs and other local officials need to ensure that land powers provided to them are used in accordance with the respective statutory provisions and not abused, particularly in a manner that will benefit a specific individual or community.
- Set up land committees at the local level which are representative of all communities in the area and which are informal mechanisms to address land disputes and conflicts in the areas.

Local Political and Civil Society Actors

- Support and establish initiatives aimed at resolving land disputes through mediation

Donors

- Monitor constitutional, legal and policy changes that are introduced and implemented and provide assistance accordingly.
- Provide the EPC with financial and other assistance to be able to carry out programmes and their functions as provided in the Thirteenth Amendment.
- Provide assistance to land initiatives including documentation and the implementation of initiatives that provide land to those in need and resolve land disputes. This means providing financial and other assistance to programmes through which those who are landless are provided state land and other such programmes that benefit the affected communities. Such assistance should be done in accordance with the constitutional and legal framework and good governance principles.
- Actively apprise themselves of the ground situation when funding projects such as housing, infrastructure and development which could exacerbate existing land disputes.

Appendix I

State Land and Administration

A large percentage of land in the Eastern Province is state owned, including land coming under the Centre (54,551 hectares) and the Province (76,666 hectares).¹¹⁹ This includes bare land, as well as land for public purposes or provided to persons for specific purposes under land permits or grants. There are several laws that govern state land which are briefly discussed below. There are also several forms of documentation that divests state land to those in need of land and done through either permits or grants/deeds. These are briefly discussed below:

Permits

Permits are issued by the respective Divisional Secretaries to those who need state land and are only issued subject to several conditions, including fairly stringent conditions regarding the ability of a permit-holder to dispose of the land. A permit-holder may not dispose of the land, and may only mortgage his interest in the land with the permission of the GA. A permit-holder may only erect those structures specified in the permit, and the permit-holder must obtain permission from the GA before erecting any additional structures. The permit can also be cancelled if the permit-holder has not developed the land or has breached the stipulated conditions.¹²⁰

Permits can be issued under the LDO and State Land Ordinance. The LDO provides that no person may acquire a prescriptive title (i.e through long-term occupation) to permit land. It is an offence to encroach on permit/grant land, and anyone who does so may be required to pay a fine or be subjected to imprisonment, or both. A permit cannot be sold, regardless of the conditions. A permit can be converted into a grant after conditions are met and after a specific time period has passed. Usually for paddy land a permit can be converted to a grant after three years have elapsed and after conditions are met. In the highlands this period is usually only one year, but specific conditions must also be met.

¹¹⁹ M. Yasaratne, Provincial Land Commissioner in Daily Mirror, Kelum Bandara, "Big demand for State land in EP," September 3 2009

¹²⁰ Where a permit is cancelled, the permit holder cannot make a claim for compensation for deprivation of property.

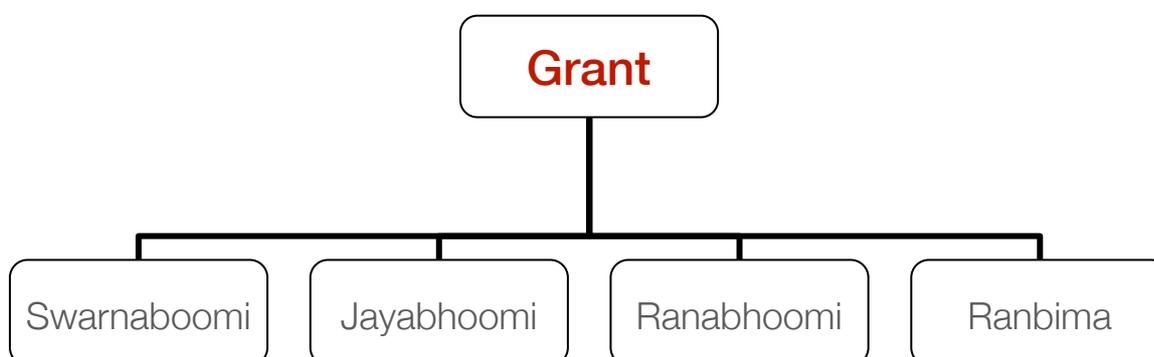
Grants or Deeds

Permit-holders may apply to the Land Commissioner for their permits to be converted to the status of grants or deeds. Grants or deeds confer legal ownership and cannot be taken back by the State except under the Land Acquisition Act. A permit can be converted to a grant after the permit-holder fulfils certain criteria.¹²¹

There is a process by which a permit may be converted into a grant or deed. An application to convert a permit to a grant/deed needs to be made to the local GS who then needs to examine the land and submit a report to the respective DS. The land officer or colonisation officer of the DS will also prepare a report and document whether the land has been developed according to the criteria set out in the permit. The plan will be then examined by the Survey Department, DS or Deputy Land Commissioner (inter province) who will prepare the deed/grant and forward it to the Land Commissioner through the Provincial Land Commissioner. After the document is checked by the Land Commissioner, it is then forwarded to the Presidential Secretary for the President's signature. Only then will the grant/deed be registered in the land registry. A grant/deed provides absolute ownership of the land to the owner.

Once the permit has been converted to a grant/deed, the grantee cannot divide the plot further and cannot transfer the land without the permission of the GA. A grant can be sold with the permission of the respective Divisional Secretary.

According to the Ministry of Lands and Land Development, grants have been issued under several projects.



Relevant Laws Governing State Land

There are several laws that govern state land and provide for divesting land to those in need. Some of these are discussed below:¹²²

¹²¹ The criteria are- develops the land in a manner satisfactory to the GA; erects a house, toilet and fence upon the land, and maintains them in a satisfactory manner, all within the time specified in the permit; clears and cultivates the land as set out in the schedule of the permit, if the land is meant for cultivation; resides upon the land for at least three years if it is farmland and at least one year if it is for housing; adopts measures for soil conservation; and is a citizen of Sri Lanka.

¹²² For more information, refer to CPA, *Women's Access to and Ownership of Land and Property*, in Batticaloa, Jaffna and Vanni, CPA, September 2005

Land Development Ordinance No. 19 of 1935 (as amended)

Under the Land Development Ordinance, certain families may be granted state land vested with the Land Commissioner Department for the purpose of developing the land. State land can only be granted to persons who settled on the land before 15 June 1995, except in the case of special relocation or resettlement programmes. The procedure for granting land begins with a person first obtaining a permit to occupy state land. In order to obtain a permit, a person must apply to the Divisional Secretary.¹²³

Courts have held that no written law, other than the provisions of the LDO providing for succession upon intestacy (i.e. where a person dies without leaving a will), is to have any application in respect to any land alienated under the LDO.¹²⁴ The LDO provides that state land alienated under a permit/grant is succeeded by the spouse on the death of the permit/grant-holder, irrespective of whether the spouse was nominated as the successor.¹²⁵ A spouse who inherits the land under the LDO is bound by the conditions contained in the permit and may not dispose of the land or nominate a successor upon his/her death.¹²⁶

The permit/grant holder may nominate someone other than their spouse to inherit the land should the grant to their spouse fail due to non-adherence to the conditions contained in the permit. The permit/grant-holder may only nominate as successor(s) those relatives listed in the First Schedule to the LDO. Where the spouse fails to succeed to the permit/grant land and no person is nominated a successor, the land passes according to the order of preference specified in the Third Schedule to the LDO. The Schedule gives preference to male over female heirs, and where there are multiple relations in any one group of successors, preference is given to the eldest in the group. The non-recognition of joint ownership under the LDO has also given rise to a number of problems. CPA has continuously recommended that the LDO be amended to recognize joint ownership and enable inheritance resulting from joint ownership.¹²⁷ According to media reports, an amendment to the LDO was presented to Parliament in 2009 though no new amendments have yet been passed and enacted into law.¹²⁸

The Land Grants (Special Provisions) Act No. 43 of 1979

¹²³ Persons who have lost their permits may apply for certified copies at the Divisional Secretariats. Since 1990, Divisional Secretariats are required to keep copies of all permits, grants and leases. Area Secretariats, which had kept documents until then, were required to hand over all documents to the Divisional Secretariats, though even at the time of writing, not all documents had been transferred. Many Area and Divisional Secretariats, in particular those of Mullaitivu and Kilinochchi Areas, were seriously damaged during the conflict, as a consequence of which land documents were lost. This is particularly problematic for permits as no other copies are available in other state bodies. Persons who have lost their grants may apply for certified copies at the Land Registries and the Divisional Secretariats.

¹²⁴ Dharmalatha v. David de Silva [1995] Sri L.R 259.

¹²⁵ The spouse of a deceased permit holder who fails to take possession of the land within six months of the death of the permit/grant holder will not succeed to the land.

¹²⁶ These last two conditions do not apply to a spouse that was nominated as the successor by the permit holder.

¹²⁷ CPA, *Memorandum on Land Issues Arising From the Ethnic Conflict and the Tsunami Disaster*, January 2005.

¹²⁸ Daily News, "Land Ordinance Bill before Steering Committee", Daily News, January 23 2009

The Land Grants (Special Provisions) Act provides that the President may grant agricultural or estate land to any citizen of Sri Lanka who is landless and has the capacity to develop it. This involves state land which is vested with the Land Reform Commission. This land will be transferred only after being surveyed, and the instrument of disposition must be registered with the GA. Any transfer of state land under this Act is subject to conditions.¹²⁹ Where there is non-compliance with the conditions, the State is entitled to obtain a court decree cancelling the land transfer. Thereafter, the land goes back to the State free of encumbrances.

Any grantee of state land can nominate his successor. Where a grantee of land under the Land Grants (Special Provisions) Act dies intestate without nominating a successor, the land will pass to the surviving spouse. If there is no spouse, it will pass to any one of the following in the following order: sons, daughters, grandsons, granddaughters, father, mother, brothers, sisters, uncles, aunts, nephews and nieces.¹³⁰ Where there is more than one individual in any one group, the eldest is preferred. The conditions attached to the transfer of state land go with the land and are binding on all successors. Moreover, such land can be disposed of only with the prior written consent of the Land Commissioner.

State Lands Ordinance Act No. 8 of 1947 as amended

The State Ordinance provides for disposition of state land through methods such as permits and leases, and for the management and control of these lands. The power of divesting of such lands has been vested with the President of the Republic. Where the land is vested in local authorities¹³¹ by the State, such authorities have the power of making permits or leases.

A legal opinion has been provided by the Attorney General's Department which establishes that joint ownership is possible under the present statute and land can be provided in the name of both the wife and husband. This development provides for joint ownership of land and puts a stop to practices of giving land to the head of the household only.¹³²

Private land

Several laws govern the ownership and control over private land. In most areas deeds are used to prove ownership of private land, which are registered in the respective land registries of the area.

¹²⁹ The conditions are: there must be prior written consent of the Land Commissioner; the transferee must carry out such soil conservation measures as the GA may require; the transferee's title shall be subject to servitudes attaching to the land; any mineral found in, on or under the land will remain the absolute property of the state; the transferee is liable for any irrigation rates under the Irrigation Ordinance in respect of the land; and the land will revert to the state if the transferee does not fulfill each of these conditions, or any other conditions that may be prescribed for the proper use and management of the land.

¹³⁰ Section 10 of the Act

¹³¹ This includes a Municipal Council, an Urban Council, a Town Council, a Village Council or any other authority prescribed as a local authority

¹³² Opinion by the Attorney General, 28th January 2008

The Registration of Documents Ordinance No. 23 of 1927 provides that a deed of transfer or document registered under this Ordinance gains priority over an unregistered document even if the unregistered document is given a date prior to the registered document. This Ordinance applies to leases, mortgages and all forms of transfers. Though failure to register will not make a deed invalid, subsequent transfers made in relation to the same property that are registered will take precedence.

Three copies of the land deed needs to be registered. They remain with the:

- 1) Land owner
- 2) Notary
- 3) Land Registry

Persons who have lost their deeds may apply for a certified copy at the relevant District Land Registry. The process may be lengthy if the landowner is not familiar with the particulars of the deed in question, since each land volume in the District Land Registry will have to be searched. Obtaining a copy may be further complicated by the fact that many volumes in the Land Registries were destroyed during the conflict or damaged by the tsunami. In situations where the volumes in the Land Registry have been destroyed, the claimant may draft a “deed of declaration” whereby s/he declares ownership of a particular property. This deed is registered at the Land Registry and the claimant can maintain possession of the land until his/her claim is challenged. Deeds of declaration may be drafted by *bona fide* owners and by those wishing to claim prescription. Public information campaigns should be undertaken to inform people of the procedure for obtaining and locating documents at Land Registries.

In the last few years, there has been an initiative to introduce land titling, as seen in Kantale, which the Ministry of Land has taken the lead with the support of the World Bank. The Registration of Title Act No. 21 of 1998 provides for (i) the investigation and registration of title to land parcels and (ii) the regulation of land transactions. The provisions of the Act apply only to those provinces, districts or divisions as gazetted by the Minister.¹³³ The Act may be used in cases where all documents, including those held by land registries, notary offices and property owners have been lost or destroyed. The Act creates a new system for the registration of title to replace the existing system which requires a court decree to obtain clear title. The Act creates land parcels that must be registered with the Registrar-General of Title. This has only been initiated in a few places but is a model that can be used in areas such as the North and East where land documents have been lost or destroyed.

Bim Saviya Programme

In the 2008 Budget speech, the Government introduced the ‘Bim Saviya’ programme which was initiated to clear impediments on land titling. A 10-year action plan was drawn up to enable the registration of around 10 million blocks of land in 332 divisional secretariat divisions and also to computerize related information.

¹³³ Extraordinary Gazette No 1508/20 which specifies the districts falling under the Registration of Title Act 1998, 1st August 2007

Funds have been allocated to enable the commencement of registration of 75,000 such blocks of land situated in 10 districts, during 2008. This programme comes under the Registration of Title Act 1998 which enables title registration for plots of land.

The 'Bim Saviya' Program is different to the landlessness initiative underway in the East. This programme only looks at private land. It is a programme conducted by the Ministry of Land and Land Development and implemented by three departments including the Survey Department, which surveys all the lands and prepares the plan, the Land Settlement Department, which investigates ownership and confirms it, and the Registrar General's Department which does the required registration. This 'Bim Saviya' programme is initiated as a key element of the "Gama Neguma" programme under Mahinda Chintanaya.

The activities of the 'Bim Saviya' programme include:

- Conversion of land registration in Sri Lanka from Deed Registration to Title Registration
- Clear ownership of lands
- The development of a Land Information System which enables better land Management

As a result of the 'Bim Saviya' Program, a digital Land Information System will be established and will be made available for planners and decision makers and will be an asset for scientific land administration. This is a programme existing from 2007 to 2021. The districts concentrated by the programme are Kandy, Gampaha, Ratnapura, Colombo, Hambantota, Kurunegala, Badulla, Monaragala, Polonnaruwa, and Trincomalee.¹⁴¹ This program will be administered by a council established under the Registration of Title Act. Although the programme intends to include the East, at present work has commenced only in the Kantalale division which comes within the Trincomalee.

CPA has been informed that there are several set-backs in the programme. Though this programme was initially planned for 15 years to cover 12 million land parcels, due to insufficient staff the project has stalled.¹⁴¹ At present there are 200 staff employed under this programme and with the current staff capacity it will only complete its target in 2037. CPA was informed that only 40% of the programme has been completed up to date which covers the areas of Balangoda, Divulapitiya and Douwa.

In addition to inadequate resources, there are other setbacks to the programme. CPA was informed that a regular problem encountered in the programme is identifying land ownership of particular plots of land. Furthermore, CPA was informed that the Land Title Act does not make provision for dispute settlement and therefore it was essential to have a mechanism to look into land problems such as the establishment of a Land Tribunal.

Although land titling is considered to be an effective and less cumbersome form of ownership of land, it has been very slowly implemented in Sri Lanka. Lack of resources and funds have delayed progress and therefore it is too soon to comment as to how well it would work. Experiences elsewhere have indicated that this form of ownership of land maybe the best since it establishes clear ownership title and reduces disputes and conflict. In a country that has seen varied and diverse forms of conflicts and disputes related to land, some of which is documented in this report, it is essential to find ways of reducing such disputes and identifying sustainable and effective ways of owning land. Therefore the 'Bim Saviya' programme is welcome, though in need of support to facilitate speedier implementation on the ground.

Private land is governed by statutory law, common law and customary law, depending on the area and ethnicity of the owner. Several key acts of legislation that govern private law and which bear a relevance to the Eastern Province are highlighted below.

Prescription

Individuals may obtain ownership of the immovable property belonging to another by proving lengthy uninterrupted possession. This principle is codified in the Prescription Ordinance No. 22 of 1871, which provides for the acquisition of private property through prescription. Prescriptive rights are not available against state land. In order to obtain prescriptive title, the Ordinance requires proof of undisturbed and uninterrupted possession for 10 years by title adverse to, or independent of, that of the claimant/plaintiff. Adverse or independent possession is defined as possession unaccompanied by payment of rent or by performance of service by the possessor from which one could infer an acknowledgement of a right existing in another.

Where the owner of property has been dispossessed other than by operation of law, s/he can bring a possessory action within one year of such dispossession (discussed below). The Ordinance also protects owners have a disability, against claims of prescriptive title¹³⁴.

The application of the Prescription Ordinance in conflict-affected areas of the North and the East would lead to injustice as the conflict has forced a large number of people to move away from their homes against their will. Those willing to return are often faced with the problem of their property being occupied by others (secondary occupation). There have been recommendations that in the North and the East, the application of the Prescription Ordinance be suspended for the duration of the conflict, preferably, from 1980 onwards.¹³⁵ It has also been recommended that the provisions of the Ordinance which protect owners under a disability be amended to include “displacement from the property due to circumstances beyond one’s control” as another disability clause that would act as a defence to a claim based on prescription.¹³⁶ Previous studies have documented that lawyers in Jaffna appear to have informally agreed not to use the Prescription Ordinance if the original owner was absent from his/her home as a result of the conflict.¹³⁷

Legislation was introduced to prevent tsunami-related displacement from interrupting an occupier’s prescriptive period. The Tsunami (Special Provisions) Act 2005 provided that adverse possession that began prior to 26th December 2004 by a person affected by the tsunami shall be deemed to have been uninterrupted if such person or their heirs repossess the property on or before 26th December 2005. Moreover, the period between 26th December 2004 and 2005 shall be excluded from the calculation of time prescribed for the filing of certain actions under the Prescription Ordinance if the relevant parties were affected by the tsunami.

Although the Government introduced legislation to address those affected by tsunami within a short period after the disaster, there has been slow movement to address problems caused by the conflict and amend legislation

¹³⁴ The disabilities provided for are infancy, idiocy, unsoundness of mind, lunacy or absence beyond the seas.

¹³⁵ CPA, *Land and Property Rights of Internally Displaced Persons*, February 2003.

¹³⁶ HRCSL, *Analysing Existing Laws, Policies and Administrative Procedures on Internally Displaced Persons*, February 2004 [Draft].

¹³⁷ CPA, *Memorandum on Land Issues Arising From the Ethnic Conflict and the Tsunami Disaster*, January 2005.

accordingly. In a post war context, the Government needs to introduce legislation in discussion with all stakeholders to address the problems caused as a result of the conflict including being displaced from original lands for several decades.

Possessory Actions

Under Roman-Dutch Law, the general principle is that a person in possession of land or goods, even as a wrongdoer, is entitled to take action against anyone interfering with their possession unless the person interfering is able to demonstrate a superior right. A person who is dispossessed of their immovable property may file a possessory action (*res vindicatio*) within one year and one day of being dispossessed. A plaintiff ousted from possession need not prove title to the land, only that they were in exclusive possession of the property in question at the time they were ousted, and that the ouster was unlawful. Prescription, proof of superior title and the fact that the land belongs to a third party are defences to a possessory action.

Temporary orders for possession can be brought under sections 66-69 of the Primary Courts' Procedure Act, No. 44 of 1979. The Act provides that a person who (i) is not the owner but who has been in possession of property for two months before filing an application to the Court claiming possession and (ii) who has been dispossessed of property, is entitled to possession of such property if the application is filed within two months. This would enable trespassers to obtain possession of land affected by the conflict and/or the tsunami. This provision could therefore operate unfairly on displaced persons.¹³⁸

Land Acquisition Act No. 9 of 1950 as amended

The Act vests the State with the power to acquire private land for a 'public purpose'. The procedure for acquisition as set out in the Act is to be followed even when land is acquired under other statutes. Once the Minister decides that a piece of land should be acquired for a public purpose he or she may order the acquiring officer of that area to give notification of acquisition to the owner of the land. Subsequent to the decision to acquire being gazetted, notice must be provided so that interested parties may express any objections. Land that is needed for public purposes should be acquired in accordance with established legal processes such as that found in the Land Acquisition Act.¹³⁹ In practice though, *ad hoc* processes have been followed where IDPs are unaware whether their land has been acquired and for what purposes. In most cases, compensation for acquisition of land has been non-existent or very low. With the HSZ in Sampur, it has been reported that notices for acquisi-

¹³⁸ A land owner who is dispossessed can bring a *rei vindicatio* action to reclaim his land but the action must be brought within one year of being dispossessed. (Section 4 of the Prescription Ordinance)

¹³⁹ Section 2 of the Act sets out the process where the Minister decides a particular plot of land is needed for a 'public purpose'. The Minister can direct a local official to put up a notice in Sinhala, Tamil and English stating that the land is required for a public purpose and that steps will be taken to investigate the suitability of the land including surveying, digging, setting boundaries and marking the land and other acts as provided in the Act. Compensation should also be assessed by an authorized person. After issuing a notice of acquisition and informing the owner/s, objections can be received regarding the acquisition. Section 5 states that a Minister shall also make a written declaration that a particular plot of land is needed and acquired for a public purpose and will be printed in all three languages in the Gazette and exhibited in a public place. An aggrieved party can appeal the decision of the acquisition by filing a case in the District Court and appealing to the Court of Appeal during a stipulated time period. Under Section 38, the Minister can make an order to acquire immediate possession of land on the ground of 'any urgency'.

tion have been distributed though many of the IDPs were unaware of the initiative and implications of land acquisition. Those who CPA spoke to claimed to want to return to their land, even if it meant living in displacement for a longer period and rejected initiatives to relocate them in other areas. Some of the IDPs were aware of acquisition taking place while others were not informed of the process and stated that there were no initiatives by the Government to inform them of such processes.

Similarly, CPA was informed that very limited information was available on the construction for certain road development projects in the East such as the Outer Circular Road in Trincomalee district. Residents who owned land that has been used to construct the Outer Circular Road informed CPA that they were not informed of land being acquired by the State, were not aware of the process and were not compensated.

Appendix II

Policy Related to Land

Appendix 2 briefly sets out some of the policies relevant to land issues in the Eastern Province.

Draft Land Policy

Sri Lanka is yet to enact a national land policy. The most recent draft dates back to 2005 which due to administrative delays is yet to obtain cabinet approval. CPA has been informed by government actors working on land issues that there is an immediate need for a national land policy and though there has been a draft since 2005, very little has been done by political actors to introduce a national land policy.¹⁴⁰ The primary focus of the draft National Land Policy is to lay out the overarching policy of the Government with regards to land. Some of the key points in the draft policy are:

- Identification of land resources and mapping of land;
- Land distribution for activities in industrial, residential, commercial, social and religious areas;
- Land conservation and management;
- Land development by way of granting leases;
- Land acquisition;
- Institutional arrangements
- Legal arrangements;
- Establish entitlement to land;
- Alienation of land to landless persons on a highly transparent policy of land allocation

Land Use Policy

The Land Use Policy was passed in 2007 with the goal of ensuring that there is a rational utilization of land for food security, a high quality of life, equity and ecological sustainability. The policy states that there is a need for planning to ensure that land is used in the most effective and productive manner for agricultural, livelihood purposes and to solve human environmental issues, especially in urban areas. According to the policy, productivity of fertile land in Sri Lanka has reduced due to improper land use and nearly 44% of agricultural lands have been subject to land degradation. The plethora of small agricultural holdings, which do not benefit from economies of scale, is another reason for low productivity levels.

According to the policy, land is sub-divided in the following categories:

¹⁴⁰ CPA interviews with government officials, April 2010

Land Use Category	Extent (hectares)
1. Agriculture (Tea, Rubber, Coconut, Paddy, & other crops)	2,605,647
2. Urban Areas	29,353
3. Forests, Wildlife, Reserves & Catchments areas	2,000,000
4. Underutilized Lands	728,800
5. Reservations (Reservoirs, Streams & Irrigation Channels)	585,300
6. Steeply sloping lands, unsuitable for Agriculture	380,000
7. Barren Lands	77,000
8. Highlands over 5000 feet (1600m) above mean sea level	76,400
9. Mangroves & Marsh Lands	70,000

The Land Use Policy is meant to provide a policy framework to ensure that there is proper land use which in turn provides for food security, economic development and the maintenance of the productivity of the land at a higher level. The Policy goes on to state that the State on behalf of the people will function as the "trustee" of land to enable the present and the future generations to use the land on a sustainable basis. Land use will be based on the principle of zoning and the utilization of land will be based on its physical suitability. The Policy is also to achieve other objectives in addition to stated above including preventing the under use and improper use of lands, protect, conserve and manage all sources of water on state as well as private lands, introducing a rational distribution of population and settlement in order to achieve a balanced regional development and orderly economic growth, minimize fragmentation of agricultural lands, prevent encroachment of lands, introduce effective tenurial reforms to promote the efficient use of land resources, minimize the vulnerability of land to natural and human induced hazards and environmental hazard, promote gender equity in the ownership, utilization and conservation of land and preserve historical, cultural, religious, and aesthetic values associated with lands.

A National Involuntary Resettlement Policy (NIRP)

The policy was established by the Government to address the adverse social and economic impact of land acquisition for development purposes. The policy applies to all development-induced land acquisition, and a Resettlement Action Plan needs to be prepared where 20 or more families are affected. The procedure and protection of economic, social and cultural interests provided for in the NIRP may be a useful model to be used in future resettlement programmes.

Mahinda Chintana 2005 and 2010

The Mahinda Chintana document 2005, the policy document of the President, contains a section on housing and land issues. The document states that every family should own a house and that 100,000 plots of land would be provided for the construction of houses. The document does not state whether this would be state or private land. It further goes on to add that four housing schemes (condominium property) would be implemented for public servants in Colombo and the suburbs. The document also states that 50,000 new houses

would be built urgently under the 'Ranaviru Gammana' concept as housing facilities for officers and soldiers in the Security Forces. There is no mention on the land ownership for such houses.

The Mahinda Chanthana document 2010 was introduced prior to the Presidential Elections held in January 2010 where the incumbent president set out his policy. The document sets out several housing projects that would be given to soldiers who are disabled or to families of soldiers who died in action, where a 10 perch land is to be given for the construction of the house. It also provides that the above category of persons who were occupying state land without legal sanction or title as of 1st January 2010, will be given title deeds to such lands. The document also provides land to public sector employees and government corporation employees who do not have houses, who will be given up to 10 perches of land. Further, the document states that under the Mahinda Chintana project of giving agricultural land to 100,000 farmers, 20,195 allotments have already been given away and permits have been issued for a further 32,063 allotments, while offer documents have been issued to yet another 38,277 farmers. Finally the document states that free agricultural land will be given to 100,000 farming families in the Northern and Eastern Provinces. No reference is made as to whether the land would be state or private land, nor does it mention any selection criteria.

While the goals set out in the policy document are welcome, it is questionable whether the Government has taken any concrete steps to achieve these goals, or indeed whether some Government promises can be met.¹⁴¹ The Government needs to take immediate steps to demonstrate its commitment to housing and land issues. One step in addressing these issues is to have a land policy which is based on a rights framework and takes on board the needs of the people.

Draft Housing Policy

Sri Lanka does not have an overarching housing policy. Though many attempts have been made to draft such a policy, the lack of political will and the constant changes in governmental policy with every change of government has made this a near impossible task, according to Housing Ministry officials. Despite the difficulty of the task efforts are once again under way to draft a national housing policy. An Outline for Discussion on the National Housing Policy sets out the past experiences on housing, issues related to housing development, objectives and strategies of the policy, and identifies key areas for reform. It is notable that one of the objectives of the policy is to 'ensure right to housing rather than ownership of housing [emphasis added]'. Among the strategies proposed is for 'local governments to play a central role in the development of housing programmes through the provision of infrastructure facilities, building approvals and other needs'. It must be kept in mind that the proposed policy focuses on housing development in general and does not deal with specific tsunami or conflict-affected housing issues. The policy seeks to ensure access to affordable and descent housing for all families and to set up a contributory National Housing Fund open to all individuals.

¹⁴¹ It is yet unclear how 100,000 farming families in the North and East would be selected for land under this scheme and where this land would be situated. The cases highlighted in the present report demonstrate the politicization and ethnicisation in choosing beneficiaries and in providing land and therefore steps need to be taken to ensure there are checks and balances to avoid abuse of the system.

Appendix III

Government Actors and Local Government on Land

1. Government actors dealing with land

There are many ministries within the Central Government that deal with land and land-related issues. These include, but are not limited to, the Ministry of Land and Land Development, the Ministry of Resettlement, the Ministry of Irrigation and Water Resource Development, the Ministry of Economic Development and the Ministry of Defence which is to oversee urban development in the future.¹⁴² The Ministry of Land itself has a number of departments within it devoted to particular subject areas, some of which overlap including the Department of Land Commissioner.¹⁴³ This creates confusion and leads to the duplication of work.

An additional Central Government institution is the Urban Development Authority (UDA), established by the Urban Development Authority Act No. 41 of 1978 in order to promote integrated planning and implementation of economic, social and physical development of areas. The UDA has considerable powers to acquire land, including private land, in areas which have been declared 'Urban Development Areas'. With the new changes to Parliament that were introduced after the Parliamentary Elections in April 2010, urban development is to come under the Ministry of Defence.¹⁴⁴ There are no public reasons given for such a move and there are questions raised as to the reasoning behind this move in a post-war context. The present move begs the question whether having urban development within responsibilities of the Ministry of Defence, thereby under the purview of the President, and the fact that the secretary is the President's brother, Gotabaya Rajapaksa, would ensure that development projects can move swiftly without any unexpected delays and questions. Although it is too early to comment on the present move, there are fears that development projects maybe initiated by the UDA under the guise of 'national security' or other reasons provided by the Ministry of Defence without adequate information, consultation and transparency. The example of the Sampur HSZ and SEZ in Trincomalee is a good example of how development can take place in secrecy with no consultation of those affected or the public at large.

There are also relevant Central Government institutions, such as the Mahaweli Authority, which plays a relevant role in the Eastern Province. The Mahaweli Authority is a statutory body established by the Mahaweli Authority Act No 23 of 1979 to oversee the development of the Mahaweli river area and related activities.

¹⁴² Gazette No. 1651/20, APRIL 30, 2010

¹⁴³ The Ministry of Land contains the following departments: the Department of Land Commissioner, the Department of Land Settlement, the Land Use Planning Division, the Department of Survey General and the Institute of Surveying and Mapping.

¹⁴⁴ Gazette No. 1651/20, APRIL 30, 2010

At the provincial and district levels, one also finds Government Agents¹⁴⁵, land officers and divisional secretariats (DS) that work in land and land-related areas. The DS play a critical role regarding land issues. The Transfer of Powers (Divisional Secretaries) Act 1992 which decentralises powers to the DS, ensures that the DS can under Section 3(2) exercise, perform and discharge within such Division any power, duty or function imposed or assigned by a statute of the Provincial Council or by power delegated by the Governor of a Province. Further, Section 4 of the Act states that any reference to the GA in any law, notice, permit or communication shall be referred to the DS other than stated exceptions. Accordingly, after the passing of the above Act, many of the powers vested with the GA are now with the respective DS including powers over land in the respective divisions. In addition to the above, there are also the Provincial level land actors, with the Provincial Land Commissioner playing an important role regarding state land. As discussed in this report, the Land Commissioner and the PLC work closely on land regularisation and other state land initiatives.

The presence of so many actors, and the absence of a coherent structure causes problems in coordinating land and land-related policies. It is further compounded by having actors coming under the Central Government and those within the Eastern Provincial Council. At the ground level, many are unaware of exact roles and titles of the numerous actors leading to confusion. In the present cabinet there are more than four ministries whose portfolio has some work related to land, and this coupled with the various departments and authorities, not only leads to confusion and possible duplication but is a waste in public spending. What is needed is to have a few key ministries and institutions handling land and land related issues at the centre that work closely with actors in the Provinces and districts.

2. Local Government and Land Issues

In Sri Lanka, the system of local government is comprised of three different bodies: (i) Municipal Councils in large towns; (ii) Urban Councils in smaller towns; (iii) Pradeshiya Sabhas mainly in rural areas (excluding the areas of the Municipal Councils and Urban Councils) whose boundaries generally keep within with the borders of Divisional Secretariats. Municipal Councils, Urban Councils and Pradeshiya Sabhas exercise similar functions which include powers over roads and thoroughfares, public health, public markets and public utility services. In addition, Pradeshiya Sabhas are vested with development functions that include housing, maternity and child welfare, agricultural experiments, schemes for unemployment relief and the integrated development of selected villages.

Municipal Councils were established by the Municipal Councils Ordinance No. 29 of 1947. They have the power to acquire, hold and sell property, and the following lands are vested in Municipal Councils: waste lands; stone, gravel and cabook quarries; lakes, ponds, reservoirs, tanks, aqueducts and other waterworks; and, with the sanction of the President, such state lands, with or without buildings, that are situated within the limits of the Municipality. However, the Central Government retains overriding power to acquire, hold and sell state property, including that vested in the Municipal Councils, for public purposes.

The Urban Councils Ordinance No. 61 of 1939 vests in the Urban Council of each town certain immovable property including, but not limited to, waste lands and open spaces, public lakes, streams, public tanks, ponds and channels, and certain state land that has been transferred to the Urban Council with the sanction of the

¹⁴⁵ GAs have been renamed District Secretaries, although the old term is still used.

President. As with the land vested in Municipal Councils, the Central Government retains overriding power to acquire, hold and sell state property vested in Urban Councils.

The Pradeshiya Sabhas were established by the Pradeshiya Sabhas Act No. 15 of 1987. As with the Ordinances discussed above, the Act contains exceptions to the powers of Pradeshiya Sabhas over land, and the central government to resume or dispose of state property for public purposes at any time.

Although the Urban Councils Ordinance, the Municipal Councils Ordinance and the Pradeshiya Sabhas Act are evidence of attempts to decentralise decision-making in relation to land and land-related issues, the exceptions mentioned above show that certain important powers have been retained by the Central Government. Given the participatory and decentralizing objectives of these legislative measures, the effectiveness of the Pradeshiya Sabha and Municipal and Urban Council systems is questionable. The responsiveness of policies, plans and initiatives to the needs of particular communities will be limited if much of the decision-making power remains with the Central Government. Elsewhere, CPA has recommended that the principle of subsidiarity be respected, and that there be attempts to strengthen the capacity of these institutions of devolution and decentralisation, since they present promising opportunities for strengthening participation and empowering local communities, and women in particular.¹⁴⁶

¹⁴⁶ CPA, *Memorandum on Land Issues Arising From the Ethnic Conflict and the Tsunami Disaster*, January 2005.

Appendix IV

Publications Produced and Cases Filed by CPA on Land and Related Issues

Publications

- Land and Property Rights of Internally Displaced Persons (2003)
- Informal Dispute Resolution in the North East and Puttalam (2003)
- Memorandum on Land issues arising from the ethnic conflict and the tsunami disaster (2005)
- Women's Access to and Ownership of land and property in Batticaloa, Jaffna and the Vanni (2005)
- Study on landlessness and homelessness in Sri Lanka (2005)
- A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District (2008)
- A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya (2009)
- Trincomalee High Security Zone and Special Economic Zone (2009)

Public Interest Litigation and Other cases

- Fundamental Rights Petition on Internally Displaced Persons filed in the Supreme Court (2000)
- Application to the Human Rights Commission on Internally Displaced Muslims of the Northern Province (2002)
- Fundamental Rights Petition Challenging the [Eviction of Tamils from Lodges in Colombo](#) filed in the Supreme Court (2007).¹⁴⁷
- Fundamental Rights Petition Challenging the Sampur High Security Zone filed in the Supreme Court (2007)
- Fundamental Rights Petition Challenging the lack of Freedom of Movement for the Internally Displaced Persons in camps in the North and East filed in the Supreme Court (2009)

¹⁴⁷ CPA's Fundamental Rights Petition on the Eviction of Tamils from Lodges in Colombo in 2007, <http://www.cpalanka.org/page.php?id=0&pubid=439&key=9bdd5f06c37bdab66735ca41a9457925>