



# LAND IN THE NORTHERN PROVINCE

POST-WAR POLITICS, POLICY AND PRACTICES

BHAVANI FONSEKA AND MIRAK RAHEEM

# Land in the Northern Province:

Post-War Politics, Policy and Practices

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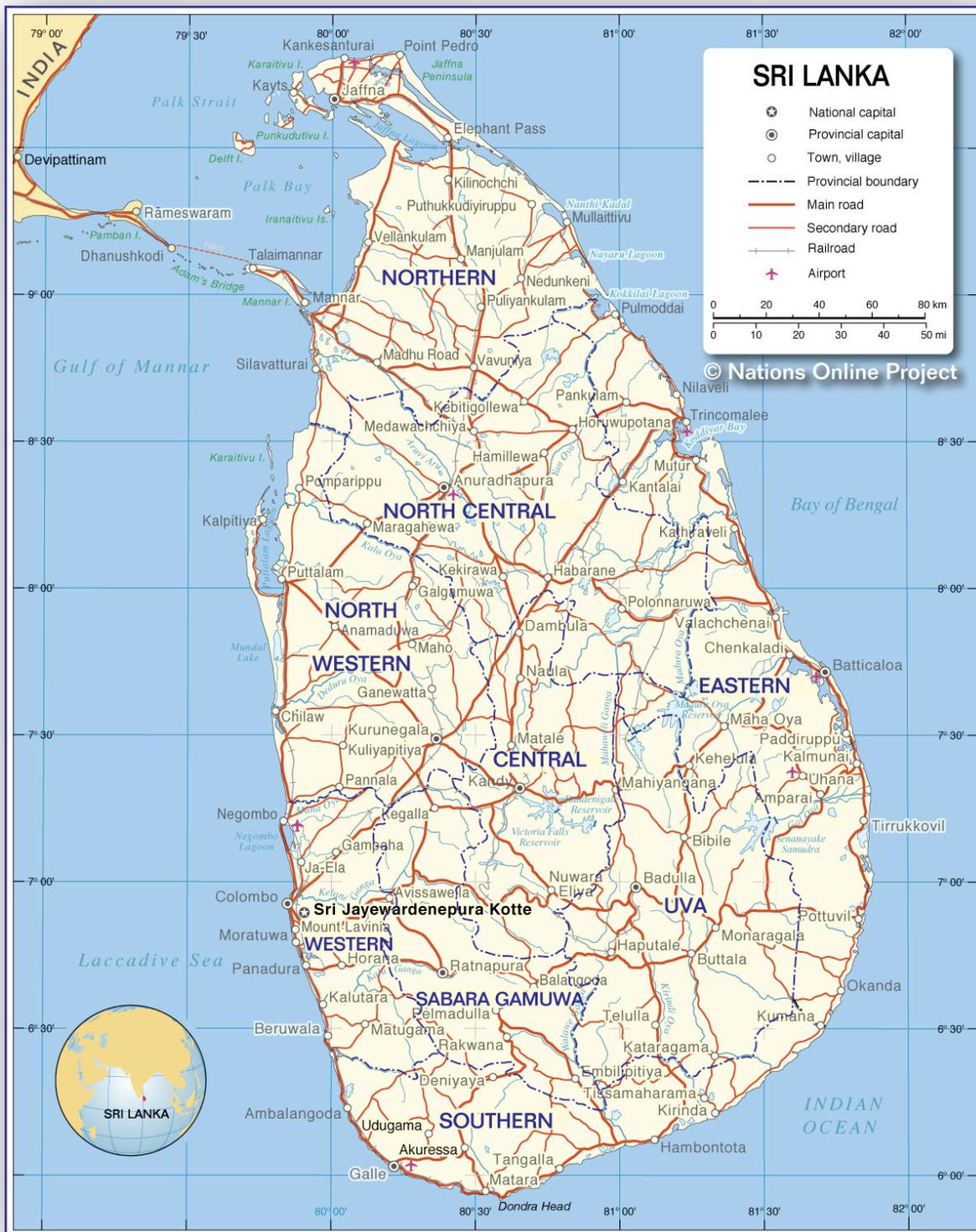
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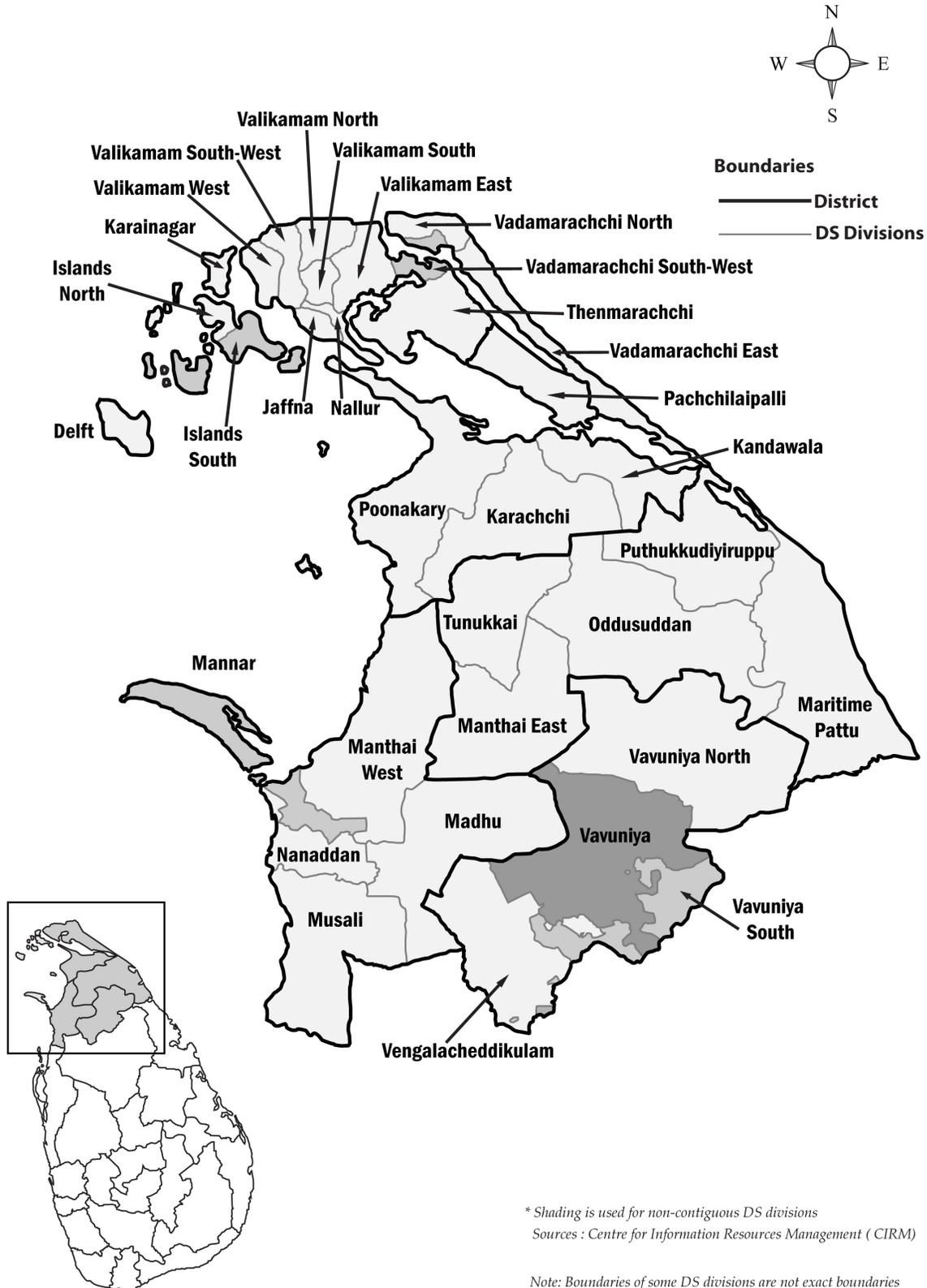
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# NORTHERN PROVINCE DS DIVISIONS



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## Abbreviations

ADB	Asian Development Bank
AGA	Additional Government Agent
CPA	Centre for Policy Alternatives
DCC	District Coordinating Committee
DDC	District Development Committee
DS	Divisional Secretary
GA	Government Agent
GS	Grama Sevaka
HSZ	High Security Zone
IDP	Internally Displaced Person
IHP	Indian Housing Project
I/NGO	International or National Non Governmental Organisation
LDO	Land Development Ordinance
LO	Land Officer
LTF	Land Task Force
LTTE	Liberation Tigers of Tamil Eelam
NLC	National Land Commission
NEHRP	North East Housing Reconstruction Programme
NPC	Northern Provincial Council
NPLC	Northern Provincial Land Commissioner
PC	Provincial Councils
PTF	Presidential Task Force
RDS	Rural Development Society

TNA	Tamil National Alliance
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UXO	Unexploded Ordnance
WFP	World Food Programme
WRDS	Women Rural Development Society

## Executive Summary

As the Northern Province attempts to transition from war to peace, a key emerging challenge is that of land. Given the importance of land at the individual, familial and community levels, the ownership, control of, and access to land are important components in pushing this transition forward. Land in the North is a complex issue that is closely tied to the war and ethno-political conflict. As such, the resolution of land issues is important for post-war processes such as resettlement and development. Nevertheless, these issues have been made all the more complicated as various political actors and communities have used land to assert their control. Despite the complexities involved, addressing land issues is a prerequisite to ensure economic recovery, social rehabilitation and the transformation of the conflict.

### The Challenges on the Ground

At the outset it needs to be noted that while there are similar problems related to land emerging across the Northern Province, the intensity and frequency of these problems vary between the five districts. Characteristics including the nature of the land, scale of displacement and destruction, socio-economic features and political history contribute to these differences. For instance, land in the Jaffna district is largely in private hands, while the Kilinochchi District has large portions of state land.

There are a whole host of issues relating to land that need to be addressed in order to move forward. In sum, these issues are obstacles to civilians accessing, utilising and securing control of their lands. The loss and destruction of documentation suffered by both the owners and relevant state actors is a key problem. Secondary occupation by a range of actors including the displaced or other civilians, the military, the police or other state representatives is an additional issue requiring attention. This challenge is tied to the problem of competing claims where two or more actors claim ownership over the same property. In some cases this may even be a private individual and the state contesting ownership.

The involvement of state actors, the LTTE, other armed groups and powerful civilians in seizing land, and in some instances distributing the land to other civilians, has further complicated the determination of land ownership. Additionally, in the post-war period, state actors have made clear their interest in acquiring land on national security or development grounds, which has served to exacerbate existing problems. Outside of competing claims, there are a host of other problems including landlessness. The lack of awareness and understanding among civilians and other actors

relating to valid documentation as well as the importance of land ownership has meant that addressing the problem of land has been made all the more contentious and complicated.

## **On-going Policy Reform Initiatives**

Since the end of the war, the Government has largely adopted a piecemeal approach to addressing the wide range of land problems in the North. In the absence of a single comprehensive land policy, multiple documents and practices have provided guidelines for the resolution of various concerns over land. However, in recent months the Government put forward a proposal for a single process that would streamline government policy in the Province (Discussed in Chapter Three). As Chapter Three highlights there is a recent drive by the Government to examine land issues through the introduction of new legislation, circulars and regulations. While CPA recognises the need for reform, such steps need to be taken in a transparent and inclusive manner.

CPA has been informed that in April 2011, the cabinet passed a Memorandum (Memo) titled 'Regularize Land Management in the Northern and Eastern Provinces' and a subsequent Land Circular in July 2011. The principal aim of the Memo and Land Circular appears to be to address the issue of land ownership and competing claims. According to interviews conducted by CPA with key government officials involved in the process, it is apparent that the Land Circular will attempt to establish a process for land claims to be examined; for ownership documents to be issued when there is no contestation; for an appeals procedure in the case parties object to decisions; for providing lost documents; and for the transition to a fixed system of land titling. At the time of writing the Land Circular was under revision as a result of litigation challenging its legality, specifically on the authority of the Land Commissioner General to issue instructions relating to private land and the non-fulfillment of conditions under the Registration of Titles Act.

CPA welcomes the efforts to introduce a land policy in the North and East that attempts to grapple with some of the key problems related to land ownership and control. At the same time, CPA has concerns over specific issues. An underlying principle in the Memo and Land Circular is that they prioritise the importance of land rights of individuals who fled during the war over subsequent owners and occupiers of land. This is a complex issue. The rights of individuals and families who fled during the war need to be recognised. However, there are questions as to how civilians who were given land documentation during the war period will be treated. This issue is especially pertinent in the Vanni where there were dual actors, including a de facto dual administration by the LTTE, which played a key role in land issues and a functioning government administration. Those civilians who received land in schemes introduced by the LTTE are at risk of dispossession of their current land. It is unclear whether land redistributed by armed actors and others associated with the State will face the same scrutiny. The Circular does have a provision that if the land has been

developed by those who claimed these properties more recently, then efforts should be made to locate alternate land for the original owner. An additional problem in the proposed process is the high level of military involvement in the structures meant to examine and decide on competing claims. While these new policy initiatives are positive first steps in reform in a post war context, further consultation with stakeholders, clarity on specific points as well as amendments that respond to problems with the existing draft are necessary for a successful policy that addresses land problems in the North and East.

## **Key Trends related to Governance and Land**

A central issue to addressing the problem of land in the North is the reform of the governance framework (Discussed in Chapter One). The primary role of actors from central government is one of the most dominant features in the post-war North. In the absence of an elected Northern Provincial Council (NPC)- that has significant powers over land as per the Thirteenth Amendment of the Constitution- there is greater space for **centralisation**. The failure of the central government to appoint a National Land Commission (NLC) in accordance with the Thirteenth Amendment is an additional problem that is preventing the improvement of land-related governance. The failure to fully implement the Thirteenth Amendment as well as recent policy statements made by the Government, including by President Mahinda Rajapaska, raise serious concerns as to the Government's level of commitment to the devolution of powers including land.

There are a number of central government ministries and authorities that deal with land; the Minister for Land and Land Development, Land Commissioner General, Department of Land Settlement and Department of Land Use Policy Planning, but key roles are also played by both the Ministry of Economic Development and the Ministry of Defence. In addition, the military is a central actor in the Northern Province as it is both maintaining a heavy security presence while also becoming increasingly involved in administrative functions, at times even supplanting the civilian administration. As such, land is a complex policy and administrative issue involving a multitude of different actors.

A variety of powerful actors have become increasingly involved in land issues, making it extremely difficult for the de-centralised arms of government at the district level to function without deferring to higher-level actors. The processes of land alienation as well as land reclamation especially have fallen victim to the trend of continuing **politicisation** of land issues. As such, major political actors in provincial and district-level affairs with no assigned powers over land policy have become involved in the sensitive problem of competing land claims. The motives behind these activities are unclear, but could very well be the result of the manipulation of land for political or electoral gain.

The lack of transparency concerning land administration and policy has made some residents in the North uneasy about the future of their land, the security of their livelihoods, as well as the true motives behind central government decisions regarding land distribution and occupation. Given the level of complexity, as well as the strong emotionality of the theme, a greater degree of public involvement and consultation led by the civil administration is required to avoid increasing public fears and to ensure a fair and just arbitration of disputes that prevent future disagreements or charges of bias.

The general discontent and allegations of Government bias with regard to land must be understood in the broader post-war context of the North. Land has always been viewed as a political issue, especially in the North and East, and is considered a root cause of the war. Unfortunately in the post-war period, the perceptions of politicisation and **ethnisation** of land have hardened and distrust has increased among the key stakeholders. Both prior to and during the war there were allegations that a number of actors from the State, Tamil armed groups and even civil society were involved in land settlement schemes. In specific instances, there have been accusations that some of these powerful actors have been involved in land grabs that seized lands from citizens or the State for their own purposes or to re-distribute among civilians (Discussed in Chapter Eleven).

**Competing Claims and Land Appropriation:** The long history of settlement in the North coupled with a convoluted past of parallel administrative control by both the Government and armed groups means that several different actors often have competing claims to the same piece of land. To complicate the issue further, many lost their documentation during displacement and face obstacles to proving land ownership. Others purchased or sold the land without following legal procedures during times of conflict. The legacy of powerful actors including State actors and Tamil militant groups in land distribution without following legal processes has further complicated issues on the ground. Importantly, competing claims over plots of lands are not only occurring between individuals, but also between state, non-state, and religious entities. The act of deciding whose claim is more legitimate is one that has the potential to aggravate tensions between communities and shake the trust of the people in Government intentions and commitment to peace. The Land Circular is meant to address these issues and it is yet to be seen whether the initiative will be successfully implemented.

In the post-war context, certain Government actions have sparked fears over potential state-sponsored land grabs. These allegations relate to both the acquisition of land for national security and development purposes as well as for Sinhala civilians. With regard to the latter, there have been allegations by local communities of Government-sponsored 'Sinhalisation'. Some residents fear that the Government is providing preferential treatment and economic incentives, such as land, to Sinhalese populations from the South - an allegation that needs to be investigated. The cases

presented in this report also highlight the politically emotive nature of land and how various political actors are able to use land to mobilise support. Above all it underlies the importance of land for other critical processes of return and reconstruction, while also making clear the need for initiatives aimed at coexistence and confidence building.

**Militarisation:** The post-war North has seen a high level of militarisation that has had significant repercussions on land access as - two and a half years after the end of the war - a significant number of properties still remain under military occupation (Discussed in Chapter Ten). Nevertheless, since 2009, the report documents several cases where lands from HSZs have been released and returned to private land to owners. However, there still remains a very high presence of military personnel from the army, navy and air force in the North. While security concerns are paramount, questions arise as to the necessity of maintaining a large presence in the North. There are a number of possible reasons for the heavy militarisation of and restrictions on land, including the heavy presence of mines and UXOs, hidden arms stocks, and fears of militancy among the civilian population, among others. This report documents areas where the military has consolidated its presence and is building camps.

Recent policy statements made by state actors, including the President, claim that the HSZs will be removed. However, the lack of information and transparency relating to the length of occupation and the future release of lands is a fundamental problem not just for the families directly affected but also for other actors, such as government and humanitarian agencies, who are unsure as how to respond to this problem. Military occupation of land is part of a wider phenomenon of militarisation, including the military's involvement in public administration and humanitarian activities.

In addition to the trends highlighted above, there are a number of inter-related issues that both impact and are being impacted by land-related developments, which have been focused on in the report:

**Returns:** Over the past two years, the massive Government resettlement initiatives in the North have resulted in 250,000 people, or 95% of all 'official IDPs,' being allowed to return to their homes and communities. This remarkable effort should be lauded as an important step towards the normalisation and rebuilding of life in the North (Discussed in Chapter Four).

There are several key issues related to the resettlement of returnees that this report attempts to highlight. First, a number of those officially resettled still do not have access to their homes, lands or even villages and are still de facto displaced. As a result, they have limited options when it comes to access to sustainable livelihoods that depend on access to their land or to fishing waters. Secondly, there a number of other categories for IDPs who have not been included in the official government statistics, including IDPs living with host families, 'old IDPs' and refugees, who

have not been resettled. While there are questions of equity between these various populations, there are also questions as to how land claims will be addressed as these various displaced groups return and attempt to assert their rights. Thirdly, an important question that needs to be better understood regarding the needs of returnees is that of when displacement truly ends. As the report argues, there is a need to take a longer-term perspective in placing return as part of a lengthier process of the rehabilitation of war-affected communities and addressing other vulnerabilities, some of which predate the war, including landlessness and caste.

**Housing:** The provision, construction and repair of destroyed and damaged housing is a significant challenge facing the North (Discussed in Chapter Five). Even while there are a number of on-going housing projects, including the large-scale NEHRP and Indian Housing Projects, there is a short fall in terms of the required 168,130 permanent houses. Land ownership has proved to be key requirement for agencies involved in housing. Given the problems of land documentation and ownership, actors have sometimes had to rely on a letter of assurance from the DS, which raises several concerns including the legal basis of such documents. However, in the context of the Land Circular it is amply clear that this issue of ownership needs to be clarified and as such agency timelines for the completion of projects may need to be reviewed. In addition, given the model of owner-driven construction, there are issues on the ground as vulnerable families in particular are finding it difficult to build their houses with the amounts provided to them.

**Marginalised Groups:** In examining the issue of land, it is apparent that a number of marginalised groups are affected. For instance, there is a significant landless population in the North (Discussed in Chapter Six). Landlessness is not only a problem for IDPs, but for anyone who does not have full control or substantiated legal ownership of land, including those whose land is currently occupied by the military or other actors. This issue of identifying the landless and finding land for their settlement is a key challenge that needs to be addressed.

Women, and especially women-headed households, face many obstacles to owning, controlling and accessing their lands (Discussed in Chapter Seven). These challenges are only compounded by the attitudes relating to women's rights of both external actors, such as government officers and lawyers, as well as the women themselves, who may believe in conforming to traditional gender roles and thereby in censoring their own rights. There is a greater need to raise awareness among women but also to sensitise government officers, legal practitioners and others responsible for assisting women to claim their rights, including their rights related to land.

**Development:** The post-war period has seen a wide range of large-scale development initiatives in the North, including infrastructure projects under the Uthuru Wasanthaya, Wadakkinn Wasantham, or the Northern Spring programme (Discussed in Chapter Eight). Many of these projects require significant amounts of land. The current weaknesses of the Northern Spring programme include the lack of transparency regarding project funding and evaluations as well as limited community

involvement in decision-making. Additionally, concerns have been raised over the acquisition of land for these initiatives including allegations of possible land grabs. There are also concerns as to the lack of attention paid to sustainability or environmental impact mitigation plans. Economic development and the improvement of the quality of life of people in the North should be a key priority during the post-war period. However, the Government must also take care to ensure that rehabilitation addresses intra-regional disparities and implement their initiatives in a conflict-sensitive manner.

**Boundaries:** Land ownership and access are significantly affected by the demarcation of boundaries. While the report documents existing confusion and contention over district and division boundaries, it also points to the on-going or proposed initiatives that will impact boundaries and district allocations (Discussed in Chapter Nine). Given the concerns that there are ad hoc measures resulting in the shifting of boundaries, including in geographically sensitive areas, this is an issue that needs to be addressed through greater transparency and public consultation.

## **Conclusion**

While this report does not claim to detail all of the multifaceted issues that have been raised over land in the North, it does aim to provide an overview of the main problems and to stress the importance of the formation of a clear, transparent, and inclusive Government plan to resolve land issues in the North. The primary responsibility for addressing this problem falls on the Government. This report provides a list of recommendations to key stakeholders. The issues and recommendations presented demonstrate the need for policy reform and to articulate the government position regarding land issues in the North and East. The issues highlighted above all demonstrate the need for a comprehensive land policy that is formulated in a way that keeps with issues highlighted in this document. There also is a need to recognise the issues faced by the communities in the North on a daily basis including obstacles faced in fully owning and controlling their land. Therefore, while reform is needed at the policy level, issues on the ground must also be immediately addressed.

## Introduction

Land is a contentious issue in Sri Lanka. It is a common source of conflict in family disputes, and is also a recurring problem resulting in litigation. Moreover, land is of critical importance at the level of the individual, the family and even the community. It is viewed as a key component of identity, a source of financial security and a source of social status. It is also a highly sensitive and politicised issue, with successive governments and other political actors attempting to use land as a means of asserting control and power. Land is seen as one of the root causes of the ethnic conflict and the war. The struggle for territory created new political and social realities impacting the lives of thousands of people.

### Post-War Land Issues

In a post-war context, the issue of land - at least at the community level - can take on more relevance as the displaced return and individuals attempt to assert control over land they claim as a part of the larger effort towards normalisation. Beyond the war affected areas, issues such as landlessness, competing claims and acquisition of land for development and public purposes all make clear that there have to be efforts to develop a policy agenda to deal with land issue at the national level. Thus, any future land policy reform will not only have an immediate impact but could also, in the long term, define the post-conflict context in Sri Lanka.

The efforts to address the problems relating to land have been largely piecemeal. The Government has attempted to implement a circular from July 2011 that attempted to address key problems including competing claims, loss of documentation and the extension of the titling system but the process has been problematic with significant problems including limited of public information, high levels of military involvement, lack of public consultation in the design of the process but ultimately it was the attempt to use the circular to instruct government officers and the general public on private land that resulted in the Court of Appeal suspending the Public Notice. It remains to be seen how the Government will respond to this development. There are, however, other areas relating to land where there is still no coherent policy outlining the government's stand, including the establishment of a National Land Commission - as required by the Constitution under the Thirteenth Amendment - has stalled. In this policy vacuum, it is the various other policy documents, laws, circulars, statements by government actors and land-related initiatives that define government policy on land.

The context in the North has dramatically changed over the last two and a half years since the war ended. With the end of a bloody three-decade war, large areas are being demined and significant numbers of people have returned to their places of origin amidst high levels of militarisation, increased assistance and development programmes and significant political developments including a series of elections. As returnees and other war-affected communities attempt to rebuild, they have attempted to regain control over and to claim ownership to their land, while the Government has also made clear its interest in acquiring land for national security, development and other public purposes. Given the situation regarding land ownership and control in the North, especially when taking into consideration the high instances of lost documentation by owners and government offices, mass displacement and secondary occupation, landless populations, distribution of land by armed actors, and military occupation of land and involvement in land administration, land has re-surfaced as a central problem on the post-war agenda.

## **Scope of Report and Methodology**

This report profiles problems relating to land in the North, which includes the districts of Jaffna, Kilinochchi, Mannar, Mullaitivu and Vavuniya. While focusing on ground realities and developments in the five districts, the report also references land related issues in the Puttalam district regarding internally displaced persons (IDPs) originally from the North and those attempting to return to their places of origin. In addition, this report examines initiatives by the government and other stakeholders to address land in the North.

The research was carried out through interviews carried out in the five districts of the North and Colombo from January to November 2011. In addition to the two principal researchers, CPA employed field researchers to follow up specific case studies and desk researchers to monitor the media. CPA spoke to a variety of actors including Central Government figures in the relevant ministries and authorities in Colombo, provincial actors in Jaffna, district secretariat staff in the districts, DS officers and GS officers; humanitarian agency staff in Colombo and the districts; politicians including parliamentarians and local authority members; civil society actors including activists, NGO staff, religious figures, academics and lawyers; and local communities. CPA organised a consultation on 26 July 2011 in Colombo to discuss the findings of the research, which was attended by a wide cross section of stakeholders and the report include feedback received at the consultation. This report is part of more than a decade of research and advocacy undertaken by CPA focusing specifically on land in disaster contexts, both the war and tsunami.

Although the focus of this report is on the two years since the end of the war, and it concentrates on a post war context, reference is made to developments prior to the war and during the conflict period given that the history of the land is crucial for understanding the broader issues and

dynamics related to land. While the report attempts to highlight the complexities related to land issues in the North with a focus on current issues, more specific socio-political and economic research with regard to land in the North needs to be conducted. The report also recognises that the diversity of ownership in the North, from private to state land to temple land, is further complicated when there are competing claims that may change the use and identity of the land. The status of the land - whether possession is in the form of deeds, permits, grants or other forms of documentation - also has an impact.

The report sets out key areas that need further attention and highlights ongoing processes for policy change. After a three decade war, many changes have taken place where reform is needed to address present needs and grievances and avoid future disputes. The issues captured in this report demonstrates that the impact of the conflict and tsunami, multiple actors and increased politicisation, centralisation and militarisation of land, have all contributed to the confusion and may lead to disputes in the future. The Government is engaged in an-ongoing initiative to address some of the key issues relating to land in the North, the content and implications of which are discussed in this report. While welcoming moves for reform, CPA hopes such moves are done in a transparent and participatory manner, with the involvement of communities and local actors and in keeping with principles such as equity and conflict sensitivity.

The report makes a strong case for reform, but the process through which such reform is introduced and implemented also needs consideration. While advocating specific initiatives to address the land issue in the North, at the central, provincial, district and community levels, CPA continues to push for change at the national level. CPA hopes the findings in the present report will inform stakeholders and the public of the issues in the area and create a constructive dialogue on resolving land and related issues in the North.

# Chapter 1

Governance Issues related to Land

In a post-war context, a principal challenge is to ensure a fully functioning administration that is responsive to the needs of war-affected communities and recognises their rights as well as the key principles of good governance. As the Northern Province makes the transition from post-war to post-conflict it is confronted by a range of governance problems, including issues related to land. Several legal, policy and administrative issues and developments in the post-war context have relevance to land in the North. While there are a variety of actors at the national, provincial and district level that have a role to play in land issues in the North, it is clear that a select number of them are playing a predominant role in the current administration. To address problems at the policy level and on the ground, it is vital to understand the governance issues related to land, identify shortcomings and discuss alternatives. This chapter examines two key areas related to governance: Section I discusses the constitutional framework and legal issues related to land and Section II looks at the role of key actors. Descriptions of the relevant legal provisions with respect to land issues are contained in Annex I. Annex II provides more details of specific actors relevant to land in the North.

## **Constitutional and Legislative Framework**

While there have been no constitutional or legislative changes made in the post-war context directly impacting land, the subject of land has been a central component of the political debate on power sharing. Furthermore, key political actors on constitutional and legislation changes impacting on or relating to land have made various statements.

### **Constitutional Powers over Land and Devolution**

The 1978 Constitution of Sri Lanka does not contain a specific provision regarding the right to land or property. However, the Constitution does contain other provisions in its Fundamental Rights chapter that relate to land issues including the guarantee of equality before the law, freedom of movement, choice of residence and other rights.<sup>1</sup> Further, the Directive Principles of State Policy advocates several issues including housing.<sup>2</sup> Thus, it can be inferred that the Constitution provides for a right not to be arbitrarily denied the right to land, housing and property.

In addition to this, the Thirteenth Amendment to the Constitution has a component on land. The Thirteenth Amendment was introduced to devolve certain powers to provincial councils. The

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<sup>1</sup> Articles 12 and 14 (1) (h)

<sup>2</sup> Article 27 (2) (c)

following land powers are reserved for the provincial councils: rights over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement.<sup>3</sup> However, all state land remains the property of the central government, thus the alienation of state land is done under the seal of the President on the advice of the relevant provincial council. Regardless of changes to the role of the central government regarding land in the provinces, the central government continues to play a key role in this area. It retains the power to override decisions of the provincial councils as all projects involving several provincial councils fall within the purview of the central government<sup>4</sup> and exercises financial control over provinces.<sup>5</sup>

The Thirteenth Amendment provides a framework for land policy but it has not been fully implemented. The Amendment determines that where the distribution of allotments of State land occurs, it should be undertaken on the basis of national ethnic ratios.<sup>6</sup> In the North - an area that is predominantly Tamil - this could be interpreted to mean that the Sinhalese maybe in a favourable position if and when state land is distributed.<sup>7</sup> However, the Amendment also specifies that such allocation should not upset demographic patterns or communal cohesiveness. Furthermore, under the Constitution 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 immediate area, and finally to the landless of the Province.<sup>8</sup> This report documents several cases where if due steps are not taken in providing land there maybe disputes and grievances in the future.

Furthermore, the Thirteenth Amendment provides for the establishment of a National Land Commission (NLC) that is responsible for formulating National Land Policy for state land.<sup>9</sup> However, to date, no NLC has been formed and as a result Sri Lanka has neither a mechanism to formulate a comprehensive national policy on land nor has it developed such a policy through alternative means. At present policy formulation related to land is conducted in Colombo, including policy decisions regarding land in the Northern Province. For example, as discussed in this report, actors in Colombo have spearheaded the Cabinet Memorandum and the Land Circular, which

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<sup>3</sup> Provincial Council List, Ninth Schedule, Thirteenth Amendment to the Constitution.

<sup>4</sup> For example, the Mahaweli Development Scheme is within the central government. The Mahaweli Development Scheme and its focus on the North is discussed later in this report

<sup>5</sup> Centre for Policy Alternatives, Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions 2008-2010

<sup>6</sup> Appendix II - Land and Land Settlement, Thirteenth Amendment to the Constitution

<sup>7</sup> This is an important aspect to monitor in light of the most recent Land Circular and other initiatives that may lead to alienation of state land in the Northern Province.

<sup>8</sup> Appendix II - Land and Land Settlement, Thirteenth Amendment to the Constitution

<sup>9</sup> Appendix II - Land and Land Settlement, Thirteenth Amendment to the Constitution

impact the Northern and Eastern Provinces.<sup>10</sup> It is extremely important that the NLC is established as soon as possible to ensure that the mandated authority conducts policy formulation relating to land. If the NLC is established, it is important that it functions in a transparent, participatory and inclusive manner to ensure that local stakeholders are consulted in the process. It is also important that the members of the NLC are not political appointees.

The Northern Province forms one provincial unit following the de-merger of the North and East in 2006. However, as of 30 November 2011 no date has been announced by the Government for the holding of provincial council elections in the Northern Province even though a series of other elections have been carried out in the province since the end of the war.<sup>11</sup> A provincial council consists of a Chief Minister, Board of Ministers and the Governor. Given that the provincial council in the North is yet to be formed, there is no Chief Minister or Board of Ministers. Thus, the elected component of the executive arm of the Northern Province does not exist, and only the Governor (appointed by the President) in addition to the provincial administrative services function at present. Given that an elected provincial council together with the elected executive in the form of the Chief Minister and Board of Ministers is crucial to the exercise of devolved legislative and executive powers in the Northern Province,<sup>12</sup> the impact of the failure to elect a Northern Provincial Council cannot be overstated. As noted elsewhere in this Report, there are many aspects of land and related issues that need reform and direction at the provincial level and it is recommended that a fully functioning Northern Provincial Council is elected as soon as possible.<sup>13</sup>

Furthermore, the provincial council, as the legislative body, has other important functions to fulfill. For example, it has a role to play in the process of constitutional change. The Constitution provides that where a constitutional change affects the provinces, the provinces must be afforded an opportunity to express their views on any proposed amendments.<sup>14</sup> The process of considering constitutional amendments should be a legislative function that should only be performed by an

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<sup>10</sup> Discussed in detail in Chapter Three

<sup>11</sup> Presidential and Parliamentary elections were held island wide in January and April 2010 respectively. Local government elections in Jaffna and Vavuniya were held in 2009. Local council elections were held in parts of Vavuniya, Mannar and Mulaitivu in March and July 2011. Local council elections in parts of Mulaitivu District have been postponed and no date was set for these elections at the time of writing. Statements by government promises to have elections in the Northern Province soon and recent media reports indicate that elections are likely to be held in 2012. Mandana Ismail Abeywickrema, "Minister Devananda to contest as CM candidate"; *The Sunday Leader*, 30 October 2011

<sup>12</sup> For more details refer to Centre for Policy Alternatives, *Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions 2008-2010*

<sup>13</sup> A date for elections should be called taking on board the humanitarian and security situation in the area, ensuring an independent assessment is done whether it is feasible to hold elections and ensure all registered electors are able to vote in a free and fair election.

<sup>14</sup> Constitution of Sri Lanka, Article 154G (2), as amended by the Thirteenth Amendment.

elected legislative body. Therefore, it can be interpreted that the Governor should not have the power to consider constitutional amendments in the absence of an elected provincial council. In relation to the North, there are concerns that the delay in holding the Provincial Council elections in the area is largely political. In the absence of an elected Northern Provincial Council, there is no possibility of any obstacles being raised by the province regarding any proposed constitutional amendments. As discussed below, with the Governor as an agent of and loyal to the Executive in terms of the Thirteenth Amendment, there is very limited or no opposition from the existing provincial actors in the North regarding any decisions and activities affecting the area.<sup>15</sup>

In the absence of an elected Northern Provincial Council, the Governor plays a key role in the province. The Governor is appointed by the President, usually for a period of five years and can be dismissed by the President at any point. The Governor has broad powers including administrative, executive and special powers at times of emergency. The Governor for the Northern Province at present is a retired military official, Major General G.A. Chandrasiri, who previously served as the army commander of Jaffna. While the appointment of retired military officials is not a new phenomenon and has been seen in other geographic areas and positions,<sup>16</sup> it does highlight a disturbing trend of the militarisation of administration. In the North, in addition to the powers provided under the Constitution, the Governor also plays an active role in day-to-day functions. He is co-chair of the District Coordinating Committees (DCC), a body that discusses and approves all projects for the specific districts within the Northern Province (Districts of Jaffna, Kilinochchi, Mannar, Mullaitivu and Vavuniya).<sup>17</sup> Further, the Governor is also kept informed of all projects that are approved by the Presidential Task Force (PTF). Although the government has made several statements indicating intent to hold Northern Provincial Council elections, there are no signs of this happening in the immediate future. In such a situation, politicians, political appointees and the military influence projects and programming implemented in the North with the central government playing a pivotal role. This is the case although there is a functioning Northern Provincial Council administration headed by a chief secretary. Further, CPA was informed that a meeting with the Northern Provincial Land Commissioner need to first be approved by the Governor's office which serves to indicate the level of control the current Governor and through him the Central Government is seeking to maintain in the North.<sup>18</sup>

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<sup>15</sup> Centre for Policy Alternatives, Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions 2008-2010

<sup>16</sup> For example, the Governor for the Eastern Province and the GA for Trincomalee District are both retired military officials. For more information, read Centre for Policy Alternatives, Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions 2008-2010

<sup>17</sup> Meeting with government official in Jaffna, 24 June 2011

<sup>18</sup> CPA interviews with government official, May 2011 and with humanitarian agency, October 2011

It is important to note that even if a provincial council was established in the North, there are criticisms regarding the overall structure of the devolution arrangement and its implementation in Sri Lanka.<sup>19</sup> The fate of the Eastern Provincial Council offers a model to assess the success of the PC system under the current administration. In addition to the Government's failure to provide key powers and clarify the overlap between the centre and the PCs, it has also raised questions over and delayed granting approval for statutes and appointments, and providing funds.<sup>20</sup> When considered broadly these relate to the Centre's lack of bona fide efforts to devolve power to provincial units and over the technical aspects of the Thirteenth Amendment. With respect to the latter category of criticisms they relate to the shortcomings in the scheme that limit the ability of the provincial councils to govern their own affairs. In particular, despite the devolution of power, the Centre retains significant authority to assume any or all administrative powers of a Province. The President has gone on record to state that he is not willing to grant land and police powers to the provincial council and there are reports that the Government may introduce new legislation in order to amend the Thirteenth Amendment accordingly.<sup>21</sup> Given the importance of a political solution to a sustainable peace, such a move by the Government would only further undermine confidence and trust in the Government's commitment and willingness to address this issue. The failure of the Government to put forward a proposal and its suggestion of setting up a Parliamentary Select Committee to look into the issue raises serious questions as to whether the Government is attempting to use dilatory tactics and has no interest in finding a solution. The Government's failure to implement existing provisions of the Constitution with regard to devolution only exacerbates this concern. Beyond the problems relating to the current administration's unwillingness to fully implement the Thirteenth Amendment, it is also apparent that there are issues with the Amendment and the relevant law itself. The need to go beyond the Thirteenth Amendment or a 'Thirteenth Amendment Plus' has been repeatedly mooted, including in the All Party Representative Conference, with a clearer distinction in terms of the separation of powers between the Centre and the PCs.<sup>22</sup>

## **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. There

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<sup>19</sup> Bhavani Fonseka and Mirak Raheem, *Land in the Eastern Province: Politics, Policy and Conflict*, CPA, May 2010.

<sup>20</sup> Centre for Policy Alternatives, *Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions 2008-2010*

<sup>21</sup> "No Police, Land Powers to PCs", *The Sunday Times*, 12 June 2011,

<sup>22</sup> R. Yogarajan & N. Kariapper (ed.); "Proposals made by the All Party Representatives Committee to form the basis of a new constitution", 19 July 2010

are several laws that are relevant to both state and private lands. With regard to some of these laws, amendments are required in order to deal with specific problems highlighted in Annex I. 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. Tesawalamai, which is applicable to persons originating from Jaffna,<sup>23</sup> and other laws are discussed in greater detail in Annex I. Reform of customary law has also been proposed although no draft amendments have been made public.

## Actors

There are a multitude of actors involved in and influencing land administration in the North. There are line ministries and statutory bodies whose powers are set out by a legislative framework - some having worked under successive governments while there are others who are more recent and established in response to a particular event or policy direction. For example, several bodies were established post-tsunami to look at and respond to the situation created by the tsunami<sup>24</sup> and similarly the PTF was created in 2009 to handle humanitarian and development issues in the North.

Among the key trends relating to governance, one of the most dominant is that of centralisation. As discussed above, the provisions of the Thirteenth Amendment and the non-implementation of certain provisions has meant that there is greater room for the central government to play a key role in land administration and control. Actors in the central government play a prominent role in land policy, administration and decision-making. For example, in the absence of the establishment of the NLC as provided in the Thirteenth Amendment, central government actors such as the Land Ministry take the lead in policy related issues. For instance, the recent Memo and Land Circular on land issues for the North and East have been prepared by the Land Ministry and departments within its purview. The centralisation of land issues is not limited to line ministries and departments. The Executive wields significant power and control over the Northern Province and issues of return, resettlement, development and land.

**Presidential Task Force:** A key actor that has emerged in the post-war context is the PTF, which is undoubtedly the most important body with regard to policy making and project approval in the North. In May 2009, the President appointed a nineteen member PTF for Northern Development. Among the nineteen members of the PTF are the Minister for Economic Development, Basil Rajapaksa, who serves as Chairman of the PTF; Defence Secretary, Gotabaya Rajapaksa; the

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<sup>23</sup> For more information, refer to: Dr. H.W. Tambiah, *The Laws and Customs of The Tamils of Jaffna*, WERC, 2009.

<sup>24</sup> Discussed in "Memorandum prepared by Centre for Policy Alternatives (CPA) on Land Issues Arising from the Ethnic Conflict and the Tsunami Disaster", CPA, 2005

Army Commander; and the Northern Province Governor (who is also a former military actor).<sup>25</sup> It has a mandate to prepare the strategic plans, programmes for resettlement of internally displaced persons, economic development and social infrastructure of the Northern Province.<sup>26</sup> All activities in the North need PTF approval, which was confirmed by all government officials and agencies working in the North.<sup>27</sup>

A body that is meant to have broad powers needs to be gazetted or enacted by the legislature. The PTF has broad powers over the North and is considered the primary actor in formulating policy, circulars and regulations regarding activities in the North, and therefore should be established by legislation to have legal authority. However there is no public information available about whether or not the PTF has been gazetted. Thus, the legal basis for the establishment and powers of the PTF are unclear. Further, there appears to be no limit to the matters that fall within its purview. Most local actors like the Government Agent, Divisional Secretaries and Grama Sevakas claim that most decisions concerning all matters in the North are made in Colombo by the PTF.<sup>28</sup> Humanitarian agencies, NGOs and other civil society actors claim that the previous practise of obtaining approval from Government Agents has been replaced with instructions to get approval from the PTF with the district actors playing a secondary role.<sup>29</sup> The prescribed process has been criticised as extremely rigid, where even the most minor amendment to a project requires new approval. For example, an agency that had received approval to build ten toilets in a village was told that they would require fresh approval if they were to build even one additional toilet.<sup>30</sup> The process for obtaining approval can be time consuming, ad hoc and lacks transparency. Further, the PTF also requires local non-state actors to provide progress reports on their current projects. This consumes significant resources, as these reports must be submitted in a prescribed manner using statutory language. These reports cannot contain certain key words like “policy alternatives,

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<sup>25</sup> At the time of writing information publicly available showed the other actors to include Secretary to the President, Ministry of Finance and Planning Secretary, Ministry of Resettlement and Disaster Relief Services Secretary, Ministry of Nation Building and Estate Infrastructure Development Secretary, Ministry of Highways and Road Development Secretary, Ministry of Power and Energy Secretary, Ministry of Land and Land Development Secretary, Ministry of Health Care and Nutrition Secretary, Defence Chief Staff Air Chief, Navy Commander, Air Force Commander Air Marshall, Inspector General of Police, Director General\Department of Civil Defence, Chief of Staff of the Sri Lanka Army\Competent Authority for the Northern Province, Former Director General\National Planning Dept. There are no women appointed to the PTF.

<sup>26</sup> Ministry of External Affairs Sri Lanka, Presidential Task Force on Northern Development, [http://www.slmfa.gov.lk/index.php?option=com\\_content&task=view&id=1730&Itemid=1](http://www.slmfa.gov.lk/index.php?option=com_content&task=view&id=1730&Itemid=1), 18 January 2011.

<sup>27</sup> Interviews conducted in the areas, January - June 2011

<sup>28</sup> Interviews in the North, January- July 2011. Also refer to- Bhavani Fonseka, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, (2010) p11.

<sup>29</sup> Bhavani Fonseka, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, (2010) p.11.

<sup>30</sup> Bhavani Fonseka, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, (2010) p.12.

gender, rights...”<sup>31</sup> While the PTF has justified these additional processes as necessary in order to avoid mistakes from the past, to ensure effective monitoring of projects and to prevent duplication, the added bureaucracy has made it more difficult for non-state actors to operate in the North, not only in terms of day-to-day operations but also to plan for long term projects. In addition, securing approval for a particular project identified as ‘soft ware’ such as empowerment and psycho-social care has been difficult for most actors unless there is a ‘hard ware’ component or the payment of salaries for government staff is involved.

In July 2010, a majority of agencies assisting with returns and livelihood work were refused access to the Vanni without being provided with any explanations.<sup>32</sup> In a similar ad hoc manner, many agencies were informed this year that certain requirements to work in the North will be relaxed to ensure an easier work environment in the areas, including the de-centralisation of approval for projects from the PTF to District Secretaries.<sup>33</sup> Decisions by the PTF have a significant impact on humanitarian and rehabilitation work in the North, either enabling agencies to work or shutting off their access to areas and communities. In most of these decisions there is no rationale given and there is limited scope for appealing a decision of the PTF. For instance, many international humanitarian agencies were unable to secure permission to set up office in Kilinochchi and Mullaitivu or their requests delayed, which has meant that agencies have had to waste time driving up from Vavuniya in order to execute and oversee projects in Kilinochchi and Mullaitivu. The role of the PTF raises significant issues with respect to transparency, accountability and centralisation of power, as well as the undermining of local decision-making bodies.

**Ministries and Departments:** There are a host of ministries that are responsible for administering important land related issues at the national level. A key actor is the Minister for Lands and Land Development. The Minister for Lands and Land Development has power over the Land Commissioner General, Department of Land Settlement and Department of Land Use Policy Planning to name a few. Some of these actors play a key role in the new policy direction the government is taking with land issues in the North and East including with the Land Circular discussed in this report and other regulations.

The Mahaweli Authority is an important actor in the Central Government with a wide reach over land and development in Sri Lanka and through its System L has a presence in the North.<sup>34</sup> The Mahaweli Authority of Sri Lanka Act No 23 of 1979 provides broad power to the Minister in charge

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<sup>31</sup> Information gathered in discussion with humanitarian agencies in July 2010

<sup>32</sup> Bhavani Fonseka, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, (2010) p12.

<sup>33</sup> Interview with humanitarian agencies, June and July 2011

<sup>34</sup> The Mahaweli Master Plan was introduced in 1968 and the Accelerated Plan introduced in 1977. The principal stream in system L is Ma Oya and according the Mahaweli Authority this area also has a large number of non-operational small tanks.

to formulate new regulations and take over new bodies of water for development after the approval by the President.<sup>35</sup> This report documents the relevance of the Mahaweli Authority and its broad powers in relation to land in the North that may impact ownership and control, lead to possible competing claims and exacerbate concerns of possible land grabs and allegations of 'sinhalisation'. System L covers a gross area of 163.393 hectares and includes the Padaviya scheme, Weli Oya programme and other areas.<sup>36</sup> The Padaviya scheme and Weli Oya programmes are most relevant to this study. It covers four administrative districts of Anuradhapura, Mullaitivu, Trincomalee and Vavuniya. According to reports, this area was given by the Land Commissioner's Department to the Mahaweli Authority and was designated as a 'special area' in March 1988.<sup>37</sup> In 2007, more areas in border villages around this area were brought under the Mahaweli Authority.<sup>38</sup> CPA was informed that since 1992 both Colombo and Padaviya DS<sup>39</sup> administered this area and System L.

In addition to these actors, the Minister of Defence and Urban Development, the Minister of Finance and Minister for Economic Development exercise a host of other important government functions that affect land rights. The Minister of Defence and Urban Development is responsible for the Sri Lankan Army, Navy and Air force as well as the Department of Registration of Persons, Department of Police, Urban Development Authority and Department of Coast Conservation.<sup>40</sup> The Northern Province was the main theatre for Sri Lanka's civil war and the armed forces continue to maintain a high presence in the Province. As a result, the minister responsible for the armed forces has a high degree of control over the general affairs of the Province. Currently the President has assigned to himself the portfolio for the Ministry of Defence. His brother, Gotabaya Rajapaksa, is the Secretary to the Ministry of Defence. The Minister of Finance also exercises a host of powers over key national institutions that affect land rights, including the Treasury, the Department of National Planning, the Department of Fiscal Policy, Department of National Budget, Department of Public Finance, Department of Inland Revenue and Department of Legal Affairs.<sup>41</sup> The President has also assigned to himself the Ministry of Finance. Further, the Minister for Economic

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<sup>35</sup> Section 3

<sup>36</sup> <http://www.mahaweli.gov.lk>, as at 1 July 2011. There are two stages that are relevant for System L. Stage I of the Moragahakanda project includes System I, IH, MH, which includes parts of the North. Stage II will only commence upon completion of Stage I, and Stage II is to include system I, J, K, L and M. Government officials felt that if funds are allocated stage II can commence in 2015.

<sup>37</sup> Gazette No. 06 (Act No. 23 of 1979 – Mahaweli Authority Act), 28 March 1988

<sup>38</sup> Gazette No. 1487/32 (Act No. 23 of 1979 – Mahaweli Authority Act), 9 March 2007

<sup>39</sup> Interview with government official, 6 July 2011

<sup>40</sup> For more information refer to- <http://www.defence.lk/mid.asp?fname=aboutus>

<sup>41</sup> [http://www.priu.gov.lk/Ministries\\_2010/subjects\\_functions\\_institutions.pdf](http://www.priu.gov.lk/Ministries_2010/subjects_functions_institutions.pdf)

Development has broad powers from tourism, the economy, regional and national development to conservation of flora and fauna.<sup>42</sup> The President's brother Basil Rajapaksa is the Minister for Economic Development.

Thus, power is concentrated in the hands of few key individuals who control much of the important government functions and most of the funds that impact on land rights of citizens. This situation is compounded by Sri Lanka's broader constitutional arrangements which serve to reinforce the concentration of power in the hands of a few and, in particular, the office of the President. For example under the Eighteenth Amendment to the Constitution, the President has complete control over all key appointments to the public service, including the Human Rights Commission, Attorney General, all Judges of the Supreme Court and Court of Appeal.<sup>43</sup>

## **Military**

During the last thirty-year period, military actors (both state and non-state) not only had a high presence but also significant powers over a variety of issues in areas that they controlled and influenced in the province. The military's use of violence, including allegedly against civilian targets and involvement in protecting the land rights of Sinhalese communities during the course of the war in particular, has meant that it is not perceived to be a neutral actor. Two and a half years after the conclusion of the war, the military continues to have a high presence that shows no signs of decreasing despite repeated statements assuring the public that the military presence will diminish gradually.<sup>44</sup> To date, very little to no action has been taken to effect these statements and in fact it appears that the military is consolidating its presence, including by constructing new bases.<sup>45</sup> Thus the military's move to acquire new land and further expand their presence has resulted in a situation where individuals are returning to find their lands occupied by the military. As noted above, the Ministry of Defence is also assuming additional tasks in the post-war context at the national level.

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<sup>42</sup> [http://www.priu.gov.lk/Ministries\\_2010/subjects\\_functions\\_institutions.pdf](http://www.priu.gov.lk/Ministries_2010/subjects_functions_institutions.pdf)

<sup>43</sup> The Eighteenth Amendment to the Constitution: Substance and Process; Rohan Edrisinha & Aruni Jayakody (ed.), CPA 2011

<sup>44</sup> See for example, Shanika Sriyananda, 'SL Army gears for 'peace time ops'', Sunday Observer, 10 October 2010 <<http://www.sundayobserver.lk/2010/10/10/fea02.asp>> accessed 22 April 2011; Sunday Island, 'Emergency Over in two or three months: Gota', Sunday Island, 27 November 2010 <[http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=12273](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=12273)> accessed 22 April 2011; Daily Mirror, 'Phased out Army Withdrawal', Daily Mirror, 30 April 2010 <[http://www.dailymirror.lk/index.php?option=%20com\\_content&%20task%20=view&id=3439&Itemid=425](http://www.dailymirror.lk/index.php?option=%20com_content&%20task%20=view&id=3439&Itemid=425)> accessed 22 April 2011.

<sup>45</sup> Discussed in detail in Chapter Ten

While the police presence has been increased it is the military that plays a dominant role in terms of security. It continues to perform security and identity checks in most parts of the Northern Province. In the Vanni in particular, it is not unusual for most villages to have some military presence. Even while there have been gradual reductions at least in terms of a visible presence along the A9, the military retains a heavy presence in the region. In addition, the military continues to manage entry and exit into the Vanni, with the two checkpoints at Elephant Pass in the North and Omanthai in the South so as to register and monitor movement. In fact in 2010, the MOD introduced a requirement whereby foreign nationals who wanted to enter the Northern Province had to register and gain prior approval from the MOD.<sup>46</sup> Recent reports indicate that that particular restriction has been relaxed but many who were interviewed were uncertain for how long this would remain.<sup>47</sup>

Further, though the continuing extensive military presence in the Northern Province has been justified on the grounds of national security, there have been serious concerns regarding human security as well as law and order in the province. During December 2010 - January 2011, Jaffna experienced a sharp increase in killings and abductions, which demonstrated a breakdown of law and order.<sup>48</sup> This issue was also raised in parliament by the TNA.<sup>49</sup> The involvement of military personnel in the breaking up of a TNA meeting and attempted assault of the TNA MPs in June 2011 also raises serious questions as to the role of the military. In addition, there have also been questionable processes introduced by the military such as the registration of civilians in parts of the North. This was to have been carried out since early 2011 and was challenged by the TNA in March 2011.<sup>50</sup> Although the State gave an undertaking that this practice is to be immediately suspended, locals report that the practice is ongoing in certain areas in the North in an ad hoc manner.

It also needs to be recognised that the military has taken up an administrative role. In addition to the Ministry of Defence playing a role with approval for humanitarian agencies, it appears that the military is trying to expand its role. For instance, in early 2011 humanitarian agencies in the Vanni

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<sup>46</sup> "UK says Lanka now safe", Daily Mirror, 30 July 2010

<sup>47</sup> Interview with humanitarian actors, July 2011

<sup>48</sup> Interview with local actors, January-February 2011; Kelum Bandara & Yohan Perera, "Fear Psychosis in Jaffna: EPDP", Daily Mirror, 5 January 2011

<sup>49</sup> Groundviews, 'Video: Parliamentary debate on deterioration of human security in the North of Sri Lanka', Groundviews, 21 January 2011 <<http://groundviews.org/2011/01/21/video-parliamentary-debate-on-deterioration-of-human-security-in-the-north-of-sri-lanka/>> accessed 23 April 2011.

<sup>50</sup> S. S. Janagan, Sri Lanka: AG gives undertaking to stop forthwith the forced registration of residents by Army in the North, Asian Tribune, 03 March 2011

were requested to submit beneficiary lists for approval by the military.<sup>51</sup> Even while this was verbally denied by the PTF, CPA was informed that at a meeting in Mullaitivu, one PTF official informed a group of government officers and humanitarian agencies that, “the military is the civilian administration.”<sup>52</sup> As pointed out in other chapters, the military is and will be involved in a variety of issues, including their proposed role as set out in the Land Circular. (Discussed in Chapter Three)

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<sup>51</sup> Interview with humanitarian agencies, July 2011

<sup>52</sup> Interview with humanitarian agencies, June 2011

## Non-State Actors

One of the most significant changes with regard to non-state actors over the last few years was the defeat of the LTTE. When the Government and the LTTE signed the ceasefire agreement in February 2002, the LTTE controlled roughly half of the North, an area referred to as the Vanni. Having set up a nascent state in the Vanni, the LTTE established institutions including a judicial system, police force and departments to carry out specific duties, while allowing the government administration to run in parallel. In addition to areas it directly controlled, the LTTE also influenced governance in areas dominated by the Government in the North and East. With the military defeat of the LTTE in May 2009 and the Government's re-establishment of its control over the entirety of the North, there are no longer two competing administrations.

However, with regard to land as well as with other areas, the LTTE has left a deep legacy. Concerning land administration, the LTTE implemented its own policies including providing land for the landless, seizing land and properties for its own use or for individuals selected by it, establishing settlements for Maveera families<sup>53</sup>, providing three month long 'LTTE permits,' creating forest reserves and declaring particular areas as restricted zones.<sup>54</sup> The LTTE was also involved in the use of violence and intimidation, including against civilians, which resulted in mass displacement and evacuation from lands and land sales. As discussed in Chapter Eleven, such practices are now creating problems especially when original owners are returning to claim their land and complicating land claims and disputes.

In addition to the LTTE, there were a number of other armed political groups some of whom continue to play a limited but influential role in land issues. Tamil groups such as EPDP, PLOTE and TELO that initially fought against the State were later able to establish themselves in government-controlled areas particularly from the 1990s onwards allied to most governments and operating as paramilitaries, and at the local level were able to influence policy and administration including on land. In Vavuniya, a number of these groups including PLOTE, TELO and Sri TELO 'gave' State land to their supporters and others, including in the post-war context (Discussed in Chapter Eight). While the influence of many of these groups has waned, there continue to be accusations that they are involved in human rights abuses and in attempting to influence district administration, including distributing state land in Vavuniya in the post-war context.<sup>55</sup>

Both during the war and after its conclusion, a significant sector - in terms of the assistance programmes - has been the humanitarian sector. Made up of organisations that include

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<sup>53</sup> Maveera families are identified as families who had a special status within the LTTE

<sup>54</sup> Interviews with civil society and humanitarian agencies working in the North, January-July 2011

<sup>55</sup> CPA interviews with humanitarian agencies, civil society and others in Vavunia, June-July 2011

international, national and local level organisations, this sector has played a dominant role with regard to providing assistance to the displaced and returnees, including with the provision of rations, non-food relief items, transitional shelters and livelihood support. In terms of contributions, this sector could claim to have provided a substantive proportion of aid. Even though it has worked with and through the Government, this sector faces a variety of challenges as a result of government restrictions, including refusal or delays in approving projects, almost blanket refusal to approve projects regarding protection and awareness raising activities, the non-provision or delays in granting visas to expatriate staff, and the multiple forms required for approving and reporting on projects. While the sector's impact in terms of land is more indirect, it has a direct role in particular activities, including the provision of permanent housing, awareness of land rights and legal assistance for land owners and users seeking to claim their rights. Hence, in the post-war context, those in this sector need to be more cognisant of land issues and laws so as to avoid exacerbating existing problems on the ground.

The Government's overarching focus for the Northern Province is centered round economic development (Discussed in detail in Chapter Eight). As a result, corporate actors have an increasing presence in the Northern Province. Examples of private sector actors in the Northern Province range from resource companies seeking to discover oil in the Mannar basin<sup>56</sup> and development of large luxury hotels.<sup>57</sup> Their presence and business activities can have a direct impact on the land rights of local residents. For example, with development, land maybe acquired and those occupying and owning land maybe dispossessed with no proper information or compensation. It is more important than ever that administrative actors operate in an efficient and ethical manner, following due procedure by ensuring that individual and community rights to land are not adversely affected by corporate actors. To date, there has been limited information on clearance and approval processes associated with development activities. There have been reports, for example, of failure to gain environmental approval prior to commencing new business initiatives and of illegal land acquisition processes.<sup>58</sup>

## **District and Local Actors**

At the district level, various land related key actors perform administrative functions. The District Secretary or Government agent is a key player in terms of the administrative services,

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<sup>56</sup> Sandun A Jayasekara, 'Indian company to drill for oil in Mannar', Daily Mirror, 14 September 2010, pA4.

<sup>57</sup> Sunimalee Dias, 'Jaffna to reject state holiday plans', Sunday Times, 17 April 2011 <<http://sundaytimes.lk/110417/BusinessTimes/bt02.html>> accessed 26 April 2011.

<sup>58</sup> Interview with officials and agencies in the North- January- June 2011

implementing and coordinating various activities in the district. In addition there are District Coordinating Committees (DCCs)<sup>59</sup> tasked with overseeing and approving projects for the district, which are jointly chaired by the Governor and a Government Minister from the area. As of July 2011, Jaffna and Kilinochchi had a joint DCC but there are requests for separate meetings.<sup>60</sup> The concept of DCCs comes under the Regional Development programme of the Ministry of Economic Development. Their main goal is to achieve National Economic Development. The District Development Committees (DDCs) fall within the DCC.

Divisional Secretaries play a key role in land administration at the local level. The Divisional Secretary's Division can now exercise powers that were formally vested in the Government Agent, Assistant Government Agent, and Additional Government Agents.<sup>61</sup> While this move can be seen as a positive measure towards de-centralisation and improving government services, the design of Divisional Secretaries (DS) has been criticised as an attempt to 'claw back' devolution by the centre.<sup>62</sup> The DS function as an extension of presidential power and at times their functions replicate competencies of the provinces. Yet they are not answerable to the provincial councils.<sup>63</sup> In the Northern Province, there was a unique situation. Sixteen assistant government agents were not upgraded to divisional secretaries, which effectively meant that these actors could not authorise their powers, including on land. Finally, in April 2011, cabinet approval was granted for this upgrading process to go ahead.<sup>64</sup>

Another local actor that functions along the side of DS is the local authority. There are three types of local authorities functioning in the North: municipal councils, urban councils and pradeshiya sabhas. Elections for these authorities are being staggered and those for Puthukuduyoruppu and Maritime Pattu Pradeshiya Sabhas have been delayed due to these areas not been resettled as yet. From those that were polled, the vast majority of the authorities polled in the North were won by the TNA and the remainder by the UPFA.<sup>65</sup> While the re-establishment of local authorities is to be welcomed, there is cynicism as to whether they will be provided the space to engage in

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<sup>59</sup> The DCCs are set up under the circular HA/DG/D/DP of the Ministry of Public Administration in 1996 so as to coordinate development programmes at the district level.

<sup>60</sup> CPA interview with government officials in the North, June 2011

<sup>61</sup> Transfer of Powers (Divisional Secretaries) 1992, Section 4

<sup>62</sup> Centre for Policy Alternatives, Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions 2008-2010, p47.

<sup>63</sup> Ibid.

<sup>64</sup> Sandun A Jayasekara, 'Northern agas upgraded to DSs', Daily Mirror, 8 April 2011. The upgrade was made by a decision of the Cabinet for the purposes of improving service delivery to local residents.

<sup>65</sup> Twenty four local authorities were won by the TNA and six by the UPFA in the North in elections held in July 2009, March 2011 and July 2011 (Department of Elections, [www.slections.gov.lk](http://www.slections.gov.lk))

decision-making and oversight roles. Despite the efforts at decentralisation, the Government has been careful to ensure that the Centre retains tight control of duties and projects that could be handled by local authorities. In particular, with reform of local authorities taking place amidst wider conversations about devolution and the implementation of the Thirteenth Amendment, it has been suggested that, perhaps the Government will attempt to pass off increased decentralisation, including establishing Jana Sabhas, as an alternative solution to off-set the demands for greater devolution.<sup>66</sup>

The role of the relevant Ministers and Members of Parliament (MPs) needs to be highlighted in this regard. While the influence of opposition MPs is limited apart from raising key issues on land in the media, in Parliament and with other key stakeholders, including the Government, ministers can play an important role. The two most prominent ministers from the North are Minister for Traditional Industries and Small Enterprise Development, Douglas Devananda representing the Jaffna electorate and Minister for Industry and Commerce, Rishard Badurdeen, who are also co-chairs of their respective DCCs. There are reports that both ministers have significant influence over the district administration and also certain development projects in Jaffna and Mannar districts respectively. It has become 'accepted practice' for MPs from the governing coalition to be invited for all openings of projects and major distribution of items, which has also resulted in increased politicisation of humanitarian activities.

## **Need for Reform**

This report documents the relevant legal, policy and administrative framework available for land and related issues in the North. They are both part of the solution and the problem. It is important to understand the framework provided by the Constitution, laws and what happens in practise. This chapter maps out several trends in relation to land in the North including the centralisation, politicisation and militarisation of decision-making. These trends further undermine hope for devolution and the possibility of empowering civilian administration. Recent statements by the President and government actors regarding the Thirteenth Amendment, political settlement and the most recent proposal to implement another Parliament Select Committee raises concerns about whether the government is genuinely interested in full devolution as a first and necessary step in addressing the problems in the areas. These and other statements and actions related to land in the North paint a bleak picture of any change or reform to provide for the possibility of providing greater rights and freedoms to the people in the area.

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<sup>66</sup> Bhavani Fonseka, Mirak Raheem and Supipi Jayawardena, *A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill*, October 2010.

## Recommendations

- The Thirteenth Amendment to the Constitution should be fully implemented, ensuring that land is devolved to the Provincial Councils and the NLC is established.
- The Government should make public the plans for any reform regarding devolved subjects as provided by the Thirteenth Amendment and provide clear reasons for any changes. Land policy devised and implemented by the Central Government should be in keeping with the provision of the Thirteenth Amendment.
- Elections for the Northern Provincial Council and remaining local authorities in the North should be conducted as soon as possible, while taking on board ongoing resettlement drives in the area and security issues.
- Legislation that is archaic and fails to recognise the impact of the war should be amended such as the Prescription Ordinance.
- New legislation such as a law to establish special mediation boards and amendments to existing legislation should be done in a transparent and inclusive manner, providing information to local actors and affected communities. The same should apply to government policies including circulars and regulations.
- Make public the legal basis for the creation of the PTF, providing clarity on its functions and role in the post war context. Further, the Government should make clear whether there is a sun set clause pertaining to the PTF.
- Issues related to land should be in the domain of the civilian administration.
- The capacity of local authorities in the North needs to be strengthened, especially given that some of these authorities have not functioned for decades during the war.
- Demilitarisation should take place where the military hands over civilian administration activities to the police, local government and civilian administration.

# Chapter 2

Importance and Implications of Land Ownership and Control  
in the North

The full enjoyment of land necessitates the critical elements of ownership and control. Ownership is the best method of securing the possession of land, but ownership alone does not absolutely guarantee the complete possession and ability to use the land. Complimentary to the provision of ownership is the control over land, which ensures that a person can use and manage their land to the fullest. This means the ability to access and occupy the land, and be able to rent, lease or sell if needed. Particularly in conflict and post-war settings, these two elements may be absent or exclusive of one another. For example, one may own the land but not be able to control or use it, if the land is located within a restrictive high security zone that prohibits access to said land. In contrast, secondary occupants of land maybe in control of the land, but not own the land. A comprehensive understanding of the land issues in the North of Sri Lanka requires that further attention be given towards the complexities of land ownership and control.

## **Challenges in Proving Ownership and Control**

The war and tsunami created a dynamic situation in the North, where there was a high frequency of displacement, migration, return, resettlement and relocation. These concerns were further compounded by legalistic problems on the ground such as difficulties in distinguishing property boundaries, and documents that were damaged or destroyed as a result of the conflict and tsunami. The severity of the problem of proving ownership differs among the districts in the North, but a common element in all districts has been the destruction and devastation and its impact on land. In Jaffna, with its high number of private lands, the issue was somewhat different: most residents have been able to locate documentation or obtain copies from the central register. The situation is different in the Vanni due to several factors. The Vanni was largely controlled by the LTTE, and although the government civil administration had a presence<sup>67</sup>, the control of the LTTE in the area resulted in land settlement schemes that it promoted and stringent controls over externally supported initiatives including supporting documentation programmes. Furthermore, the Vanni contains large areas of land that are both private and state owned. Due to conflict, migration, displacement, in addition to settlement schemes, it is not always clear whether the land is owned or claimed by permit or grant. A combination of the above has resulted in a complex situation where there are challenges to distinguishing ownership and control of land in the North.

Proper documentation is critical to proving both ownership and control of land. If a person does not have a legally valid document, their ownership and control may be in question. Due to the fact that many people return to their places of origin and file ownership and control claims, it is extremely important to possess legally valid documentation. CPA met with a number of individuals

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<sup>67</sup> The government had administrators in all LTTE controlled areas. These include GAs, DSs, land and colonisation officers and GSs.

who took their documents with them as they fled, taking the papers all the way to Puthumathalan, Menik Farm and back to their homes, all the while wrapped up in plastic bags to prevent them getting wet or damaged. Nonetheless, some of the documents in the possession of people are in a state of severe damage, especially in the case of older documents. When documents have been lost, families may be able to recover copies of permits and grants through government officials or deeds through the land registry; however, it can be a time consuming task and some individuals may approach lawyers to help resolve such issues for a fee.<sup>68</sup> It is not uncommon that in some cases the necessary documents may not be found. For instance, it was reported to CPA by a legal expert in Jaffna that documents from the colonial era are not available in the Kachcheri.<sup>69</sup> Some of the official copies of documents were destroyed in places such as Mullaitivu as a direct result of the conflict and the tsunami.

A further dimension to documentation required to prove ownership is the issuance of fraudulent documents. CPA interviewed several communities in Vavuniya who were provided state land by non-state armed political parties (discussed in Chapter Eleven) In one village, Achchipuram, some of the families were asked by the RDS at the time in 2006 to pay Rs.1000 per family to get a deed for their plot of land. Several families had paid the amount to a local lawyer who had issued a deed copy stating that the respective person who resided in the plot of land was the true owner. None of those who had paid the amount and obtained the document were aware that a deed cannot be issued for state land and that the transaction was illegal. All those who had paid the money to the lawyer had done so in good faith following the advice of the RDS and believed that they now owned the land.<sup>70</sup>

A challenging situation has been created where several actors may have competing claims for the same land (Discussed in detail in Chapter Eleven). With the mounting cases of documentation issues and competing claims, it is important that a modality to resolve documentation and land disputes is introduced. The recent Land Circular discussed in this report touches on this issue, but it remains to be seen how this issue will be address this issue.

Another matter of concern is the variety of actors who have had a role on land administration in the North over the years. In addition to government actors that have been working on land issues since the conflict, the LTTE also played a significant role in the areas under their control. From cases documented in this report, there is evidence that both the LTTE and the civil administration had a role in issuing land documents including permits, grants and, in some instances, letters and

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<sup>68</sup> CPA interview with lawyer in Mannar, Mannar Town, June 2011

<sup>69</sup> CPA interview in Jaffna, June 2011

<sup>70</sup> CPA was informed that the Government had recently initiated a process to issue documentation for those living on state land in Achchipuram. It is to be seen how this process will be implemented. Interview with humanitarian actor, October 2011

pieces of paper to show a form of ownership and control over a particular plot of land. Apart from the legality of some of these documents, questions are raised as to how to address this issue. During the LTTE control of these areas, these practices were accepted and became a normal practice. Government actors have challenged the validity of some of these documents on the grounds that these officials were either working under duress or willfully carrying out LTTE policies. In addition to these actors, the report documents several cases where paramilitary groups and other prominent actors have provided land to the landless and others in government-controlled areas (Discussed in Chapter Eleven). In these instances some form of documentation has been issued, although close examination is needed to verify validity and whether measures are needed to address any gaps in documentation. The impact of having a multitude of actors involved in land administration in the North during, and even after, the conflict has created confusion within the government, other stakeholders and the community, and therefore needs to be resolved to avoid future disputes.

A key issue that impacts ownership and control, and needs to be taken into consideration, is the general lack of awareness with regard to land rights. This has resulted in multiple problems wherein claimants are unaware of the process of legally securing land, how ownership in state lands is maintained, which documents are legally valid, and whether land can be transferred or sold. A frequent and basic problem that CPA encountered across all five Northern districts with regard to state land was that families had bought or sold their land permit while unaware that they could not legally do so. There were also cases where individuals from the North claimed legal ownership over a private plot of land and provided not a deed, but a document given to them by a lawyer, complete with a stamp, written assurance of property ownership and sometimes even a plan of the plot.<sup>71</sup> In a particular village in Vavuniya DS, CPA was even informed by some of the villagers that they are not interested in land ownership, but only want a house.<sup>72</sup> This conceptual separation of legal ownership and de facto control among villagers demonstrates a faulty assumption. The concept of land ownership and control has different understandings among actors in Colombo as well in the districts. In certain cases, individuals have found it practical to get land documentation that may not be legally valid. For instance, families settled by paramilitaries in Vavuniya were not suspicious about the lack of documentation for their properties. Many believed that given the authority of these actors at a particular moment in time and the apparent cooperation of government servants in these processes that their encroachments over state land would over time be regularised.

In the post-war context, it is easy for Government actors in Colombo to claim that these families should have known better in obtaining fraudulent documentation and land through questionable

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<sup>71</sup> CPA interviews in the North, May-June 2011

<sup>72</sup> CPA interview with communities in Vavuniya, May 2011

means, but to address this problem merely through the use of the relevant law is problematic. A challenge in verifying ownership and control has been also attributed to established practices during a long period of time. Due to the conflict most people in the North have been displaced at least once, but in many cases multiple times. Some of those who were displaced from their original lands moved to other areas in search of security and better livelihoods, and are now opposed to returning to their own lands. Some have stayed in welfare camps, with host families, on rent, or in abandoned or unoccupied land. In some instances this has caused secondary occupation. Areas abandoned were sometimes occupied by others, or in other cases, non-state actors provided abandoned land to selected communities. Welfare centres were established and some families bought or were granted plots within these centres. The result has been in effect the creation of new villages. This is especially evident in Puttalam where some areas identified officially as 'welfare centres' are de facto relocation villages where the Government and other actors have provided financial support for families to buy the land.

Although the ceasefire period raised attention to these issues and some proposals were made to address grievances, there was no significant push at the policy level to address issues of ownership and control over land in the North. As a result, ad hoc arrangements remained in many areas. With time some of those who occupied land belonging to others or encroaching on state land believed themselves to be the owners. Others were convinced to claim possession by obtaining documentation. In some instances, as seen with the case in Achchipuram in Vavuniya North, fraudulent documentation was issued by a lawyer for state land (Discussed in Chapter Eleven). This is apparently quite a common practice in the North and in particular Puttalam, but also in other areas of Sri Lanka. In the North issuing fraudulent documents are colloquially referred to as 'Japan deeds'.<sup>73</sup> In other instances, government officials have claimed certain plots of land as state land, but individuals have subsequently claimed that it is their private property as seen with at least one case in Mulaitivu district.<sup>74</sup> Displacement, occupation, lack of documentation frequently contribute to people who have lived for long periods of time on new lands and assume possession of these lands without expectation of complication.

Ownership and control over land can be and has been challenged in numerous ways and by numerous actors. The post-war context has shed light into a dynamic array of issues questioning the concept of ownership and control over land and whether the existing legal and policy framework is able to address the growing list of issues.

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<sup>73</sup> This is a common reference across the North to describe documents that are fraudulent or questionable.

<sup>74</sup> Discussed in Chapter Eleven

## **Policy Reform and Implications**

Significant developments related to land have been witnessed as a result of the conflict and other events such as the tsunami, as well as politicisation, centralisation and militarisation of the North. Archaic laws introduced several decades ago without consideration to problems created by conflict or other crises still remain, such as the Prescription Ordinance (Discussed in Annex I). Laws that do not provide for equal status of men and women are still in force (Discussed in Annex I). Confusion also prevails over the multitude of laws, regulations, circulars and gazettes related to land that remain in force. While not all are implemented, the fact that many are still valid and can be implemented at any given time leads to unnecessary confusion and complexity. This is seen across the board including among administrative officials, donors, agencies and communities. During the research for this report and previous studies, the lack of reform with the legal and policy framework has been seen as an area that has facilitated the continuation of problems, but also remains an area that can be addressed if reform takes place taking on board the situation on the ground, the needs of the communities and in keeping with a rights framework.

The government has made several public statements regarding land, especially with relevance to the North. Most recently a visiting Indian delegation was informed that land powers would not be fully devolved as provided by the Thirteenth Amendment.<sup>75</sup> This is the most recent statement in an area where the government and its various actors have been commenting regularly, ranging from full implementation, 'Thirteen plus' and limited implementation including no devolution of land and police powers to the provinces.<sup>76</sup> The government has made public plans for massive tourism and development projects for the area in the future. The rapid development in the area and the secrecy surrounding many of the projects raises concerns within the local communities as to their ownership and control of land.

## **Importance of Ownership and Control over Land**

This report demonstrates the importance of having ownership and control over land. Both aspects are essential for a strong claim to land. There remain numerous problems that can be raised regarding whether a person owns and/or controls land, and in the post-war North these problems are abundant. The situations created as a result of HSZs, occupation and encroachment effect ownership and control when one or both are missing, thus putting the owner or occupier in a vulnerable situation.

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<sup>75</sup> "Lack of Clarity in Foreign Policy; Sri Lanka on Collision Course", Sunday Times: Political Column, 19 June 2011

<sup>76</sup> "Key issues for Govt., time running out", Sunday Times: Political Column, 03 July 2011

Statements by the government indicate policy change, but this is yet to be fully articulated and made public. The reasons for this delay are unclear. What is in the public domain raises several concerns including the rights of the affected communities, their status in owning and controlling land; long-term government plans for the North and their corresponding implications. The most recent Land Circular and other documents may bring significant changes. It is important to monitor the progress of government policy and any practices that are introduced in the area related to land and act swiftly when necessary.

As this chapter demonstrates, there is a fundamental need to appreciate the importance of ownership and control of land so as to better understand the implications of new policy and practice and what it all means. This chapter merely covers some of the basic aspects of this issue. A more comprehensive study is needed to understand what is meant by owning and controlling land in the North by the various actors including IDPs, those already residing in land, returnees, host communities and other affected communities, government actors including civil and military actors, political parties, donors, agencies and others. It is also important to examine whether the concept of ownership and control of land has changed with time, from what was in existence during the conflict period and what is present now in a post-war context. There should also be consideration as to what ownership and control of land may mean when moving towards a post-conflict period. It is paramount that discussions of ownership, control and policy reform is done within a legal and human rights framework. A basic starting point, especially in a post-war context, would be for the Government and other stakeholders to increase awareness on land rights. This would, however, involve the government also ensuring that it will ensure its commitment to these rights.

# Chapter 3

A Commentary on New Government Land Policy Initiatives

There is limited information available in the public realm regarding government plans for land in the North but a recently approved cabinet memorandum (Memo) titled 'Regularize Land Management in Northern and Eastern Provinces' sheds some light on the government's plans and policy for and approach to the issue. Subsequent to the Memo, a land circular titled 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' (Land Circular) (Circular No: 2011/04) was issued on 22 July by the government laying out a process land issues in the North and East in line with the Memo.<sup>77</sup> Two additional circulars dealing with specific land issues have also been drafted by the Government with regards to the North since 2010.<sup>78</sup> In addition to these the Government introduced a new Bill titled 'Town and Country Planning (Amendment) Bill' which has implications to land across Sri Lanka including in the North.<sup>79</sup> Further, the public notices<sup>80</sup> and a gazette<sup>81</sup> indicate that the Bimsaviya project<sup>82</sup> is to commence in the North, raising questions whether the circular and the Bimsaviya are separate processes or two documents meant to compliment each other. The Land Circular and the public notices in connection have been challenged in court and the implementation of the public notice was suspended by the Court of Appeal. It is to be seen whether the process and implementation will change as a result of litigation and other forms of advocacy.<sup>83</sup> The introduction of the above policies demonstrates the interest taken by the Government in relation to land, begging the question why so many changes related to land are happening at this moment.

These documents represent the Government's response to the complex land issues in the North and East provinces, with regards to both state and private land, and will guide government policy

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<sup>77</sup> At the time of writing, the cabinet memo remained an internal government document and not available in the public domain. This report discusses in detail the land circular and its implications.

<sup>78</sup> Documents discussed in this chapter are limited to those that were discussed by government officials in the course of the research. CPA notes that there may be other documents related to land issues in the North that are not available in the public domain.

<sup>79</sup> The Bill includes the power for the Minister to demarcate areas as 'sacred areas', 'architectural areas' and 'conservation areas' with no information provided in the Bill as to the criteria used to decide on such areas. CPA challenged the constitutionality of the Bill in the Supreme Court (SC/SD/3/2011). According to media reports, the Supreme Court has refused to rule on the constitutionality of the Bill as it has not been sent to the provincial councils. Please refer to 'Land takeover: SC refuses to give ruling,' Sunday Times, [http://www.sundaytimes.lk/111204/News/nws\\_03.html](http://www.sundaytimes.lk/111204/News/nws_03.html), 4 December 2011.

<sup>80</sup> Public notice on 16 September 2011 in the Daily News

<sup>81</sup> Title registration areas in the North were listed in Gazette No 1688/14, 12 January 2011

<sup>82</sup> As provided under the Registration of Title Act, No 21 of 1998

<sup>83</sup> A Writ application (620/2011) and a Fundamental Rights application (494/2011) were filed in the Court of Appeal and the Supreme Court respectively by TNA National List MP M.A. Sumanthiran challenging the Land Circular and the notices. On 9 November the Court of Appeal issued an order staying the Public Notice calling for applications for land in the North and East and allowed the undertaking by the Attorney General's Department to revise the Land Circular. The case is to be mentioned again on 19 January 2012. The FR application on the same matter is listed for March 2012. At the time of writing both cases were still before courts.

with regards to land in the North and East at least for the next few years.<sup>84</sup> Therefore these proposals will have far-reaching implications for key issues including how land claims can be decided, how land is to be alienated in these areas, and types of ownership and control that can be provided.

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### **Land Circular (Circular No: 2011/04)**

CPA was informed of a land circular issued in July 2011 by the Land Commissioner General's Department with input from other government actors which is to give guidance to some provisions of the Memo and set out a framework for land claims in the North and East.<sup>85</sup>

The circular reiterates some of the key points raised in the Memo including:

- the primacy of claims prior to the war, and in case of development of a land by an occupier, the need to find alternative land;
- the status of land documents issued prior to the commencement of war and during the war and the process by which documentation is to be issued;
- whether land is to be alienated for encroached state land;
- how to address the landless issue;
- commencement of a titling programme;<sup>86</sup>
- mechanisms that are to be established to address land claims.

CPA was able to discuss with several officials who were involved in the process, and this report includes some issues shared during the course of the research including the status of implementation. Several meetings conducted by CPA with government officials, civil society and humanitarian agencies working in the North between August and October 2011 indicated that there were problems regarding the land circular including lack of information, confusion and

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<sup>84</sup> There is a possibility that other circulars and documents related to land in the North were issued but this report discusses those that were available during the research period. Information gathered during the course of the research also indicated that several other circulars, laws and other policy documents are to be introduced including in the area of mediation and boundaries.

<sup>85</sup> Interview with government official, 22 June 2011

<sup>86</sup> As provided under the Registration of Title Act 1998.

practical issues such as lack of application forms and other resources needed for implementation<sup>87</sup> resulting in fear and apprehension of the possible implications related with the land circular.

**Proposed Process:** Some key points of the land circular include the following<sup>88</sup>:

Publicity for process and examining claims

- i. The government will inform the public of the initiative using media<sup>89</sup>, web and other means and call for claims over land
- ii. Applicants will be given two months to apply with their claims
- iii. The claims will be first examined by a committee headed by the respective DS for the area
- iv. If the documents are damaged or destroyed for a particular plot of land and no competing claims are made for the land, new documents will be issued
- v. If there are competing claims for a particular plot of land, then the committee must verify details of each case and decide who has best claim over the land
- vi. An observation committee comprising minimum two persons will be appointed comprising of civilians from the area to observe proceedings.<sup>90</sup>
- vii. The observation committee will be assisting the committee headed by the DS and provide them with any necessary information of the area
- viii. After the committee has verified claims, a selection list for each area will be displayed locally

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<sup>87</sup> Those interviewed in the North and East indicated that most people were not aware of the process and implications and that many did not know how to submit applications. Discussions held by the research team from the time of introduction of the Land Circular to early November when applications were being called demonstrated that those living in the North and East, IDPs, refugees, Diaspora and others with a claim to land in the area had limited information, did not know who to speak to obtain information and feared that they may lose ownership of their land as a result of the new policy. Several workshops held by CPA in the North and East in September, October and November indicated the need for greater awareness among potential applicants and government officials including DSs, GSs and others.

<sup>88</sup> For more information, refer to- A Short Guide to Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces Circular: Issues and Implications' by Bhavani Fonseka and Mirak Raheem, CPA, September 2011.

<sup>89</sup> CPA is aware of public notices of the Bim Saviya form being carried in most main stream newspapers on 16 September 2011 but yet to see any notice in relation to the land circular.

<sup>90</sup> Those appointed to the observation committees are selected from civilian committees appointed by the police and the security forces, raising several concerns including the independence of such bodies.

## Appeals Process

- i. The government will call for objections within a period of a month regarding any matters that arise from the list
- ii. Those who are unhappy with the decision can appeal to a second committee which is to be headed by the Northern Provincial Land Commissioner (NPLC) and include a representative of the respective GA and area commander of the area
- iii. The committee will examine objections and put out a list after their deliberations
- iv. If there are disputes, the problems will be directed to special mediation boards that are to be constituted to hear such cases

## Securing Documentation

- i. The list will be then sent to the DS who will forward it to the NPLC
- ii. Annual permits will be issued with conditions after the list is finalised
- iii. Long term leases will be issued for particular projects and development activities
- i. After a year and if there are no objections, the annual permit will be transferred to a grant/title which will ensure there is clear title to the land. This title will subsequently come under the Registration of Title Act

## Titling

- i. Titling will be a parallel process and with time will aim to cover the entire North Province

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## Key Guiding Principles

As the newest policy document issued by the Government regarding land in the Northern and Eastern Provinces, the Land Circular and provides insight into some positions the Government has taken on land issues in the areas but also has relevance to security, development, rehabilitation and reconciliation. There are several key principles the Land Circular sets out which are:

## 1. Preference to those who owned land in the North and East prior to the war

The intentions of the present Government through the Memo and Land Circular is to give preference to those who owned land in the North and East prior to the war over any other subsequent claim appears to be a key guiding principle in the Memo and the Land Circular. The preference over previous owners is a critical point, as those who obtained state land during the conflict may have a lesser or no claim over the land. A government official interviewed during the research stated that the government considers land given during the war as illegal, even though the DS may have issued the permits.<sup>91</sup> His contention was that land documents were given without following established practices such as holding a land kachcheri and have been issued under duress or in connivance with the LTTE.

The Land Circular appears to direct government officers to return land to the original claimant when dealing with land distributed unlawfully and under the 'influence of a terrorist group'. While CPA recognises that the LTTE and other armed actors have used coercion to secure land from civilians and that government officers have allegedly provided official sanction and even documentation for these land grabs and re-distributions, there is no simple formula to address possible cases of injustice. It is not clear whether Maveera settlements<sup>92</sup>, for instance, will come under special scrutiny. It needs to be noted, however, that the circular does state that where permanent houses have been constructed and the land has been developed "it is not practicable to recover such lands" and therefore alternate state land should be found nearby for the original claimant. This suggests that some recognition will be granted to the ownership rights of those whose claims post-date the outbreak of the war.

Another interviewed official made the point that the land circular will give guidance to land officials and others on how to decide on land claims. CPA was informed that discretion will be given to local actors to decide which claims are valid, but not all who received land during the conflict will be dispossessed if there is no competing claim for the plot of land.<sup>93</sup> This is an important point as it indicates that the government may consider a case by case approach and decide who has the better claim rather than have a blanket approach of cancelling all alienation that occurred in the North and East during the war period. While CPA welcomes the case by case approach, there are also concerns whether such discretion maybe used to target particular groups such as those who were provided land by particular non-state actors and thereby may open to abuse in individual cases where actions by other non-state or even state actors may be over looked. CPA was also informed that if there are no competing claims, those who have documents are to be allowed to

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<sup>91</sup> Interview with government official, 22 June 2011

<sup>92</sup> Maveera villages are identified as families who had a special status within the LTTE

<sup>93</sup> Interview with government official, 6 July 2011

stay on their land including those who were provided land during the conflict.<sup>94</sup> In such cases land documents will be checked and when necessary new documents issued to provide valid proof of ownership.<sup>95</sup> A comprehensive examination is needed to understand the history of a particular land including previous ownership and control patterns. In making an assessment of the land it is also important to understand the situation of those who have accepted land from non-state actors, possibly under duress or due to poverty, landlessness or other reasons.

This report documents several areas where non-state actors have provided land to communities who have in turn developed the land and now recognise the plot of land as their own (Discussed in Chapter Eleven). By having an arbitrary provision that does not consider the vulnerabilities of affected communities and history of the land, many may be dispossessed. The long term result could be the creation of new tensions and disputes. An added complication may also arise with the possible role played by government actors. This report discusses the dual administration present in the LTTE-controlled areas during the war and the fact that government actors had a role in administering the area including with regard to land issues. While government actors issued permits and other forms of land documents during the conflict, what is unclear is whether these government officials were coerced to issue land documents or to make any decisions related to land. Interviews with officials indicate that it was an extremely complex and sensitive period and topic, and many government actors had to tread carefully in carrying out their duties. Several also confirmed that decisions taken were communicated to Colombo and relevant officials.<sup>96</sup> Therefore it seems the officials in Colombo were aware of developments in the area and may have in some cases sanctioned such practices. It raises the question whether it is fair for the government now to introduce policies that may dispossess communities of land they have been living on for long periods, especially in cases where the communities had no part in the decision making and policy formulation during the conflict or now. This all raises questions of ownership and control over land and equitable treatment of communities. The lack of conflict sensitivity may have multiple long term implications including in the rehabilitation and reconciliation processes, thus, needs to be given serious consideration before any decision is taken.

Even while the Memo and Land Circular seem to advantage those who have prior claims, it is unclear if this is only with regards to land distribution or ownership that has been affected by the LTTE or in LTTE-controlled areas. Neither the Memo nor the Land Circular address the issue of land given to individuals by state actors and others associated with the state, such as the military, political parties and paramilitaries, all of whom have no powers to alienate land. This report and

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<sup>94</sup> Interview with government official, 6 July 2011

<sup>95</sup> Interview with government official, 6 July 2011

<sup>96</sup> Interviews conducted with government officials and other actors in the North and Colombo, March, April, May and June 2011

others have documented instances where actors without statutory powers to alienate land were involved in the practice, raising concerns of the legality of land that is alienated by such actors. CPA was informed that the focus of the Memo and the Land Circular is to examine land that was given during the war as a result of the involvement and possible duress used by terrorist groups such as the LTTE.<sup>97</sup> This is a critical point as land has been alienated by state actors and political parties, some with an affiliation to the government. CPA recommends that the government adopt a fair and equitable approach by looking into this aspect, verify claims and regularise ownership when needed.

## 2. Status of Land

The status of land alienated during the war is a key aspect addressed in the Land Circular. This is an issue that requires further attention and past practices need examination to shed light on what prompted any alienation and how land alienation processes functioned during the war in the North. While recognising there may have been variations in practice, questions are also raised regarding land that was alienated under donor funded government implemented projects such as the World Bank funded NEHRP project and others.<sup>98</sup> At face value, there is a risk that claimants who were able to secure some form of official ownership, utilised and developed the land, and built a permanent house on it, may risk losing both the land and house. In such instances, stating that prior ownership stands may exacerbate already difficult disputes and also impact on-going project.

## Key Concerns

Given the complexity of land issues in the North and East and the fundamental importance of land to multiple processes including reconstruction of permanent houses, rehabilitation of war-affected families, return to one's land, development and strengthening co-existence, there is an urgent requirement for the Government to provide a policy framework to deal with the issue of land taking on board the rights, vulnerabilities and needs of affected communities and in line with legal obligations and human rights standards. As such, CPA recognises the necessity to formulate policies and processes to address the complex land issues in conflict-affected areas and thus welcomes the overall aim of this current initiative. CPA is, however, concerned with the present circular that contains certain provisions, which are problematic and unclear and may exacerbate fear and apprehension among affected communities. It can be assumed that despite legal challenges to the circular, that the Government will go ahead with the Land Circular but it is hoped that it will be improved so as to improve the process and outcomes.

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<sup>97</sup> Interview with government officials, 22 June 2011 and 6 July 2011

<sup>98</sup> This project had several components to it which are discussed in detail in Chapter Five. A key issue to examine is the land taskforces that were established under this project and functioned in the North and East.

A key issue with the Land Circular related to the legal validity of the circular, and in particular the powers of the Land Commissioner General to issue a circular for state and private land. While several laws provide powers for the Land Commissioner General to be involved in specific functions in relation to state land (as provided under the Land Development Ordinance, State Land Ordinance and Land Grants Act), there is no legislation or any other document publicly available that provides the office with powers to issue directives for private land. This was an issue raised in two legal challenges in the Court of Appeal and the Supreme Court discussed previously. In addition the cases question the broad powers provided to the various committees which take on a quasi judicial role, a power that should remain with the judiciary or in special cases with special mediation boards established by a statute. The cases also challenge the steps taken under the Bim Saviya project in accordance with the Registration of Title Act. The Act provides specific provisions for the commencement of titling in areas including issuing a gazette demarcating the areas to be titled and conducting cadastral maps for these areas. While a gazette was issued in January 2011 demarcating the North for titling, there is no information available whether the cadastral maps required under the Act have commenced or completed. The public notice issued on 16 September 2011 refers to the Bim Saviya project that is to be implemented in the North but as pointed out above the process established by the statute have been bypassed before the public notice.

There are other areas where the Memo and Land Circular is problematic. The Memo was drafted and passed in an extremely secretive manner with limited consultation of key stakeholders, excluding most importantly the affected communities. The lack of transparency and participation in policy making in Sri Lanka is not a new issue and continues to be practiced in a post-war setting. Even some Government Ministers were unaware that a Memo had been passed by cabinet and were ignorant of its contents.<sup>99</sup> To genuinely address problems on the ground and assuage concerns and apprehensions of the communities, it is extremely important to have a transparent, inclusive and consultative process where the ownership is with the key stakeholders and not limited to a few actors sitting in Colombo. CPA was informed that the Memo was sent for cabinet approval after consultations with the relevant government officials including from the districts. While this is a welcome step, it is recommended that wider and more transparent consultations are conducted in the future where the public and interested parties are asked to send in suggestions and are consulted during the drafting process. Most importantly communities affected by the Memo should be informed of the process. Similarly, the process of drafting and consultation for the Land Circular was limited to a few government officials. Agencies and civil society working the north, political parties and others with a presence in the North were unaware of the Land Circular till it was finalised in July. It is hoped that the Government will convene discussions to explain the

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<sup>99</sup> CPA interviews with politicians, April 2011

use of the land circular and key provisions, taking on board any concerns that stakeholders may have.

The Memo and Land Circular are extremely broad and the lack of clarity on certain issues raises concerns. Provisions such as stopping new land distribution unless for security and development activities and the possibility of acquisition of land, raises concerns regarding government plans for the future in these areas. This is especially worrying because of the allegations that large military cantonments and development projects will be a key feature in the North. It is not clear as to whether in these future plans private or state land is to be utilised. While there is a token mention of using the Land Acquisition Act, this hardly gives confidence to people who have yet to be properly informed as to what will happen to their land in the coming years and whether they will be compensated for acquisition of land previously acquired. The Land Circular provides that state land will not be alienated through new mechanisms until 'lands are given again to those people who had been displaced or who had fled from only such divisional secretary divisions, where such displacements took place'. However, two special categories include: (a) Alienating required lands for purpose of National security (b) Alienating lands under Special Development Projects of the state (including special housing development projects)

It is unclear whether special housing development projects are to include all housing initiatives or limited to the Indian Housing Project. It is important that the Government advises the donors and agencies on the status of housing projects and ensure that new steps under the present circular and any other policy directive does not lead to future land disputes. At the time of writing, many donors and agencies were unaware whether their housing projects would fall within the special categories, raising confusion and delays in implementing projects.

The Land Circular states in addition to returning land to IDPs who were residing on state land prior to war, those encroached on state land prior to 15 June 1995 should also be provided land. Further, the Land Circular makes an important point that those who are unable to return to their state land which they left as a result of the war due to occupation by others who have developed the land will be given 'alternative land' nearby. The Land Circular provides that this land will be given through land kachcheri's. While ensuring that an alternative is found for those who could be dispossessed is imperative, this also raises several issues. Is alternative land to be distributed to all who may be dispossessed due to government policy? Or is this only applicable to those who fled and were displaced? Would this apply to the category mentioned above who were given land by non-state actors, but may be dispossessed due to new government policy in accordance with the Memo and Land Circular? Has the government identified alternative land and if so, would it be state or private land? Other than dispossession as per the law, could there be no other alternative such as mediation to the dispute? Furthermore, would issues such as livelihood factor be considered when allocating alternative land to ensure that communities are able to continue with

their livelihoods of fishing, farming, livestock rearing, and be otherwise able to satisfy their livelihood needs regardless of the location of the new land and any existing restrictions.

A significant positive feature in the Land Circular is that it provides for an appeals process. The Circular states that the compiled register will be made public and objections can be made within a period of a month of putting up the lists. CPA hopes that similar to the call for claims, the call for objections on any decisions taken and the process for such objections will be in all three languages and all modes of media will be used to publicise such processes. In addition, CPA recommends that more time is given, at least a period of three months, for the study of the list by affected communities and for the filing of objections will be provided. Due to various reasons, many people from the North and East have migrated to other parts of Sri Lanka and overseas and the processes mentioned in the Memo and any other related to land should take note of these factors and use modes of media that will reach a wider public. If needed, an extra time period should be provided for those outside of the country to ensure no injustice is caused by a short deadline. CPA was informed by one government official that special efforts will be made to ensure that Sri Lankan embassies abroad will be involved so as to ensure that Diaspora communities will also be made aware but there does not appear to be an information process.<sup>100</sup>

CPA was informed that respective DS and other officials in the North have in the post-war context collected information on land in each division. Some of the basic land data that has been gathered can be used to form a register and provide information on issues such as ownership, occupation, control, usage, and when land was obtained, the actors involved and whether there are land documents.<sup>101</sup> CPA hopes that the information collected from this assessment will contribute to/influence the process of issuing the circular and its implementation.

Further, the Memo and Land Circular also make clear that leading local personalities will be involved in assisting in the field investigations. This is an important feature as this would provide better usage of individuals with a history of the local communities, in addition to ensuring greater trust in the process of investigation into land claims. The Memo mentions peace committees that already exist. While there were and still are some peace committees in areas of the East and in urban centres such as Jaffna and Mannar, in other areas they are not present - unless the government has already established some committees with little publicity. In an interview with CPA, an official claimed that the committees are to comprise a minimum of two persons and these persons will be selected from the civil committees established by the police and security forces.<sup>102</sup> This is provided by the Land Circular (2.3.3.4). This raises concerns as the police and military and

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<sup>100</sup> Interview with government official, 22 June 2011

<sup>101</sup> Interview with government officials 29 March 2011 and 23 June 2011.

<sup>102</sup> Interview with official, July 2011

their appointees may not always guarantee the representation of the community. There is also no mention of the powers of such committees. And whether they would have specific powers over land or serve more as sources of information. Another issue not addressed is whether there is provision for the representation of all communities from the specific areas in these committees. The Land Circular goes on to mention the appointment of 'a conciliator' to the observation committee, a person 'who is respected and held in high esteem by the people as an impartial person'. The Land Circular states that the DS or AGA of the area is to prepare a document with all the names of persons in the observation committee which is to be sent to the NPLC and that changes will not be allowed to the list unless by the NPLC or Land Commissioner General. The Land Circular also provides that the initial list prepared by the first committee is to be forwarded for comments to the respective Divisional Coordinating Committees (DCC) and their input will also be taken on board. While wide consultation is important in issues impacting the areas and communities, there is no rationale provided as to why the DCC should be involved in this particular task.

A further problematic area with the Land Circular is the heavy military involvement in the process. An appeals mechanism mentioned in the circular is the committee comprising of the "Provincial Land Commissioner, person nominated by the Defence Commander in the area and a person nominated by the GA." The involvement of civilian administrators in land issues is imperative given their expertise and knowledge on land policy and administration. What is notable with the Memo and the Land Circular is the prominence given to the defence establishment in hearing and deciding land claims. The First Committee of Inquiry includes an Area Civil Co-ordinating officer while the Second Committee of Inquiry includes a representative of the relevant security commander. This report documents the militarisation in the North by the security establishment and the impact on land (Chapter Ten), demonstrating a critical role they play in relation to land. A question asked by communities in the North is why there is a necessity for the military to have such a large presence more than two years after the end of the war and such a key role in administration in the North. It is important that in a post-war setting the civil administration is able to function without involvement or interference of the military in administrative issues. The present Land Circular further legitimises the role of the military in the areas as well as in administrative functions. No rationale is provided as to why they should be involved in purely administrative functions. The place given to the military in the Land Circular sheds light on the government policy of continuing the present militarisation in the area. It is important that steps are taken to ensure that there is respect for the work of the civil administrators and a reduction of the involvement of others in their work.

Both the Memo and Land Circular also mentions titling for the area. While the Memo raises some confusion by referring to the 'Title Settlement Act' which is not presently an enacted legislation, the circular refers the Registration of Title Act 1998. The introduction of title is a positive element as it would create a new system in the area, provide clear title to the land and prevent future disputes. A

key advantage of land titling would be that all lands, both state and private would be documented under one system, as opposed to the two under the present system. While there are significant positive elements to titling, it would also be time consuming and costly. There is a lack of clarity as to how the government will proceed with this initiative of titling.

## **Additional Gaps**

While the gaps in the Memo and Land Circular need to be addressed, it is also clear that the issue of ownership, control and use of land is fundamental and should be decided by a body representative of all communities and areas and provided by the existing legal and policy framework. The government should constitute the National Land Commission provided by the Thirteenth Amendment to the Constitution to decide on such policy issues and issue direction. While policy direction is needed there is also a need for a special mechanism to provide technical assistance in examining claims and resolving disputes. The inquiry bodies mentioned in the Memo and Land Circular can address some issues. CPA has also been informed that the government is considering introducing new legislation to create a special mechanism for resolving land disputes such as special mediation boards, similar to what was done post-tsunami.<sup>103</sup> What is unclear is how different it would be from the mechanisms introduced in the Memo and Land Circular or whether it will be the same body.

As pointed out, the Memo and Land Circular cover a variety of issues, suggesting that the Government is attempting to address a broad range of challenges. However, there is a lack of clarity on particular issues. For instance, with regards to landlessness, the two documents look at dispossession as a result of occupation, hence the landless whom will be recognised seem to be only those who are encroaching or occupying private land.<sup>104</sup> Furthermore, it is also not clear whether there will be a more general process for addressing landlessness as per the rest of the country (Discussed more in detail in Chapter Six). The issue over private lands is an additional area of concern. While the circular deals specifically with state land, based on CPA's interviews on the ground, it is clear that there are questions as to whether a plot is state or private. As of November 2011 there was no public information that the Government is attempting to address the issue of private land while all Government officials who were interviewed during the course of the research

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<sup>103</sup> Interview with government official, 22 June 2011

<sup>104</sup> In addition to the gaps related to landlessness in the Land Circular, further confusion is created regarding this category of people due to another initiative apparently ongoing in some parts of the North and East. CPA was informed in October 2011 that another initiative has commenced in parts of the North and East calling for applications from landless people in the area to ensure they are provided land in these areas. At the time of writing no further information was available regarding this new process and whether it would duplicate or compliment the process set out by the Land Circular.

indicated that private land owners would also have to apply under the process set out under the Land Circular and Bim Saviya project.

## **Other Key Circular and Government Documentation**

Prior to the Memo and the Land Circular, several other circulars and documentation have been issued since the end of the war in regard to land and related issues in the North. CPA was informed of a land circular issued in February 2011 by the Ministry of Land and Land Development that suspends all new alienation of state land unless it is related to the Indian Housing Scheme.<sup>105</sup> Another circular issued in June 2010 by the Land Commissioner Generals Department stops all temporary documentation being issued for lost documents for land in the North. These two circulars impact communities in the North who are attempting to rebuild their lives after the war but are unable to obtain land documentation and new land. Without land documentation it is impossible to prove ownership and full control as others can challenge one's possession and ownership. A further complication is the inability to obtain loans and other assistance if land ownership cannot be proved. In the present post-war context, owning land and having legally valid documentation demonstrating ownership is important. As Chapters Two and Eleven discuss, this is vital at a time when there are competing claims for the same plot of land. In some instances the various parties claiming ownership may all show documentation that, on the face of it, seems to be a legally valid document. Without new documentation being issued for those who have lost documents in the last few years, the challenges of ownership and control remain great.<sup>106</sup>

Although these circulars can be seen as stringent, they were introduced with the intention of reducing fraudulent claims and to avoid complicating already complex land issues. These measures were meant to serve as stop gaps until a comprehensive verification system of land ownership could take place. It means, however, that in cases where documents have been approved and are pending distribution, such as the tsunami relocation schemes may be delayed.

In addition to the Land Circulars, there are other documents issued by government actors that impact land. There are unconfirmed reports of gazettes being issued to restrict the use of land in certain areas in the North. As discussed in Chapter Eleven, CPA was also informed of letters written by government officials in 2011 providing licenses to Sinhala fishermen from the south providing padus in the coast of Mullaitivu, an area used by Tamil fishermen for several decades and

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<sup>105</sup> Interview with government official, 29 March 2011

<sup>106</sup> Although new documentation seems to have been suspended due to the new policy initiatives discussed in this chapter, CPA has been informed that in some areas in the North and East new documents for land such as permits have been issued in 2011. While it is hard to comment on specific small initiatives in particular areas such developments also indicate the confusion among government officials regarding policy directives.

where there are competing claims by Tamils (discussed in Chapter Eleven).<sup>107</sup> Furthermore, there are decisions taken by the military to close off areas citing security reasons with no additional information given or without sharing a written document justifying such moves. During the course of the research for this report CPA was informed of several locations including areas in Puthukudiruppu (PTK) and part of the coast of Mullaitivu, Silavathurai and Mullikulam in Mannar, Mandathivu in Jaffna islands where areas have been closed off to residents (Discussed in Chapter Ten). The Memo and Land Circular discussed above demonstrates the government policy regarding the use of land for security purposes and there is no indication that such a policy will change in the immediate future.

## **Problems in Implementation**

Following the issuing of the Land Circular an advertisement appeared on 16 September in national newspapers calling for the submission of forms (referred to as public notices in this chapter). CPA attempted to monitor the process across the North and East, but it became increasingly apparent that there were high levels of confusion not just among the general public but also with the government officials meant to administer the process and advise the general public. The key areas of confusion included who needed to apply and whether it applied to all persons owning and claiming land. For instance, humanitarian agency personnel insisted that the process was only for private land owners, while others stated that it was for those with documents for or claiming state land, while in other areas this was seen to be part of an initiative to address landlessness.<sup>108</sup> In addition, there was confusion relating to deadlines, as to whether it was the end of September or end November. One government officer in Kilinochchi informed CPA in October that the deadline had passed but forms would continue to be accepted.<sup>109</sup> CPA also met humanitarian personnel and community leaders who had no idea that such a circular was being implemented. The circular had also caused significant confusion within the Diaspora and it is not clear that Sri Lankan embassies overseas have been issued instructions to provide information to persons of Sri Lankan origins living in these countries.

There was also active opposition to the Land Circular. For instance the TULF organised a protest in Vavuniya against the circular and called for a boycott.<sup>110</sup> In a workshop jointly organised by CPA, the Jaffna Bar Association and Law Faculty of the Jaffna University on 15 October 2011 to

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<sup>107</sup> Interview with communities, June 2011

<sup>108</sup> Discussions with humanitarian actors and civil society working in the North, September, October and November 2011

<sup>109</sup> Interview with Government actor in Kilinochchi, October 2011

<sup>110</sup> "Protest in Vavunia", Daily Mirror, 17 October 2011

increase public awareness and debate on the Land Circular, a number of participants raised concerns as to why the Bim Saviya process was being implemented and the motives for the Land Circular including whether it was an attempt by the government to acquire more land and the idea of a boycott was mooted.<sup>111</sup> It was clear that the lack of information had intensified public confusion and apprehension regarding the Land Circular.

The Land Circular has been challenged through a Writ application (620/2011) and a Fundamental Rights application (494/2011) which were filed in the Court of Appeal and the Supreme Court respectively by TNA National List MP M.A. Sumanthiran. On 9 November 2011 the Court of Appeal issued an order staying the public notice calling for applications for land in the North and East and allowed the undertaking by the Attorney General's Department to revise the Land Circular. The Case is to be mentioned again in January 2012. At the time of writing both cases were still before courts and it is to be seen how the Government will respond: as to whether it will revise and reissue, devise a whole new process or return to a more piece meal approach.

## **Recommendations**

The Memo, Land Circular, and other documents discussed in this chapter are vital to understanding the intentions of the government in relation to land in the North and East. This is most important when there is no comprehensive land policy in Sri Lanka and other policy related documentation is outdated and is in need of revision in a post-war context.

This chapter critiques some of the policy initiatives introduced by the government. It is also hoped that the Government will take note of the following when implementing new policies, procedures and projects. Given the suspension of the Land Circular and the need to revise it, there is an opportunity to ensure improvements in the process, some of which are detailed below.

- The Government should make public and widely publicise all policies, circular, gazettes and other documents formulated in relation to land in the North and East in the region, the rest of the country.
- Formulating policies and procedures related to land in the North and East should be done in consultation with affected communities and officials of the area.
- The process of formulation and implementation of policies, procedures and projects should be transparent, with information provided explaining the impact to communities and local officials.

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<sup>111</sup> Workshop in Jaffna, October 2011

- An immediate awareness raising about the circular needs to be carried out with all government actors involved in the process, especially Grama Sevakas, other local officials and community leaders. Basic information such as who needs to apply, deadlines and the process of application and appeal need to be made available through a comprehensive dissemination process.
- The Observation Committee should be expanded to make it more inclusive of civil society representation.
- The time period for applications and appeals should be extended. The application period needs to be extended from 2 months to at least 4 months and the appeals process from 1 month to 3 months.
- The government should explain whether alternative land is to be provided to all who will be dispossessed and displaced as a result of new policies, development projects, occupation and HSZs. Information also should be provided on the status of the land that is to be provided and whether full ownership and control will be provided.
- All effort should be taken to ensure that legal owners of land are allowed to retain their ownership of land, even if land is not accessible due to security and other reasons.
- Those affected by policies and projects should be treated in an equitable manner. This means that land and documentation should be provided to all affected regardless of the history and how a particular community received land.
- The process of land alienation, verification of land claims and all other matters related to land should be the responsibility of the civil administration.
- Provision of land should be done in consideration with key principles including the history of the land, livelihoods of the communities, infrastructure available in the area and security issues.

# Chapter 4

Displacement, Return and Recovery for War-Affected  
Communities

A massive return and resettlement programme over the last two and a half years in the North has allowed 424,635 civilians to return to their homes and communities.<sup>112</sup> According to official statistics, over 95% of IDPs displaced from the Vanni during the last two years of the war have been resettled.<sup>113</sup> This is a significant achievement for the Government, the humanitarian community and other actors involved in the resettlement process, but from the perspective of the affected population of displaced persons, the process has proved more problematic. In early 2009, there was a widely held perception that the IDPs would be held in closed-IDPs camps with almost no freedom of movement for a two to three year period.<sup>114</sup> The decision to resettle had a dramatic impact in providing an opportunity for the overwhelming majority of IDPs to return to their places of origin and for the processes of post-war normalisation, rehabilitation and reconstruction to proceed. While there are significant positive indicators suggesting that the incremental process of reintegration of the displaced into their communities is moving forward, it has become increasingly apparent that a number of challenges persist, including that displacement continues to be an on-going problem. Furthermore, even among those who have been able to return there are families finding the process of rebuilding their lives a significant challenge, raising concerns of large-scale vulnerability and even dependency of returnees. The issue of land is central to the process of ending displacement, as it is through the process of reclaiming properties or securing control of or access to new land that a durable solution can be found for the majority of IDPs and other war-affected to rebuild their lives and livelihoods.

## **Challenges to Ending Displacement**

While the various phases of the war resulted in new waves of displacement, return and resettlement initiatives took place in parallel, particularly during the ceasefire period but even during periods of the armed conflict. Even during the last phase of the war, there were resettlement initiatives for specific locations in the North, but mass resettlement commenced in the wake of the war in August 2009.<sup>115</sup> The bulk of those resettled in the post-war period were from areas previously controlled by the LTTE in Mannar, Kilinochchi, Vavuniya, Jaffna and Mullaitivu, resettlement was also carried out in other areas of the North including the Jaffna islands and areas

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<sup>112</sup> “Joint Humanitarian and Early Recovery Update,” UNOCHA, Report 37, October 2011

<sup>113</sup> Resettlement Ministry Secretary B.M.U.D. Basnayake quoted in Lakna Paranamanna, “IDP camps to close by December: Ministry,” Daily Mirror, July 2 2011, page 4.

<sup>114</sup> CPA, A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya, March 2009

<sup>115</sup> Resettlement in the North officially commenced in Mussali in April 2009 (“Resettlement process begins in North,” Press release, Government of Sri Lanka, 29 April 2009.)

that were formerly HSZs, in addition to other areas where IDPs and refugees were previously wary of returning to due to the overall state of war and concerns relating to security.<sup>116</sup>

Ending displacement is a central aim of the Government, humanitarian agencies and other key actors. However, as to when displacement exactly ends is disputed in both conceptual and practical terms. In its most simplistic form, the end of displacement could be considered as the resettlement of IDPs to their homes and the provision of basic assistance such as rations and temporary shelter to ensure reintegration. It could, on the other hand, be understood as a more comprehensive concept such as securing a sustainable and durable solution.<sup>117</sup> Even while key stakeholders may be working towards ensuring that IDPs can return home and live in dignity, there is also a clear political dimension to the issue. Given that the majority of IDPs from the Vanni were held in closed camps, the issue of ending displacement became all the more controversial.<sup>118</sup> IDP statistics can and have become highly politicised and contentious, especially when they serve as a primary indicator of a continuing humanitarian problem. The focus on statistically reducing numbers without necessarily ensuring that all IDPs can actually return to their homes, communities and properties creates problems on the ground.<sup>119</sup> CPA and other actors have repeatedly pointed out that there is a clear problem in how IDP figures have been used without systematically assessing whether durable solutions have been found and displacement has effectively ended for those experiencing displacement. A general point to be highlighted is that in Sri Lanka the term resettlement is used very broadly by the Government and some humanitarian actors to cover a number of scenarios including bringing back civilians to their villages of origin or even just the GS or DS division of origin, without actual return to one's own home and land. Resettlement is used

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<sup>116</sup> The resettlement programme was focused on new IDPs, however in certain instances old IDPs were able to spontaneously return i.e without official support for the movement from the site of displacement to the area of return and to even claim assistance in specific areas.

<sup>117</sup> "A durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. It can be achieved through: (i) Sustainable reintegration at the place of origin (hereinafter referred to as "return"); (ii) Sustainable local integration in areas where internally displacement persons take refuge (local integration); (iii) Sustainable integration in another part of the country (settlement elsewhere in the country) (A Framework on Durable Solutions for Internally Displaced Persons, 29 December 2009),

<sup>118</sup> The legality of detaining an entire population, including the elderly and children, raised a series of questions as to the Government's commitment to human rights and reconciliation. As a result of multiple factors including increasing international concerns and growing reluctance of funding closed camps, as well as domestic reasons such as elections and the monsoon, the Government initiated mass release and resettlement programs starting in August, 2009.

<sup>119</sup> Bhavani Fonseka, 'The Numbers Game' in Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, Centre for Policy Alternatives (CPA), September 2010).

interchangeably with return and even relocation.<sup>120</sup> This is not just an issue of terminology, but brings with it serious consequences for the affected families.

According to official Government statistics, there were only 7,427 of IDPs as of 21 September 2011<sup>121</sup> and it would seem that resettlement could conclude within a few months. However, there are a number of problems on the ground that challenges this notion that displacement can be so easily terminated. This section will argue that omissions of addressing the situation of particular types of IDPs raise questions as to the use of the official IDP statistics and concerns about how the current humanitarian situation in the North is understood.

Firstly, a majority of these approximately seven thousand plus IDPs that were still in camps in Vavuniya are from the Eastern side of Mullaitivu.<sup>122</sup> While some of the GSs are being gradually demined and opened for resettlement, in eight GS divisions in Puthukuduyirippu AGA and three in Maritimpattu AGA, return seems to have stalled and have not been opened up for mine clearance.<sup>123</sup> Officially the problem of mines and UXOs has been put forward as the principal reason for delayed resettlement.<sup>124</sup> However, there is suspicion among civilians and civil society actors in Mullaitivu that the real reason behind the delay may be that the Government does not want to open up all these areas as evidence of what occurred during the last phase of the war might be found there.<sup>125</sup> The Government announced that all IDP camps including Menik Farm would be closed by December 2011,<sup>126</sup> and the remaining IDPs would be moved to a site in Kaiveli and Kombavil.<sup>127</sup> It is unclear if this is for re-establishing a transitional site or whether this will be

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<sup>120</sup> This problem was also witnessed during the resettlement in the East, as this approach offered the Government a means of reducing the number of displaced and demonstrating an improvement in the humanitarian situation (See also Policy Brief on Humanitarian Issues, Centre for Policy Alternatives (CPA), December 2007; A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya, Centre for Policy Alternatives (CPA), March 2009; Bhavani Fonseka, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, Centre for Policy Alternatives (CPA), September 2010).

<sup>121</sup> Minister of Resettlement Gunaratne Weerakoon addressing the Parliament in September 21 stated there are 7,427 IDPs left in the North ("IDPs still in camps number 7,427 – Weerakoon," *Island*, 22 September 2011). According to UNOCHA by 31 October 2011 there were 7,618 IDPs in Menik Camp ("Joint Humanitarian and Early Recovery Update," UNOCHA, Report 37, October 2011).

<sup>122</sup> "Joint Humanitarian and Early Recovery Update," UNOCHA, Report 36, September 2011

<sup>123</sup> "Joint Humanitarian and Early Recovery Update," UNOCHA, Report 36, September 2011

<sup>124</sup> It is reported that in the Pudukudiyiruppu AGA division 23 GS divisions were "mine-infested", of which 10 have been cleared (P. Krishnaswamy, "Refugee-camp saga of Northern Tamils to end," *Sunday Observer*, 29 May 2011; Resettlement Ministry Secretary B.M.U.D. Basnayake quoted in Lakna Paranamanna, "IDP camps to close by December: Ministry," *Daily Mirror*, 2 July 2011, page 4).

<sup>125</sup> CPA interviews with residents and civil society actors, Mullaitivu, June 2011

<sup>126</sup> Lakna Paranamanna, "IDP camps to close by December: Ministry," *Daily Mirror*, 2 July 2011, page 4

<sup>127</sup> P. Krishnaswamy, "Refugee-camp saga of Northern Tamils to end," *Sunday Observer*, 29 May 2011

permanent relocation.<sup>128</sup> Furthermore, it is not clear if in the event it is relocation, whether the residents have been informed why they cannot return and as to what will happen to their land. It is also not clear if their consent has been sought for permanent relocation, and whether the land acquisition process has been followed. Even while the government claims it will address all the key needs of these IDPs to relocate,<sup>129</sup> the UN and INGOs have received requests for assistance.<sup>130</sup> However, a number of key donors are reluctant to support such relocation.<sup>131</sup> As noted in Chapter Ten there are a number of issues relating to humanitarian agency and donor involvement in such a process. The TNA issued a statement on 4 August 2011 questioning the Government's decision and suggested that there "must be some sinister reasons" for not returning the population to their homes and that it was a "contravention of the public commitment made by the Government to the displaced people and also to the international community,"<sup>132</sup> making clear the sensitivities relating to the proposed relocation. There are a whole series of issues related to this issue, including the rights of these IDPs and the post-war policies of the Government. It also highlights the issue of the very definition of resettlement that is being used in Sri Lanka. There is a lack of clarity as to whether the relocation is meant to be permanent rather than temporary and there are no firm assurances that the closed areas will be opened for resettlement soon.

Secondly, while some 250,000 IDPs have been officially resettled in the North, there are specific populations that are still unable to return to their homes or properties and, in some cases, even their villages. In effect, this means that while these persons who have been de-registered as IDPs by the Government, they have not necessarily found durable solutions and are still de facto IDPs, living in displacement yet again, whether in transit sites or other locations. The term 'transferred displacement' is used by some humanitarian agencies to describe this population.<sup>133</sup> For instance, there are IDPs who have been officially resettled- including to their village or respective GS division but not specifically their own property. As discussed below, while de-mining is an issue in some areas, in others the key problem appears to be military-imposed restrictions. According to the UN at least 1,114 IDPs are living in 'transit situations' as of 31 October 2011.<sup>134</sup> Furthermore, there are

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<sup>128</sup> CPA interview with humanitarian agencies working Menik Farm and Mullaitivu, Colombo, June 2011

<sup>129</sup> The article also claims that the GA stated that "Since the villages where the families are to be resettled are very fertile with extensive state lands and abundant water resources, each family would be allotted half-an-acre to one acre of arable land with provision of all assistance to engage themselves in agricultural activities." (P. Krishnaswamy, "Refugee-camp saga of Northern Tamils to end," Sunday Observer, 29 May 2011)

<sup>130</sup> CPA interviews with humanitarian actors involved in relocation discussion, August 2011

<sup>131</sup> CPA interviews with humanitarian actors and donors involved in relocation discussion, August 2011

<sup>132</sup> "TNA suspends talks with Govt and sets conditional 2 week deadline for resumption," Press Release, Transcurrents, 4 August 2011.

<sup>133</sup> CPA interviews with humanitarian agencies, December 2009

<sup>134</sup> "Joint Humanitarian and Early Recovery Update," UNOCHA, Report 37, October 2011

other IDPs living with host families in areas such as Vavuniya who have not taken up the offer of resettlement. As of 31 October 2011 it was estimated that there were up to 34,671 such IDPs living with host families who were displaced during the last year of the war.<sup>135</sup> It is by no means clear what will happen to them, as they are no longer recognised by the Government as IDPs following the resettlement of their village. However, this figure may not reflect the actual number of persons who cannot return and there may be other such cases of 'hidden displacement.'<sup>136</sup>

In real terms, this situation means that displacement may continue in areas of resettlement and displacement regardless of official government statements unless a durable solution for those undergoing transferred displacement or those living with host families is found. There are additional fears that families may end up in new categories of displacement if new military camps are established or existing ones are enlarged, large scale development projects result in residential land being acquired, or settlements established by the LTTE are declared illegal and the land rights restored to original owners without attention being paid to the viable relocation of those persons currently living there. These cases also point to the importance of regaining ownership to, control over and access to land as a critical step in the process of return and ending displacement.

The official statistics being used by the Government and even some humanitarian actors raise concerns that the actual number of IDPs in Sri Lanka is not included in this statistic. Much of the focus on IDPs in Sri Lanka over the last four years has focussed on the IDPs displaced from the Vanni from 2008 onwards, whom are referred to as new IDPs. Thus, when the Government refers to IDP statistics, it is referring to this specific population.<sup>137</sup> In August 2010, the then UN Resident Representative, Neil Buhne, stated that 90% of IDPs in the North had been resettled,<sup>138</sup> which served to highlight both the problematic use of statistics, use of terminology, and policy gaps by both the Government and UN. In addition to the new IDPs, Sri Lanka hosts other IDP populations - including old IDPs, i.e. those displaced prior to 2008- who are often not counted within official numbers. This population is made up of various case loads including the expelled Northern Muslims, Jaffna and Sampur HSZ IDPs, in addition to other groups from all ethnic communities displaced from the North, East and border areas. At the end of the war, this population was

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<sup>135</sup> "Joint Humanitarian and Early Recovery Update," UNOCHA, Report 36, September 2011.

<sup>136</sup> Policy Brief on Humanitarian Issues, Centre for Policy Alternatives (CPA), December 2007, pg 06; A Profile of Human Rights and Humanitarian Issues in the Vanni and Vavuniya, Centre for Policy Alternatives (CPA), March 2009.

<sup>137</sup> A statement issued by the Ministry of Disaster Management and Human Rights in February 2009 claimed: "The statistics has been inflated, and 230,000 persons have been registered as internally displaced. From October 2008, we have been catering to such exaggerated amounts. As to the government estimates, it would not exceed 100,000 and another 35,686 arrivals have been registered during the last three weeks," he added briefing group of foreign media personnel." ("Confusion in IDP statistics," The official news portal of the government of Sri Lanka, 19 February 2009.)

<sup>138</sup> "90% of IDPs resettled in the North – Buhne," News Line, Policy Research and Information Unit of the Presidential Secretariat, 20 August 2010.

estimated to be at least 180,000, the majority of whom are from the Northern Province.<sup>139</sup> While the omission of this statistic could be seen as a mere oversight, it seems to be part of a much larger issue of marginalisation of this population.<sup>140</sup> For instance, on 3 July 2011 the government announced that the final stage of resettlement of IDPs was completed in the Jaffna Peninsula,<sup>141</sup> thereby conveniently ignoring the remaining 42,505 IDPs from the HSZs in the area whom have yet to be resettled.<sup>142</sup> According to UNOCHA it is estimated that there are 7,553 IDPs from the long-term caseload living in camps and a further 41,613 living with host families.<sup>143</sup> These statistics are by no means uncontested as it is not clear that all those who have de-registered or been re-recognised have found durable solutions. These examples obviously raise concerns that some members of government, political actors, media, civil society and even some humanitarian agencies are not cognisant of this issue.

Another population that is often forgotten in the discussion of displacement in Sri Lanka is that of refugees. It is currently estimated that there are at least 141,074<sup>144</sup> officially registered refugees from Sri Lanka living abroad. India alone has 104,121 refugees, more than 86% of whom are from the North.<sup>145</sup> There are a number of schemes specifically designed to assist refugee return including by UNHCR, IOM and DRC, and there also continue to be spontaneous returns. Nonetheless, the rate of return has been low, with 2,054 refugees returning in 2010 and 1,680 in 2011.<sup>146</sup> The lack of confidence among the refugees to return is a significant problem and there could be additional issues including that despite the poor conditions of the camps in Tamil Nadu, some have been able to establish themselves and may even consider settling in India. In 2009, the then Chief Minister of Tamil Nadu M. Karunanidhi offered citizenship to some 100,000 Sri Lankan origin refugees.<sup>147</sup> However, groups working with the refugees suggest that the vast majority is looking to return.<sup>148</sup> While a number of families are returning a number of returnees are adult males

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<sup>139</sup> Mirak Raheem, "The Other Half of the Problem: The Old IDPs," *The Daily Mirror*, 3 November 2009

<sup>140</sup> Mirak Raheem, "The Other Half of the Problem: The Old IDPs," *The Daily Mirror*, 3 November 2009.

<sup>141</sup> "Final stage of resettlement in Jaffna today," Ministry of Economic Development, 05 July 2011.

<sup>142</sup> The government revealed to Supreme Court in September that there are 42,505 IDPs from High Security Zones (HTZ) are still to be resettled. ("Over 40,000 yet to be resettled in HSZ," *BBC Sinhala*, 09 September 2011.)

<sup>143</sup> "Joint Humanitarian and Early Recovery Update," UNOCHA, Report 37, October 2011

<sup>144</sup> Source: UNHCR, <http://www.unhcr.org/pages/49e4878e6.html>

<sup>145</sup> "Sri Lankan refugees keen to return home – UNHCR Dep Rep," Official Website of the Government of Sri Lanka, 11 October 2010; Statistics of refugees in India from OfERR, August 2011 .

<sup>146</sup> CPA interview with UN official, December 2011

<sup>147</sup> "Karunanidhi promises citizenship to all Sri Lankan refugees in India," *Times of India*, 30 September 2009.

<sup>148</sup> "Sri Lankan refugees keen to return home – UNHCR Dep Rep", Official Website of the Government of Sri Lanka, 11 October 2010.

who are coming back in order to re-establish livelihoods and homes and to re-claim property.<sup>149</sup> Returning refugees face a variety of problems. For instance, one set of refugees returning to Pier Village in Mannar were denied entry to their former lands by the military and were told that they had been squatting on state land prior to displacement so ended up living in tents on land owned by a nearby mosque.<sup>150</sup> While the Government has initiated some measures<sup>151</sup> and made some statements acknowledging the specific needs of refugees,<sup>152</sup> it needs to take urgent steps to increasing confidence building measures, including some 'go-and-see' visits, addressing documentation issues. Like in the case of old IDPs, the limited employment and education are obstacles for immediate return.<sup>153</sup> In addition to IDPs and refugees in India, there is the Diaspora, many of whom originate from the North, but live in other countries and still own property in Sri Lanka; some members of the Diaspora have family in the Northern Province and may wish some day to return to Sri Lanka.

However, it is apparent that finding durable solutions for the current population of IDPs in Sri Lanka is proving problematic due to the challenges presented on the ground. It is also clear that the entirety of the displacement problem is being discussed and is recognised - not only in terms of statistics, but also reintegration, claiming back or securing land, and to what extent IDPs have been able to return to their places of origin. There has to be an effort by Government, humanitarian agencies and civil society organisations in order to identify such populations as a first step towards addressing post-war displacement.

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### **Issues related to Northern Muslims and Challenges to Finding Durable Solutions for Old IDPs:**

There are several commonalities between the various old IDP populations. Nonetheless, patterns discussed in this chapter cannot be used as a rule to determine that entire populations will not return or delay return. Instead, this issue has to be reviewed on a case-by-case basis.

Northern Muslim returnees confront some of the same type of problems as other returnees including secondary occupation and land disputes, but also have specific problems. Even though one of the most significant challenges to Northern Muslim return no longer remained in the post-war context, they found it increasingly difficult to return due to a variety of factors. The LTTE posed

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<sup>149</sup> CPA interview with humanitarian agencies working with returning refugees, August 2011

<sup>150</sup> "Refugees in India; refugees in Sri Lanka," Daily Mirror, 24 November 2011.

<sup>151</sup> "Refugees who wish to come back will be welcomed –Rajiva," Ada Derana, 31 May 2011.

<sup>152</sup> Minister of Traditional Industries and Small Enterprise Development Douglas Devananda had recently stated that a special programme will be launched to resettle the refugees ("Spl. resettlement programme for refugees to be launched," Daily Mirror, 17 November 2011).

<sup>153</sup> CPA interview with humanitarian agencies working with returning refugees, August 2011

one of the more prominent obstacles to Northern Muslim return even during the ceasefire periods, both given the fear of re-expulsion by the LTTE, like in October 1990<sup>154</sup> and the lack of serious efforts by the LTTE during the ceasefire period to facilitate Muslim return, hence its military defeat offered greater space for return. The rate of return has been relatively low in the post-war context, with Northern Muslims claiming that they need assistance packages for return and the re-building of lives and livelihoods and more time.

When resettlement commenced in Mussali in April 2009, Northern Muslims living in Puttalam and other areas of the South were not able to return along with the new IDPs, except in individual cases. This resulted in Northern Muslims demanding parallel or even slightly delayed resettlement for many months as the authorities refused to provide clearance.<sup>155</sup> Despite their significant political clout, with three MPs and one cabinet minister, Northern Muslim returnees have found it difficult to secure equity in terms of assistance. For instance, most old IDP returnees whom CPA spoke to in Southern Mannar claimed that they did not receive the resettlement allowance of Rs 25,000, but in specific cases, some of the early returnees who had been able to negotiate and secure permission to return had been able to claim this assistance.<sup>156</sup> For much of 2009 and 2010, humanitarian agencies were even informed by PTF that housing projects had to first and foremost address the new Vanni returnees, not other IDP populations.<sup>157</sup> The situation has improved so that Northern Muslims are able to return to areas, which have been opened up and are now more able to claim the full assistance package, although permanent housing continues to be a challenge. Northern Muslim returnees also complain that government and humanitarian actors which are largely staffed by Tamils are not sensitive to their needs and are unwilling to include them in assistance schemes.<sup>158</sup> There are, however counter complaints by Tamil civilians in the North that Northern Muslim returnees are favoured by the military and receive state patronage through cabinet ministers, including Minister Rishard Badurdeen. These rival perceptions have created tensions between the two communities and could have implications for reintegration and coexistence. While individual communities such as those in Jaffna initially found their land was occupied by civilians or

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<sup>154</sup> In October 1990 the entire Northern Muslim population of the North was forcibly expelled by the LTTE. See *The Quest for Redemption: The Story of the Northern Muslims, Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990*, Law & Society Trust, 2011.

<sup>155</sup> "Sri Lanka: Difficult homecoming for Muslim IDPs," IRIN, 22 March 2010; Lather Farook, "Nobody's People: The Forgotten Plight of Sri Lanka's Muslims," *Muslim Guardian*, 11 July 2009; "Appeal to Make 2010 The Year of Return of Expelled Northern Muslims," Statement by civil society and religious organisations, January 22 2010.

<sup>156</sup> CPA interviews with returnee communities in Silavathurai, Mussali and Marichchakatti, June 2011; Shreen Saroor, "Ignoring two decades," *Himal South Asian*, February 2010

<sup>157</sup> CPA interviews with agencies involved in permanent housing, May 2011

<sup>158</sup> See Shreen Saroor, "Ignoring two decades," *Himal South Asian*, February 2010; *The Quest for Redemption: The Story of the Northern Muslims, Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990*, Law & Society Trust, 2011, page 175-6

by the military, in other areas there is a question of new state lands being provided for a larger population of returnees that has grown during displacement.<sup>159</sup>

There is a general perception among humanitarian agencies, Tamil civil society activists and donors to assume that the Northern Muslims will not return and that they have been provided adequate assistance. This fails to address the vulnerabilities within the Northern Muslims community, the differing aspirations within the community and the complex nature of protracted displacement. While some Northern Muslims may have been able to establish houses and businesses in sites of displacement there are others who do not own property and do not have sustainable livelihoods so are looking to return. A sample survey conducted by NRC among Jaffna Muslims in Puttalam found that 48% intended to return and 52% were interested in staying in Puttalam.<sup>160</sup> Even within families there may be differing positions to return with some members opting for return while others may look to relocation, and a few may be undecided. For IDPs who have experienced protracted displacement, the option and process of return may be more complicated than for more recent IDPs. Even while case loads of protracted IDPs have developed coping strategies and received specific assistance programmes including rations and shelter at the site of displacement, the vulnerabilities of displacement have not been eliminated. IDPs continue to face limited employment opportunities and competition with the host community for resources. Nonetheless, when comparing the services and resources in the areas of return, which may have deteriorated during the war, some old IDPs may prefer to live for an interim period in their current locations (often in more urban areas), rather than return before the health, education and other services in return sites have been improved. This is not unique to the Northern Muslims. For instance, in the Jaffna Islands the return of Old IDPs has been slow. In interviews with CPA, community leaders and humanitarian agencies stated that some of the families relocated to Jaffna town and its suburbs as well as Colombo would probably not return anytime soon as they have found alternate living arrangements, good schools for their children, and employment, but may look at ensuring they secure control of their properties.<sup>161</sup> Key factors for returning or locally integrating in sites of displacement include emotional ties, economic opportunities, housing and land ownership and social infrastructure.<sup>162</sup>

For the displaced Northern Muslim community there has been very little information and arguably little discussion on the available choices of return or local integration. Instead of an official announcement stating that they will lose their displacement status on a particular date, they have

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<sup>159</sup> The Quest for Redemption: The Story of the Northern Muslims, Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990, Law & Society Trust, 2011, page 173

<sup>160</sup> NRC, "Protracted Muslims IDPs from Jaffna in Puttalam and their right to choose a durable solution," June 2010

<sup>161</sup> CPA interview with humanitarian agencies working with displaced and community leaders from islands, May 2011

<sup>162</sup> NRC, "Protracted Muslims IDPs from Jaffna in Puttalam and their right to choose a durable solution," June 2010

received continuous reports of rations being suspended from the end of 2009, which were finally terminated in December 2010. Key actors in government have not attempted to engage in a dialogue and provide information on return and local integration. This has resulted in increased confusion within the community and increased pressure to secure assistance wherever available. In early 2011, there were a high number of Northern Muslims who de-registered in Puttalam and other areas of displacement and then registered as returnees in the North. According to the Secretariat of Northern Displaced Muslims (SNDM) by April 2011 77,965 had de-registered and returned to the North.<sup>163</sup> On any given day, however, many of the return sites have far fewer Northern Muslims than those who have registered as returnees, which has raised concerns among government officers and humanitarian agencies that many seek to return only in order to claim returnee assistance. Interviews with returnees, however, reveal that conditions in return sites are poor and the limited assistance has meant that many Northern Muslims are hoping to build up their homes and livelihoods over time and gradually return.<sup>164</sup> In addition to those families who were landless or who occupied land without proper documentation, there are 'new families' among the displaced, ie those who were born and grew up in displacement who were not able to make any land claims. It is unclear to what extent assistance will be granted for such families, including the provision of state land. Recognition needs to also be made that the process of registration by northern Muslims is not merely for the purpose of securing assistance but is also tied to questions of identity and dignity. Northern Muslims fear that by not immediately de-registering they will lose their right of return.

The decision to return or locally integrate in areas where they are currently displaced, including in Puttalam will vary due to a number of factors including opportunities for return in the areas of origin and conditions in displacement, but will also differ within family units. With the Government moving expeditiously to end displacement, IDPs and returnees are finding it difficult to ensure existing government support and to immediately opt for one choice or another. The SNDM, which was set up in 2005 to administer the welfare camps in Puttalam was officially closed down in Puttalam in April 2011 and was not re-established as expected in the North.<sup>165</sup> CPA was informed that it however continued to sign off on the de-registration of IDPs raising confusion as to whether they had to mandate to do so after closing down. To exacerbate matters, signing off by the SNDM was not recognised by government staff in the North who demanded that the GA of Puttalam needed to approve such measures. In addition, IDP children who are still in Puttalam faced some problems

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<sup>163</sup> The Quest for Redemption: The Story of the Northern Muslims, Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990, Law & Society Trust, 2011, page 179

<sup>164</sup> CPA interviews with returnee communities in Mannar, displaced communities in Puttalam and Northern Muslim community leaders, May and June 2011; The Quest for Redemption: The Story of the Northern Muslims, Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990, Law & Society Trust, 2011, page 173-175

<sup>165</sup> "The Secretariat for Northern Displaced Muslims and Their Resettlement Status," Muslim Guardian, 12 May 2011.

in early 2011 in getting approval from GSs who stated that they cannot continue to use government services unless they have locally integrated, however the problem has been temporarily resolved.<sup>166</sup> Ensuring full rights as citizens of Puttalam therefore is a key challenge and a challenge that needs to be addressed soon by those wishing to locally integrate, political and civil society actors in the area, and the government.

While there are an increasing number of families returning from displacement sites, it is evident that a number of Northern Muslims will locally integrate into areas such as Puttalam. CPA interviewed some families who have opted to locally integrate and as such have registered as voters in Puttalam.<sup>167</sup> Those who opt for local integration are not eligible for any specific assistance scheme and will have to turn to more general assistance programmes such as Samurdhi, which is available for families below the poverty line. In a situation where large populations of displaced have relocated, there have to be efforts to address their needs in the community so as to ameliorate resource problems and possible tensions. This problem can be seen currently in Puttalam, but steps may need to be taken in other areas. The tensions between the local population and the Northern Muslims have been documented, particularly over issues of assistance, housing, livelihoods and state services.<sup>168</sup> It is clear that the Government needs to at the very least make clear what is required and re-adjust its allocations for the district. The implementation of specific projects to address poverty and livelihood opportunities for both locals and the displaced is of critical necessity. In Puttalam Town in particular, land is a specific problem that was raised, as the displaced have bought up land in and around the town resulting in increased prices and shortages in available land. While local groups including the main mosque committee is attempting to find land for local landless families that have been living there for decades they claim that it is very difficult.<sup>169</sup> The need for Government, local civil society and donors to develop basic infrastructure projects that would address the needs of both the locals and the displaced who have opted to integrate in Puttalam is very apparent. Beyond development assistance, community leaders from both sides need to ensure steps are taken to ameliorate tensions.

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<sup>166</sup> CPA interviews with activists working with Northern Muslim community, Colombo and by phone, May 2011

<sup>167</sup> CPA interviews with Northern Muslims in Puttalam Town, May 2011

<sup>168</sup> The Quest for Redemption: The Story of the Northern Muslims, Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990, Law & Society Trust, 2011, page 126-141

<sup>169</sup> CPA interview with local Puttalam community leaders, Puttalam, May 2011

## Challenges to Return and the Rehabilitation of Communities

Even while the statistics of returnees coupled with the assistance programs available to them and the significant signs of recovery on the ground in terms of rebuilding of houses and cultivation of crops suggest that progress has been made, it is also evident from interviews on the ground that there continue to be challenges in addressing the needs of returnee communities in order to enhance their opportunities to rebuild and recover.

There are various forms of assistance available to returnees. In the majority of cases, for IDPs to secure assistance they need to be de-registered at the welfare centre and registered as returnees by the government authorities in their area of origin.<sup>170</sup> Returnees are eligible to an assistance package that includes a six-month WFP ration, Rs. 25,000 resettlement allowance, non-food relief items and transitional shelter. Even while the bulk of IDPs came from areas previously controlled by the LTTE in Mannar, Kilinochchi, Vavuniya, Jaffna and Mullaitivu, resettlement was also carried out in other areas of the North including the Jaffna islands and areas that were formerly HSZs, in addition to other areas.

**Limitations with assistance:** CPA was informed of some returnees being unable to access the full assistance package. As noted in the case study above Northern Muslims have not in some instances been able to claim some of the assistance, including the resettlement allowance or the six-month food ration but even some of the Vanni IDPs found it difficult to secure the full resettlement allowance due to the stipulation that part of the allowance had to be deposited in a bank account.<sup>171</sup> While this basic assistance package is a critical crutch for returnees, there are other pressing issues that are required for communities to be able to re-establish themselves, particularly community infrastructure including access to water for drinking and washing, permanent shelters, toilets, basic community infrastructure, irrigation for fields, as well as services including schools, hospital, canals, and transport. In CPA's visit to returnee communities in Oddusudan DS division, frequent demands were related to basic infrastructure including the shortage of clean drinking water for the entire village and lack of transport.<sup>172</sup> This development gap at the community level is not exclusive to returnees, but it is a more general problem faced by war-affected communities in the North and other areas.

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<sup>170</sup> There is sometimes a parallel registration in specific areas, particularly in the Vanni, which is conducted directly by the security forces and includes the taking of a family photograph.

<sup>171</sup> For instance, those who had lost all their documents could not open bank accounts and therefore only received the Rs 5,000 in cash, because the additional Rs 20,000 must be deposited a banking account (Bhavani Fonseka, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, Centre for Policy Alternatives (CPA), September 2010).

<sup>172</sup> CPA interviews with communities in Mullaitivu, May 2011

**Challenges related to livelihoods:** As Chapter Eight highlights, returnees face a serious challenge to rebuilding their lives and livelihoods. Restarting livelihoods is a critical obstacle in ensuring that returnees are not dependent on external assistance and can move towards becoming more self-sufficient and of securing some level of economic security. In a post-war context, re-building community economies is challenging due to the multiple impacts of the war including the loss of livelihood equipment, scarce financial resources for families and the destruction of infrastructure. As a recent report by the Government and the UN states, “poorly developed livelihoods, lack of employment opportunities, high food prices as well as delayed and insufficient livelihood interventions puts severe stress on the economy of many households. With low-income levels and high food prices, a majority of households in the Northern Province live below the poverty line. As a result, we see signs of asset depletion in the Northern Province and adaptation of relatively severe coping behaviour.”<sup>173</sup> Livelihood recovery is not an issue that was comprehensively covered in the research, but it is clear in individual cases that the difficulties in accessing land and bodies of water have hampered the rehabilitation process.<sup>174</sup>

**Presence of mines:** A principal obstacle to resettlement was the presence of mines and UXOs, post-war security concerns, and the process of clearing and releasing land for resettlement. Even though some areas have been opened up for resettlement, the entirety of the village or urban area may not have been de-mined. In most instances, the focus is on buildings and surrounding areas, where preliminary de-mining is completed and a technical certificate is granted. Presence of mines and UXOs continue to pose a challenge to accessing farmland in certain areas, such as parts of Mullaitivu, which are heavily mined. Certain areas such as the Mannar Rice Bowl including Madhu and Manthai West DS divisions were heavily mined and the de-mining agencies focussed on settlements and the immediate surrounding areas, and contaminated areas have been identified which still require work.<sup>175</sup>

**Vulnerable Groups:** As discussed in Chapter Eight, it is clear that at the macro-level and also for some communities, post-war economic recovery will take place over time. Nevertheless there are immediate positive indicators such as the increased movement of agricultural products from the North and the provision of permanent shelters. However, given the problems on the ground in the North, it is clear that short-term assistance for return and specific rehabilitation assistance such as permanent housing, coupled with macro-level development, such as the construction of major

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<sup>173</sup> “Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings,” United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011, pg.21-22

<sup>174</sup> For instance, some fisher families have been able to return but have not been able to access traditional fishing areas. One such as area is in Iranamadu Tank, where the military did not permit returnees including from Shanthapuram to fish, thus creating increasing difficulties for these families; the recent announcement by the military to provide access to these fishermen in June 2011 is a welcome move (CPA interview with locals in Kilinochchi, June 2011).

<sup>175</sup> “Joint Humanitarian and Early Recovery Update,” UNOCHA, Report 35, August 2011

transport lines and establishing factories and businesses may not address some of the structural vulnerabilities. Some of these vulnerabilities were accentuated and even caused by the war, such as the issue of a large number of women headed households in the North.<sup>176</sup> Addressing these vulnerabilities could require more sustained assistance work with communities and specific vulnerable populations such as women, the disabled and former combatants.<sup>177</sup> In addition, there have to be efforts to address other long-standing problems such as landlessness, poverty and lack of representation. These problems may be tied to other political, social and economic issues faced by families from the lower castes and Up-Country Tamil community, many of whom migrated to the Vanni in the wake of riots in the South from 1958 onwards, and problems in governance with factors such as ethnicity, class and caste all proving to be active and latent forces determining government services.<sup>178</sup> Even while the government and WFP noted that “poverty is deep and widespread, particularly in the Northern Province,”<sup>179</sup> the significant differences between the districts and areas within the districts in addressing issues such as poverty needs to be factored in, or there is a danger of increasing inequality in the socio-economic standards of the North.

**Links to Land:** Securing access to land is a primary challenge as it is intrinsically tied to the notion of home and return, livelihoods such as cultivation and grazing, provision of specific forms of assistance, including permanent housing, re-establishment of social ties and social capital, including dowry, as well as the securement of financial security among others. As pointed out in this report there are a variety of challenges to civilians securing full control and access to their land due to a variety of factors including loss of documentation, lack of ownership rights, secondary occupation by the military or other civilians and the presence of mines and UXOs. The inability to enjoy possession and use of the land is a critical stumbling block to returnees and could thereby prolong their situation of displacement. While the focus needs to be on ensuring that returnees are able to re-claim land that they owned or possessed prior to their displacement, attention needs to be given to prior claims, if they do exist, so as to avoid creating or exacerbating land conflict. The current government initiative under the Land Circular (July 2011) does prioritise pre-war claims, nonetheless there has to be careful attention to ensure that both the process and the outcomes are fair. As such ensuring information among the refugees in India and other diaspora communities is imperative. CPA has come across several cases of old IDPs who sold (in some cases illegal sales of state land) properties and now want to reclaim these lands. For instance, in Kilinochchi some Northern Muslims sold their land during the period of LTTE control, as they believed they could not

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<sup>176</sup> See Chapter Seven

<sup>177</sup> CPA interview with humanitarian agency personnel working in the North, Colombo, July 2011

<sup>178</sup> CPA interview with humanitarian agency personnel working in the North, Colombo, July 2011

<sup>179</sup> “Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings,” United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011, pg.22

secure security guarantees from the LTTE but now feel safe to return. This has the potential of creating tension, especially when it is between different ethnic communities. A community leader from the Muslim community in Kilinochchi reiterated to CPA that there is a need for honesty, sensitivity and understanding from both communities in order to deal with such issues.<sup>180</sup> In addition to the issues listed, landlessness is another significant issue in the North. For instance, among the Jaffna HSZ IDPs it is estimated that there are significant proportion who are landless, hence it is by no means clear how a durable solution could be found given the options available to them.<sup>181</sup>

Returns may not happen spontaneously, especially in the case of local minorities such as Sinhalese returning to Jaffna Town and elsewhere in the North, or Muslims to rural villages in Mullaitivu, or Tamils to Manal Aru/Weli Oya. Some families and communities fled as a direct result of violence, intimidation and fear, and the prolonged period of displacement has not made it easier to return to and reclaim rights including to land in communities where social ties may have lapsed. In addition, facing host communities (who themselves may have been displaced) whose role and support for these act of violence may be ambiguous and whose relations with returning old IDPs may be unreceptive, at best, can also prove challenging. In this sense there is a clear need to address return also in terms of coexistence as it will not happen automatically, especially if entire generations have grown up in mono-ethnic environments and there is competition for scarce resources. As such, it is important for government, political, donor, NGO and corporate sector actors to be aware of such cleavages and tailor make their programs and projects to promote ties or at the very least avoid advantaging one community over another.

**Impact of human security:** It is difficult to discuss return and the process of normalisation without discussing the issue of human security. Undoubtedly there is a dramatic improvement in the human security situation when compared with the last phase of the war. However, there continue to be problems. Jaffna, for instance, has seen sharp spikes in incidents of violence including killings and abductions during December 2010 and January 2011 and also in June-July 2011, raising concerns of a decline in law and order and a continuing culture of impunity.<sup>182</sup> Even while maintaining security is a fundamental issue that the Government has to undertake, the high levels of militarisation have proved problematic not just in terms of occupation of land but also in the insecurity it creates at the community level and the use of violence by the state as seen during the Navanthurai incident on 23 August 2011 where around 100 civilians were brutally assaulted

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<sup>180</sup> CPA interviews in Kilinochchi with returnee Northern Muslims, May 2011

<sup>181</sup> CPA interviews with humanitarian agencies working with old IDP caseload, Jaffna, April 2011

<sup>182</sup> "Info on detained LTTE suspects accessible," Daily Mirror, 20 June 2011.

and tortured and later detained.<sup>183</sup> As explained in Chapter Eight, the issue of security and human rights violations in relation to women remain a problem in the post-war context.

While the government has taken some steps to address the issue of those who died and are missing, such as the provision of a new legislation to provide death certificates<sup>184</sup> and an inquiry process to check whether family members are being held in detention,<sup>185</sup> this is an issue that requires a multi-pronged response, which should include formal judicial and psycho-social assistance. Even while the Government has tried to insist that accountability is not a concern for war-affected communities, who are more interested in housing, employment and education, it is not an either/or question. CPA's interviews with communities including in Mandatheevu in Jaffna and Oddusudan in Mullaitivu made clear that the issue of missing family members is a paramount concern with families frustrated by not knowing whom they could go to.<sup>186</sup> Above all, interviews conducted indicate that there is little space for groups and communities to raise their voices and for protection work, such as in human rights and support to victims, in the areas and approval for humanitarian agencies to secure permission to work in protection or psychosocial issues is still difficult to obtain.<sup>187</sup> It is also clear that the services for victims of human rights abuses or for their families to report such abuses and secure assistance, particularly in the Vanni are highly limited.

It is incumbent on the Central Government, district level government staff and security forces to play a neutral role and facilitate return, without backing one community against another. The displacement, return and resettlement debate is fraught with complications including allegations of ethnicisation, politicisation and militarisation. These allegations are further exacerbated in a context where much of the decision-making and implementation is shrouded in secrecy and limited to a few actors, with limited or no consultation with the affected communities, local officials and agencies. This is further complicated by the dynamic nature of the ground situation with ongoing demining, return and resettlement. Therefore, it is challenging in most instances to understand the real ground situation. This is compounded by perceptions of local communities who fear that certain politicians and security forces have an ulterior motive, including possible land grabs and changing of ethnic representation in certain areas. While the onus is on the government to demonstrate plans for return, resettlement and rehabilitation of the North, and share it with all stakeholders, it is also imperative that at the local level community leaders and politicians also engage in the process by reaching out to welcome returnees from other ethnic communities.

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<sup>183</sup> "Jaffna: brutal assault of civilians in Navanthurai," Groundviews, 25 August 2011.

<sup>184</sup> "Death certificates for missing," Sunday Times, 07 November 2010.

<sup>185</sup> "24-hour information on detainees," Island, 23 June 2011; "Info on detained LTTE suspects accessible," Daily Mirror, 20 June 2011.

<sup>186</sup> CPA interview with community members, Oddusudan and Mandaitheevu, January- June 2011

<sup>187</sup> CPA interviews with humanitarian agencies working in the Vanni, Colombo, September 2011

Specific assistance needs to be provided for local integration where IDPs opt to settle in the area of their displacement. This assistance needs to be designed in manner that will not just assist the individual IDP families who are integrated, but also the host community in order to 'Do No Harm.'<sup>188</sup>

## Recommendations

In order to ensure a more comprehensive solution to the issue of displacement and durable solutions, a number of recommendations can be made:

- At the most basic level there has to be a mapping of continuing displacement including 'transferred displacement,' IDPs living with host families, old IDPs among others. This has to be a joint initiative by government and humanitarian actors. Results should be shared with donors, agencies, civil society and others assisting IDPs, returnees and affected communities.
- The government should avoid measures that would result in the displacement of civilians or take steps to minimise the level of displacement. In instances of displacement the government should provide adequate compensation and assistance towards relocation.
- The government, donors, agencies and others should recognise that leaving camps and being 'de-registered' itself does not amount to an end to displacement. This should be factored in when planning projects and providing assistance.
- Humanitarian agencies and donors need to maintain a commitment to humanitarian standards, including on issues of relocation.
- Humanitarian agencies and donors need to ensure that beyond a quick impact, assistance programmes they need to look at longer-term impacts and interventions to strengthen local capacities.
- The government needs to ensure greater space for empowerment, psycho-social and protection activities in the North, allowing agencies with expertise in these areas to access areas and work with communities.
- Initiatives to return and resettle and assistance packages for IDPs, returnees and communities should be premised on the principle of equity while acknowledging the need for special attention to vulnerable groups, including female headed households, the disabled and elderly.

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<sup>188</sup> A humanitarian principle, 'Do No Harm' puts forward the idea that international assistance can become a key component of the context for war and peace, hence its impact cannot be viewed in purely neutral terms as it can exacerbate or ameliorate a conflict. (Mary B. Anderson, "Do No Harm: How Aid Can Support Peace or War," Boulder: Lynne Rienner Publishers, February 1999)

- Donors, agencies and others providing assistance to communities should insist on freedom of movement and other rights enshrined in the Constitution of Sri Lanka and provided by international human rights and humanitarian law, ensuring that regular consultations with communities are held to hear their views and factor in their needs which should feed into projects and programmes.

# Chapter 5

## Housing and Land Ownership

The construction and repair of housing is a key component of any post-war recovery programme. Even prior to the last phase of the war, it was estimated by the Ministry of Relief, Rehabilitation and Reconciliation in 2002 that over 58% of the housing stock in the North and East was either destroyed or damaged.<sup>189</sup> A variety of actors from humanitarian agencies, donors, government, to the actual residents and their extended families face critical challenges in addressing damaged or destroyed housing in Northern Sri Lanka. Reconstruction efforts are complicated by financial and legal concerns that current policies do not adequately resolve. Renovation and rebuilding schemes are hampered by a short-fall in funding, but issues of ownership and control prove problematic even in cases where financial support is available. Competing claims over land as well as secondary occupation by both civilians and military pose serious obstacles to reconstruction. There have been efforts to develop practicable solutions in order to deal with the lack of clarity and competing claims relating to ownership, including efforts by the government to deal with this issue through the Land Circular which may have significant implications for on-going housing projects. This chapter reiterates the urgency of policy reform and practical solutions to the complexities related to housing and land ownership, while also raising specific problems relating to housing projects. Above all, it seeks to highlight the importance of land ownership as a pre-requisite for housing projects.

## **Extent of Damage and Levels of Assistance**

The scale of destruction and damage to houses varies across the Northern Province and depends on a number of factors including but not limited to the extent of fighting over the years, length of displacement and scale of rehabilitation programmes. Even in the Vanni, where much of the fighting in the north was concentrated during the 2006-2009 period, there is significant variation in conditions, where some houses are still standing with the main damages being the loss of tiles, rafters and door/window frames, while in other areas the entire structure has been destroyed or is so severely damaged that it needs to be re-built. As a result, very few returnees in the Vanni are able to move back into their homes without some form of repair. Heavy damages are not restricted to the Vanni alone, as houses in areas such as Jaffna, especially in the HSZs, may still be standing but damages due to fighting, neglect, the lack of maintenance, and looting of housing material have had a significant impact. The confusion over boundaries between individual properties may also be a problem. In some areas, such as Mussali, the level of undergrowth and damages including from elephants, especially in the case of wattle and daub houses, may have resulted in difficulties in identifying the original housing plot or even the boundary markers of the property. Given the cycles of war and peace, some home-owners were initially apprehensive about rebuilding houses, instead preferring to wait for a period of stability.

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<sup>189</sup> NEHRP, Operations Manual, page 1, <http://nehrp.com/documents.html>

The Government has roughly estimated that 168,136 houses had been destroyed or seriously damaged by the war through an assessment that it conducted during February-March 2010 in the Northern Province.

### Assessments of Damaged Houses<sup>190</sup>

District	Damages pre-2002	Damages pre-2010			
		Total	Fully Damaged	Partial with Structural Damages	Partial without Structural Damages
Jaffna	105,064	60,842	37,286	13,917	9,639
Kilinochchi	27,363	41,214	32,580	5,686	2,948
Mullaitivu	22,871	27,652	22,563	3,286	1,803
Vavuniya	7,640	14,496	12,455	810	1,231
Mannar	20,082	23,926	19,388	3,108	1,432
Total	183,020	168,130	124,272	26,805	17,053

In 2002, an assessment was conducted throughout the North and East to calculate the number of houses that had been destroyed or damaged. For the Northern Province, the total was assessed to be 183,020. The total number of damaged houses in 2010 as compared to 2002 is lower due to the significant number of houses constructed during the CFA period and the tsunami recovery process. However, some of these more recently constructed houses were destroyed or damaged during the period of armed conflict 2006-9, and were as a result included in the 2010 survey of damaged houses. Nonetheless, it is striking that the level of damage, particularly from the districts of the Vanni region, is not much higher, especially from Mullaitivu where fighting was concentrated during the last five months.

The process of assessing damages, however, is not entirely foolproof. The present process does not include a ground assessment that involves house-by-house verification, but instead is largely dependent on the figures quoted by GS officers, which in some areas that have not been opened for resettlement are essentially “guesstimates.”<sup>191</sup> A senior government officer involved in housing interviewed by CPA was, however, confident that given the past experience of the tendency to over-estimate, the actual total figure may be lower.<sup>192</sup> Given that some houses could have been destroyed more than two decades ago and that the residents may still be living in displacement or have settled elsewhere, in Sri Lanka or abroad, there are additional issues regarding the accuracy

<sup>190</sup> “Operation Manual,” North East Housing Reconstruction Program; ‘Review Mission’ power point, NEHRP, June 30 2009

<sup>191</sup> Interview with former housing officer, June 2011

<sup>192</sup> Interview with former housing officer, June 2011

of these estimates. Nonetheless, this figure is used as the ballpark figure for the allocation of the construction of houses by humanitarian agencies, donors and government actors and forms a key component of post-war housing policies.

## **Macro Housing Requirements**

The general model for providing shelter for returnees is the provision of transitional shelters upon settlement. Temporary structures can be erected on their own properties or, when this is not available, on any other plot of land until a permanent shelter can be constructed.<sup>193</sup> As of 31 May 2011, it was estimated that 77% of the transitional housing had not been provided to IDPs in the North.<sup>194</sup> In particular areas, however, the transitional shelters consist of a few tin sheets and coconut fronds. Old IDPs, for instance, may find that they are no longer eligible for the standard return package of transitional shelters and may in fact have to appeal for assistance or to come up with alternative solutions.<sup>195</sup> While there have been efforts to distribute monsoon response kits, the serious shortfall in transitional shelters is a grave problem, especially in districts such as Kilinochchi and Mullaitivu which have a coverage gap of 27,306 and 19,261 families respectively.<sup>196</sup>

In terms of permanent houses, the issues may be even more complicated. The general expectation is that permanent shelters or assistance for the construction of permanent shelters will be provided. However, a principal difficulty in the North is that of funding for the required 168,130 estimated houses. Prior to the Indian Housing Project, there was a clear shortfall with roughly 21 housing agencies signing up to construct or rebuild 33,939 houses. As of November 2011 however, the deficiency in funding may not be as dire. A significant portion of this shortfall may be met by the Indian Housing Project (IHP). Even though the exact number of houses for the North has not been officially announced, it has been reported that the bulk of the 50,000 will be for the North. According to a leading expert on disaster related housing programmes, in addition to the bulk of the IHP being focused on the North, based on previous housing programmes it can be estimated that roughly 25% of house owners will not wait for donor money and may commence self-recovery through private finances, loans and assistance from extended family networks.<sup>197</sup>

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<sup>193</sup> The Indian Government provided roughly 4 million tin sheets and 40,000 tonnes of cement (R.K Radhakrishnan, "India continues broad spectrum engagement with Sri Lanka," *The Hindu*, 23 May 2011)

<sup>194</sup> Joint Humanitarian and Early Recovery Update, OCHA, Report 32, May 2011

<sup>195</sup> Refer Chapter Four

<sup>196</sup> Joint Humanitarian and Early Recovery Update, OCHA, Report 32, May 2011

<sup>197</sup> Interview with a humanitarian actor, Colombo, June 2011

Nonetheless, it is clear that there is a reliance on donors to address the shortfall and the government has been slow in putting forward an alternate policy or programme to fill in the gap. A significant feature in the provision of housing is that the bulk of the housing projects is from donor assistance with the government contribution is insignificant. While the Ministry of Resettlement (through REPIA)<sup>198</sup> will probably construct up to 1,000 houses, the bulk of funding for the NEHRP project, which functions under the Ministry of Economic Development, comes from the International Development Association and EU.<sup>199</sup> Government housing projects being implemented in the rest of the country are also being carried out in the North, such as the NHDA's Project in Jaffna, Vavuniya, Mannar, Kilinochchi and Mullaitivu.<sup>200</sup> The government has already constructed 50 houses under this project.<sup>201</sup> It is somewhat strange that the government's official policy document titled "Sri Lanka – The Emerging Wonder of Asia," claims in the section on Uthuru Wasanthaya that it will re-build and restore 600,000 fully and partially damaged houses.<sup>202</sup> As to how this figure was calculated is by no means clear and it is not clear if this part of an ambitious government plan for providing shelter over the coming years or a statistic for propaganda purposes.

Given scant resources, policies and standards adopted by the government, housing agencies and donors play a significant role in impacting the number and type of houses that can be constructed. While the government has attempted to encourage more donors to pledge money for housing, it has also set standards and introduced certain policies for the construction of houses. It is imperative that the Government sets out such standards so as to ensure minimum standards and to avoid problems for beneficiaries and discrimination between housing programs. However, some of these policies have complicated the situation for actors involved in housing. For instance, the government was less interested in transitional housing and expressed preference for permanent housing which has meant that some families are in extremely vulnerable living conditions. In addition the government required that agencies providing a transitional house also needed to construct a permanent toilet. The near equivalent cost for a transitional shelter and a permanent toilet has meant that there is less funding available for transitional shelters and in effect less shelters on the ground. More problematically, the government and a number of donors opted for constructing permanent houses as opposed to core houses. While this was driven by a desire to

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<sup>198</sup> REPIA stands for Rehabilitation of Property and Industries Authority (Sri Lanka) .

<sup>199</sup> Website of Ministry of Economic Development [http://med.gov.lk/english/?page\\_id=77](http://med.gov.lk/english/?page_id=77)

<sup>200</sup> Each district will get 200 houses under the project. ("Govt. provides housing to 1000 families in five districts in north," Daily Mirror, 19 August 2011; "Housing projects at Mullaitivu, Kilinochchi," Sunday Observer, 12 June 2011.

<sup>201</sup> "Ariviyal Nagar: Hon Minister praises tenacity of Northern Populace," Official website of the Ministry of Construction, Engineering Services, Housing & Common Amenities, 09 May 2011.

<sup>202</sup> Sri Lanka – The Emerging Wonder of Asia, Mahinda Chinthanaya Vision for the Future, Department of Planning, Ministry of National Planning and Finance, 2010, Page 241

provide better housing and to avoid differential treatment between the NEHRP and other housing projects, it has meant that fewer houses can be built with the existing funds. As noted in Annex 3, it also means that in the case of owner driven houses where funding is not provided for the full construction, there is more pressure on beneficiaries to complete construction.

The efforts to address housing needs for whole communities was further complicated by donor selection criteria as a number of housing projects are focused on the most vulnerable or exclude certain types of families. For instance, single member families in particular could find themselves outside beneficiary lists. The PTF attempted to encourage all agencies involved in housing to focus on entire villages but did not succeed with all actors, including with the NEHRP program.<sup>203</sup> This attempt was driven by efforts to reduce possible intra-community disputes; however, this has not proved entirely successful. As discussed in Chapter Four late returnees for instance find it difficult to get into beneficiary list.

## **Proving Ownership for Housing Projects**

Faced with the complexities of ground realities relating to land ownership, particularly in the Vanni, housing agencies, donors and the Government face a critical challenge as to whether to proceed with housing projects without resolving underlying land disputes and competing claims. The confusion over land ownership has posed a real dilemma for agencies involved in house construction. Most agencies do not want to go ahead with building a house for a beneficiary only to find out later that the land is owned or claimed by someone else. Simultaneously, agencies are facing a time crunch. Donors insist on strict adherence to deadlines and funding cycles. Further, there is a humanitarian imperative to ensure affected communities are able to restart their lives. Finally, the government continues to demand speedy construction of houses, thereby putting significant pressure on agencies. While there is a clear imperative to develop practicable solutions, it is also apparent that there is a tendency among agencies involved in housing and Central Government in Colombo to under-estimate the scale of the problem of the lack of legal ownership and competing claims related to land. With the Land Memo and the subsequent Land Circular, however, this problem is thrown into stark relief both forcing housing actors to re-examine this issue and offering all actors an opportunity to deal with this problem. This challenge will not just impact on-going housing projects but also those that have been completed, including the phases of the NEHRP project that have been completed.

Ownership of the relevant property is often a requirement for most housing assistance programmes. The main exception to this practice is housing projects for the landless or families

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<sup>203</sup> Interview with a humanitarian actor, Colombo, June 2011.

being relocated to a place where either the State or another actor offers land ownership, or the relevant agency purchases properties for that purpose. In addition, the requirement of proving ownership is less stringent in the provision of transitional housing because these types of shelters are temporary. Although some transitional housing has cement floors, most of these structures can easily be dismantled as they are made of poles, tin sheets and tarpaulins. Nonetheless, some humanitarian agencies do insist that some form of ownership is provided or in cases where there is no clear ownership, a letter from the DS stating that the beneficiary has a legal claim or a letter from the landowner in the case of private land would have to be provided. In situations where some families are unable to return to their own properties, agencies may offer transitional shelters if families can identify land and secure permission from the land-owners to temporarily reside there.

The need to prove ownership is - in many permanent housing projects - a key pre-condition. As explained in Chapter Two, this is particularly problematic in certain areas of the North. The difficulty in proving land ownership is particularly widespread in the Vanni, where some residents have lost their documents and others may neither have government permits nor deeds, due to government administrative constraints, as well as the LTTE's parallel process of land provision and ownership through its three month permit system. Competing claims between rival claimants adds another layer of complexity to the issue of ownership. In addition to the obstacle of proving ownership, there is an additional issue for families to secure control of their land. As detailed in Chapters Two and Four, there are a number of cases where even families who have clear ownership may not be able to secure control and thereby claim housing assistance for their property.<sup>204</sup>

Faced with these challenges related to permanent housing, including the high level of destruction, the urgency of resettlement and rehabilitation and the sheer number of families without documents or ownership the government and humanitarian agencies attempted to respond with pragmatic solutions. One proposed idea was for key local actors, like the GS and leading citizens, including those on village committees, to vouch for the claimant in order to ascertain whether each individual family lived in a particular plot of land.<sup>205</sup> To provide some official documentation, the AGAs provided letters attesting to the individual claimants living on the properties, and where relevant, that they were in the process of being provided land by the State. This letter was used by some housing agencies as adequate proof of ownership to proceed with construction of permanent housing. Some humanitarian agencies and implementing structures such as NEHRP involved in constructing permanent houses initiated their own processes to verify the list of potential

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<sup>204</sup> Returnees may find that they are unable to immediately return to their properties and have to find alternative sites as a result of UXOs, military occupation/restrictions, heavy undergrowth or secondary occupation. Some returnees, such as the old IDPs, may find it difficult to be included on beneficiary lists as they may have registered as a returnee but some members or even the whole family may be continuing to live in displacement in another area. As such, government officers and humanitarian agencies may not consider them eligible for housing assistance (Chapter Four).

<sup>205</sup> Interview with humanitarian agencies constructing permanent houses, Colombo, March 2011

beneficiaries provided by government officers through community consultations and to make sure that there were no property disputes.<sup>206</sup>

A majority of humanitarian actors settled for the approach of using letters from the DS attesting beneficiary ownership. This approach seemed very convenient in the short-term for those claiming ownership and humanitarian agencies wanting to build shelters, but it was also problematic. Some residents or entire villages may have been displaced from the early 1980s and 1990s and newcomers may have settled in the same plots, raising the possibility of competing claims. Constructing permanent houses using this approach would further complicate existing land disputes instead of resolving them. Reportedly, there were also initial efforts by the AGA and land officers in some DS divisions in the North to regularise some of the encroachments by the AGA and land officers, while also attempting to restore lost documents. The need for a comprehensive process to clarify ownership and to address competing claims was however all too apparent. In at least one instance, a humanitarian agency has found itself caught up in a land dispute. One humanitarian agency working in the Vanni informed CPA that it is facing the threat of a court case for attempting to construct a house on land that has been identified by the AGA as state land. The agency has received letters from the lawyer of an individual claiming to be the actual owner of the land, demanding that this agency immediately cease construction or else risk litigation. The land was provided by the relevant AGA who claimed that the land in question was State land and that a permit would be provided to the beneficiary subsequently.<sup>207</sup> As noted in Chapter Three, the initiatives by district officers to provide documents and ownership came to a halt with new policy initiatives including the two circulars and the Memo of April 2011. Following the Memo and related Land Circular, it seemed that the issue of ownership would be decided through the proposed processes. Hence, the assumption would be that housing projects, apart from the Indian Housing Project (IHP) would have to be halted until the land claims process is completed. However, the Government's final decision on this issue is yet to be seen, especially given the suspension of the circular by the Court of Appeal.

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<sup>206</sup> While this verification process is important to ensure that beneficiary lists are accurate, as explained above, this does not address some of the other competing claims, especially of those who have not yet returned and made their claims. The largest housing project that has been implemented in the North, NEHRP developed its own approach to dealing with land disputes, including developing Land Task Forces (LTF) to address some of the less complex land problems. It proved effective in tackling problems pertaining to a lack of documentation and boundary disputes. As of 26th April 2004, the LTF had received 44,248 grievances from the five districts of the North, more than 79% of which were inquired into and of which 59% were resolved and land permits issued (The median averages were calculated from the table of "Progress on Land Task Force," NEHRP, House News Bulletin, Volume 1, Issue 2006/2, April 2006-June 2006, page 3). Unsurprisingly Kilinochchi and Mullaitivu had the highest number of reported grievances, 12,724 and 10,785 respectively ("Progress on Land Task Force," NEHRP, House News Bulletin, Volume 1, Issue 2006/2, April 2006-June 2006, page 3). District Land Tribunals consisting of three qualified individuals were also set up under this project in order to mediate land disputes so as to avoid delays with court proceedings (Also see Annex III for more detailed description of NEHRP project).

<sup>207</sup> Interview with humanitarian agency personnel working in the Vanni, April 2011.

On the ground this has not meant, however, that housing projects that have commenced have been halted nor has the Government demanded a halt to construction until the process of land claims is completed. This has led to more confusion for key actors involved in housing. For donors and housing agencies, the most expedient approach would be for the Government to expand the category of special development projects exempted from the land claims process, which includes the IHP to all other large-scale housing projects. While this would meet the interests of the beneficiaries and those involved in providing housing, it is also likely to increase tensions in cases where the ownership of the property is claimed by others, including those with a prior claim. It is imperative that donors and agencies ensure a conflict sensitive approach and not just ensure legal ownership. The Government in turn cannot absolve itself of its responsibilities through leaving it to the agency to face legal and other challenges. If the Government decides to allow the housing projects to go ahead, it needs to develop a policy as to what it would do if there are competing claims, including the provision of alternate land and housing. It is also important that donors do not have unfair expectations in the need to complete funding cycles, but instead take note of the ground realities. The government needs to make a clear request to donors for extensions of funding cycles if more time is required to ensure clear ownership.

Halting permanent housing projects until all land disputes have been resolved can however prove risky, particularly due to the limited funds that are available. Given donor funding cycles and competing risks there is a possibility that there will be limited international grants for construction of houses. In this context, donors need to look at the repercussions of their funding requirements. While some agencies and donors have sought clarification from the Government in light of the circular, it is paramount that the government, donors, agencies and community representatives discuss the options of addressing issues and possible repercussions in order to avoid exacerbating problems on the ground and future disputes.

## **Housing Projects, Humanitarian Standards and Conflict Sensitivity**

The construction of houses, like other development projects, has the potential to exacerbate existing or even create new social and ethnic tensions. While agencies involved in the construction of houses for selected beneficiaries in a village may have developed the beneficiary list through a transparent selection process based on vulnerability, the selection of particular families may still create tensions especially among other members of the community who do not find alternate support for constructing houses. Particular categories of returnees including Northern Muslims and refugees from India who are resettling later may have missed the selection process and may find themselves ineligible for this assistance. Civil society groups working with both these sets of returnees also point out that other community members and government actors in some instances are not sensitive to the housing needs of these particular returnees, even citing that these recent

arrivals lived in better displacement conditions so therefore are less vulnerable than those who lived through much of the war.<sup>208</sup>

While integrating components to off-set and minimise conflict is an important step, housing agencies may find the Puttalam Housing Project (PHP) initiated by the World Bank for Northern Muslims living in displacement in Puttalam for over two decades was designed in order to support the integration of members of this community.<sup>209</sup> While having substantive humanitarian benefits including improving the living standards and for supporting the displaced the opportunity to opt for settling in Puttalam, this project proved controversial. Within the Northern Muslim Community it was critiqued for assuming that so many families were opting to relocate rather than return to their places of origin and encouraging them to do so. The PHP was also critiqued by the local community in Puttalam for encouraging the displaced Muslims to permanently settle in the district, instead of return. The presence of a large displaced community, numbering over 60,000 during the height of displacement has strained local resources including availability of land, employment opportunities and government services. Due to these problems, the PHP included a component to provide housing for vulnerable local families and also address infrastructure needs of both IDPs and local communities,<sup>210</sup> however there were protests at the differential allocation for Northern Muslim origin beneficiaries as opposed the beneficiaries from Puttalam.<sup>211</sup>

Actors involved in housing need to be cautious and conflict sensitive in their approach and ensure that they do background research into the communities they will be working with and for, and ensure that humanitarian standards and human rights of their beneficiaries are upheld. A specific challenge faced by some housing agencies and donors in the North is whether they should become involved in the construction of houses in relocation sites where the beneficiaries are not allowed to return by the Government. For instance, as discussed in Chapter Ten, the Government has occupied properties and even entire villages such as Mullikulam and Silavathurai in Mannar as it appears the navy will construct camps in these sites, leaving the civilians little choice but to relocate, if they are to secure any assistance. It is not clear if some of the houses are to be provided through the Indian Housing Project or another NGO project, or whether the Government

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<sup>208</sup> Interviews with local civil society actors working in the North, Colombo, August, 2011

<sup>209</sup> See Annex III for longer description of PHP

<sup>210</sup> The project aimed to provide a Rs. 25,000 cash grant for non-recipients of the housing loan, both IDPs and non-IDPs to build 2,000 toilets, in addition to the 7,885 toilets for those receiving housing assistance. The project also sought to provide drinking water for 13,584 IDP families and 3,291 for non-IDP families. (World Bank, "Project Appraisal Document," page 2 and 5).

<sup>211</sup> Dharisha Bastians, "Mervyn's Twin Rocks Puttalam," *The Nation*, 30 September 2007

will take on the responsibility.<sup>212</sup> In both these instances it is clear that humanitarian actors and donors risk violating key humanitarian standards and in effect are compensating affected civilians for the Government's acquisition of land for military or other purposes when that should be the responsibility of the Government.

## **Models of and Challenges to Construction**

In the provision of assistance for permanent housing there are two basic models: **owner driven** and **donor driven**.<sup>213</sup> In addition to the provision of new houses for those which have been completely destroyed, donors and agencies also support the repair of damaged houses. In the North the on-going housing projects include repairs for houses that have suffered major damages, i.e. missing a roof, as opposed to the loss of windows or doors.

Agencies involved in the construction of both transitional and permanent houses face a variety of challenges, some of which may be transferred to the home-owner. A principal issue for some owner driven programmes is that the amount of money allotted to the beneficiaries may prove to be inadequate. It is estimated that at current market rates roughly Rs. 500,000-550,000 is required to build a 500 square foot house.<sup>214</sup> If families have access to additional sources of income, including relatives in the Diaspora, completion may be possible. However, many returnees to the Vanni, who come back to their homes with limited or no financial resources, find it difficult to recommence sustainable livelihoods. Finding additional finances may prove difficult to proceed and to complete the housing.<sup>215</sup> Hence, there are issues with regard to the requirement by the Government and humanitarian agencies to build a 500 square foot two room house, as opposed to a cheaper core shelter, which a beneficiary can expand over time.

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<sup>212</sup> In another instance, the Government put forward relocation for civilians from the eight GS divisions in Mullaitivu which remain closed without specifying as to whether this was a temporary or permanent solution and as to what would happen to the land in these closed off GSs (CPA interviews with humanitarian agencies, Colombo, August and September 2011).

<sup>213</sup> In donor driven, the donor ensures that the house is built for the beneficiary by either a third party, such as a humanitarian agency, or a contractor. The level of consultation with the beneficiary on the design and space for variation of the plan varies according to the donor, but in general the houses are designed according to one model. In the owner driven model, the donor provides funding in installments for the construction of the house. The beneficiary is provided an installment once a particular stage of construction has been completed. The allotted amount per house and the number of installments differ between donors, but in general, there is a preference for the owner driven model among Government, key donors and some humanitarian agencies as it increases the sense of ownership and involves the beneficiary without strengthening dependency. In most cases there is a minimum standard set by the donor or agency, including the floor space, number of rooms, material that has to be used.

<sup>214</sup> Interview with agencies involved in housing, Colombo, June 2011

<sup>215</sup> Interview with official involved in housing, June 2011

There have also been temporary shortages of and/or inflation of key materials like sand in Jaffna,<sup>216</sup> while the transportation of material required for construction in some areas in the Vanni required special permission, which resulted in some delays.<sup>217</sup> In addition, donor driven housing projects have faced problems in locating skilled labour and in some areas unskilled labour may be unavailable or too expensive. Even while some donors attempted to use the housing project to increase livelihood opportunities the shortages and high costs for employing locals have meant that agencies have had to use outsiders<sup>218</sup> While there have been efforts to explore the potential of providing vocational training to address this problem, social stigma in terms of caste associations with these forms of labour have proved to be a challenge.<sup>219</sup>

## **Indian Housing Project (IHP)**

The Indian Government has put forward a plan to construct 50,000 houses in Sri Lanka, the bulk of which are expected to be in the Northern Province, with some houses for the East and the Up-Country Tamil population in the Central Province.<sup>220</sup> With regard to the North, the focus will be on providing shelters for IDPs. This project, which is funded by the Indian Government, will fill in a critical shortfall in terms of donor and government commitments to housing construction. The IHP is experiencing some delays,<sup>221</sup> including during the pilot phase, and during the period of research for this report there continued to be confusion among other humanitarian agencies and government actors in the district as to how the project will be implemented.

The project has commenced with a pilot phase of 1,000 houses in the five northern districts, which will be a donor driven process involving two Indian companies: Hindustan Prefab Limited and RPP

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<sup>216</sup> Interview with agencies involved in housing, Colombo, September 2011

<sup>217</sup> For instance, in transporting construction material for use in construction in Mullaitivu district, in March 2011 permission has to be sought from the district secretary, who in turn has to secure approval from the Special Forces Commander. This process increases time required for securing approval and delays construction (Interview with humanitarian agency personnel working in Mullaitivu, March 2011).

<sup>218</sup> Interview with GS in a Tellipallai Division overseeing housing construction, July 2011; interview with housing agencies, Colombo, September 2011

<sup>219</sup> Interview with agencies involved in housing, Colombo, June and September 2011

<sup>220</sup> India's 50,000-house project at standstill amid blame game," Sunday Times, 24 April 2011

<sup>221</sup> Media reports indicated a delay in the project and Indian officials claimed that this was from the government side, including a beneficiary list to be handed over by the Sri Lankan Government, allocation of land, visas and movement of construction material ("In response to media reports on Indian Housing Project," High Commission of India, Colombo, 25 April 2011; Kelum Bandara, "Indian housing project ready for occupation," 6 July 2011).

Infra Red Projects Limited.<sup>222</sup> While the bulk of the construction in the next phase will involve new houses, the project will also assist in the reconstruction of damaged houses.<sup>223</sup> It is reported that under this project the construction of a permanent house costs Rs. 500,000, while repairing a damaged house is estimated at Rs.200,000.<sup>224</sup>

### Indian Housing Pilot Project

District	Divisions	Number of units	District	Divisions	Number of Units
Vavuniya	North	43	Kilinochchi	Pachchilaipalli	50
	Vavuniya	45		Pooneryn	50
	South	43		Karachchi	89
	Cheddikulam	44		Kandavalai	61
Mullaitivu	Puthukkuduiruppu	26	Mannar	Manthai West	72
	Oddusudan	74		Mannar	25
	Thunukkai	50		Nanathan	25
	Maritimepattu	50		Madhu	30
	Manthai East	50		Musali	23
Jaffna	Tellipellai	30	<b>Sub-Total for North</b>	<b>1,000</b>	
	Karainagar	30			
	Nallur	50			
	Jaffna	40			

The focus of the pilot phase in most of the district appears to be largely on permanent housing on relocation sites. Given that many of the permanent housing projects focus on providing housing for families already possessing land and most agencies involved in housing were not interested in relocation, the IHP filled a key gap in terms of housing needs. In almost every site the Government has provided or will allocate state land for families selected from across the division. An annual permit will be issued for that land. In Jaffna the IHP was focused on providing houses for those already having land ownership including in Alaveddy East and North, in Tellipallai and Navaladdy in Ariyalai.<sup>225</sup>

<sup>222</sup> "Sri Lanka: 50,000 Indian housing project underway," Report of Government of Sri Lanka, Relief Web, 25 December 2010,

<sup>223</sup> "Sri Lanka: 50,000 Indian housing project underway," Report of Government of Sri Lanka, Relief Web, 25 December 2010

<sup>224</sup> According to the plan, the new houses will have four rooms including a hall, two bedrooms and a kitchen, in addition to a toilet ("Indian funded housing projects begin from Vavuniya," Daily News, 18 September 2010; "India's 50,000-house project at standstill amid blame game," Sunday Times, 24 April 2011.)

<sup>225</sup> Interviews in Alaveddy East and North in Tellipallai and in Navaladdy in Ariyalai with beneficiaries and government officials, July 2011.

The fact that the Cabinet Memo and the Land Circular of 2011 makes specific mention of the IHP makes clear the importance attached to this project by the Sri Lankan Government.<sup>226</sup> Through this project Indian Government is not merely providing housing, but also impacting land policy and civilian access to and ownership of land, as it effectively kick-started the landlessness initiative in the post-war North. According to the IHP's project report, the pilot project will target the most vulnerable landless IDPs, including single headed households, differently abled and the poor. The GA working through the DS will be responsible for selecting beneficiaries.<sup>227</sup> According to CPA's interviews with government actors in the district, the lists were reportedly prepared by the DS based on information provided by the GS ; hence, it would be a challenging task for the IHP project personnel to compare the profile of those on the beneficiary lists as opposed to the larger population of the landless. That the IHP does not have field offices, unlike the NEHRP project, nor an implementing partner adds to the problem.<sup>228</sup> While CPA's interviews with IHP beneficiaries in Jaffna and Mannar have made clear that Indians involved in the project have made visits to the sites, it is not clear to what extent they have been involved in the beneficiary selection and verification process.<sup>229</sup>

It is also apparent that in some IHP sites housing is provided for families who have been prevented from returning and securing their properties due to military occupation. While from a humanitarian perspective this is of obvious immediate benefit to the affected families, it raises a whole series of questions including whether the beneficiaries have provided consent to being relocated, whether they retain ownership of their original properties and whether the IHP houses and/or land are meant to serve as compensation. There are concerns in this instance of whether the Indian Government is de facto contributing to the compensation for military occupation when this is a responsibility of the Government and not that of a third party. This issue has serious political and human rights implications.<sup>230</sup> It is also not clear whether the IHP will also look at housing as a comprehensive and sustainable initiative or merely as a construction project. Given that this project involves the relocation of families, there are issues of livelihoods, community infrastructure and social ties. It is worth posing the question as to whether there is an expectation that the State will

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<sup>226</sup> Refer Chapter Three

<sup>227</sup> Project Report, Housing Project Under Indian Assistance, September 2010, Page 6.

<sup>228</sup> Interestingly the project report claims that NEHRP will be the implementing agency for the pilot phase even though in the pilot phase this has not happened (Project Report, Housing Project Under Indian Assistance, September 2010, Page 5).

<sup>229</sup> Interviews in Ariyalai and Tellipallai, July 2011; CPA interviews in Silavathurai, June 2011.

<sup>230</sup> See Kombavil relocation in Chapter Four

look into and address all these issues.<sup>231</sup> Furthermore, it is not clear how either government is verifying that there are no competing claims to the land or whether there are appeals processes in such scenarios given these sites are excluded from the process laid out in the cabinet Memo.

The IHP has created other controversies. The Indian High Commission was forced to issue a statement officially denying that it would send 20,000 Indian construction workers to Sri Lanka and would instead use local labour.<sup>232</sup> Reportedly in the pilot phase in Tellipallai there was an attempt to use labour from the village but due to the high costs other local labour was utilised.<sup>233</sup> There are also concerns that the Indian project is not coordinating with other agencies involved in construction, and that this lack of coordination could result in problems on the ground with potential beneficiaries expressing preference for the IHP as opposed to other projects.<sup>234</sup> UNOCHA issued a statement stating that some beneficiaries have refused the offers by some housing agencies to construct their homes in the hope that the Indian project will offer better quality housing.<sup>235</sup>

It appears that the next phase of the IHP would proceed with a largely owner driven model.<sup>236</sup> It is unclear as to whether the Indian Government will call upon existing housing agencies to implement and to take primary responsibility for monitoring the construction or whether it will develop its own mechanism to undertake this responsibility. According to the project report, there is a process for selecting villages and beneficiaries, a grievance mechanism, construction and supervision processes, and land ownership resolution. There is a striking similarity in the beneficiary selection

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<sup>231</sup> The IHP project report claims that “arrangements have been made” to address livelihoods and community infrastructure, without specifying as to which government will be responsible for these arrangements (Project Report, Housing Project Under Indian Assistance, September 2010, Page 5).

<sup>232</sup> Foreign Secretary Nirupama Rao in Indian N. Sathiya Moorthy, “Sri Lanka: India reaches out to Tamils,” [www.orfonline.org](http://www.orfonline.org), 11 September 2011

<sup>233</sup> Interview with beneficiaries and government official in a Tellipallai Division, July 2011

<sup>234</sup> Interviews with housing agencies, Colombo, September 2011

<sup>235</sup> The OCHA Statement claimed that “There is continuing concern that a number of families have declined shelter assistance from agencies based on the belief that they will shortly receive housing of a higher standard through the Indian Government programme. The start date and grant levels for this project remain unconfirmed.”(Sutirtho Patranobis, “UN worried about Indian Housing Project,” Hindustan Times, 28 April 2011)

<sup>236</sup> Indian assessment teams have raised concerns about using a donor driven model as there is more room for being criticised for poor standards and that it would also reduce costs. There are countervailing factors that make the donor driven model more attractive including that Indian companies could be involved and hence there would be financial benefits for Indian stakeholders. In July 2011, the Indian Government announced that apart from 5,000 houses that would be constructed using contractors, some 43,000 would be built through owner driven schemes (Kelum Bandara, “Indian housing project ready for occupation,” July 6 2011) The project report from September 2010 claims that in the second phase 10,000 house repairs will be carried out in Jaffna and the Vanni, while 40,000 houses will be constructed in the North and other areas. Interestingly, the 1,000 houses from the pilot phase are not deducted in the report adding confusion to the issue of numbers (Project Report, Housing Project under Indian Assistance, September 2010, Page 5-6).

process and grievance redress system laid out in the IHP Project Report<sup>237</sup> with the NEHRP project, which uses local level processes.<sup>238</sup> Even while the project report recognises the complexities of land ownership, the project does not necessarily lay out the process for resolving the issues apart from stating that it would use “workable mechanisms” and that it would support “a land resolution and regularisation strategy within the framework of existing land administration.”<sup>239</sup> The provision of greater information to the general public on the project, including publicly available operational, technical and financial manuals for the project will also avoid confusion and controversies.

## **Conclusion**

While there has been significant progress with and commitments to addressing the destruction and damage to housing, there are a number of gaps that need to be addressed. Securing permanent shelter is a critical step in the attempts by war-affected communities to re-build their lives. While there are a number of steps that need to be taken by the Government, housing agencies and donors in order to address the basic housing needs, it is all too apparent that steps have to be taken to deal with the underlying issue of property ownership.

## **Recommendations**

- To address the shortfall in permanent housing, the government needs to develop an overall strategy including through expanding existing government programmes rather than relying on top-up small projects from donors and piecemeal government initiatives.
- The government should encourage the corporate sector and the Diaspora to invest in housing projects.
- The government needs to clarify how humanitarian agencies should proceed with on-going construction of permanent housing in the context of the Land Memo and Land Circular. The government may need to request extensions to housing projects from donors and humanitarian agencies in this regard.

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<sup>237</sup> Project Report, Housing Project Under Indian Assistance, September 2010, Page 4

<sup>238</sup> See Annex III for description of NEHRP project.

<sup>239</sup> Project Report, Housing Project Under Indian Assistance, September 2010, Page 4

- To deal with rising costs, the government should adopt price controls on construction material as it did during the tsunami.
- Humanitarian agencies and donors involved in housing should verify the beneficiary lists provided to them by the government, while attempting to develop an understanding of the history of the land and the communities in which they are working.
- All donors and humanitarian agencies should be clear on their policy of relocation and what conditions need to be fulfilled by the Government of Sri Lanka in order for humanitarian agencies to provide housing assistance while ensuring that humanitarian and human rights standards, including that relocation is informed and voluntary.
- Humanitarian agencies, local actors and the government need to identify how to address the issue of skilled labour in the North, especially given the high demand with the implementation of the IHP. The government should ensure that the acquisition process is followed in keeping with the law, including the payment of compensation, and assistance to address livelihood, education and other basic infrastructure needs of those relocated.

# Chapter 6

## Landlessness

Among the various problems related to land in the North, a recurring issue is landlessness where a significant number of families do not own any land even if they are residing in otherwise unoccupied plots. A principal challenge in dealing with this issue is the lack of accurate information as to the scale of the problem, which is further compounded by the confusion between occupation as opposed to legal ownership. While the problem of landlessness is by no means unique to the North, the war has had a significant impact in the area by altering land usage patterns, including instances where civilians make use of land without necessarily having legal ownership. The result of uncertified land use is often an accentuation of pre-war land issues. This chapter examines different elements of landlessness in the North and discusses the modalities to resolve the issue.

## **Extent of Landlessness**

A group that needs special attention includes those who do not own land and are classified as landless. In theory it should not be difficult to document who is landless, but in the North this is challenging due to a variety of factors including the different levels of awareness relating to ownership and control of land, lack of possession of valid legal documents to prove ownership and competing claims. Additionally there are multiple impacts of the conflict, which include displacement, proliferation of actors handling land issues in the North as well as the destruction and loss of documentation.

Several people interviewed in the North by CPA for this report have different understandings of what ownership of land actually means. Some believe that having a piece of paper, regardless of who issued it or what is contained in the document, gives them ownership over land. Others believe that occupying a particular plot of land provided ownership of that land, while others believed that long-term occupation, over a decade or more, of the land legitimised their claims. CPA also came across groups who knew they had no prior ownership but thought that ownership was guaranteed on account of a long period of occupation and development of the land. There are those who believe that promises made by others - including government and political actors - meant actual ownership. For example, in Achchipuram, Vavuniya DS, some families, who had moved in search of new land as a result of HSZs in their original areas, had received state land from non-state actors during the conflict but had not been provided ownership documents. Some of the families genuinely believe they have legal ownership.<sup>240</sup> In October 2011 CPA received reports that Government officials had visited the village and were looking at providing ownership documents.<sup>241</sup> This case is by no means unique as in several areas in Vavuniya individuals have occupied and/or been granted land plots and resided in the same plot of land for over a decade

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<sup>240</sup> Interviews with communities in Vavuniya, May 2011

<sup>241</sup> Interviews with groups working in Achchipuram, October 2011

and developed their land. In such instances, the question is whether the individuals are considered landless as they are living on and utilising land but do not have ownership in legal terms.

CPA also came across groups in the Vanni who had developed state land that they occupied and were informed by Government officers that they would receive a permit, but never received the document as the war had recommenced. Interviews during the course of the research indicated that there was no movement on providing documentation for these groups but many believed that documentation would be issued in the future. Another aspect is related to those who previously owned land but were relocated to other land due to security or other purposes. There were no guarantees that documentation for the new land will be issued and when it will be issued, although many interviewed indicated that they believed documents will be issued in the future. A case where documents were yet to be issued for a relocation group was as a result of the tsunami and subsequent government policy. For example, under the tsunami recovery programme, the Government advocated the need for a buffer zone that required the relocation of families located near the beach. When CPA visited Vadamarachchi East in May 2011, it was reported that some of the relocated families had not been provided ownership documents.<sup>242</sup>

In contrast, there were others who admitted that they did not own land and were landless. A further category was not optimistic about getting their land back even though they claimed that they once owned land. In some of these cases, the land was in a high security zone or occupied by others. CPA came across families who owned land in high security areas in Jaffna and who were presently living in camps or with host families. Some families, who had increased in number after displacement, admitted that there would not be enough land for all members of the family.<sup>243</sup>

The situation of landlessness in the North exemplifies the complexity of trying to understand ownership issues. There is a necessity to understand the scope of the issue and address the problem in a post-war context. Landlessness increases poverty and powerlessness. While some causes of landlessness in the North can be traced back to factors pre-dating the war - including but not limited to population growth - scarcity of land (as seen with the limited availability of private land in Jaffna), and government policies as well as armed conflict aggravated these existing problems and created new ones. Landlessness in Jaffna is a historical problem and has been especially acute for families from lower tier caste groups. While there were initiatives to address landlessness in Jaffna through government schemes in other districts such as Kilinochchi, it is noteworthy that they often addressed only the needs of the middle class and more educated sections of society.<sup>244</sup> Landlessness not only impacts the North, but also has far-reaching

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<sup>242</sup> CPA field visit to Vadamarachchi East, May 2011

<sup>243</sup> Interviews in Jaffna, May 2011; interviews in Puttalam, June 2011

<sup>244</sup> Interviews with civil society actors in Colombo and Jaffna, May, June and July 2011

consequences as it has historically acted as push factors for Jaffna residents to migrate to other districts - particularly urban areas – thereby creating new strains and burdens on the communities in which they settle. The higher intensity of landlessness among marginalised sectors of society, such as lower tier caste group, has historically been a problem.<sup>245</sup>

CPA was informed of individuals belonging to the lower tier castes being unable to own, access and use certain lands in areas where tenure has a predominant presence of high castes. Although the impact of the conflict, politics during the war, development and economic growth changed social standing and strata in the North, caste remains a key factor shaping society and a number of actors claimed that in the post-war context there was a resurgence of caste.<sup>246</sup> Further, due to high prices and scarcity of private land in Jaffna, members of the lower tier castes cannot afford land. CPA was told of instances where there are clear preferences for selling land to members of the same caste groups.<sup>247</sup> Two years after the end of the war, the needs and situation of landlessness must be understood and ensured through changes to existing policies and practices.

## **Schemes Introduced to Address the Realities of Landlessness**

Landlessness is not a new issue and there have been previous efforts to address it. Both during the colonial and post-independence periods, there were numerous efforts to address landlessness through government initiatives including colonisation schemes and land reform.<sup>248</sup> Various armed groups such as PLOTE, LTTE and EPDP also attempted to provide land for the landless in areas which they controlled or had influence. In some instances, entirely new villages were established by these groups. The issue of valid documentation in order to prove ownership of land resulting from these policies remains a critical problem as seen in cases discussed in this report such as Achchipuram and other areas in the Vanni.<sup>249</sup>

In 2008, the government introduced a scheme to provide land to the landless, which has been implemented in some parts of Sri Lanka.<sup>250</sup> The Land Commissioner General's Department on 20 August 2008 issued the circular for state land alienation. Although the circular applies to the entire country, it is yet to be fully implemented. The aims of this initiative are to regularise

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<sup>245</sup> Interview with lawyer and social activists, May 2011

<sup>246</sup> Interview with social activists and humanitarian workers, May 2011 and June 2011

<sup>247</sup> Interviews with residents in Jaffna, August and September 2011

<sup>248</sup> Interviews with civil society actors in Colombo and Jaffna, May, June and July 2011

<sup>249</sup> Discussed in Chapter Eleven

<sup>250</sup> For more information read Bhavani Fonseka & Mirak Raheem, "Land in the Eastern Province: Politics, Policy and Conflict", CPA – May 2010

encroachment of state land, alienate state land with transparency, choose the most appropriate people for land ownership, and identify people who do not own land within their respective divisional secretariats. The candidates for land reclamation include those falling under the farmer category of the LDO, those eligible under the sections of low-income level, high-income level and educated youth of LDO, those eligible under the tax basis of the LDO and those eligible under the State Land Ordinance.

This landlessness initiative implemented in the East in 2009 is yet to commence in the North.<sup>251</sup> The conflict was a major impediment in the implementation of this scheme in the region, and it is believed that either this initiative or a similar initiative will commence in the near future, including possibly through new initiatives such as the Land Circular.<sup>252</sup> CPA has been informed that an initiative addressing the landless initiative has commenced in parts of the North and East but it was no clear at the time of writing under what scheme this programme was implemented and how it was progressing.<sup>253</sup>

In addition to a possible new policy direction, CPA noted interest in the North to address landlessness. While this is welcomed, it is hoped that the government will conduct a comprehensive assessment prior to implementing any schemes, so that it may better understand land ownership patterns and the history of land use in the area. Without the knowledge of prior ownership, control, occupation and usage of the land as well as the knowledge of who now owns land, whether it is individuals or organisations, there is a greater possibility of disputes arising in the future.

The much-discussed Indian Housing Project (IHP) is one of the rare housing projects that has a component on landlessness in the on-going pilot phase.<sup>254</sup> It is important for the donor and the government to ensure that housing given under this project addresses the issues of ownership and that landlessness is given careful consideration. Apart from respective DS officials selecting the potential beneficiaries, there is insufficient information to comment on how landless individuals will be chosen under the present project. It is yet to be seen how it will be addressed. In addition to the IHP, there are other housing projects where the provision of a land title remains a challenge.

CPA has been informed that particular local officials, politicians and other non-state actors are initiating programmes to address landlessness in their specific areas. Questions have been raised regarding the process and legality of such moves. For example, CPA was informed of a DS area in

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<sup>251</sup> Bhavani Fonseka & Mirak Raheem, "Land in the Eastern Province: Politics, Policy and Conflict", CPA – May 2010

<sup>252</sup> This is yet to be seen since the Land Circular is presently being revised. Interview with government official, Jaffna, June 2011

<sup>253</sup> Interview with humanitarian agencies, October 2011

<sup>254</sup> The IHP and other housing initiatives are discussed in Chapter Five

mainland Mannar where local officials are attempting to provide land to landless people for certain GS divisions in 2011.<sup>255</sup> CPA was informed that the relevant GS and DS had compiled the list, and land in a different GS had been identified. CPA was also informed that some individuals without land have been allocated land and housing under the IHP.<sup>256</sup> While attempts by local officials to provide land to the landless should be commended, the criteria for the selection of land recipients should be examined to ensure that the process is transparent and considerate of the current status of the awarded lands, emphasises the necessity of proper ownership documentation, legality and durability of resettlement schemes and is at least carried out across the district to avoid overt politicisation and ethnicisation of the issue.

CPA notes that several local officials are initiating such projects in order to ensure communities are provided the land essential to restarting and rebuilding livelihoods. Such projects, however, must give due consideration to broader issues and seek to prevent further problems. Several officials stated that the reason local initiatives were undertaken was due to the delays from the central government in initiating and implementing such programmes. While welcoming the proactive nature of these local officials, further study is needed as to whether such initiatives will effectively address problems faced by these communities, prevent new problems from arising or exacerbate existing issues.

Further practical difficulties remain in landlessness initiatives. Due to the conflict and other crises faced in the North, there was massive displacement, destruction of documents, disappearance of land boundaries and limited knowledge available on the history of the land. As a result, a practical problem faced at present is how to ensure the proper identification of land. This is extremely critical at a time where there are competing claims in the area and new policies should be seen to address the grievances of the affected communities and not seen as dispossessing rightful owners.

Identifying land can also be problematic. There is a scarcity of land in Jaffna, and land available is located in remote areas where services are poor and demining has only recently been completed or is still underway. There are other areas in Mannar and Mullaitivu where large areas of bare land are occupied by the military and, as a result, cannot be considered in the short-term for possible land distribution schemes.

The total number of landless is difficult to estimate at the current moment. As already explained, the lack of awareness on ownership and competing claims coupled with the provision of land under certain political initiatives or schemes and the failure of the government to provide clear ownership rights, have made it more difficult to identify who exactly is landless. As the HSZs are opened up, it will also become more apparent that there are a number of landless whose land and

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<sup>255</sup> Field visit to Mannar, June 2011

<sup>256</sup> Field visit to Mannar, June 2011

housing requirements need to be addressed or they will continue to live as a displaced population. With no indicator as to if and when HSZs will be reduced and removed, it is extremely difficult to plan on how to implement landless initiatives in these areas. Similarly, not all those displaced have returned and there may be those who own no land either in their district of origin or where they were displaced. These instances once more highlight the need for a comprehensive study by the government, which can in turn inform policy makers how to address the landlessness situation in the area.

Another dimension that is important to consider is women and landlessness. As discussed in Chapter Seven, women face several difficulties in owning, controlling and using land. Women headed households are more vulnerable due to the added responsibilities and the challenging environment in the North. The present norm is that the head of the household is still considered to be male, and very limited progress has been made to change the administrative practices and mindset of recognising that the head of household can be female. Without owning land, women may face added problems as land is closely connected to economic security, social standing and empowerment.

## **Ways Forward**

Unless the issues of providing clear ownership and landlessness are addressed, the numbers of people who are landless in the North is set to increase. There are steps that need to be taken including the clarification of land ownership and provision of documentation to that effect, which would also address the confusion among both the general public and the administration with regard to who owns land and who does not. Secondly, there is a need for a government assessment plan to identify the extent of landlessness in the North. Such a scheme could be carried out through a landlessness initiative. This process would need to be transparent and participatory. Given the problems on the ground, it is important that measures are taken by the government to include local actors in discussions on policy reform and planning programmes for the purpose of addressing the landlessness in the area as well as ensuring that conflict sensitivity and equity are key principles in influencing new initiatives. The process for identifying landless families and granting land may have to be annually conducted given the dynamic situation on the ground in the North. Furthermore, careful consideration and planning needs to go into all such initiatives to guarantee that plans and projects that are meant to solve problems do not exacerbate or create further disputes. In addition, while providing land to the landless is an important step towards ensuring economic and social security, in the long-term it will prove unsustainable, hence there have to be efforts to generate public understanding on the issue and put forward alternate options.

## **Recommendations**

- The government should extend the implementation of the 2008 landless initiative to the North. This should entail providing information to local communities who are landless and enable them to apply to obtain land in the North.
- Information should be made public on all schemes where land is to be provided to the landless, ensuring there is no duplication of efforts and reduce confusion.
- Steps should be taken to ensure there is no scope for future disputes when providing land to those who are landless. A comprehensive survey of land in the North should be conducted to understand the status of land and whether there are genuine claims of ownership.
- Attention should be given to vulnerable groups who are landless such as women and ensure that any initiative to provide land factors in these groups.
- Development projects such as housing programmes should factor in those who are landless and provide a percentage of assistance to those who are landless.

# Chapter 7

## Women and Land

Gender can play a significant role in the challenges that an individual can face in owning, controlling and accessing land. Special attention is required by policy makers, donors, agencies and civil society actors regarding the impact and dynamics between women and land. While this report has highlighted the impact of land issues on the overall community in previous chapters, this chapter explores how land problems specifically affect women.

The conflict had a profound impact on the lives of women, whereby women frequently had to take on more of the burden in dealing with security and economic challenges, which were tasks previously dominated by men. A significant number of households in the North and East are women headed as a result of the death or disappearance of male relatives, resulting in the women assuming the role of bread winner and key decision maker of the family. Security concerns for young males in particular also resulted in women having to take on a more public role, including when a family member was abducted. The burden on females has not necessarily been reduced with the end of the war, and 'new' problems have created additional challenges for women in general. This situation necessitates that government and relevant agencies take note of the changing dynamics in order to adapt programmes and plan accordingly. Several previous reports have discussed the role of women in relation to Sri Lanka's war.<sup>257</sup> This report examines key issues related to women and land issues in the North, including challenges to owning, accessing and controlling land; issues related to livelihood and identity, as well as the effect of existing policies and legal framework on women.

## **Women as Heads of Households and Issues related to Land**

Regardless of the fact that women headed households is not a recent phenomena in Sri Lanka, recognition of women as key decision-makers in the family is lacking, particularly at an administrative level. Government actors continue to refer to the male as the head of the household, even though in terms of most administrative procedures - as opposed to administrative practices - there is no requirement that the head of the household has to be male. This practice is present across Sri Lanka and is not limited to the North. The present study demonstrates that in the post-war context, while there have been changes on the ground due to the conflict and returns and resettlement in the North, the administrative arm and established practices remain the same, but many of these problems can be blamed on stringent regulations and practices that are archaic and are in need of immediate reform.

In areas significantly affected by the war, households led by women tend to be more common. A majority of the killings and disappearances of persons in the North, for instance, have been male,

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<sup>257</sup> Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni, CPA, September 2005.

leaving behind widows who have to take on men's roles. It is estimated that there are around 40,000 widows in the North alone, with around 20,000 in the Jaffna District.<sup>258</sup> There are other circumstances that create de facto women-led households, such as when a daughter is left as the principal carer of elderly parents or the husband is either absent or unable to take up an active role in the family's public and official interactions. Under these conditions women have no choice but to be the central agents in familial decision-making and public representation. It should well noted that the acceptance of women as decision makers and representatives of the family is also problematic for non-female-headed households, whereby it is more difficult for women to claim the position of co-head of the household.

Although matrilineal practices are present elsewhere in Sri Lanka, including in the Eastern Province<sup>259</sup>, women-headed households are still perceived as being outside the 'norm', even when it is a common phenomenon on the ground. While the war has changed certain realities, social norms and perceptions have proved to be slower to change. Nevertheless, the conflict has led to certain developments and changes in the prevalence of this pattern. Due to social norms, many women take a back seat, letting the male family members play a more active role over land related issues, relegated by what is considered 'accepted behaviour' and the responsibilities of caring for children, even though the land may be written in the name of the women, as in the case of dowry land. It is frequently men who are seen travelling to meet with officials in order to report land issues, obtain documents and request loans, but with the increase in women headed households, many women have assumed these responsibilities and related issues have been thrust upon them. More and more women are seen actively engaging with officials, agencies and other actors so that they can secure land ownership, control and access, as well as obtain livelihood assistance.

The LTTE's legacy in the empowerment of women is mixed: even though women had a prominent role in the military arm of the LTTE and the civil administration of the LTTE, the movement was not necessarily willing to completely overturn social norms and those that were overturned had mixed results. For example, the LTTE banned dowry being given in areas under their control, but CPA documented cases where it was practiced apparently without the knowledge of the LTTE.<sup>260</sup>

Ownership and control of land is not a guarantee that women can fully enjoy land. An important question is whether women who own land have the actual autonomy to decide what is the best use of their land. With the introduction of new initiatives and empowering existing groups, women are slowly starting to realise their rights over land. While there is more recognition and acceptance of women's rights to land, the male domination and reliance on the male to decide on issues

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<sup>258</sup> "Sri Lanka Women takeover as Breadwinners in North" - Centre for Women Development; IRIN News, Jaffna, 9 September 2010.

<sup>259</sup> Dennis B. McGilvray, "Crucible of conflict: Tamil and Muslim society on the east coast of Sri Lanka", SSA, 2008.

<sup>260</sup> Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni, CPA , September 2005.

related to land is still present in many parts in the North. For women who have lost their husbands they may face a variety of problems to securing ownership including that they initially found it difficult to secure death certificates and to contest other claimants,<sup>261</sup> including from their husband's family.<sup>262</sup>

A key concern in women's ability to gain acceptance as decision-makers is that women themselves may be unaware of how to assert their claims and rights. Specifically with regard to land, many women are uninformed with regard to their rights and their ability to own, control, use, manage and access land. This may be symptomatic of a more general problem in rural areas, where a lack of awareness of land rights- such as what constitutes a legal document or even the need for such a document -is particularly prevalent. The unfamiliarity of women with bureaucratic processes strengthens the reluctance of men to acknowledge women as being capable of asserting their rights. The perception that men are the heads of the household is not limited to male authority figures, but it is also something many women accept. Raising women's awareness of their rights is necessary for women to realise their ability to own and control land, as well as be heads of the household. Given the lasting effects of war and changing governmental administrations, the empowerment of women in these areas will require time and cannot be expected to change immediately.

During the war, several NGOs and donors had special initiatives for addressing the aforementioned problems associated with enduring gender roles. Local women's groups and organisations working in the North, such as Women Rural Development Societies (WRDS), played a primary role in providing awareness of property rights and proactively engaging women to obtain assistance in the process of land reclamation. Despite these attempts, there is still a clear need for sustained and expanded initiatives that focus on women's rights and the empowerment of women, including further awareness raising regarding the right to owning, accessing and controlling land. Current approaches to raising awareness and empowering women could be improved by looking at other key actors who play an influential role, including government officers and male community leaders. As one women's activist pointed out the level of sensitivity and awareness among the largely male dominated legal fraternity is an additional problem for women trying to secure ownership; as some lawyers do not necessarily see the importance of transferring ownership to the wife and advise their clients accordingly.<sup>263</sup> In the present post-war context and transitioning to a post-conflict situation, it is important to recognise women's role over land and address issues related to land.

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<sup>261</sup> The Government passed legislation to alter the process for securing death certificates for those who were affected by the last stage of the war in 2010. For more information, refer to the IDP Protection Working Group Quarterly Updates 2010.

<sup>262</sup> CPA interview with rights activist working in the North, Colombo, July 2011

<sup>263</sup> CPA interview with rights activist working in the North, Colombo, July 2011

## Key Challenges to Women Accessing and Claiming Land

With the end of war civilian access to their land has improved both as a result of the overall reduction of direct security threats and hostilities and the greater freedom of movement to return and secure control of land and property. Even though the war ended over two years ago, the military and police presence in the North remains high. Although many areas have been demined and opened up for resettlement, there are still many areas in parts of the North, particularly in the Mulaitivu, where resettlement is not allowed. Additionally a high number of military camps, police stations and ad hoc HSZs are in continued operation (discussed in Chapter Ten). The widely used A9 road has a steady string of camps and posts alongside the traffic lanes from Vavuniya to Jaffna. Most other roads and locations in the North have a significant presence of security personnel. This has had a bearing on women who continue to live with host families or in displacement camps as a result of their lands being occupied. For instance, in households in areas of the Vanni but also in Jaffna and Mannar, consisting largely of women with no adult male presence, the residents even sleep the night in other houses for safety reasons.<sup>264</sup>

An associated concern with the large military presence includes reports of violence and abuse faced by women. This has been and remains an extremely sensitive issue as many women choose to stay silent due to the stigma associated with reporting abuse, fear of reprisals as well as ignorance of legal rights and assistance schemes. Reported cases by local groups indicate that in some of these cases women are coerced and have no choice due to the security environment and their economic situation. CPA was informed by several individuals and organisations working in the North that clear that unreported abuse is a prevalent problem.<sup>265</sup> However, given the lack of in-depth monitoring and documentation on this issue, it is difficult to quantify the extent of this problem or its intensity. In particular, women-led households, where the women were either directly associated with the LTTE or whose family members, especially husbands were member of the group, appear to be more vulnerable. The government and military's restrictions on protection and empowerment work in the Vanni region in particular has created an additional challenge to addressing gender based violence (GBV) in general, and other gender issues. While the link between militarisation and land as causes of violence against women is not clear cut, the vulnerability of women in the North makes it extremely difficult for them to negotiate their right over land.

In addition to strong military presence and its impact on women, there are also growing concerns over community violence against women. While no comprehensive study of GBV in the North has documented cases in a post-war context, interviews conducted by CPA indicate that this is a

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<sup>264</sup> CPA interview with rights activist working in the Vanni and Colombo, July 2011

<sup>265</sup> CPA interviews with rights activists and humanitarian agencies, January-August 2011

growing concern.<sup>266</sup> A key issue reported to CPA in regards to Jaffna in particular was the sharp rise in GBV cases and the fact that often times the perpetrator is from within the same community or even family. Even though many women fear speaking out, there are reported cases of sexual assault and abuse which are documented and victims supported by government offices and civil society in the area. Violence against women in any form, regardless of the perpetrator, will impact women's rights to land and their livelihoods. In the face of violence or fear of reprisals, women may not be able to negotiate their claims to land and right to access land.<sup>267</sup>

Issues, such as military occupation and landlessness, pose significant challenges for women. Other households in a similar situation may find themselves under severe strain, but in the case of women headed households, the burden is often on just one individual. Hence, the vulnerability of women-headed households needs to be recognised and more comprehensively addressed, particularly by the government but also among humanitarian agencies, including those working on housing. As families attempt to rebuild their lives and assistance programs are phased out, one of the key challenges they face is how to manage economic sustainability. While there are on-going efforts, including cash for work, micro-credit schemes and specific livelihood training programs for widows, the short term nature of some initiatives that have either limited or no long-term strategies cannot facilitate a durable solution to problems associated with women's livelihoods.

Furthermore, women's voices, views and needs are not always represented in return and resettlement programmes, and in the design of other assistance packages. Although the conflict has created a high number of women-led households, there is no government assistance package solely focused on this group and government programmes addressing the needs of women in regards to land are lacking. Many of the issues documented in this section are not new and were even present during the war. It is imperative that the government takes the lead in policy and programmatic reform so that the situation of women affected by the war and their right to land is more widely recognised.

## **Policy and Legal Reform in Relation to Women and Land**

This section briefly highlights the need for reform in the policy and legal framework to ensure women can fully own, control and access their land in the North. Although some of these provisions are not specific to women or post-war developments, they remain crucial to progress in both of these areas.

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<sup>266</sup> Interviews conducted in January and February 2011

<sup>267</sup> Colombo Page, "Women protest in Sri Lanka's North against killing of women", 20 June 2011

Annex I discusses some specific laws such as the Land Development Ordinance (LDO), Land Grants Act, State Land Ordinance and the Tesawalamai all of which have a bearing on women's right to land. The LDO and Land Grants Act gives preference to male heirs in inheriting a plot of land, and it has been proposed that this particular section should be amended to recognise the equal standing of men and women.<sup>268</sup> In relation to state land, a growing concern has been whether the concept of joint ownership can be recognised. Joint ownership would enable women to have an equal footing in deciding on issues related to their land and livelihoods. Previous studies have recommended that relevant laws be amended to recognise this concept, but as with other cases, there has been no progress in making such changes. The Attorney General has given an opinion on this issue which states that joint ownership is possible under the State Land Ordinance.<sup>269</sup> Although several years have passed, this opinion has yet to be implemented. Land-related government officials interviewed by CPA were dismissive of the concept of joint ownership over state land and stated that no changes were needed in the law.<sup>270</sup> Several stated that for a clear title, it is best to recognise only one owner or claimant to land and that joint ownership will only further complicate existing issues. Their key contention was that clear title should be given priority and the concept of joint ownership was not in line with this goal. In such a situation, government officials interviewed by CPA stated that the use of the existing framework and policy of a distinct title for the individual is preferential to awarding joint ownership.

Similar opposition has been experienced in discussions of amending the Tesawalamai (Refer to Annex I). Many policy makers and lawyers in Jaffna felt that the Tesawalamai in fact protects the rights of the women and does not in any way make them dependent on their husbands. Those interviewed pointed out that even though women are required to obtain permission from their husband regarding the sale of the land, the law does provide for a system of recourse where if the husband refuses or is absent; a woman take the issue to court, and such cases have been witnessed over the last few years.<sup>271</sup> The opposition to reform was clear during the war in Jaffna and no change is evident in the post war context. Although a previous Minister of Justice initiated a process to discuss possible changes to several laws including the Tesawalamai, this process was never completed and the proposals were not made public.<sup>272</sup> In the present context, it is important

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<sup>268</sup> For more information, refer to Memorandum prepared by CPA on Land Issues arising from the Ethnic Conflict and Tsunami Disaster, 2005; 'Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni' by CPA, 2005.

<sup>269</sup> Centre for Housing Rights and Evictions (COHRE), Shadow Report to the United Nations Committee on the Elimination of Discrimination against Women – Sri Lanka, 48<sup>th</sup> Session, 17 January to 4 February 2011

<sup>270</sup> Interview with Government Officials in Colombo, June 2011

<sup>271</sup> CPA interviews with legal experts from Jaffna, Jaffna, June 2010 and Colombo, July 2011

<sup>272</sup> "Expert Committees to recommend Law Reforms", Daily News , 4 August 2009

for the government to initiate such a discussion regarding women's land issues and bring together actors in the North and in Colombo to discuss possible reform.

The most recent policy initiatives of the government including the Memo and Land Circular have no specific reference to women's rights over land. Chapter Eleven discusses both these documents and its implications in detail. In the implementation of policy decisions, it is paramount that the government takes note of the vulnerabilities of women and addresses their specific problems. In order to accomplish these goals, initiatives such as calling for claims over land in the North, the modalities to hear women's land cases and the appeal process as well as other such initiatives should ensure that there is a process to hear all groups in any community.

## **Conclusion**

The above issues demonstrate that women face many setbacks in owning, control, accessing and fully enjoying their land in the post-war context. Some of these problems could be easily remedied if the government and other key actors are motivated and willing to coordinate efforts. Others need reform by way of policy and legislative change. The resolution of these concerns will necessitate an inclusive and transparent process between government and civil society, as well as men and women.

## **Recommendations**

- Increase awareness among government officers, lawyers and other key actors of the importance of women's land rights.
- Increase awareness among women on the importance of land rights
- Introduce policy reform including reforming particular legislation that is discriminatory towards women.

# Chapter 8

Development and Its Impact in the North

At present, there is a variety of development projects being implemented in the North, which range from macro infrastructure programmes to community-oriented projects that have far-reaching implications for the rehabilitation of communities, livelihoods and land. In the appropriation bill in November 2012 the Government assured that Rs. 253 billion would be spent on the development of infrastructure in the North. Large-scale development is a critical requirement for an area ravaged by the conflict and natural disasters, and for the improvement of socio-economic conditions in the region. While acknowledging the direct and trickle down impacts of macro-development projects, a key issue in terms of the on-going development debate is the distributional effects of these projects. In addition to the net cost and benefit of policies across the population and economy of the Northern Province, the governance and politics of development, including the inclusion of local communities and their demands within the on-going development projects and the sustainability and ecological impacts of using land and other natural resources are all key issues. In this context, the acquisition of land for development purposes, compensation for acquisition and the impact of acquisition on livelihoods and local economies are important aspects that require attention.

## **Major Development Programmes**

Most, if not all, development projects in the North are included as part of the Government's "Uthuru Wasanthaya/Wadakkinn Wasantham" or Northern Spring Programme. Set in motion by the Presidential Task Force for Northern Development<sup>273</sup> led by Basil Rajapaksa, the programme was originally designed as a 180-day accelerated development drive focused on issues of security, resettlement, and infrastructure.<sup>274</sup> Like its predecessor, Negenahira Navodaya/Reawakening of the East, it served as a catchall of a wide-range of rehabilitation and development initiatives. As one government official informed CPA "everything is a part of Uthuru Wasanthaya," suggesting that both on-going and new projects are included in the programme. This makes it very difficult on the ground to distinguish between the overall vision and its implementation, as opposed to being a sum of various projects being undertaken by the Government, NGOs, donors and other actors, such as private individuals and private companies. The Government has indicated that the total figure spent on the programme so far is Rs. 40 billion or US\$ 360.3 million.<sup>275</sup> Originally a purely domestically funded programme, Northern Spring was expanded to become a recipient of international aid in the form of US\$ 1,789 million in loans and US\$ 331 million in grants from

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<sup>273</sup> The PTF was later known as the Presidential Task Force for Resettlement, Development, and Security. (Joint Action Plan for Assistance Northern Province 2011, Government of Sri Lanka, United Nations & Partners Pg 6, Rep. 2011.)

<sup>274</sup> Dhaneshi Yatawara, "Uthuru Wasanthaya heralds new era for the North" Daily News, 5 July 2009.

<sup>275</sup> Joint Action Plan for Assistance Northern Province 2011, Government of Sri Lanka, United Nations & Partners, 2011, pg 6.

donors.<sup>276</sup> While the Government states that all projects are undertaken through consultation with communities, IDPs and local government authorities, CPA could not find evidence that the processes of public information and consultation are adhered to in such projects. This lack of transparency and accountability has led to some feeling of marginalisation at the local level.<sup>277</sup>

While a significant emphasis of the Northern Spring Programme was on the resettlement process there has been considerable attention to the development of infrastructure:

- The restoration of **railway services**: The Government is attempting to restore the northern railway services to Jaffna and Mannar, which were suspended following militant attacks during the war. In most areas, even the railway sleepers are not on the ground. The Government symbolically commenced the Jaffna project with a 10 km stretch from Vavuniya to Thandikulam using its own funding and the line has been extended to Omanthai,<sup>278</sup> but the bulk of the project was awarded to the Indian Railway Construction International Ltd (IRCON) and funded by the Indian Government to the value of US\$185.3 million.<sup>279</sup> The reconstruction of the second major Northern railway line between Medawachchiya and Talaimannar (106 km) was also awarded to the Indian firm IRCON<sup>280</sup> and the work is expected to be completed by December 2013.<sup>281</sup>
- Reconstruction of **roads**: The reconstruction of roads has become a flagship project for the development of the North. The Central Bank announced that in 2011 alone the Government will invest almost 40% of the Rs. 50.93 billion it has set aside for infrastructure improvements in the

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<sup>276</sup> Some of the main donors include Japan, World Bank, ADB, Germany, Switzerland, and Agence Francaise de Development of France (Joint Action Plan for Assistance Northern Province 2011, Government of Sri Lanka, United Nations & Partners, 2011 Pg 6).

<sup>277</sup> Interviews with civil society actors, Jaffna, May 2011 and communities in Mullaitivu, June 2011; I.S Senguttuvan, "Is the Army and the Political Leadership on a Collision Course?" Sri Lanka Guardian, 28 June 2011.

<sup>278</sup> "Yal Devi Steams into Omanthai," Sunday Observer, 29 May 2011.

<sup>279</sup> "India Bags Contract to Build Rail Line, communication System in Sri Lanka," Journalists for Democracy in Sri Lanka, 17 July 2010; "Northern Railway to Be Rebuilt by India," Sri Lanka Railways Forum, 11 January 2010; Fernando, Santhush, "Sri Lanka: Indian FM to Kick off the Laying of Northern Rail Line in November," Asian Tribune, 21 October 2010.)

<sup>280</sup> The funding for all of the IRCON projects came from a US\$800 million twenty-year, low interest credit line from the Indian Government received by the Sri Lankan Government in 2010 (Amarasinghe, Udeshi, "Dr P B Jayasundera: Emerging Sri Lanka," Business Today, August 2010.)

<sup>281</sup> In addition, under the project "Uthuru Mithuru" 26 stations along the Omanthai-Kankesanthurai line will be funded by a combination of 26 sponsoring public and private institutions (Kelum Bandara,, "Committee to Monitor North Rail Projects." Daily Mirror, 16 March 2011; [uthurumithuru.org](http://uthurumithuru.org); "Reconstruction of the Omanthai Railway Station Commences," Sri Lanka Railways Forum, 12 July 2010.)

North for the development of national, provincial, and rural roads.<sup>282</sup> The President has assured that an expressway from Colombo to Jaffna would be constructed, along the A9.<sup>283</sup> Road rehabilitation is a sector that has a heavy amount of international investment from multilaterals and other international organisations including the World Bank and individual countries such as Japan and China. A significant road project is the US\$ 24.4 million Asian Development Bank (ADB) Northern Road Connectivity Project that aims to rehabilitate 140 km of road in the Northern Province.<sup>284</sup> China is also involved in road rehabilitation in the North, lending US\$ 423 million to the Government for key roads including the A9 with construction expected to end by September 2013, and Chinese contractor firms are involved in the implementation of the project.<sup>285</sup>

- In addition to these major projects, the Government and other key actors are involved in a variety of other infrastructure projects, including: drilling in the Mannar Basin;<sup>286</sup> reconstruction of the Kankesanthurai (KKS) Harbour;<sup>287</sup> reparation of the Iranamadu Tank in Kilinochchi as well as other water and irrigation schemes in the north;<sup>288</sup> various tourism projects including the construction of high-end hotels;<sup>289</sup> the rebuilding of the Palali airstrip<sup>290</sup> and the construction of a third international airport in Iranamadu, Kilinochchi,<sup>291</sup> among others. It is expected that these projects will have a significant positive impact on the lives of the residents in the North. For instance, the improved freedom of movement and increased accessibility to and from the North

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<sup>282</sup> The Ministry of Finance & Planning figures give the total Government budget spent on Road Development in the Northern Province in 2009 and 2010 at US\$31.02 (Joint Action Plan for Assistance Northern Province 2011, Government of Sri Lanka, United Nations & Partners, 2011, pg 9; "Sri Lanka to Spend Rs253bn on Northern Province Infrastructure Improvement," Invest Sri Lanka. 21 May 2011.)

<sup>283</sup> "Sri Lanka promises expressway to Northern Jaffna," 28 November 2011, [www.news.lk](http://www.news.lk)

<sup>284</sup> "Northern Road Connectivity Project: Sri Lanka," Asian Development Bank, 18 June 2010.

<sup>285</sup> As of September 2011 the condition of the A9 road particularly north of Omantahi, remains poor, with the temporary road works proving inadequate to deal with the weather and heavy usage (On financing see "Sri Lanka Raised US\$2.1 Billion to Rebuild War Damaged Northern Province," Pakistan Defence, 6 June 2011).

<sup>286</sup> There are a total of eight oil and gas exploration blocks in the Basin, of which two have been granted to the Governments of China and India. (Bandula Sirimanna,, "Oil Drilling in Mannar Basin in July," Sunday Times, 16 January 2011.)

<sup>287</sup> Walter Jayawardhana, "India to Assist Sri Lanka to Repair and Restore KKS Harbour", Pakistan Defence, 23 September 2009.

<sup>288</sup> "Iranamadu Tank on the Brink of Being Opened; Awaits Security Clearance," Lanka Puvath: National News Agency of Sri Lanka, 01 September 2010; "ADB, Japan Support Water Upgrade in Northern Sri Lanka", Relief Web, 16 February 2011.

<sup>289</sup> Sunimalee Dias,, "Jaffna to Reject State Hotel Plans," Sunday Times, 17 April 2011; "Sri Lankan Army Opens 'luxury' Resort in Occupied Tamil Land," Journalists for Democracy in Sri Lanka, 7 October 2010.

<sup>290</sup> "India Aid to Rebuild Palali Airport," Sunday Observer, 22 January 2011.

<sup>291</sup> Ariya Rubasinghe, , "Peace Brings Opportunities," Daily News, 6 October 2010.

due to the rehabilitation of key roads has helped boost agricultural production, as residents and businesses in the North are able to send their goods to markets in the South. According to Central Bank estimates, the total produce sent from Jaffna farmers to the South over the past two years was worth an estimated Rs. 2 billion.<sup>292</sup>

Prior to the outbreak of the war, the Northern Province was the second largest contributor of the provinces to national GDP in 1981 but now ranks last on the list.<sup>293</sup> As external assistance for post-war recovery reduces, the need for economic growth of the Northern economy is all the more important so as to realise the 'peace dividends', meet the needs of a growing population and to avoid socio-economic disparities and tensions. Revitalising the Northern economy requires the reconstruction of infrastructure, provision of key services and facilities, new investments by the public and private sectors and donors, in addition to increasing public confidence to ensure the return or entry of funds and professionals. The post-war context coupled with substantive investments through humanitarian and development projects seems to provide a conducive environment for the economic take-off of the North. According to the statistics of the Central Bank, the Northern Province recorded the highest GDP growth in 2010 improving from 12.1% in 2009 to 22.9% last year. However, there continue to be serious hurdles. For instance, even while the private sector has a variety of investments in the North, the level of actual investment remains low. For instance, it was expected that some major companies would establish factories in the North but as of November 2011 the pace of investment has been slow even while the Board of Investment has claimed the Northern Province to be "an investment paradise."<sup>294</sup> The BOI has claimed that the wide range of investments in the North, including expected and current projects such as a garment factory by MAS Active in Aradiyanagar, a concrete yard in Elidumattuwal by Tokyo Cement Company Holdings and hotel projects by expatriates and private firms, would amount to over US\$ ten million.<sup>295</sup> As the North attempts to transition from the resettlement/humanitarian phase to development, there are also increasing concerns that besides the infrastructure projects other expected development projects might not be able to deliver as promised. For instance, the Government has announced that over one billion barrels of oil lie under the Gulf of Mannar seabed<sup>296</sup> and the current efforts at exploration have found gas deposits. However, there are recent reports that the gas deposits found in at least one of the two blocks are commercially

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<sup>292</sup> Surekha Galagoda,, "Agriculture's Northern Spring," Sunday Observer, 15 May 2011.

<sup>293</sup> "Sri Lanka's Northern Province records highest GDP growth in 2010," Colombo Page, 13 July 2011; Provincial Gross Domestic Product 2010, Central Bank, 12 July 2011.

<sup>294</sup> Indunil Hewage, "Jaffna BOI projects top US \$ 10 m," Daily News, 18 October 2011.

<sup>295</sup> Indunil Hewage, "Jaffna BOI projects top US \$ 10 m," Daily News, 18 October 2011.

<sup>296</sup> "One billion barrels of crude in Mannar basin," Daily News, 2 February 2008.

unviable.<sup>297</sup> As noted below, there have to be efforts to ensure that proper procedures are being followed including for bids to secure contracts for exploration and that safeguards are put in place.

## **Development and Vulnerabilities**

While there needs to be a focus on large scale economic development projects in the North, it is important that there is greater attention to existing economic realities and vulnerabilities. Given that a majority - 80 percent - of the Northern population is dependent on agriculture and fishing, it is imperative that the immediate needs of these important sectors are identified and met.<sup>298</sup> Unskilled non-agricultural labour is the dominant source of income accounting for roughly 30% in the north, while fishing and farming tend to be the next major sources of income.<sup>299</sup> Strengthening existing livelihood opportunities is an obvious way forward. In terms of farming, the government, humanitarian agencies and donors have provided livelihood assistance in the way of seed, fertiliser, tools and other key required items. However, other key areas need attention including ensuring greater productivity include improving irrigation systems; provision of water pumps and other tools for agriculture; expansion of agro-related businesses and services; improved storage services and better access to markets.<sup>300</sup> A key issue raised with the CPA team was the need for secure tenure and documentation, which is required for economic security and strengthening farming.<sup>301</sup> As pointed out by individual communities, the loss of equipment and capacity has been a critical challenge.<sup>302</sup> Apart from Mannar, the three other coastal districts all recorded a loss in the number of boats, ranging from non-mechanised traditional crafts to day-boats, from 1982 and 2009.<sup>303</sup> The Government has attempted to develop a plan for addressing some of the key infrastructure

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<sup>297</sup> "Gas-find a damp squib?" Daily Mirror, breaking news, 23 November 2011, [www.dailymirror.lk](http://www.dailymirror.lk)

<sup>298</sup> Economic & Social Statistics of Sri Lanka 2011, Central Bank, April 2011; Chandrapala Liyanage, "Sri Lanka Attends the Food and Agriculture Organization's Committee on Fisheries," Asian Tribune, 12 February 2011.

<sup>299</sup> Laura Meissner, "Emergency Market Mapping and Analysis (EMMA) Report – Rice Market System, Northern Province, Sri Lanka March-April 2011," USAID/OFDA for USAID in Sri Lanka, pg 13-16.

<sup>300</sup> Laura Meissner, "Emergency Market Mapping and Analysis (EMMA) Report – Rice Market System, Northern Province, Sri Lanka March-April 2011," USAID/OFDA for USAID in Sri Lanka, pg 13-16.

<sup>301</sup> CPA interviews with humanitarian agency working in the North, Colombo, July 2011; Laura Meissner, "Emergency Market Mapping and Analysis (EMMA) Report – Rice Market System, Northern Province, Sri Lanka March-April 2011," USAID/OFDA for USAID in Sri Lanka, pg 13-14.

<sup>302</sup> In terms of fishing, CPA was informed that the loss of equipment, including boats, nets, storage and transport facilities during the war and displacement were key issues (CPA interviews with fishing communities in Jaffna, April 2011; Mannar, May 2011; Mullaitivu, June 2011).

<sup>303</sup> In Jaffna for instance saw the total number of vessels drop from 4,112 to 2,290. In parallel there has been a reduction in the number of active fishermen. In Jaffna the number of active fishermen decreased from 24,839 in 1982 to 15,195 in 2009 (Accelerated Fisheries Development Plan for the Northern Province in Sri Lanka, [http://www.fisheries.gov.lk/English\\_link/ActionPlan\\_NE-NEW\\_Final%20EDITION\\_.pdf](http://www.fisheries.gov.lk/English_link/ActionPlan_NE-NEW_Final%20EDITION_.pdf)).

projects including developing 11 new fisheries harbours<sup>304</sup> in order to restore and develop the province's fishing capacity as the province accounted for 40% of national production prior to the outbreak of war.<sup>305</sup> As to how individual communities are able to develop their capacity, however, remains a challenge.

**Complexities Related to Livelihoods and Related Issues:** However, it is clear that these traditional livelihoods cannot address all the needs of the North in the future. The problem of environmental management and sustainability is a clear issue that needs to be looked into. Even while fish production can be increased through improved capacity, technology and facilities, there is a question as to whether over-fishing could make it increasingly difficult for fishermen to support themselves. In addition, the social expectations of youth who no longer want to fish or farm but would prefer to develop their own businesses or become white collar workers requires attention for the purpose of expanding alternate livelihood opportunities.<sup>306</sup>

At present, there is a reliance on assistance in the Northern Province. A recent study carried out by the Government and WFP, however, has raised concerns relating to a number of issues including income and nutritional levels in the North. Comparing food security in three provinces, the study found food insecurity to be highest in the Northern Province, followed by the East and then in the North Central Province.<sup>307</sup> In the study sample, it was found that the median income range fell below Rs. 3,318, which at the time of assessment was the national poverty line as defined by the Department of Census and Statistics.<sup>308</sup> Kilinochchi in particular has a high rate of poverty with more than half the population reportedly living below the poverty line (57%) and a further quarter of the population below half the poverty line (26%).<sup>309</sup> While all the five districts in the Northern Province have more than half the population living under the poverty line, the situation in Kilinochchi

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<sup>304</sup> Suraj A. Bandara, "More fisheries harbours for North – minister," The Daily News, 22 September 2001.

<sup>305</sup> Accelerated Fisheries Development Plan for the Northern Province in Sri Lanka, [http://www.fisheries.gov.lk/English\\_link/ActionPlan\\_NE-NEW\\_Final%20EDITION\\_.pdf](http://www.fisheries.gov.lk/English_link/ActionPlan_NE-NEW_Final%20EDITION_.pdf)

<sup>306</sup> In Mandatheevu, for instance, the primary requests were for new employment opportunities for youth, in addition to increased assistance for securing livelihood equipment. Hence, there have to be efforts to expand employment opportunities and strengthen existing livelihoods in a sustainable manner (CPA interviews with communities, Mandatheevu, May 2011).

<sup>307</sup> "Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings," United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011.

<sup>308</sup> "Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings," United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011.

<sup>309</sup> "Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings," United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011.

has deteriorated significantly over the period of this study.<sup>310</sup> Where the other four districts recorded an improvement in income levels between October 2010 and March 2011, in Kilinochchi the situation has worsened: the proportion living below the poverty line has slightly increased from 54% to 57% and the percentage of persons below half the poverty line has also increased from 22% to 26%.<sup>311</sup> To account for this deterioration, the suspension of food rations and other returnee assistance programmes may prove influential, in addition to highlighting challenges post-return.<sup>312</sup> It needs to be noted that between resettlement and rehabilitation of IDPs and war-affected communities and realising substantive development as well as economic sustainability at the community level, there is a significant gap that needs to be addressed. Furthermore in districts such as Kilinochchi, the state assistance scheme for families below the poverty line, Samurdhi, has not been re-introduced following the resettlement, so even the minimal state support available to those families has not been extended. While this study jointly undertaken by the Government and WFP raises clear warning signals, the conclusions are not uncontested. For instance, humanitarian agencies attempting to use local labour as a means to provide some income generating activities for the local population have found that labour rates in areas such as Kilinochchi are considerably higher than hiring from outside but this could be due to the impact of ‘cash-for-work’ schemes on the labour market. This in turn highlights the need for humanitarian agencies to pay attention to the longer-term impacts of some of their projects.

While there is a focus on increasing macro-economic production in the North, it is imperative to take note of the needs of the communities in the province and adopt a conflict sensitive approach. This can be observed most vividly with the contentious issues surrounding fishing access in the North, which are both a national as well as international problem. As pointed out in Chapter Eleven, issues have been raised related to the allocation of fishing permits given to Sinhalese fishermen from the South as opposed to Tamil fishermen from the North. This was an issue raised with the CPA team by community leaders in Mullaitivu and Vadamarachchi East. While the seasonal migration of fishermen from the South to the North and East has been a phenomena pre-dating the war, there are increasing tensions around this issue, as there are perceptions that the state actors

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<sup>310</sup> “Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings,” United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011.

<sup>311</sup> WFP provides a 6-month ration for returnees, and that programme was extended for a further 3 months in most areas (“Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings,” United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011.)

<sup>312</sup> “Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings,” United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011.

are assisting southern fishermen who are also more technologically advanced.<sup>313</sup> This particular issue has increased tensions and also raised questions as to the role of Government in respecting the rights of local communities and acting as a neutral arbiter as well as the lack of conflict sensitivity. Therefore, humanitarian and development agencies also need to be cautious in order to avoid providing assistance to one community, thereby strengthening their claims to a paddy land or fishing areas over one another when there is an-going dispute. In addition to conflict sensitivity, it is imperative for humanitarian and development agencies, and donors to maintain their commitment as per the Guiding Principles for Humanitarian and Development Assistance in Sri Lanka.<sup>314</sup>

As noted in Chapter Ten, despite dramatic improvements in the freedom of movement due to de-mining and the removal of military restrictions, there continue to be limitations imposed by the military, which impacts the ability of civilians to restore their livelihoods. In certain areas there are restrictions on coastal and inland fishing waters. This may vary from a ban on fishing in certain areas as in Iranamadu Tank where fishing is restricted to a particular portion of the tank and the need for fishermen to obtain permits from the navy. In Mannar, fishermen complained that they have to obtain permits while multi day trawlers from Puttalam and Kalpitiya have open access to the same marine area.<sup>315</sup> In addition to military restrictions making economic recovery for families and local economies difficult, this case also raises concerns of differential treatment.

Given the various forms of vulnerabilities, it is clear that while there are large-scale macro-economic projects that could have both immediate and trickle-down impacts there have to be efforts to address questions with regard to immediate needs, structural inequality and vulnerabilities - some of which are a direct consequence of the war. While at the national level, the Government claims that poverty levels have dropped in the Northern Province consisting of approximately 1.9 million inhabitants the Government has not been able to carry out the Household Income and Expenditure Survey. The survey was conducted only in Jaffna and Vavuniya in the North and found that the former had the second highest levels of poverty in the country (16.1%) and the latter has the lowest (2.3%) in the country.<sup>316</sup> These limited statistics raise a number of issues including

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<sup>313</sup> The fishing industry in the North has been seriously impacted by the war and is not as technologically advanced as that of the south, including in that there are no multi-day trawlers (Accelerated Fisheries Development Plan for the Northern Province in Sri Lanka, [http://www.fisheries.gov.lk/English\\_link/ActionPlan\\_NE-NEW\\_Final%20EDITION\\_.pdf](http://www.fisheries.gov.lk/English_link/ActionPlan_NE-NEW_Final%20EDITION_.pdf)) See also Chapter Eleven.

<sup>314</sup> In 2007 , ten key donors in Sri Lanka came forward to sign up to where they agreed to ten basic principles derived from customary practice and existing international best practices to ensure that donors and implementing agencies would commit to minimum standards, including to ensure that these actors should be impartial, while requesting access and safety and security for staff ([http://www.humanitarianinfo.org/sriLanka\\_hpsi/docs/GL\\_Guiding\\_Principles\\_Sri\\_Lanka\\_final\\_version\\_15-5-07.pdf](http://www.humanitarianinfo.org/sriLanka_hpsi/docs/GL_Guiding_Principles_Sri_Lanka_final_version_15-5-07.pdf)).

<sup>315</sup> "Mannar fishermen prevented from fishing," BBC Sinhala, 11 September 2011.

<sup>316</sup> "Poverty Indicators, Household Income and Expenditure Survey 2009/2010," Ministry of Finance and Planning, Department of Census and Statistics, Volume 1, Issue 2, May 2011 [http://www.statistics.gov.lk/poverty/PovertyIndicators2009\\_10.pdf](http://www.statistics.gov.lk/poverty/PovertyIndicators2009_10.pdf)

significant regional variance and also highlights the need for greater information relating to the socio-economic situation in the North, particularly from the Vanni. Taking the example of Jaffna, some economists have argued that absolute poverty is relatively low due to foreign remittances and high levels of land ownership (as high as 90%),<sup>317</sup> but that relative and social poverty may be more common.<sup>318</sup> Key factors, especially caste and origin (for instance being of Up-country Tamil origin) can be key reasons for social exclusion. It is widely acknowledged that the levels of poverty in the Vanni are considerably high. Hence, the significant intra-regional variations also need to be acknowledged and addressed. It is all too apparent that there needs to be further quantitative and qualitative research to ascertain the actual situation in the North. For instance, it is assumed that remittance is a key aspect of socio-economic support for Northern households but this has also been contested with a recent study claiming only 5% of households reported receiving remittances.<sup>319</sup>

In some instances the various forms of vulnerability overlap. For instance, returnees are a sizeable population of over two hundred and fifty thousand. In most areas food assistance is being phased out, and returnee families have to become self-sustaining. Both within and without this returnee population, there are other forms of vulnerability including, women-headed households, the disabled and elderly. In addition, given the relationship between poverty and lower-tier caste, the issue of caste as an obstacle for social and economic advancement needs to be taken on board. Hence, it is a necessity to deal with issues of structural inequality including caste prejudice and the domination of the government sector, professions and civil society by higher-tier caste members.

Furthermore, there is a danger of development being focussed on key urban centres and along the main link road – the A9. There is, therefore, a need to focus on the varying infrastructural and economic needs of the five districts and the areas within these districts. For example, one government official pointed out that the Iranamadu Irrigation Project was initially designed to meet the water needs of Jaffna but failed to address the water needs of those areas in Kilinochchi, which the pipe passed through. The subsequent intervention of government officers and political actors reportedly had a positive impact in ensuring the project addressed the needs of both districts.<sup>320</sup> This is also reflected in the District Coordinating Committee structure as there are joint meetings for Jaffna and Kilinochchi despite efforts by the government staff in the latter to secure separate meetings to allow for more detailed discussions on the needs of the latter. In dealing with these

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<sup>317</sup> Jaffna District Secretariat quoted by Muttukrishna Sarvananthan, “Jaffna and the conflict-poverty symbiosis,” in poverty portal, [www.cepa.lk](http://www.cepa.lk)

<sup>318</sup> Muttukrishna Sarvananthan, “Jaffna and the conflict-poverty symbiosis,” [www.cepa.lk](http://www.cepa.lk)

<sup>319</sup> “Food Security in the Northern, Eastern and North Central Provinces – A Preliminary Briefing Paper of Food Security Assessment Findings,” United Nations World Food Programme, Ministry of Economic Development and Hector Kobbekaduwa Agrarian Research and Training Institute, May 2011.

<sup>320</sup> CPA interview with government official, Kilinochchi, June 2011.

issues of regional variation, structural inequality and discrimination through development the central government has a critical role but it is imperative that other politicians, academics, the media and local civil society highlight issues that are coming up and propose alternative solutions so as to generate wider public debate and to pressure the central government for more transparent and inclusive policies and programmes.

## **Actors Involved in Development**

As noted in Chapter One, there are a variety of actors involved in land administration and the same applies for development. The central government, particularly the PTF as the dominant authority responsible for approving development projects in the North is the crucial actor impacting the context and process for development. Even though other actors are involved in signing off on the projects, including the DDCs, the District Secretaries and on occasion local authorities, the PTF is the effective decision maker.

As discussed in Chapter One, a notable actor involved in northern development projects is the military, which plays a supporting role to the PTF. At the central level, the overlap between the PTF and the Ministry of Defence, in addition to the MOD's authority over key government institutions such as the Urban Development Authority, has meant that it is a key player in development projects. On the ground, the military has been increasing its role in the implementation of certain development tasks.<sup>321</sup> The military's role in development related activities while seemingly offering an efficient labour force is problematic on a number of fronts. For instance, the use of army labour limits the positive impact of this development project on the labour market as it means there will be fewer employment opportunities for local communities, thereby limiting the immediate economic impact of the projects. The military has commenced cultivation in areas and is selling vegetables at lower prices, which is beneficial for consumers but is effectively undercutting the local farmers.<sup>322</sup> The military's low cost does not reflect the hidden costs for the state and citizens, as the costs in terms of labour, equipment and other additional such as water which are required by the military for cultivation for are covered by the State as running costs. In addition, the military has set up a string of welfare canteens, including along the A9, where some of Sri Lanka's largest private sector companies - a number of whom have prominent corporate social responsibility programmes - have been advertising their products and shops with huge billboards. This has resulted in a direct loss of business for the smaller shops owned by locals that are unable to compete with the army

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<sup>321</sup> For instance, in addition to the military's involvement in de-mining with its Humanitarian Demining Unit, the railway tracks from Vavuniya to Jaffna were constructed with a volunteer labour force from the Army that assisted the Railway Department ("Train services to Omanthai to recommence from May 27," Daily News, 23 May 2011.)

<sup>322</sup> According to the TNA "the military has taken several thousands of acres in Kilinochchi, Mullaitivu and Vavuniya for cultivation without due process" ( Situation Report: North and East Sri Lanka, TNA, 21 October 2011.)

canteens. There are additional questions relating to the impact on military involvement such as making consultation of communities in development projects all the more difficult, especially given the fears of the military among residents of the North.

In addition to the military, the private sector has played a significant role in the economic recovery of the North, including in establishing new enterprises as well as providing contracting services and investments in development projects. Examples of private sector actors in the Northern Province range from companies seeking to discover oil in the Mannar Basin<sup>323</sup> to those looking to develop large luxury hotels.<sup>324</sup> While some private sector investments have proceeded smoothly, others have encountered setbacks. For example, a private company secured permission to construct a hotel in Nallur, Jaffna, but the project has stalled. CPA's interviews in Jaffna revealed competing stories as to why the project did not go through - one speculation being that neighbours had objected to the project on the grounds of the Thesawalamai law.<sup>325</sup> Others fiercely contradicted this rumour, citing instead the negative Environmental Impact Assessment report and the failure to secure approval from the relevant authority as some of the key reasons behind the project's cancellation.<sup>326</sup> There is a clear need for greater public information on projects and mechanisms to ensure that due process is followed, including securing approval from relevant local authorities. The Testa Restaurant case where the construction was not approved by the relevant local authority also highlights the problematic approval process where PTF approval is seen as *carte blanche* for circumventing other standard operating procedures.<sup>327</sup> There are also needs for basic corporate social responsibility. For instance, that leading private sector companies advertise with giant billboards the military canteens but have not attempted to promote local shops in the same way. There is also a need for greater sensitivity. For instance, a private company is building a hotel on a plot in Chaati Beach, Velanai of Island on what used to be a LTTE cemetery.<sup>328</sup> Being aware of local histories, including of the land where investments are to be made is vital.

There is little public space to discuss alternatives to the proposed development projects in the North. Once projects are approved there is limited space for suggesting alternate options to reduce the negative impact on local communities. There is a clear need to focus on the governance of development. In a context where economic development is given priority over all else, there is currently limited scope to push for a rights framework and due process during the implementation

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<sup>323</sup> Sandun A Jayasekara, "Indian company to drill for oil in Mannar," Daily Mirror, 14 September 2010.

<sup>324</sup> Sunimalee Dias, "Jaffna to reject state holiday plans," Sunday Times, 17 April 2011.

<sup>325</sup> CPA interviews with Jaffna civil society leaders, Jaffna, June 2011.

<sup>326</sup> CPA interviews with Jaffna civil society leaders, Jaffna, June 2011.

<sup>327</sup> See also Chapter Eleven; CPA interview with government official, Kilinochchi, June 2011.

<sup>328</sup> CPA visit to site, Chaati Beach, July 2011.

of development projects. Reform is needed so that development projects are implemented in a way that adheres to existing laws and policy frameworks and involves the input of local communities. A greater degree of community consultation and oversight will help to avoid perceptions of marginalisation of communities.

## **Inclusive Development**

Although development projects in the North have seen intended positive results, some concerns have been raised as to the manner in which programmes are proceeding as well as their impact on local communities and their land. In particular, the lack of involvement of local communities is a significant issue. Importantly, even while the large-scale macro-development projects are expected to positively impact the lives of the people in the North, there are concerns that in the short-term the direct economic benefits on the ground may be limited. For example, an issue that came up repeatedly in CPA's interviews was the use of labourers from the South and even from abroad to work on some of these projects, such as the Chinese and Indian contractors, thereby taking away potential jobs from local communities.<sup>329</sup> While it is unclear whether the use of outside labour is an issue of perception rather than actual fact, this is an issue that needs to be addressed by the government by providing more information and publicity on process and projects. This issue, however, requires further examination. There are a number of on-going projects aimed at providing short-term work and assistance through 'cash-for-work' projects. Some of these projects have a negative impact on the labour market as unskilled labourers for instance then refuse to work for lower wages and effectively out price themselves resulting in humanitarian and development agencies opting to use cheap labour from outside the North.<sup>330</sup>

The issue of land acquisition for development is one that is of increasing concern for affected communities. In certain cases, families have encroached on State land and steps need to be taken by the authorities to ensure that these families are moved and appropriate measures taken to find alternative arrangements. For instance, there are on-going efforts to speed up the construction of the railway from Medawachchiya to Mannar and Thandikulam to Jaffna, but rebuilding has been difficult given that during the war surrounding communities sometimes used the structures and lines for a variety of purposes.<sup>331</sup> Additionally, as roads are expanded, residents risk losing parts of their property. For instance, the Jaffna-Point Pedro Road and the Jaffna-Pallali Road are being

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<sup>329</sup> CPA interviews in Jaffna, May 2011 and Kilinochchi April 2011.

<sup>330</sup> CPA interviews with humanitarian agencies working in the North, Colombo, July 2011.

<sup>331</sup> For instance, in Jaffna there are a number of structures that have been built on the railway tracks, including bus stops, toilets and even temporary shelters. In addition, the railway stations served as shelters for the displaced. However, in early 2011 the authorities moved these structures and relocated the people living there (Interviews in Jaffna with civil society actors, April 2011.)

expanded and re-surfaced and as such require more land. Structures including walls and shop fronts have been demolished as a result of this expansion. When CPA attempted to carry out interviews with homeowners along both roads, a number of households were wary of discussing the subject, while others explained that they had little choice, limited information and were informed that their compensation was the construction of a new wall.<sup>332</sup> It is important to ensure that land is acquired pursuant to the prescribed procedure in a transparent and fair manner, and does not impinge on the rights of legal owners. In this regard, it is important that government actors - national, provincial and local - exercise their powers in a competent and responsible manner.

## **Sustainable Development**

Even while there is a fundamental challenge in ensuring the growth of economic opportunities, a key issue that is cropping up from the North is that of environmental sustainability. At the most basic level there is a need for greater environmental awareness.<sup>333</sup> The increasing population and the region's development demands has placed a strain on scarce resources. For example, given the high levels of construction, there are increased demands for sand, which has resulted in shortages and high prices in places such as Jaffna and Mullaitivu.<sup>334</sup> In some areas, sand extraction to meet the rising demand is taking place, but there are questions as to whether formal processes of approval are being followed. In Moderagam Aru, on the northern boundary of Wilpattu National Park, CPA observed two trucks removing sand as well as large pits by the riverbank which can be clearly seen from the main road - indicating the systematic removal of sand. When questioned, the truck driver informed CPA that the sand was being taken for a navy camp in Kalpitiya.<sup>335</sup> However, locals told CPA that sand is transported both north and southwards from Moderagam and that the residents are not allowed to collect sand for their own personal use, such as for building their houses.<sup>336</sup> There is a navy camp in close proximity to the river that controls both the checkpoint just beyond the riverbank as well as access to the park.<sup>337</sup> In

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<sup>332</sup> CPA interviews along Point Pedro Road, Kalviyankadu, June 2011.

<sup>333</sup> There is clearly a greater need for raising the awareness of environmental protection among both stakeholders and the general public. For instance, while driving through southern Mannar or along sections A9, polythene bags are strewn across fields and stuck on barbed wire fences and trees. In the case of the former, it appears that it is largely the refuse of returnees, while in the case of the latter it is both residents as well as local tourists who stop by the roadside and leave their refuse without properly disposing of it. It is noteworthy that the military has put sign boards on the road to the Jaffna Islands that polythene is banned, which was seen as a response to the influx of southern tourists who left behind polythene refuse (CPA visit to Jaffna Islands and Mannar, interviews with civil society actors, Jaffna, May 2011.)

<sup>334</sup> CPA interview with humanitarian agency working in Mullaitivu, Colombo, July 2010.

<sup>335</sup> CPA interview with truck driver, Moderagam Aru, June 2011.

<sup>336</sup> Interview Marichchakatti, June 2011.

<sup>337</sup> CPA visit to area, June 2011.

explaining its role in the area, the navy's website states that it is currently providing assistance to local authorities in order to prevent drug trafficking, poaching, deforestation and sand mining, even though in this case it is not clear what procedures are being followed.<sup>338</sup>

This issue of resource extraction is one of serious concern, particularly in Jaffna. Point Pedro was famous for its high sand dunes. However, over the years the sand in Manalkadu has been mined to such an extent that the ruins of an old church that was completely buried under the sand forty years ago can now be seen in its entirety.<sup>339</sup> It is alleged that powerful political actors in Jaffna are involved in this extraction. On 1 January 2011, Thavarasa Ketheswaran (28 years) - an employee of the post office in Vadamarachchi - was killed by unidentified gunmen. Ketheswaran attempted to document the sand mining in the area and had reported on and protested against illegal sand mining and the involvement of the Maheswari Foundation and the EPDP.<sup>340</sup> His killing highlighted the dangers of advocacy on these issues and the involvement of armed actors in sand mining in the area. Moreover, along the main road to Keerimalai, Jaffna there is on-going extraction of limestone, resulting in vast open pits on both sides of the road a few kilometres from the coastline. The environmental impact of lime stone extraction is an issue that has been raised for decades in Jaffna as it increases the salinity of Jaffna's already meagre water table and also increases the likelihood of erosion. In a study conducted by Jaffna University it was found that 35.3% of wells in Jaffna had unsuitable irrigation water quality and that 25% of that 35.3% have a salinity hazard.<sup>341</sup> Talking to civil society organisations and academics in the North, it seemed that there are only limited environmental projects being carried out in the North, issues such as coast conservation - including mangrove denudation - remain pressing problems that have generally been disregarded, despite some interest in the wake of the tsunami disaster. On this issue there is need for greater engagement by academics, environmental groups and other interested parties, including from the North.

The need for greater environmental safeguards for development projects in Sri Lanka including the North is clear. Environmental impact assessments are by law a prerequisite for development projects in Sri Lanka (EIA);<sup>342</sup> however, it is unclear whether this is always the practice, raising with it the need for greater public scrutiny. Furthermore, additional safeguards outside of environmental

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<sup>338</sup> Ranil Wijayapala, "Mullikulam Naval Area Headquarters: Booster to country's first line of defence," Official website of the Sri Lanka Navy website.

<sup>339</sup> CPA visit to Point Pedro, May 2011.

<sup>340</sup> CPA interviews in Jaffna, December 2010 - February 2011.

<sup>341</sup> S. Carmelita Nishanthiny, M. Thushyanthy, T. Barathithasan and S. Saravanan, "Irrigation Water Quality Based on Hydro Chemical Analysis, Jaffna, Sri Lanka," *American-Eurasian J. Agric. & Environ. Sci.*, 7 (1): 100-102, 2010.

<sup>342</sup> The need for EIAs for "prescribed" development projects was included in the National Environmental Act (NEA) of 1980 through a Gazette extraordinary No 772/22 (June 1993). (Official Website of the Central Environment Authority.)

impact assessments are required. For instance, it is uncertain in the short run if Sri Lanka even has the regulatory and oversight mechanisms, regarding both safety and ecological protection, needed for the high-risk activity of deepwater offshore drilling off Mannar Basin. Additionally, the agreements made between the Government of India, China, and Sri Lanka for the blocks granted, including information regarding responsibility for any mishaps or disasters, have not been made public.<sup>343</sup> While Parliament approved the exemption of taxes of Cairn Lanka Private Limited, the Opposition raised a series of questions, including on whether a tender process was followed and the level of profit that the Government of Sri Lanka will receive.<sup>344</sup>

Poaching by Indian fishing trawlers has also been a long-standing issue raised by Sri Lankan fishermen, especially from the North, and has even resulted in incidents of violence at sea and the detention of fishermen by both the Sri Lankan and Indian authorities. The use of trawlers and concentration of Indian fishermen in Sri Lankan waters around Palk Bay and the Gulf of Mannar have had a significant impact on fish production and the sustainability of fishing. Overfishing is a threat, as fish stocks are not being replenished. Unsustainable fishing habits as well as overfishing in general, including by Indian fishermen have depleted stocks.<sup>345</sup> Fishermen in Jaffna have complained that the fishing authority in Sri Lanka have banned the use of the more tightly woven

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<sup>343</sup> Tisaranee Gunasekara,, "From Mannar to Beruwela: The Dangers of Offshore Drilling for Oil," *Transcurrents*, 31 May 2010.

<sup>344</sup> Yohan Perera and Kelum Bandara, "Cairn Lanka exempted from taxes and import duties," *Daily Mirror*, 11 August 2011.

<sup>345</sup> The issue of Indian fishermen poaching in Sri Lankan waters is tied to disputes over the maritime boundaries and over fishing in Indian waters ( see also Malaka Rodrigo, "Poaching Indian Fishermen: Not Just Political Ripples but Conservation Too," *Sunday Times*, 24 April 2011.)

disco nylon nets, but the trawlers used by Indian poachers are being allowed to deplete fish of all sizes indiscriminately.<sup>346</sup> This issue needs to be addressed.<sup>347</sup>

## Ways Forward

While the current development approach has brought key benefits, it is apparent that there are gaps and problems that need to be addressed. Fundamentally there is a need to ensure that the Government moves beyond the rhetoric and assesses the ground situation to ensure that problems are identified so that they can be addressed. Even while communities acknowledge the benefits of humanitarian assistance and development projects, there are significant challenges to ensuring sustainable livelihoods and economic security. Acknowledging the development gaps, structural inequalities, vulnerabilities within populations and regional disparities will be imperative. Strengthening and improving the governance of development including improving public information and transparency, increasing public consultations, addressing environmental costs and ensuring conflict sensitivity will better ensure public confidence in development processes. A few key recommendations include:

- Vulnerability mapping should be conducted prior to the commencement of a project to ensure key problems are highlighted and raised with stakeholders, thereby impacting the design and implementation of projects.
- The Government should be transparent with development plans including those for the North and provide more information regarding development projects, especially at the community level.

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<sup>346</sup> CPA interview with fishermen, Mandatheevu, May 2011.

<sup>347</sup> The large boats also pose an environmental threat in shallow waters. These waters are rich in coral and seaweed that are easily damaged by the bottom trawling method used by the poacher (Malaka Rodrigo, "Poaching Indian Fishermen: Not Just Political Ripples but Conservation Too," *The Sunday Times*, 24 April 2011). In February 2011, frustrated fishermen off the coast of Jaffna took the law into their own hands when they boarded, seized, detained, and handed over to the police 20 trawlers and 136 fishermen from Tamil Nadu, India who were illegally poaching fish in Sri Lankan waters ("Jaffna Fishermen Capture Indian Poachers, Trawlers – Ex-SLN Chief's Prediction Comes True," *Lanka Journal*, 16 Feb. 2011). Additionally, an Indian fisherman was found dead at sea on 22 January 2011 resulting in protests in Tamil Nadu (Editorial, "Fishermen Again," *The Hindu*, 27 January 2011; "SLN Denies Allegations," *Sunday Leader* online, 24 January 2011; "We will wipe SL off the world map if attacks on fishermen continue," *Ada Derana*, 23 February 2011). Even though the Indian and Sri Lankan Governments have held negotiations aimed at finding a solution to the issue, the talks have increasingly become bogged down in negotiating the release of fishermen held by the other, while the larger underlying problem of maritime boundaries and policing of these waters remains unresolved. In April 2011, the Indian Government announced plans to develop a "road map" for a solution to the problem, but nothing has come of it as of yet. In the meantime, both the Sri Lankan and Indian authorities have apprehended fishermen for fishing in their territorial waters. Notably, the fishermen's unions in Kalpitiya, which are also feeling the effects of Indian poachers, are now considering an offer by Northern fishermen to band together to solve the problem (Chamikara Weerasinghe, "Road Map to Solve Fishermen's Poaching Issue," *Daily News*, 06 April 2011; Rathindra Kuruwita, "Jaffna-Sinhala Cooperation on Indian Poaching," *Lakbima News*, 17 July 2011.)

- The Government, donors, agencies and others should conduct wide consultations with communities regarding development projects in the areas, and ensure the involvement of other local actors including local authorities in the planning and implementation of such projects.
- A conflict sensitive approach should be incorporated into Government and NGO programmes so as to avoid increasing local level tensions through development projects. It is essential that the various Government actors at the ministerial, provincial, district and local levels act with neutrality and ensure that disputes are mediated to ensure fair outcomes while ensuring that local needs, regional disparities and infrastructure handicaps are all addressed.
- Ensure due process is followed in development projects, including with land acquisition processes and adequate compensation and assistance provided to those affected.
- Take steps to ensure environmental safeguards are taken for development projects and that EIAs are undertaken as a first step to guide the approval for such projects and the design of safeguards.
- Increased research by academics and research organisations on quantitative and qualitative studies on key aspects pertaining to development to better inform stakeholders.

# Chapter 9

## Complexities with Electoral and Administrative Boundaries

The issue of administrative and electoral boundaries requires the attention of policy-makers and other stakeholders, given the significant implications of boundaries on land ownership and access, especially in a context of competing land claims and administrative changes. Additionally, a number of national level administrative initiatives, both proposed and active, could have ramifications on land ownership and administration in the Northern Province, including the administrative delimitation process to re-draw intra-district administrative boundaries, the proposed electoral reforms for local government which would include the demarcation of wards for local authorities, the registration of voters and national census.

## **Boundary Problems on the Ground**

The boundaries of administrative divisions and relevant officials of each administrative unit have significant impact in terms of land use and ownership. Those owning, using or controlling land and also the landless have to approach the relevant administrative officers from the district secretariat overseeing that particular area for any administrative work and approval. GS officers play an important role in assisting the district administration in gathering information and helping civilians obtain documentation, including on land. As noted in Chapter One, even though the upgrading of a number of divisions in areas formerly controlled by the LTTE from AGA to DS status is still in progress, the AGA officers still have significant powers in recommending access to land and verifying land ownership. In areas where the boundaries are unclear, there is room for confusion and contestation among both residents and administrative officials. In one such instance, residents from a village on the boundary of two divisions were able to return as part of the resettlement of Pooneryn division, while other residents of the same village who insisted it was part of Karachchi division were resettled later.<sup>348</sup> As of 30 October 2011, this issue has not been resolved and is causing confusion between the two DS divisions.

There are a variety of administrative and practical problems relating to existing boundaries between districts. Visvamadu town, straddling both Kilinochchi and Mullaitivu districts, is bifurcated by the A34. Administrative initiatives, including efforts to address specific development needs by one district, have the potential to cause problems between the residents and the two divisions. For instance, as resettlement took place earlier in areas in Kilinochchi than in Mullaitivu, returnees to Killinochchi requested the construction of a market to help meet their urgent needs and the project was authorised by the DS of Kandavelli. Following the resettlement in areas in Mullaitivu, however, problems emerged as a market had previously existed on the Mullaitivu-side of Vishvamadu, but is now less used due to the new market in the Kilinochchi-side, impacting the livelihoods of the later

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<sup>348</sup> CPA Interview with official in Kilinochchi district secretariat, June 2001.

returnees.<sup>349</sup> The location of Shanthapuram has also proved to be a problematic site as in terms of administrative and electoral boundaries it falls within the Kilinochchi district, but given that it is positioned by the border of Mullaitivu district, some actors, including the military, claim that it falls within Mullaitivu.<sup>350</sup> While these boundary problems are by no means unique to the North, these issues are exacerbated due to the dynamic nature in the North, especially with ongoing return, resettlement and other initiatives, in addition to the variety of actors influencing policy and administration discussed in this report.

It should be noted that there are a number of actors involved, in terms of de facto administration, who add to the current confusion in boundaries. In addition to the district level government officers, there are provincial actors such as the Governor and the Northern Provincial Land Commissioner, Central Government actors including the PTF, Ministries including that of Public Administration and Local Government, the Mahaveli Authority with regard to system L, and the military. With respect to the military, an interesting example is the village of Kumarasandipuram that has been claimed by the civilian administration of Kilinochchi district. However, the military in the area is reported to have initially resisted the resettlement of its inhabitants stating that the village actually falls in the Mullaitivu district.<sup>351</sup> The issue of administrative divisions poses a problem for the military as the demarcations for its own divisions and the administrative boundaries do not necessarily match. As mentioned already in Chapter One, given the critical role of the military in both development and land disputes, the military's separate demarcations have added to the confusion.

In terms of the civilian administration, the lack of resources including experienced staff to deal with the varied nature of issues, including problems related to boundaries, have severely strained the administrative services in these districts. As such, addressing some of these changes and problems on the ground may help improve government services and mitigate confusion between civilians and the various government actors - including the military – that have taken leading roles in post-war administration in the North.

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<sup>349</sup> CPA Interview with official in Kilinochchi district secretariat, June 2001.

<sup>350</sup> CPA Interview with official in Kilinochchi district secretariat, June 2001. See also Bhavani Fonseka, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, Centre for Policy Alternatives (CPA), September 2010, pg 20.

<sup>351</sup> Bhavani Fonseka, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, Centre for Policy Alternatives (CPA), September 2010, Pgs 23-4.

## The Conflict and Boundaries

The ethnic conflict and inter-ethnic tensions and suspicions have made the issue of administrative boundaries still more contentious. Even prior to the outbreak of the war, there were a series of allegations that the boundaries along the Northern Province's south-eastern border (including parts of the districts of Mullaitivu and Vavuniya North with the border of Trincomalee and Anuradhapura districts) were being altered in a manner that would weaken Tamil domination in these areas.<sup>352</sup> This border area is of strategic political importance as it connects the Northern and Eastern provinces, which are identified as the Tamil homeland, and creates a buffer between the provinces. While this buffer does not nullify the efforts to merge the two provinces, it does create practical and political complications. In demographic terms, the Northern Province's southern areas have been viewed as a suitable location for the settlement of landless Sinhalese from other districts, which has fed into the allegations of state-aided Sinhala colonisation.<sup>353</sup> Both prior and during the war, this area Manal Aru was a key area of contestation and has been the scene of competing land settlements, displacement and massacres.<sup>354</sup>

There have been several efforts to establish a new administration unit in this area. A gazette dating 18<sup>th</sup> July 1988 established the Weli Oya DS division. Strikingly most official reports continued to refer to Mullaitivu having five DS divisions.<sup>355</sup> It needs to be noted that during the war, there was a de facto arrangement whereby Sinhala areas of Vavuniya, Mullaitivu and Trincomalee were reportedly being administered by the Anuradhapura district secretary.<sup>356</sup> It was alleged by the Nation newspaper in 2006 that there were efforts to establish a "separate administrative unit covering Welioya, Sripura, Parakramapura and Padaviya situated in the districts of Mullaitivu, Trincomalee and Vavuniya and bring it under the control of a Competent Authority who is likely to be a military officer."<sup>357</sup> The newspaper also claimed that the government had "sent out instructions" to the Secretary of the Mahaweli Ministry as these areas fall under the Mahaweli L Zone. CPA's interviews with government officers established that during the war administration of these villages did take place from Anuradhapura district, but could not find evidence of a separate competent authority as per the claim of the newspaper. In the post-war context there were new reports, including from

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<sup>352</sup> Can the East be won through Human Culling?: Special Economic Zones - An Ideological Journey Back to 1983, UTHR(J), Special Report 26, 03 August 2007.

<sup>353</sup> Rajan Hoole, Sri Lanka: The Arrogance of Power: Myths, Decadence & Murder, UTHR(J) Publications, 2001.

<sup>354</sup> From Manal Aru To Weli Oya and The spirit of July 1983, Special Report 05, UTHR(J), 15 September 1993; Padaviya-Welioya: Bearing the burden of Ideology, Briefing No.04, UTHR(J), 13 February 1995.

<sup>355</sup> For instance the Northern Provincial Council website only indicates 5 divisions in Mullaitivu ([www/np.gov.lk](http://www/np.gov.lk)).

<sup>356</sup> "Military Rule Mooted," The Nation, 2 July 2006.

<sup>357</sup> "Military Rule Mooted," The Nation, 2 July 2006.

TNA MP Sivashakthi in August 2011, of attempts to create a Sinhala majority AGA division in the Manal Aru/Weli Oya area of Mullaitivu.<sup>358</sup> The new division is said to comprise of 16 GS divisions with 7 from Welioya, a further 5 from other parts of Mullaitivu and 4 from Vavuniya.<sup>359</sup> The process of establishing a new DS division to include portions from other districts can be legally challenged and the TNA has already raised objections.<sup>360</sup> There has even been some discussion of establishing a new Sinhala majority district in this area which would annex land from three or more districts. One such proposal was for a Padaviya district would link up Sinhala villages from Anurdhapura, South and North Vavuniya, Northern Trincomalee and Southern Mullaitivu.<sup>361</sup> The logic behind the establishment of this district is that it would allow Sinhalese from these areas, including those in the border areas of Anurdhapura, easier access to Government services. However, the latter would have significant political implications, including for the Northern Province which would lose territory and population. Some actors within the state structure made clear to CPA that they would like to push forward this proposal.<sup>362</sup> A committee established by the Government for the purpose of administrative delimitation has ruled out the possibility of establishing a new district.<sup>363</sup>

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<sup>358</sup> "Sinhala AGA Office in Mullaitivu Govt. attempts to confiscate lands of Tamils", Sudar Oli, September 1 2011, page 1; "Attempt to establish a new Sinhala AGA division in Mullaitivu District Vanni MP Sivashakthi requested to drop the plan", Veerakesari, 1 September 2011, page 1.

<sup>359</sup> Chris Kamalendran, "Fresh criteria for new Grama Sevaka Divisions: Delimitation Committee," 23 October 2011.

<sup>360</sup> Chris Kamalendran, "Fresh criteria for new Grama Sevaka Divisions: Delimitation Committee," 23 October 2011.

<sup>361</sup> CPA interview with government official, Colombo, July 2011.

<sup>362</sup> CPA interview with government official, Colombo, July 2011.

<sup>363</sup> Secretary to the Ministry of Public Administration, P.B. Abeykoon quoted in "Welioya goes to Mullaitivu," The Daily Mirror, 18 October 2011.

## CASE

### Post-war Changes: Boundaries and Sinhalisation

In addition to allegations of post-war ‘Sinhalisation’ through ‘new Sinhala settlements’ (discussed in Chapter Eleven) there are also claims that boundaries are being shifted on the southern border of the Northern Province, particularly in Northern Vavuniya DS division, Vavuniya district and Maritime Pattu DS division, Mullaitivu district. One specific allegation made by TNA MP Sivashakthi Ananthan in his speech in Parliament on 20 June 2011 is that boundaries have been unofficially altered in order to change the map and demography of Northern Vavuniya.<sup>364</sup> CPA carried out interviews with politicians and government officials in Vavuniya<sup>365</sup> who provided further details, which are detailed below, but further attention into this matter is required.

**Relocation of a Tank:** CPA was informed by a political and government actors in Vavuniya that a tank has been allegedly shifted out of the administrative boundary of one DS division into another.<sup>366</sup> The Kanakarayankulam Medium Irrigation Tank was listed in the 2010 Irrigation Department’s Statistical Handbook as located in Northern Vavuniya, but it is not listed in the corresponding handbook for 2011.<sup>367</sup> A new tank is listed in the 2011 handbook in Southern Vavuniya, Kalebogasweva, but was not included in the 2010 handbook.<sup>368</sup> The Tamil residents around Kanarayankulam Tank have not been able to resettle in their original properties or visit. The ‘disappearance’ of a tank from a Tamil majority area and the appearance of a ‘new’ tank in the adjoining Sinhala area has obviously created significant fears that surreptitious steps are being taken by government officials to alter existing boundaries. In April 2011, an Emergency Northern Recovery Programme (ENRP) project to construct a bund for this tank was approved by the Vavuniya District Co-ordinating Committee for Rs 4.5 million.<sup>369</sup> Given that it is the Irrigation Department that is listing the tanks and the Economic Ministry that is proposing the construction project, there are concerns as to what extent and at what level government officials are involved in this alleged change.

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<sup>364</sup> “Sinhalisation of the North: Sinhala renaming of Tamil village of Kokkochchankulam,” *Vikalpa*, June 27 2011.

<sup>365</sup> CPA interview with politicians and government officials, Vavuniya, June 2011.

<sup>366</sup> CPA interview with politicians and government officials, Vavuniya, June 2011.

<sup>367</sup> The Kanakarayankulam Tank, according to a government official from the Katchcheri, has been identified as a medium tank since at least 1983 (CPA interview with Government official, Vavuniya, June 2011) and feeds an irrigable area of roughly 127.07 hectares (Source: Handbook Irrigation Department 2011.)

<sup>368</sup> In the 2011 handbook, it is stated that Kalebogasweva has 168 individuals in the adjoining villages. For that year Northern Vavuniya has only one listed medium tank at Kokkochchankulam.

<sup>369</sup> Sri Lanka: Emergency Northern Recovery Project : P118870 - Implementation Status Results Report : Sequence 03; Documents and Reports, Official Website of the World Bank, 07 June 2011.

**Shifting Villages:** There is an allegation that five Sinhala villages are going to be or have already been attached to Northern Vavuniya.<sup>370</sup> CPA was informed that the five villages are Kalyanapura, Athawattuweva, Nikaweve left, Nikaweve right and Kalebogasweva. The joint proposal to reclassify the villages was submitted by the 4 UPFA members and 1 UNP member in the TNA-dominated Vavuniya North Pradeshiya Sabha following the March 2011 LG election. It was reported to CPA that some residents of these villages did in fact vote in the March 2011 local government election for Vavuniya North.<sup>371</sup> The TNA MP Shivashakthi alleges that the 2011 election saw 2,000 new Sinhala voters, including from these five villages.<sup>372</sup> The allegation is that there are attempts at both an administrative and electoral level to include Sinhala villages in Vavuniya North. Sinhala civil society actors working in Vavuniya interviewed by CPA claim that the villages were administered by the Anurdhapura district during the war, but did originally belong to Vavuniya North D.S division.<sup>373</sup> Hence, they claim that the villages are being re-attached to their pre-war status. Nevertheless, the current status of these villages is disputed and the issue has become clearly ethnicised.

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<sup>370</sup> CPA interview with politicians and government officials, Vavuniya, June 2011.

<sup>371</sup> The list of polling centres for Vavuniya North PS shows three of these locations – Kalyanapura (227 voters), Nikaweve (1,123) and Athavettuweva (1,016).

<sup>372</sup> CPA interview with TNA MP and political activists, Vavuniya, June 2011.

<sup>373</sup> CPA interview conducted through phone with civil society activists in Anurdhapura, July 2011.

While these allegations need to be verified, they make clear the high level of apprehension over boundary issues in the area. While the allegations of ‘Sinhalisation’ feed into the contested narratives and ethnic politics of colonisation and state involvement, it is also evident that there are communities who fear they may lose their right to property and livelihoods as a result of these changes.<sup>374</sup> There are additional concerns that there is a possibility for changes in district boundaries that would result in some villages in Northern Vavuniya and Southern Mullaitivu being attached to Anuradhapura district in the North Central Province. While CPA was provided some examples, including those listed above which were highlighted as evidence of possible Sinhalisation,<sup>375</sup> it has been difficult to conclusively prove that this is taking place. It needs to be noted that the war created a whole series of problems that resulted in changes in terms of land control including the targeting of communities that resulted in their displacement, sale of properties, forcible occupation of land by military and other actors and other forms of secondary occupation and illegal exchanges of land that has made land an extremely complex politicised and ethnicised issue. As the Weli Oya case highlights, administrative changes were introduced during the period of the war, some of which are controversial and were made on a number of grounds including improving administrative efficiency, on politico-military needs and humanitarian grounds. In this context, there are counter-assertions that in the North, Tamils in powerful positions and to a much lesser extent Muslim politicians have been able to advantage their respective communities claims over Sinhalese. In the post-war context, the spectre of ethnicisation cannot be ignored and needs to be addressed.

Compared to the East where existing DS divisions are based on ethnic lines, in the North - where there is an overwhelming Tamil majority - competing ethnicised DS divisions is less of a problem.<sup>376</sup> However, there are two divisions that have majorities from other ethnic communities: Mussali, which is a Muslim majority division, and Vavuniya South, a Sinhala majority division. Vavuniya South is a unique division as it is the most non-contiguous DS division in the entire country. It is majority Sinhalese, 98.67%,<sup>377</sup> and is made up of some six areas that are geographically unconnected. A striking counterpart to this division is the adjoining Chettikulam DS division, which is also made up of three non-contiguous units and is largely Tamil. It is most likely that the need to give civilians access to administrative officials with the ability to use the same language is the underlying logic of these geographically fragmented divisions. In terms of local authorities, the election of a South Vavuniya Tamil PS and a South Vavuniya Sinhala PS makes clear the extent to which ethnicisation dominates both administrative and electoral boundaries. As to whether these DS divisions will be

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<sup>374</sup> CPA interview with politicians and government officials, Vavuniya, June 2011.

<sup>375</sup> CPA interview with TNA MP and political activists, Vavuniya, June 2011.

<sup>376</sup> See Bhavani Fonseka & Mirak Raheem, *Land in the Eastern Province: Politics, Policy and Conflict*, Centre for Policy Alternatives (CPA), May 2010, Chapter 6, ‘Land Boundaries: Political and Administrative Implications’.

<sup>377</sup> *Statistical Handbook Vavuniya 2009*, District Planning Secretariat, District Secretariat, Vavuniya.

maintained in their current form, or whether there will be further boundary changes is yet to be seen. There are also unsubstantiated rumours that Vavuniya's DS boundaries will be re-drawn so that there will be DS division with a majority Muslim population, but demographically this would be difficult.<sup>378</sup>

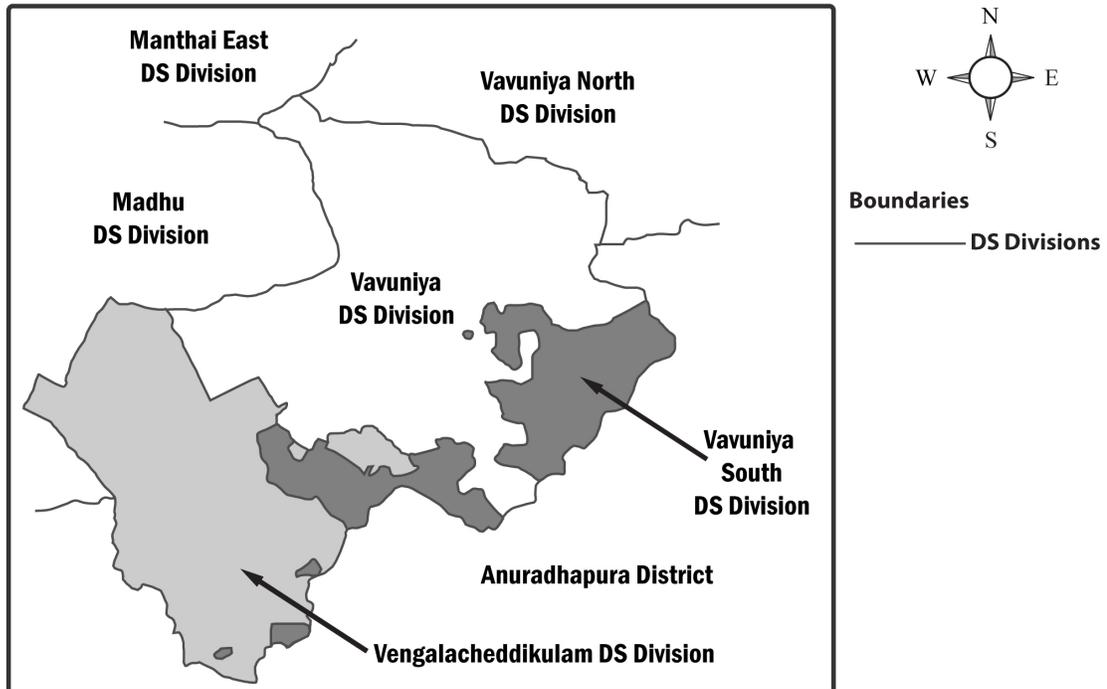
There are increasing demands for changes in boundaries and for the establishment of new units even at the village level. In addition to the various other examples cited in this chapter where actors are demanding new GS and DS units, or changes to boundaries of existing units, there are also demands for divisions within villages. For instance, CPA was informed of an effort to divide an existing village into two. Konnavil in Karachchi division is a wholly Tamil village where there are social issues between the largely higher-tier caste groups that are mainly from Jaffna; lower-tier caste Tamils also from Jaffna and Up-country Tamils from the village. A similar division within a village was also reported to CPA from Mamullai in Maritime Pattu Division, with two RDSs being established along caste lines.<sup>379</sup>

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<sup>378</sup> CPA interview with agency personnel working in Vavuniya, Colombo, August 2011.

<sup>379</sup> CPA interview with actor working in Mamullai, Colombo, July 2011.

## VAVUNIYA SOUTH DS DIVISION



*\* Shading is used for non-contiguous DS divisions  
Sources : Centre for Information Resources Management ( CIRM)  
Note: Boundaries of some DS divisions are not exact boundaries*

### Official Initiative to Re-Demarcate Boundaries

In April 2010, the Ministry of Public Administration and Home Affairs announced an initiative to establish new GS divisions and to alter the boundaries of existing GS and DS divisions. A 13-person committee was established for the purpose of considering public proposals and making recommendations for changes.<sup>380</sup> The official rationale guiding the initiative is to “streamline the present boundaries in order to make it more workable,”<sup>381</sup> including an increase in the number of GS divisions so as to address population growth or conversely to amalgamate GS units in

<sup>380</sup> Bhavani Fonseka & Mirak Raheem, *Land in the Eastern Province: Politics, Policy and Conflict*, Centre for Policy Alternatives (CPA), May 2010, Pg 56.

<sup>381</sup> Minister for Public Administration and Home Affairs, John Seneviratne quoted in Leon Berger, “Govt. to re-demarcate DS and GS divisions,” *The Sunday Times*, 2 May 2010.

particular DS divisions.<sup>382</sup> According to the NPC website the Northern Province consists of 5 districts has 33 DS/AGA divisions and 867 GS divisions.<sup>383</sup>

This initiative does have a number of positive aspects. While changes in individual administrative divisions have been made in the past, this initiative offered an opportunity for making more uniform demarcations across the country. The 2010 initiative also offered interested groups and the general public the opportunity to make submissions, thereby making the process more participatory.<sup>384</sup> According to the Committee they received over 300 submissions.<sup>385</sup> While welcoming this initiative, a number of concerns with the process were raised by CPA, including the overall level of transparency as well as the level of public consultation and ethnic representation in the committee.<sup>386</sup> Even while four criteria were cited for the establishment of new GS divisions,<sup>387</sup> population size appears to be an important aspect for delimitation.<sup>388</sup> Recent reports however suggest that not many GS divisions will be established. The secretary to the committee, Jinasiri Dadallage stated that the committee would attempt to maintain existing GS divisions and establish new divisions only where there were no alternatives.<sup>389</sup> However, in a meeting with civil society activists in Badulla in September 2011 the committee stated that due to the lack of public finances for new officers it would not recommend establishing a series of new GS divisions.<sup>390</sup> In an interview with the the committee, it was announced that priority would not be given to regional ethnicity in the delimitation process, but rather to the languages used in the areas to be

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<sup>382</sup> Minister for Public Administration and Home Affairs, John Seneviratne quoted in Leon Berger, "Govt. to re-demarcate DS and GS divisions," *The Sunday Times*, 2 May 2010.

<sup>383</sup> Northern Province Administrative Boundaries Map on [www.np.gov.lk](http://www.np.gov.lk). It needs to be noted that there is a variation in the number of GS divisions between the Department of Census and Statistics (number of GS by DS on main page of [www.statistics.gov.lk](http://www.statistics.gov.lk)) (912) and the Northern Provincial Council) (867).

<sup>384</sup> The Ministry for Public Administration and Home Affairs placed advertisements in the media calling for public and civic organizations, public officers and the general public to submit suggestions by 20 May 2010.

<sup>385</sup> The Secretary to the Committee, S.K. Weeratunga was quoted in the *Sunday Times* stating that the bulk of these submissions were from Kurunegala and the Eastern Province. "300 submissions to delimitation panel," *The Sunday Times*, 9 July 2010.

<sup>386</sup> See Bhavani Fonseka & Mirak Raheem, *Land in the Eastern Province: Politics, Policy and Conflict*, Centre for Policy Alternatives (CPA), May 2010, page 56 .

<sup>387</sup> The delimitation committee proposed that "when a new GSD is to be established, the number of families, convenience to the public, social and other factors, road facilities and physical boundaries should be taken into consideration". Chris Kamalendran, "Fresh criteria for new Grama Sevaka Divisions: Delimitation Committee," *Sunday Times* , 23 October 2011.

<sup>388</sup> A rural GSD is to include 500 families, a suburban 500-1,000 and an urban 1,000 – 2,500. Secretary to the Commission quoted in Chris Kamalendran, "Fresh criteria for new Grama Sevaka Divisions: Delimitation Committee," 23 October 2011.

<sup>389</sup> Chris Kamalendran, "Fresh criteria for new Grama Sevaka Divisions: Delimitation Committee," 23 October 2011.

<sup>390</sup> CPA interview with NGOs working in the Badulla District, Colombo, October 2011.

surveyed.<sup>391</sup> It will prove difficult to avoid the issue of ethnicised divisions. For instance, there are demands for new GS divisions to address the needs of roughly 4,100 Muslim families. According to the Muslim Guardian, new GS divisions have been set up for villages including Suduventha Pilavu, Palaya Kudimanai, Mankulam, Vaalavaitha Kulam, Pattaik Kaadu, Pulitariththa Kulam and Saalambaik Kulam.<sup>392</sup> To further add to the confusion around this initiative it is noteworthy that the mechanism is described both as the delimitation committee and delimitation commission by the media, which creates further confusion especially given that in accordance with Article 95 of the Constitution, a Delimitation Commission has to be established specifically for the purpose of establishing electoral boundaries.<sup>393</sup> The deadline for the committee to present their recommendations to the Minister is not clear but a ministry official has publicly stated that the committee's report will be submitted by the end of the year.<sup>394</sup> As of October 2011, the committee has not visited all five districts in the North.<sup>395</sup>

In addition to the number of issues highlighted above relating to demarcation, the initiative has raised other concerns. For instance, the initiative took place at an inappropriate time for the Northern Province given the ongoing return and resettlement of displaced persons, restoration of government services, and reconstruction of houses and infrastructure. Hence, some argue that administrative officials, civic organisations and even political parties have more pressing concerns to attend to. In interviews conducted by CPA with politicians and civic organisations in the North, there were few actors who were aware of this initiative, let alone who had sent submissions. It would be advisable for the committee to announce a new deadline for public suggestions from the Northern Province in this regard as there are a number of issues that need to be addressed. For instance, there is a request from the Kilinochchi District Secretariat for the division of the Karachchi division into two separate units because of its large size in contrast to the other divisions in the district.<sup>396</sup> According to 2007 estimates by the Northern Provincial Council Administration, Karachchi is the largest of Kilinochchi's four DS divisions, accounting for 100,700 persons of the district's total population of 195,812.<sup>397</sup> The Vavuniya GA, P.S.M. Charles has also asked for the

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<sup>391</sup> Joseph Thavaraja, "Sri Lanka begins electorate re-mapping, delimitation not based on regional ethnicity but on language" Asian Tribune, 15 October 2010.

<sup>392</sup> "Separate Muslim divisional secretariat in Vavuniya district," Muslim Guardian, 13 July 2010.

<sup>393</sup> Bhavani Fonseka & Mirak Raheem, *Land in the Eastern Province: Politics, Policy and Conflict*, Centre for Policy Alternatives (CPA), May 2010, page 56.

<sup>394</sup> "Welioya goes to Mullaitivu", The Daily Mirror, 18 October 2011.

<sup>395</sup> By October 2011 the committee had visited Kilinochchi District.

<sup>396</sup> CPA interview with official from Kilinochchi District Secretariat, June 2011.

<sup>397</sup> CPA interview with government official Kilinochchi district, June 2011.

establishment of two new DS divisions.<sup>398</sup> The mandate of the committee as advertised by the Ministry of Public Administration and Home Affairs in the media on 29 April 2010 does not suggest that new DS divisions will be recommended and the committee informed the Kilinochchi District Secretariat officials that it would make a recommendation in the case of dividing Karachchi AGA. Furthermore, the secretariat is also facing opposition from some residents from the DS.<sup>399</sup> The delimitation committee has gone on record saying a new DS division would require 50-75 GS divisions. Only one existing DS division in the entire Northern Province, Thenmarachchi has more than 50 GS divisions.<sup>400</sup> Even though this delimitation process is already underway in the North it is, however, also incumbent on politicians, academics, civil society organisations and other actors to raise this issue with the committee and the ministry, instead of waiting for the presentation of the conclusions by the minister to make an intervention.

## **Demography and Electoral Reform**

There are additional initiatives that could have significant implications for governance in the North including the proposed electoral reform to move from the existing proportional representation (PR) system to a mixed system of PR and First-Past-the-Post (FPP). While the Government put forward the Local Authorities' Election (Amendment) Bill in October 2010, some actors within Government have suggested that the mixed system will also be introduced for provincial and parliamentary elections.<sup>401</sup> The mixed system will involve the establishment of wards within the electoral units, be they local authorities or electoral districts.<sup>402</sup> According to the Bill (as of October 2011), the process of delimitation is to be undertaken by a number of committees, but ultimately it is the Minister of Local Government who is given the primary authority over its implementation. Thus it is up to the minister to decide whether to appoint all the proposed committees, which raises a number of

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<sup>398</sup> "Welioya goes to Mullaitivu", The Daily Mirror, 18 October 2011.

<sup>399</sup> CPA interview with official from Kilinochchi District Secretariat, October 2011.

<sup>400</sup> A number of Up-Country groups have made representations calling for new DS and GS divisions but in the Badulla meeting were made to realise that the committee was unlikely to meet their expectations (CPA interviews with a member of parliament representing Nuwara Eliya, Colombo, July 2011; CPA interview with NGOs working on issues impacting Up-Country Tamils, Colombo, July and October 2011).

<sup>401</sup> "Major changes in election laws", Daily Mirror, 04 April 2011.

<sup>402</sup> The Northern Province has two electoral districts – Jaffna that includes two administrative districts (Jaffna and Kilinochchi) and Vanni that consists of three administrative districts (Vavuniya, Kilinochchi and Mullaitivu).

concerns relating to the lack of an oversight mechanism, public participation and transparency.<sup>403</sup> It is significant that there is no mention of the constitutionally required delimitation commission.<sup>404</sup>

A national census is to be held throughout the country in 2011 for the first time since 1981 but has been delayed until end 2011.<sup>405</sup> The enumeration offers the country an opportunity to get a sense of the demographic composition of the various regions and the country at large. However, implementation of the census in the Northern Province will face some complications. In particular, the ongoing process of return and resettlement, especially with regard to old IDPs and refugees, puts into question the exactitude of any census to be conducted in the current context. Ongoing resettlements are particularly important given that the census will be used by the Government to decide provincial and district level allocations. CPA was also informed of another process similar to the census that the government is conducting with the involvement of the military in the North,<sup>406</sup> which raises additional concerns related to the continuing militarisation of governance and added security regulations targeting the Tamil community in the post-war period.<sup>407</sup> According to the Tamil media there were also reports of teachers being compelled to undertake the census.<sup>408</sup> In addition to the census, registration has been conducted by the military and the police in parts of the North, with the process conducted in early 2011 being challenged in the Supreme Court.<sup>409</sup>

An enumeration carried out by the Jaffna Assistant Elections Commissioner in the district in 2010 as part of the annual registration of voters conducted by the Elections Commissioner's office found that the number of voters in the electoral district is 484,709, down from 816,005 registered voters in the previous electoral register. The Commissioner of Elections, Mahinda Deshapriya announced in July 2011 that the number of MPs representing the district would accordingly be reduced from nine to six.<sup>410</sup> The number of MPs elected from Jaffna Electoral District was previously reduced

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<sup>403</sup> See Commentary-, Bhavani Fonseka, Mirak Raheem & Supipi Jayawardana, *A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill 2010*, October 2010.

<sup>404</sup> Bhavani Fonseka & Mirak Raheem, *Land in the Eastern Province: Politics, Policy and Conflict*, Centre for Policy Alternatives (CPA), May 2010, page 56.

<sup>405</sup> Chris Kamalendran, "Printing errors: Census put off", *The Sunday Times*, 23 October 2011.

<sup>406</sup> At the time of writing this process was only known to have been commenced in the North.

<sup>407</sup> Parliament debate, 7 July 2011.

<sup>408</sup> "Defence Ministry has taken steps to take statistics in the North instead of arm registration," *Sudar Oli*, 25 June 2011.

<sup>409</sup> Five TNA MPs from the Jaffna and Kilinochchi districts challenged the registration being conducted in these districts in March 2011 in the Supreme Court. When the case was taken up an undertaking was given to suspend such registrations. Since then CPA has been informed of continuing registrations by the military and police in parts of the North.

<sup>410</sup> Gazette Notification 1715/4, 18 July 2011; Special Media Release (Members of Parliament) issued by the Department of Elections, <http://www.slections.gov.lk/pdf/parliament.pdf>.

from 11 in 1989 to 10 in 2010 and 9 in 2004.<sup>411</sup> A number of statements of protest were made by political parties, civil society actors and prominent personalities. Many of these actors protested against this decision requesting that any change should be postponed until resettlement is completed and that the allocation could have been delayed until a general election was called for.<sup>412</sup> The decision by the Commissioner of Election to make this announcement raised a number of questions including the constitutionality and the sensitivity of this decision. According to Article 98 (8) the Commissioner of Elections is tasked with certifying the number of members each electoral district is entitled to return following the certification of the electoral register. The commissioner could have in recognition of the dynamic circumstances in the North delayed making the decision which has significant political and ethnic repercussions. The previous Chief Justice Sarath N. Silva argued that the commissioner should have used the provisions of Article 98 (9) and “refrained from certifying the number of seats.”<sup>413</sup> The commissioner did point out that the seat allocation would be increased if voters returned.<sup>414</sup> As to whether the commissioner took the decision in order to prepare for the NPC elections that are to reportedly to be held in 2012 is a moot point.<sup>415</sup> While exact reasons are unknown for these developments, it is clear that the changes will have significant implications for minority representation in Sri Lanka.

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<sup>411</sup> Kelum Bandara, “Four MP slots reduced from Jaffna,” *The Daily Mirror*, 29 July 2011.

<sup>412</sup> “TNA to meet polls chief on ‘missing’ seats,” *Nation*, 07 August 2011; “Move to reduce number of Jaffna MPs: Sangaree wants polls chief to rescind decision,” *Island*, 01 August 2011; “Jaffna seats: Parties and monitors slam polls chief,” *Sunday Times*, 07 August 2011.

<sup>413</sup> “Is it wise to reduce parliamentary seats for Jaffna Electoral District?” *Daily Mirror*, 22 August 2010.

<sup>414</sup> Sumaiya Rizvi, “MP seats will be increased if voters return – deshapiya,” *Daily Mirror*, 30 July 2011.

<sup>415</sup> “Elections for Northern Provincial Council of Sri Lanka next year,” *Colombopage*, 28 June 2011.

## Recommendations

Given the importance of the administrative delimitation process there has to be more emphasis to ensure due attention to the North is given in addition to addressing gaps in the current delimitation process. As such, key recommendations include:

- Given that resettlement and other processes were on-going during the last deadline for public submissions of proposals, the Government should provide a new deadline for submissions from the Northern Province. The public call for proposals and the deadline should be widely advertised in the media and through government offices, providing information regarding process and deadline for all interested.
- Key political and civil society actors and others in the North need to advocate for such an extension and ensure public awareness in the process so that submissions can be sent from the North.
- In general, the committee should make clear its criteria and how the process will proceed, while the Government should avoid making ad hoc decisions regarding delimitation. The committee should also take into consideration the dynamic situation in the North, especially given the on-going process of returns.
- The Delimitation Commission should be appointed as per the Constitution. The deliberations of the Commission should be consultative and transparent and the process supported by the appointment of a parliamentary oversight committee that could assist in administrative and local authority electoral delimitation.

There are additional suggestions relating to the other initiatives:

- While a number of additions can be made to improve the Local Government Authorities' Elections (Amendment Bill)<sup>416</sup> with regard to delimitation, efforts should be made to ensure greater oversight so as to reduce the powers of the minister concerned through establishing a parliamentary oversight committee and to increase public participation. Attention should be paid in the electoral delimitation process to maintain consistency with the administrative delimitations where possible.
- The 2011 census should be carried out by officers from the civilian administration but the dynamic situation regarding population movement should be noted so as to avoid making immediate political and administrative changes based on the census.

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<sup>416</sup> Bhavani Fonseka, Mirak Raheem & Supipi Jayawardana, A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill 2010, October 2010.

- The parliamentary seat allocations for Jaffna should be maintained for the interim period until resettlement of IDPs and refugees has progressed.

# Chapter 10

## Post-war Militarisation of Land

Demilitarisation, including the removal of military restrictions on civilian use and access to land, is a commonly held expectation following the end of war. The release of lands occupied by government and armed actors, however, is often phased over time due to security and political considerations despite anticipation especially among affected communities of an immediate de-escalation of military presence as an immediate peace dividend. With the execution/implementation of resettlement programmes, the government released lands in the Northern Province that had previously been restricted for civilian access, both in areas that had been controlled by the government prior to the outbreak of war in 2006 and those captured from the LTTE. While there has been substantive progress in terms of the releasing of lands, two and a half years following the end of the war military occupation of land continues to be a critical problem. The failure to return both public and private properties to civilian use has created a variety of problems including thwarting the recovery process for affected families and communities and undermining confidence and trust in the post-war context. While de-mining is a clear challenge, it also appears that the Government is apprehensive about security threats, and thus it continues to maintain a variety of restrictions in the North. Contrasting policy statements by key actors in government suggest that while the demilitarisation of land will proceed, there is a commitment to maintaining military occupation, which is part of a larger process of militarisation in the North in particular. The militarisation of land is also inextricably tied to a larger process of post-war militarisation where the military is maintaining and even taking on new duties, relating to civilian administration. Even while there are post-war security requirements, they need to be balanced against fundamental rights, and the need to increase confidence and trust among the residents of the North in the State and to restore normalcy.

## **Mapping Military Restrictions on Land**

While a variety of continuing military restrictions and specific cases can be identified, in the South there is tremendous public ignorance not just on the scale of the problem, but that such a problem even exists. In fact, it appears that the issue of military restrictions is highly contentious. The controversial nature of military-related issues in post-war Sri Lanka is tied to a number of factors: the Government's use of national security and the war against the LTTE even in the post-war context to defend its policies, the practise of denying existing problems, the popularity of the military, coupled with a reluctance and fear among policy makers and civil society to question the military's role. On the part of the authorities there is a reluctance to acknowledge the full scope of the restrictions and the significant and multiple impacts they have on civilian life. The continued presence of HSZs is a key topic raised by the TNA during the talks with the Government<sup>417</sup> and

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<sup>417</sup> "TNA says HSZs not necessary now," Daily Mirror, 09 April 2011.

raised in Parliament,<sup>418</sup> which has helped the documentation of military restrictions on land, but coverage on the issue is limited and largely relegated to the Tamil media. The Government has presented some statistics in Parliament. Chief Government Whip Dinesh Gunawardena claimed in February that 1,205 private properties and institutions were occupied throughout the North including 1,129 by the military, 35 by the navy and 41 by the Air Force, while 472 properties had already been turned over by the army.<sup>419</sup> The reliability of this information is very much in question. For instance, the Navy acquired some 57 properties in Karainagar in September 2011 – more than twice the number of properties that the navy is supposedly occupying according to the government statistics provided in parliament. By contrast, the TNA claims that of the total land mass of 65,319 square kilometres in the North and East, the Tamil people inhabited 18,880 square kilometres of this area and that 7,000 square kilometres have been occupied by the military.<sup>420</sup>

The lack of public information as to the exact nature of the restrictions and the period for which they will apply is an obvious challenge to any efforts aimed at adequately addressing the problems both created and exacerbated by these restrictions. Collecting information regarding restrictions is challenging due to numerous reasons. This is largely due to the difficulty in discussing information considered sensitive in the North, particularly in the Vanni, and the apprehensions that engaging in data-collection could be deemed as anti-state or a threat to security. In such a context, it is an onerous task to map out restrictions. It is beyond the scope of this report to conduct a comprehensive mapping of the restrictions. Nevertheless this report does attempt to document the various types of restrictions, to outline a few individual cases, describe the impact these restrictions have on civilians, recount the attempts to provide alternate solutions, both temporary and permanent. This chapter is, therefore, only a glimpse at a situation that is incredibly dynamic, especially as relaxation of restrictions is ongoing, such as the official announcement that all fishing restrictions would be removed.<sup>421</sup>

### **Some of the main types of military restrictions include:**

- High Security Zones (HSZ): These are significant tracts of land declared off limits by the security forces on the grounds that they are of strategic military value. HSZs can be created through legal

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<sup>418</sup> “Issues and problems facing people of Northern and Eastern provinces – by M.A. Sumanthiran MP,” TNA Parliamentary Group statement in Parliament, July 2009, <http://dbsjeyaraj.com/dbsj/archives/2529>.

<sup>419</sup> Saman Indrajith, *The Island*, “Forces occupying 1,205 civilian houses, institutions in North,” 23 February 2011.

<sup>420</sup> Situation Report: North and East Sri Lanka, TNA, 21 October 2011.

<sup>421</sup> On July 9, 2011, in a significant move towards easing the situation for fisher folk, the Government Information Department announced that all restrictions on northern fishermen that required them to secure passes for fishing would be removed. The announcement took place in the context of local government elections held on 23 July 2011. (“Fishing restrictions off,” *Island*, 09 July 2011.)

processes<sup>422</sup> or unofficially.<sup>423</sup> According to publicly available information none of the HSZs in Jaffna have been gazetted as of November 2011. While some of these HSZs are officially acknowledged, including those in Jaffna, others in the Vanni have not been officially identified or legally demarcated.

- **Military camps:** During the war and in its immediate aftermath, the government consolidated its control through the establishment of military camps. In addition to the camps in areas that were controlled by the government prior to the outbreak of war, military camps have been established in areas captured from the LTTE.
- **Occupation of individual properties:** The security forces and police have occupied individual public and private properties in both urban and rural areas that are currently being used as sentry points or military posts.
- **Restrictions on access<sup>424</sup>:** There are additional restrictions on accessing particular areas such as fishing restrictions that require fishermen to get passes from the security forces, while in other areas there are restrictions as to where fishing can be conducted. Restrictions include entering paddy lands and forested areas in specific locations.

The following sections will highlight cases in specific areas before discussing the impact of militarisation on those affected by the occupation of their land and the various efforts that have been made to address the problem.

## **High Security Zones and Other Forms of Occupation in Jaffna**

During the war, the government established a number of HSZs throughout the country around strategic military and economic centres. The level of restrictions and the extent of land varied between the different HSZs. During the period of the war, Jaffna had the largest concentration of HSZs of any district with roughly 16% of the entire land area of the peninsula under severe military restrictions with almost no civilian access to these areas.<sup>425</sup> From the mid-1980s onwards, the government established HSZs in strategic areas including around key military bases, near the

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<sup>422</sup> The former Sampur HSZ in Trincomalee district and a few others across Sri Lanka were established through emergency regulations. For more information, read *A Brief profile of the Trincomalee High Security Zone and Other Land Issues in Trincomalee District*, CPA May 2008, and *Trincomalee High Security and Special Economic Zone*, CPA September 2009, and *Land in the Eastern Province: Politics, Policy and Conflict*, CPA, May 2010.

<sup>423</sup> No public records are available regarding the use of legislation to create the Jaffna HSZs and others in the North.

<sup>424</sup> Discussed also in Chapter Eight.

<sup>425</sup> Hasbullah, Shahul H., Balasundarampillai, P. Silva, Kalinga Tudor, "Addressing Root Causes of the Conflict: Land Problems in North-East Sri Lanka," UNHCR and FCE, November 2005, Colombo, Pg 63.

forward defence lines and along the main supply routes.<sup>426</sup> By May 2009, it was estimated that more than 65,000 people were displaced as a direct result of the HSZs in Jaffna.<sup>427</sup>

A critical challenge to addressing the issue of HSZs is that in the North none of the HSZs or other high security areas have been legally established.<sup>428</sup> This effectively means that the mere existence of and restrictions resulting from these ad hoc HSZs can be challenged on the grounds that they are not established in accordance with the existing legal framework. Regarding this issue, the Supreme Court responded to two fundamental rights applications filed by Jaffna MP, Mavai Senathirajah, and a farmer from Tellipallai.<sup>429</sup> However, the lack of a gazette or any other legal instrument for any of the HSZs in Jaffna makes it all the more arbitrary as there is no real clarity on the status, specific restrictions or the extent of the HSZ. With the state of emergency being allowed to lapse in August 2011, the status and legality of HSZs and other ad hoc military restrictions were further in question. With the end of the war, the public expectation was that the HSZs would shrink and be withdrawn, but contradictory public statements by actors within the government created confusion as to whether all the land held under HSZs would actually be released.<sup>430</sup> Minister for Economic Development Basil Rajapaksa noted in May 2011 “We do not want HSZ[sic] in the country any further as we have no enemies among ourselves. The entire country is now under a single peace zone...”<sup>431</sup> As demonstrated below, over the last two years, there has been a gradual release of lands, but there continues to be a lack of clarity as to whether all these HSZs will eventually be released.

The single largest HSZ in Jaffna is referred to as Tellipallai/Valikammam HSZ that encompassed some 43 GS divisions cutting across a number of DS divisions including Tellipallai, Chankani, Sandilipay, Uduvil and Kopay. Tellipallai was the most affected DS division in Jaffna with 35 of its 45

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<sup>426</sup> One of the first HSZs was around the Pallaly Airport in the mid-1980s. As fighting and military operations intensified and the type of weaponry being used grew more advanced, this HSZ was expanded, becoming the largest in Jaffna, while additional HSZs were established in tandem in other areas.

<sup>427</sup> In addition to Jaffna, there were HSZs in other parts of the North including Talaimannar and Vavuniya.

<sup>428</sup> There are no publicly available gazettes setting out the boundaries and applicable restrictions for HSZs in the North. Instead, it appears that through the broad powers of the Emergency Regulations restrictions were enforced to prevent civilian access and establish de facto HSZs. In Sampur a HSZ was established through gazette (Gazette Extraordinary No.1499/25 of 30 May 2007) and is now a Special Economic Zone (SEZ.)

<sup>429</sup> SC FR 646/2003 & SC FR 533/04 which are as of November 2011 still before the Supreme Court.

<sup>430</sup> Minister for Mass Media and Information Keheliya Rambukwella stated in July 2010 that the HSZs will remain because they are essential for the nation's security while the Leader of EPDP Douglas Devanandaa few months prior to that stated that “there is no LTTE threat so these high security zones will be removed completely step by step.” (“Northern High Security Zones will not be removed,” Ministry of Defence Sri Lanka Website, 16 July 2010; “Jaffna HSZ to be removed,” Daily Mirror, 12 April 2010).

<sup>431</sup> “Resettling civilians in HSZs begins,” Daily Mirror, 12 May 2011.

GS divisions being occupied by the HSZ.<sup>432</sup> With the expansion of the military across the division into a highly residential area containing cultivable lands, up to 15,000 families were unable to return during the course of the war as the military refused to release any of the occupied land. Following the case before the Supreme Court mentioned above, the military promised to release some areas, but the process of release dragged on with the focus being on the buffer zone of the HSZs.<sup>433</sup> It is only from the latter part of 2010, however, that significant progress was made on the release of HSZs. In November 2010, 3 GS divisions were released along with the remainder of the buffer zone. A further 9 divisions were released in May 2011 and there is a possibility that more GS divisions in Tellipallai could be released. As of 30 November 2011, 15 GS divisions continue to be occupied by the Tellipallai HSZ, while 8 others are still partially occupied.<sup>434</sup> CPA was informed of some lands in other HSZs such as Ariyalai, Maniyanthottam, Mirusavil, Karainagar and Vadamarachchi East being released since 2010. In March 2011, the military announced the end of HSZs in Jaffna Town with the opening up of Victoria Road and the return of Subash Hotel back to its owners.<sup>435</sup>

Even while the process of releasing HSZs is ongoing, there are conflicting reports as to whether all the HSZs will be withdrawn. In Mandateevu, the Navy has released some land in the HSZ established by them,<sup>436</sup> but there are competing accounts of new land being acquired.<sup>437</sup> CPA's interviews, however, suggested that the Navy appears to be consolidating its presence over land that it already occupies rather than claiming new areas. In Karainagar, the navy has acquired private property to which the government has reportedly paid Rs. 57 million to 56 land owners as compensation<sup>438</sup> making clear the permanency of its camps. In Mandateevu more than thirty

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<sup>432</sup> This HSZ was initially created by the Government to protect the Pallaly Airport but was expanded over time to prevent and restrict the LTTE from firing artillery at planes and to defend other strategic points such as Kankasanthurai Harbour and Myladdi Port.

<sup>433</sup> In January 2010, a 300m section of the buffer zone of the Tellipallai HSZ was released, and over 2010 other portions of the buffer zone were released. Nevertheless, only the southern portion, or roughly half of the 600m buffer zone, was opened to the public (CPA interview with humanitarian agencies in Jaffna, April and July 2011.)

<sup>434</sup> Interview with government officials, Jaffna, June 2011; interview with humanitarian agency, November 2011.

<sup>435</sup> A spokesperson for the military claimed that the Victoria Road was closed for sixteen years due to the presence of the 51 Division army headquarters and other key buildings, while the Subash Hotel was used by the 52 Division. The spokesperson added that the release was on the instructions of the Defence Secretary. ("No more HSZs in Jaffna," Daily News, 21 March 2011.)

<sup>436</sup> Over the last three years, there have been some improvements with the release of the village and sections of the beach, including the opening up of the main church (Interviews in Mandateevu, May 2011.)

<sup>437</sup> There were unconfirmed media reports in May 2011 that a further 40 acres have been taken over by the Navy in Mandatheevu in order to construct a Navy base, thereby expanding the existing HSZ on the island. It is also reported that a Saiva Temple and a tank are situated in the island that has been taken over. CPA interview with humanitarian workers and civil society in Jaffna, May 2010.

<sup>438</sup> "Rs.57 mn compensation for 56 land owners near Karainagar, navy camp," The Island, 20 September 2011.

houses continue to be occupied which has meant that these families are unable to return to their homes and are effectively displaced, and there are additional restrictions including accessing the main St Peter's Church.<sup>439</sup> The Navy has repeatedly promised community leaders that the area will be released, but there are fears that this occupation may continue.<sup>440</sup> While compensation and acquisition processes in accordance with legislation appear to have been followed in the acquisition of land in Karainagar, this has not been extended to all other parts of the North, at least in terms of information that is publicly available.

While the 'new' post-war restrictions are seen most clearly in Kilinochchi and Mullaitivu, there are other districts that are also experiencing this policy of military occupation including in Southern Mannar, and in Vadamarachchi East - both of which were retaken by security forces from the LTTE in 2007 and 2008 respectively. While Vadamarachchi East is part of the Jaffna district, it was controlled by the LTTE before 2006. In Chemianpattu, Vadamarachchi East, in addition to the occupation of approximately 20 houses by the 551 Brigade for their main military camp, the military has a number of smaller camps by the beach shore. Since the area was first opened up for resettlement some houses in the area have been gradually handed back to their owners but restrictions remain in some areas in the village.<sup>441</sup> Following the tsunami, the government proposed a 200m buffer zone in the North and the East<sup>442</sup> that resulted in civilians having to relocate to alternate areas further inland but they were allowed to retain ownership of their beachside properties and use them for other purposes such as small-scale agriculture. Following their resettlement in September 2009, the military has not allowed them access to the coconut groves and informed the owners that the land is now state land.<sup>443</sup>

Even while the general expectation is that all HSZs in Jaffna will be shrunk and eliminated, there are fears that some areas, including areas in Tellipallai, may be maintained for some years or even

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<sup>439</sup> The main St Peter's church can be accessed only from 6 am to 6 pm. In addition, the small beachside Vellankerni Church built by local fishermen continues to be under navy occupation (CPA interview with community leaders and women, Mandatheevu, May 2011; CPA interview with church official, Jaffna, June 2011.)

<sup>440</sup> Interview with church official, Jaffna, June 2011.

<sup>441</sup> Interview with residents, Chemianpattu, June 2011.

<sup>442</sup> Following the imposition of the buffer zone, civilians were not permitted to build houses as a means of protecting coastal communities from a future tsunami. Families living in the buffer zone or with properties by the beach were relocated further inland. This policy on the buffer zone was also endorsed by the LTTE, and therefore in areas such as Chemianpattu, families were relocated but used their coastal properties for coconut cultivation. See also "Memorandum prepared by Centre for Policy Alternatives (CPA) on Land Issues Arising from the Ethnic Conflict and the Tsunami Disaster", CPA, 2005.

<sup>443</sup> Reportedly one owner did visit the military and request that he be allowed to pluck his coconuts. He was given five coconuts (CPA visit to Chemianpattu, 4 June 2011.)

permanently.<sup>444</sup> The failure of the government to provide a clear plan to the public, especially to those directly affected by HSZs, has fostered an environment of public confusion and suspicion. While the threat of a LTTE attack was the principal reason for the continuation of the HSZs previously in the North, in the post-war context there is no clear rationale for maintaining each of the individual HSZs, and, instead, only general reasons have been provided, such as de-mining and non-specific national security.<sup>445</sup> As discussed below, there has to be a process to review the necessity of HSZs taking into account civilian needs and rights, ensuring that as much land as possible is released back for civilian usage.

## **Occupation of and Restrictions on Land in the Vanni**

Following the mass resettlement in the Vanni, there were a number of reports of military restrictions from the districts of Kilinochchi and Mullaitivu. Although the TNA has made some effort towards providing a list, to date<sup>446</sup> there has been no comprehensive listing of public and private buildings occupied by the military in the Vanni. Through a number of field visits and interviews conducted with actors from or working in the Vanni districts since 2010, CPA was able to identify particular areas that are currently being occupied.

This task of compiling a list should be immediately undertaken by the Government as a preliminary measure to review the current policy of occupation. In some areas it will be difficult for government actors at the district level to investigate ongoing occupations as it could put them in a position of confrontation with the military, while district level government staff do not have access to areas that have not been opened for resettlement. The government will also have to make clear whether it will continue to occupy certain areas, for how long and for what purpose.

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<sup>444</sup> There are concerns that while the Tellipallai HSZ is being shrunk, not all the GS divisions will be released and that up to 15 GS divisions around the Pallali Airport, the Kankasanthurai Harbour and Myladdi port could be maintained as a HSZ.

<sup>445</sup> Currently, the procedure for releasing HSZs is for the military to first inform the GA of their intentions, who in turn notifies de-mining agencies. Much of the de-mining in the area is being conducted by non-governmental demining agencies including HALO Trust and DDG, with the military's Humanitarian De-Mining Unit carrying out part of the workload. The GA and the relevant DS are also responsible for notifying the humanitarian agencies working in resettlement.

<sup>446</sup> As of November 2011.

## Examples of Militarisation in the Vanni

In Kilinochchi District, a number of public as well as private buildings and lands have been occupied and used for the establishment of military camps<sup>447</sup>:

- In Pooneryn, the Pooneryn Regional Hospital and Vigneswaran Vidyakaya school premises
- In Kilinochchitown: the library and public grounds have been taken over. Private shops including those in close proximity to the Kandasamy Kovil have been occupied.
- In Karachchi: the AGA Building
- In Iranamadu: the Irrigation Circuit Bungalow
- In Paranthan: the Government Chemical Corporation and playground
- In Mullankavil: the Agrarian Services building
- In Akkarayan: Skanthapuram Sugar Cane Plantation land
- An Elderly Home, Urumagalikuli/Vanniyadikulam, Karachchi division, which previously houses up to 200 elderly people and was registered with the Social Services Ministry
- Paravipanganvillage, which is close to Kilinochchi town and home to roughly 1,200 individuals, is occupied
- The Iranatheevu islands were initially occupied by the Army, then the Navy and closed off for civilian resettlement.

The list above of occupied public and private properties is by no means comprehensive and does not include other areas in the Vanni. Some lands in Ramanathapuram, Uruthurapuram, Pallai, Kalmadunagar, Shanthapuram, Thirumurukandi, Skandapuram, Kanakapuram, Ganeshapuram, Thirunagar areas are occupied by security forces and police.<sup>448</sup> The TNA in its October Situation Report stated that at least 7 schools in Mullaitivu and Kilinochchi were occupied by the military.<sup>449</sup> These occupations has meant that these government institutions have had to be moved to alternate locations or have alternative arrangements, creating added burdens for communities and

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<sup>447</sup> Interview with MP from Vanni Region, Colombo, June 2011.

<sup>448</sup> Interviews with MPs from the Vanni, Colombo and Vavuniya, June 2011; civil society groups in Jaffna, May 2011.

<sup>449</sup> Situation Report: North and East Sri Lanka, TNA, 21 October 2011.

government officials. In the case of students from Vigneswaran Vidyalaya, a school that reportedly had 1,000 students, they are now divided between the two functioning schools.<sup>450</sup> An alternate site has been selected for the construction of the Pooneryn hospital.<sup>451</sup> The continued occupation of houses and cultivable lands has had a serious impact on the affected families who will find it difficult to re-build their lives without access to their lands, and the restrictions on larger areas makes it extremely difficult for communities to develop. For instance, the Shanthapuram Sugar Cane Factory was given by the Government to private developers in the 1950s to cultivate sugar cane, but over time the land was distributed among those working in the factory. As of June 2011 much of this land was reportedly being cultivated by the military.<sup>452</sup>

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<sup>450</sup> Interview with MP from Vanni Region, Colombo, June 2011.

<sup>451</sup> Interview with MP from Vanni Region, Colombo, June 2011.

<sup>452</sup> Interview with MP from Vanni Region, Colombo, June 2011.

It is also not clear whether areas that are currently closed off will be opened up for resettlement. An area of particular sensitivity is the coastal zone of Maritime Pattu and Puthukuduyiruppu divisions composed of around eight and a half GS divisions: Mullaivaikal East, Mullaivaikal West, Ampelavanpokkanai, Puthukuduyiruppu East, Puthukuduyiruppu West, Sivanagar, Manthuvil, Malligaitheevu, Ananthapuram. According to one interviewee in June 2011 there was an official request by the military for resettlement to proceed slowly in these areas and for alternate relocation sites to be selected.<sup>453</sup> There are a number of factors that could be influencing this request. The security forces have established their headquarters in Keppapulavu, an adjoining GS, (parts of which have not been opened for civilian access) so they may not want to return to the land for civilian use.<sup>454</sup> Given that this area is where some of the most intense fighting took place and was the location of the last stage of the war, there is reportedly a heavy concentration of mines and UXOs. Hence, demining may take longer than other areas but no demining agency has been permitted to carry out an initial assessment. Furthermore, the current international spotlight on war crimes may be another factor. The Government and military may be reluctant to release these areas for fear that there may be evidence of what took place during that period. There are also unsubstantiated rumours that the beachfront will be used to establish hotels. TNA MP Sivashakthi Anandan claimed that Sinhala tourists were allowed to visit these areas, even though the government was claiming that resettlement could not proceed due to heavy mining.<sup>455</sup> The lack of clarity on whether and when these areas will be released makes it very difficult for the affected population and other actors, including humanitarian agencies and even government actors to make plans regarding settlement, reconstruction and development. As discussed in Chapter Four there is a government proposal to permanently relocate civilians from these areas in Kombavil.<sup>456</sup> The lack of transparency has intensified fears of land grabs and a cover up on the part of the Government.<sup>457</sup> This report highlights that by default and by design the military has taken up the role of deciding land use and even land policy at the local level. While civilians do turn to a variety of actors including district secretariat staff, politicians and humanitarian agencies to raise the issue of military occupation, many of these actors are also helpless to change the situation, leaving civilians no choice but to approach the military.<sup>458</sup>

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<sup>453</sup> Interview with actor working in Mullaitivu, June 2011.

<sup>454</sup> Interview with actor working in Mullaitivu, June 2011.

<sup>455</sup> "Army is attempting to colonise 20,000 Sinhalese in Kombavil, Mullaitivu," Sudar Oli, 4 August 2011, page 3.

<sup>456</sup> In addition to the private properties and community buildings, it is estimated that there are at least twenty Catholic Churches in the area of Puthukuduyiruppu, Iranapallai, Mathalan and Velanjeyamadam that remain closed as these areas have not been opened for resettlement (CPA interview with church official, Jaffna, June 2011.)

<sup>457</sup> "6 Village divisions in Mullaitheevu district declared as HSZ," Tamilnet, 27 October 2010.

<sup>458</sup> CPA has documented at least one case regarding civilians who were returned, being taken back to transit sites by the military in Shanthapuram (Commentary, page 20.)

There are concerns that the military bases and occupations may not be a temporary post-war phenomenon, but may be permanent. Furthermore, there are claims that permanent houses for military personnel and their families will be constructed in the Vanni and other parts of the North, which have raised concerns of land grabs state aided colonisation and demographic changes.<sup>459</sup> This is a charge that the Defence Secretary Gotabaya Rajapaksa has contested by stating at the Lessons Learnt and Reconciliation Commission that the camps will only house soldiers and officers, and that no new settlement will be created.<sup>460</sup> However, there are allegations that a settlement for the military is being constructed using Chinese pre-fabricated shelter material in Murukandi,<sup>461</sup> but CPA has not been able to verify this claim. There are unverified claims that the military is hoping to secure 1,500 acres from Zones 0-4 of Menik Farm once the IDP camp is closed, reportedly to carry out cultivation in the area.<sup>462</sup> While there is a clear need for alternate land to be found so that the military can move from the occupation of public buildings and private properties, there is a basic question of whether large extents of land should be handed out to the military on a long-term basis, when the emphasis should be on demilitarisation, including the reduction of the military presence, and normalisation. As one government actor informed CPA, government staff are wary of asking the military to vacate public and private properties for fear of being asked for alternate land.<sup>463</sup> Given that in the post-war context the military is taking on a variety of other duties including the cultivation and sale of vegetables as well as establishing hotel and restaurants services, there are concerns that the military may take up the lands for their own economic projects, when there are competing land demands from the civilian population. There is also the possibility that -as in the case of Sampur which was both a HSZ and a Special Economic Zone (SEZ) (with emergency lapsing it is presently just a SEZ)<sup>464</sup> - the land could be turned over for development projects instead of being returned to its prior users and owners.

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<sup>459</sup> TNA MP Suresh Premachandran was quoted as saying, “The army has about 40,000 troops now in the Vanni. Very soon, the troops’ families will join them. Once a permanent settlement comes up, infrastructural facilities like Sinhalese schools and Buddhist temples will come up, and the ethno-cultural character of the Vanni will change.” While C. Sritharan was quoted by Sudar Oli daily as saying that the army is constructing 4,000 family quarters at Kokkavil. (P. K Balachandran, “TNA highlights Sinhalese influx into North Lanka,” 25 March 2010); V. Anandasangaree, “Govt Must Stop Setting up New Army camps in Vanni and building houses for Army families,” 02 July 2010.

<sup>460</sup> Submission to LLRC by Gotabaya Rajapaksa on 17 August 2010, <http://llrc.lk/images/stories/docs/August2010/Gotabaya%20Rajapakshe.pdf>, LLRC, 17 August 2010.

<sup>461</sup> Interview with prominent civilian, Jaffna, June 2011; “Sinhala families to be settled in Jaffna with Chinese assistance,” Tamil Net, 02 November 2010.

<sup>462</sup> Interview with TNA MP and TNA political activists, Vavuniya, June 2011.

<sup>463</sup> Interview with government official, Vanni, June 2011.

<sup>464</sup> Bhavani Fonseka and Mirak Raheem, “A Brief Profile of the Trincomalee High Security Zone and Other Land Issues in Trincomalee District,” Centre for Policy Alternatives, May 2008.

## Status of Land Previously Occupied and Used by the LTTE in Post-War North

During the LTTE's de facto control of the Vanni, it had its own military restrictions that precluded civilians from accessing or residing in particular areas. These included forward defence lines but also other strategic security and political locations identified as sensitive by the LTTE. In addition, the LTTE occupied individual properties and demanded rent. As one interviewee from Karachchi division told CPA, some Tamil land owners who came back during the CFA period did not claim their land as the LTTE demanded "tax" for looking after the land.<sup>465</sup> Returning Northern Muslims during the CFA period were also in some instances informed that they could obtain their lands only once they paid back payments to the LTTE for the care of their properties.<sup>466</sup> In the post-war context, some areas that had been used or occupied by the LTTE have been retained by the military and not turned over for civilian use, justifying the restrictions on the grounds that they existed before. As one activist in Kilinochchi told CPA, "the army says 'before it was used by the LTTE, now we are using it'."<sup>467</sup> This simplistic justification obviously raises questions as to why the Government would seek to replicate some of the same harsh policies of a group that it defeated and sought to liberate the civilian population from.<sup>468</sup> The Iranamadu Tank area was a significant strategic concern to the LTTE as it had its own hydroelectric project and airfields for its nascent air force close to the tank. The military has imposed specific restrictions in the area, including a fishing ban in the tank. However, the complete ban was removed in June 2011 but there were restrictions as fishermen were only permitted to use a 13 km area from the shoreline.<sup>469</sup>

In establishing its control over the North, the Government has attempted to destroy key symbols of the LTTE, including memorials both in areas that were controlled by the Government and areas previously controlled by the LTTE. The LTTE had a number of memorial sites for its cadres in the Vanni, including in Thunavil in Puthkuduyirippu but also in other areas such as Koppai in Jaffna and Tharanikulam in Vavuniya. All of these sites have been flattened, as have other LTTE memorials

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<sup>465</sup> Interview with resident from Karachchi Division, Colombo, July 2011.

<sup>466</sup> Interview with Northern Muslim returnees, Kilinochchi District, June 2011.

<sup>467</sup> Interview, Kilinochchi, June 2011.

<sup>468</sup> The area around the former LTTE Peace Secretariat in Paravadipanchan, Kilinochchi has been taken over by a military camp of the 571 Brigade, effectively preventing the resettlement of up to 235 families, many of whom reportedly have LDO permits. Some of the other locations where the LTTE reportedly had bases or were deemed militarily sensitive, and which the military is now occupying portions of include: Vatakachchi, Uruthipuram, Ramanthanpuram, Akkarayan, Konavil, Pallai, Mullankavil, Kalmadanagu, Shanthapuram, Thirumurakandi, Skandapuram, Kanakapuram, Ganeshapuram and Thirun.

<sup>469</sup> Interview with actor working with fishing families, Kilinochchi, June 2011.

and statues.<sup>470</sup> In March 2011, the new headquarters of the 51<sup>st</sup> Brigade was opened on the site in Koppai where previously the LTTE cemetery once stood, which provoked outrage.<sup>471</sup> As to what will be done with the individual sites, particularly in the case of the cemeteries, is a controversial issue that needs to be dealt with sensitively. New monuments to commemorate the military's victory and the servicemen who lost their lives have been constructed in Elephant Pass and Kilinochchi. In contrast, new memorials for civilians killed during the war are notable by their absence.

## Naval Restrictions in the Mannar District

In addition to the restrictions imposed by the Army, the Navy has its own set of security restrictions in areas for which it has responsibility over. Based largely in coastal areas, the Navy continues to maintain a number of its camps and security policies, and has even consolidated its presence in certain areas. In the islands off Jaffna Peninsula, such as Mandatheevu the Navy has released some properties that it previously occupied but continues to retain control over others without indicating that they will be released while simultaneously releasing some sections of these islands. Across the seaboard of Mannar, the Navy has established firm control with a string of camps along the shoreline,<sup>472</sup> and even inland, especially in southern Mannar. Ostensibly all these camps were established for “the protection of the fishermen”<sup>473</sup> however, it is clear that they are proving a hurdle for civilians to regain some sense of normality. This post-war militarisation has significantly impacted civilian life, acting as the principal obstacles for the resettlement, restoration of livelihoods and the overall process of normalisation for some communities. In the post-war context it appears that this area is being treated as a strategic area.<sup>474</sup> The navy has moved its North West headquarters from Puttalam to Mullikulam and will maintain another major base in Mannar, in

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<sup>470</sup> This policy of destroying LTTE burial sites was also carried out previously when the military captured Jaffna in 1995 and demolished sections of Kittu Park as well as during the military operations in the East in 2006-7 when the LTTE burial site in Vakarai was flattened.

<sup>471</sup> <http://groundviews.org/wp-content/uploads/2011/03/Uthayan-Article.jpg>; “Military HQ in LTTE graveyard,” BBC Sinhala, 07 March 2011.

<sup>472</sup> Ranil Wijayapala, “Mullikulam Naval Area Headquarters: Booster to country's first line of defence,” Navy website, <http://www.navy.lk/index.php?id=2547>

<sup>473</sup> Navy Spokesman Commander D.K.P. Dassanayaka quoted in Ranil Wijayapala, “Navy camps for Silavathura, Mullikulam,” Daily News, 8 September 2011.

<sup>474</sup> This development is part of the Navy's post-war security strategy “towards enhancing the country's first line of defence” i.e. to increase naval presence and range (Defence Secretary Gotabaya Rajapaksa quoted in RanilWijayapala, “Mullikulam Naval Area Headquarters: Booster to country's first line of defence,” Navy website, <http://www.navy.lk/index.php?id=2547>)

Silavathurai.<sup>475</sup> In addition, the Navy has virtually taken over the administration of Wilpattu National Park and constructed a number of camps within the park.<sup>476</sup>

The level of restrictions in the four villages, Mullikulam, Marichchakatti, Karadakulli and Pallakulli in Southern Mannar vary, but the restrictions themselves raise serious concerns as to the post-war focus on and definition of security that comes at the expense of the rights and needs of civilians and the need for re-building the public's confidence in the government. A large navy complex which was opened by Defence Secretary Gotabaya Rajapaksa,<sup>477</sup> has been constructed in Mullikulam village effectively placing the entirety of the village off limits and effectively preventing the residents from returning. Consisting of 210 families at the time of displacement, most of the residents engaged in either fishing or farming and the village had 2,000 acres of agricultural land, 10 ponds and 15 padu licenses.<sup>478</sup> The church owns much of the land in the town, although up to 100 families have permit and deed lands.<sup>479</sup> In interviews with CPA, the displaced from Mullikulam, stated that they do not know whether they will get their land back. This uncertainty remains despite repeated promises by UPFA politicians that they would be allowed to return, including by Minister Rishard Badurdeen during the April 2010 election campaign who took them on a 'go and see visit'.<sup>480</sup> When they left Mullikulam in September 2007, they were informed by the military that they would be allowed to return within three days and they brought a few possessions in "polythene bags" so are concerned as to what has happened to their possessions and homes.<sup>481</sup>

The affected families are finding life in continued displacement increasing difficult. In 2007 there were approximately 280 families who are currently living in displacement in Thalvupadu, Mannar, Pesalai and Thalaimannar largely with host families or in properties that are rented.<sup>482</sup> For instance,

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<sup>475</sup> According to navy spokesperson Athula Senarath the NW Area will consist of SLNS Theraputta in Silavathura, SLNS Barana in Mullikuluma, SLNS Vijaya in Kalpitiya and SLNS Thambapanni in Puttalam (Ranil Wijayapala, "Mullikulam Naval Area Headquarters: Booster to country's first line of defence," Navy website, <http://www.navy.lk/index.php?id=2547>)

<sup>476</sup> In Sep 2011 Minister of wild life announced that military camps will be gradually decreased (<http://www.ft.lk/2011/09/20/wilpattu-national-park-to-be-free-of-military-camps/>).

<sup>477</sup> Ranil Wijayapala, "Mullikulam Naval Area Headquarters: Booster to country's first line of defence," Navy website, <http://www.navy.lk/index.php?id=2547>

<sup>478</sup> Interview with displaced from Mullikulam in village in Southern Mannar, June 2011; and in Mannar Island, June 2011.

<sup>479</sup> Most of the villagers are Catholic Tamils, although there are a few Hindus. Roughly eighty families lived on the fifty four acres owned by the church land and did not pay rent or have ownership (Interview with displaced from Mullikulam in village in Southern Mannar, June 2011.)

<sup>480</sup> During the campaign they were even taken on a 'go and see visit', but were only allowed within the church premises and not allowed to visit all their homes (CPA interview with residents from Mullikulam in two different locations in Southern Mannar, June 2011.)

<sup>481</sup> Interview with displaced from Mullikulam in village in Southern Mannar, June 2011.

<sup>482</sup> Interview with displaced from Mullikulam in village in Southern Mannar, June 2011.

some families constructed transitional shelters in Thalvupadu on private properties. Four years later the residents of the area want their land back.<sup>483</sup> Some families have also opted to move to Silavathurai and rent boats jointly in order to re-start fishing as they do not want to rely on rations. Their presence has created some problems, as the fishermen in Silavathurai do not want others attempting to take up fishing.<sup>484</sup> The Government has not provided alternate relocation sites nor compensation, let alone basic information regarding possible relocation. The residents of the village had offered a compromise of ceding half their land to the navy but even that offer has been refused.<sup>485</sup> The Mullikulam community also attempted to secure permission to celebrate their annual church festival but failed to secure permission and subsequently organised a protest in Mannar Town along with representatives of civil society including the Bishop of Mannar, Rayappu Josph on 15 September 2011.<sup>486</sup> There has been only limited public advocacy on the issue of Mullikulam, which is symptomatic of how the larger issue of military occupation in southern Mannar has been taken up. With seemingly little opposition, limited largely to the affected communities the Navy appears to be making clear that this is a permanent occupation, thereby effectively thwarting return.

Approximately 30 km north of Mullikulam another naval base has been established in Silavathurai town. The base is located in the centre of the settlement; hence, most of the public service buildings are not available for civilian access nor are most of the old residential area.<sup>487</sup> As one resident pointed out to CPA, “that [the area occupied by the navy] is the town of Silavathurai,”<sup>488</sup> which has meant that returnees who are largely Muslims have had to re-establish themselves in the surrounding areas. In Marichchakatti, a significant portion of the village, including the Jummah Mosque, is under Navy occupation. According to the residents who were allowed to return in July 2010, the Navy has informed them that the building, which is on the boundary of the Navy camp, will be opened soon. Due to the continued Navy occupation, the community in Marichchakatti had

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<sup>483</sup> Other problems such as arguments over access to wells and issues between children and youth from the displaced and host communities are cropping up (Interview with displaced from Mullikulam in village in Southern Mannar, June 2011).

<sup>484</sup> Interview with displaced from Mullikulam in village in Southern Mannar, June 2011.

<sup>485</sup> Interview with displaced from Mullikulam in village in Southern Mannar, June 2011; and in Mannar Island, June 2011.

<sup>486</sup> “Displaced persons protest for home,” UCA News, 15 September 2011, <http://www.ucanews.com/2011/09/15/displaced-people-protest-for-homes/>

<sup>487</sup> Some of the buildings that fall into the navy camp include the Jumma Mosque, the PradeshiyaSaba office, the library, post office, RDS building, the ice corporation, and market (CPA interview with community leader and residents, Silavathurai, June 2011.)

<sup>488</sup> Interview with resident from Silavathurai, June 2011.

to construct a temporary mosque.<sup>489</sup> In neighbouring Karadakulli, the entire village is open to resettlement, but the Navy has imposed certain restrictions in the surrounding areas that impact the livelihoods of the returnees, including fishing, farming and forest gathering. When CPA visited in June 2011, fishing was not allowed during the night and is restricted to between 6 am to 6 pm.<sup>490</sup> A pass is required for every fisherman, and according to the fishermen who were interviewed, the process of obtaining a pass takes 4-5 months.<sup>491</sup> In the adjoining fields farmers can access their paddy fields, but the interviewed villagers stated that the Navy does not approve of them spending the night in the fields to protect them from wild animals.<sup>492</sup> The collection of firewood and bee's honey has also become much more difficult as the Navy has imposed restrictions.<sup>493</sup>

The Navy has also established restrictions and a presence in other areas such as the Iranatheevu Islands off mainland Kilinochchi district. The residents of Peratheevu (Iranatheevu North Island) were displaced in 1992 and were neither allowed to resettle by the LTTE when it controlled the island nor the Government after they captured the island.<sup>494</sup> For over a decade they have been living in a relocation village on the mainland, Iranamanagar for which many families have permits dating from 1995 onwards.<sup>495</sup> Following the end of the war they were resettled in Iranamanagar in November 2009 but they have not been allowed to return to Iranatheevu. Since January 2010, however, the residents from Iranatheevu have been allowed to fish and set up wadis on the south island (Siratheevu)<sup>496</sup> and access is granted for the annual church festivals.<sup>497</sup> The economic

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<sup>489</sup> The navy had put up cement pillars by the roadside on the western side of the village that the villagers thought would result in the construction of a fence and the land being taken over by the navy. Due to appeals by the villagers, who claimed that they had threatened to fast, however, the navy removed the pillars from the northern section of the village. The pillars remain in the Southern section and the navy reportedly made it clear that this area would not be open for civilian residence, even though civilians are allowed to access that specific area (Interviews in Marichchakatti, June 2011.)

<sup>490</sup> The fishermen from the village also complained that the navy asks them to bring their boats to a certain spot on the beach which is rocky and where they have to sign in. They complained that the bottom of their boats get damaged and cannot understand why the navy cannot do the same check in a different area (CPA interview in Karadakulli, June 2011.)

<sup>491</sup> Interview in Karadakulli, June 2011.

<sup>492</sup> Interview in Karadakulli, June 2011.

<sup>493</sup> Interview in Karadakulli, June 2011.

<sup>494</sup> In 1992 the navy reportedly demanded that the resident should leave following an attack on the island. The navy subsequently withdrew and while the LTTE did not allow them to resettle when it gained control of the island, the LTTE did allow them to fish.

<sup>495</sup> They named the relocation village as an expression of their desire to maintain ties with their original village (Interviews with residents living in Iranamanagar, 24 May 2011.)

<sup>496</sup> Along with all the other villages on the western seaboard, the residents of Iranamanagar were displaced in the last phase of the war, in July 2008 and shifted at least 15 times before they were shifted to Menik Farm and were eventually resettled in the village in November 2009 (Interviews with residents living in Iranamanagar, 24 May 2011.)

<sup>497</sup> Each island has a main church and a corresponding festival, January for the Siratheevu and October for the Peratheevu.

livelihood of the community is still limited, especially for the women who used to earn a livelihood by wading into the shallow waters off the coast and collecting sea cucumbers. The residents have not received any official notification as to whether they will be allowed to return and what will happen to their properties, even though some residents claimed that they have deeds.<sup>498</sup> In addition to the navy, the police has also occupied individual buildings and there are unverified allegations of attempts to take over land in Pesalai.<sup>499</sup>

## **Balancing National Security and Human Security**

The military occupation is tied to the larger issue of high levels of militarisation, not just in the Vanni, but also in the North in general. Even while the Government has taken some steps towards demilitarisation including relaxing certain military restrictions, removing check points and releasing occupied land, the militarisation manifests itself in multiple ways including the heavy military presence and involvement in civilian life. Three Tamil politicians, including two closely allied to the Government in a joint submission claimed that "The government has no plans for demilitarisation, contrary to which the forces are involving more and more in civil administration...The people cannot (hold) any function without the participation of some Army personnel. The people are terrified over the presence of army personnel in every nook and corner of the north."<sup>500</sup> Given that the Vanni was the heartland of the LTTE, the Government is convinced that a high level of vigilance is required, but that concern has translated into a heavy troop presence for monitoring the territory and residents. The heavy military presence in both urban and rural settlements, requires buildings and shelters for the officers and troops. While the necessity of such a heavy presence - especially two and a half years after - can be contested, the occupation of public and private properties in particular requires immediate discussion and review.

It appears that in a number of cases occupation of public buildings and private properties is an easier and cost saving option for the military and Government as they can use existing buildings and do not have to find land and construct new structures. Instead, the cost is effectively transferred to the civilian population, which has to bear the brunt of military occupation and is

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<sup>498</sup> Two of the interviewed residents claimed that they had deeds for their lands. Many families have reportedly lost their documents, including the deeds from Iranatheevu and permits from Iranamanagar but in month the AGA gave small slips of paper for the later. In January 2011, a kani katchcheri was held to identify who had lost documents and who did not have land (Interviews with residents living in Iranamanagar, 24 May 2011).

<sup>499</sup> "Timely protest saves church land from police occupation in Mannar," Tamilnet, 16 December 2010.

<sup>500</sup> Submission by V Anadasangaree (TULF), D Siddharthan (PLOTE) and T Sritharan (EPRLF) was made to Indian Foreign Secretary Ranjan Mathai when he met them in Colombo quoted in "Sinhalese moving into Tamil areas," IANS, 11 October 2011.

unable to return to their homes and/or use their properties. Thus, while significant strides have been made by the Government, the continuing military restrictions, including the occupation of land have been a critical flaw in post-war government policy in the North to winning civilian confidence and trust. Above all the pace of release of land and the lack of information has fallen short of public expectation in the North.

The principal dilemma in dealing with the issue of militarisation in the post-war context is to balance national security with the human security of the affected community. While there is a clear expectation in war-affected areas that demilitarisation, including the removal of security restrictions, will take place immediately with the end of war, the process of demilitarisation must be conducted in a manner that would reinforce post-war security and build a robust foundation for sustainable peace. For instance, even while the Government has insisted that the military ensures better security for civilians, the spate of killings and abductions in Jaffna during November 2010 to January 2011 raised significant concerns of continuing militarisation maintaining rather than thwarting the culture of impunity.<sup>501</sup> If the post-war policies of militarisation and counter-insurgency are excessive and infringe on rights, then they risk reducing peace dividends for war-affected communities, inadvertently increase political distrust and serve as an underlying cause of insecurity. Hence, it is important to immediately and periodically review the policy of militarisation not just in terms of national security, but also in terms of its impact on the rights and the lives of those affected, as well as on the economy and politics of the affected area, and take effective measures to end the infringement of rights of civilians and to create a more conducive atmosphere for the restoration of normalcy.

Some of the military restrictions outlined above, ranging from HSZs to fishing restrictions are infringements on the basic rights guaranteed by the Constitution of Sri Lanka including the freedom of movement. There is a general lack of clarity as to the legality of some of the restrictions, including the HSZs, given that there is limited information publicly available regarding the legal basis for such restrictions. Since there are no gazettes or official notifications related to some restrictions, they are more *de facto* by military declaration as HSZs rather than *de jure*. One humanitarian agency official aptly described the restrictions in Mannar as “informally referred to as a HSZ.”<sup>502</sup> With the lapse of the Emergency Regulations in August 2011 questions are raised as to the legal basis for the continuation of HSZs.<sup>503</sup>

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<sup>501</sup> There are also specific allegations of military involvement in post-war human rights abuses, including in the few publicly reported individual cases of violence against women (See also Chapter Seven).

<sup>502</sup> Interview with international humanitarian agency, Mannar, March 2011.

<sup>503</sup> Emergency regulations were replaced by regulations issued under the Prevention of Terrorism Act, which were near identical in nature but to date there are no regulations that are publicly available in relation to HSZs or other high security areas. (Press Release: Emergency Regulations and Local Government Elections, Centre for Policy Alternatives, 16 August 2011.)

It also appears that the authorities have made little effort to fully understand the impact of these restrictions on people's lives: it is not merely the occupation of a building, but it is also the prevention of claiming one's home; it is not just restrictions on access to land and water, but it is the very basis of livelihoods on which the economy and health of a family depends. Even while individual community leaders are contemplating submitting fundamental rights petitions before the Supreme Court or challenging this in other courts, there are fears of being harassed and intimidated by the military as a result. For instance, efforts by civilians to demand the release of the HSZ in Silavathurai resulted in the questioning and warning of some of those involved in the protest by the authorities.<sup>504</sup> In CPA's interviews it was also noted that there is a significant climate of fear that thwarts open discussion about the issue of occupation, although some individuals have approached the military about getting access to their properties or even been informed by individual officers that they recognise the importance of the release of these properties.

Military restrictions on land are contributing to increasing discontent with the post-war situation and government policies. It is clear that these restrictions are sources of tension and undermine the Government's own confidence-building measures. Instead of this current phase being viewed as a new chapter in post-war politics and reconciliation, the policies of continuing military occupation risk feeding into the politics of the past - that of a largely unsympathetic and discriminatory State. In a post-war context, when the military is engaged in a series of initiatives to increase public trust with civilians in the North, maintaining restrictions and constructing military camps, risk feeding allegations of an occupying army. Even while the government seeks to justify the restrictions on the grounds of national security and interest, there is a strong counter-argument - the very notion of national security must be transformed to take into account post-war requirements of confidence-building, normalisation and reconciliation.

The issue of ethnicity is also difficult to ignore. It is important to note that most of the land being taken up by the Government - be it public or private - lie in areas that are predominantly Tamil. In the case of private property, it is argued that it is mostly lands belonging to Tamils that has been taken by the military, thereby denying Tamils their rights to ownership, property, freedom of movement and livelihoods. In Mannar some Tamil interviewees insisted that the land that was partially released to the public belonged to Muslims, rather than land belonging to Tamils.<sup>505</sup> While militarisation is concentrated in Tamil majority areas of the North and East and is perceived to be targeting the Tamil community, it is not a policy and practise that exclusively impacts Tamils. Like in Silavathurai, where Muslim land has been confiscated or appropriated, other communities are also

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<sup>504</sup> CPA interview with community members, Silavathurai, June 2010 and June 2011.

<sup>505</sup> CPA interview with humanitarian agency actors, Mannar, March 2011.

affected by militarisation, as land owned and used by other communities.<sup>506</sup> Nonetheless, at least in terms of occupation of land it is a phenomena that largely affects the minorities.

The charge that military restrictions have an ethnic bias is further compounded when the restrictions appear to be partial towards one community. This is particularly relevant to restrictions relating to paddy land or fishing waters. CPA received complaints from both farmers and fisher folk at individual sites, who complain that other ethnic communities appear to be engaged in livelihood activities in these restricted areas. As pointed out in Chapter Eleven, the military's role in Northern Vavuniya in preventing Tamil farmers from accessing their paddy fields while allowing Sinhalese to cultivate these same fields, which continued until September 2011, created a perception that militarisation is heavily ethnicised. The fact that the security forces are overwhelmingly Sinhalese only adds another dimension to this charge of ethnicisation, given that the military is playing a dominant role in administration. These beliefs have been further compounded by the military's role in the past of assisting in policies that aided Sinhalese, including military operations and attacks that forcibly displaced Tamils while providing security for Sinhala settlements. Therefore, while the military has been and is currently involved in efforts to assist civilian communities in their post-war recovery, it cannot completely ignore the negative effects of militarisation. Furthermore, the Government's failure to clarify the exact purpose and duration for which the land has been taken over has intensified speculation and apprehensions that it is taken for ulterior motives, including demographic changes through the settlement of the military and their families and the military's expansion into commercial ventures beyond military canteens to establishing hotels in areas such as Thalsevanain Kankasanthurai within the HSZ in Jaffna.<sup>507</sup>

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<sup>506</sup> In the Eastern Province, lands dominated by all ethnic communities have been taken up for military purposes. For instance in Lahugala military occupation of land is a big problem for the community which is largely Sinhala area. ("Sinhala organisation in land grab accusation," BBC Sinhala, 30 March 2011; "Villagers protest against 'land grab'," 27 July 2010.)

<sup>507</sup> "Commander of the Army Declares Open 'Thalsevana', the Luxurious Holiday Resort in Jaffna," Official website of the Army, 03 October 2010; "Wadduwa Holiday Resort Now Offers 4 Star Class Rooms with New Wings," Official website of the Army, 17 October 2010; "Navy now into restaurant business," Sunday Times, 17 July 2011.

## Dealing with Occupation

While the continuing policy of release and relaxation of land restrictions is welcome, the process has largely been piecemeal.<sup>508</sup> The existing uncertainty regarding the ongoing occupation of buildings and land necessitates a comprehensive government-led assessment covering all GS divisions in the North in order to identify current restrictions. A parallel review of security requirements also needs to be undertaken on the ground. These two assessments could be carried out by separate teams working closely together, but must also involve a mixed group of individuals including actors from the government, military and local community. The purpose of these two activities would be to identify communities and families who are still affected by military restrictions, to detail the impact of these restrictions on their lives, and to draw up a schedule identifying when restrictions will be removed and which properties will be required for long-term use. The publication of such a plan could help all stakeholders - including those directly affected and humanitarian organisations - gain a better sense of the situation and plan for the immediate future, in addition to helping to ensure that adequate steps are taken to offer compensation where necessary.

In the cases where the military has taken over a building or an entire village, there has to be a process that is followed by the Government and the military to firstly ensure that such restrictions are absolutely necessary and secondly that there is no other option available than to deny civilian use of that land. Rather than occupation being the first option, it should be the last. It is also imperative that the Government approach to militarisation should be as a temporary phenomenon rather than a permanent feature of the governance landscape. If alternative land cannot be identified, then the Government must determine for how long the property will be used and provide payment or rent. Only as a last resort should the Government look at permanent occupation. In such instances it should follow existing laws to acquire the land and ensure that adequate compensation is provided. The Justice Minister Rauf Hakeem promised that with the lapse of the emergency regulations the Government would acquire land legally if the properties were required.<sup>509</sup> It must also ensure that relocation is carried out in a manner that is in keeping with international humanitarian principles, which have corollary national principles including those

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<sup>508</sup> The Jaffna Security Forces Commander, Major General Mahinda Hathurusinghe claimed that 50 houses in Jaffna occupied by the military would be handed over their owners and that a further 200 had already been handed over (Arthur Wamanan, "Army to quit houses in Jaffna before New Year," *The Nation*, 13 November 2011.)

<sup>509</sup> "Govt. To acquire private lands within HSZs," *The Sunday Times*, 11 September 2011.

enshrined in the Sri Lanka National Involuntary Resettlement Policy for public and private sector development projects.<sup>510</sup>

For the affected community, the process of having to relocate and to choose a site may be difficult to deal with and willingness to accept available options will vary between families and even within families. Therefore it is important for the Government to provide clear information as to what it intends to do with land currently occupied as well as how compensation and assistance for relocation will be provided. It does not appear that these practises are being carried out. In the case of Mullikulam, while the residents all fear that they will not be able to return, there appears to be confusion and difference of opinion between residents. One set of residents interviewed by CPA claimed to have been taken by the military on 27 April 2011, who had told them they would be able visit Mullikulam, but had instead taken them to Jeevanagar and asked if the land was state or private land. They have been told by government actors and the navy that alternate land may be provided for them in Kallaru.<sup>511</sup> These persons were of the view that the land may be for their relocation but were not informed by the military.<sup>512</sup> CPA's interviews with the affected community and agencies working with those displaced from the village suggest that there is a split within the population as to whether or not to opt for relocation. Nonetheless, even the residents who are willing to consider relocation provided that it is in a viable area confirm that "the first option is to go back."<sup>513</sup> The mixed messages and/or the lack of official information effectively puts pressure on the affected population as they fear that if they do not accept the minimal assistance in the form of relocation being offered by the authorities then they may not receive any assistance at all and could end up in limbo, especially if the Government ceases to recognise them as IDPs. It appears that there is no formal procedure for notifying the general public, which instead happens by word of mouth and through the media. In general, the authorities need to provide more timely information to the public on the release of HSZs and possibilities of return.

In Silavathurai, the villagers have received mixed messages as navy personnel have informally told some individuals that they will be able to reclaim their properties, while others have been informed that they will be given alternate land and housing.<sup>514</sup> A housing site reportedly for the Indian

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<sup>510</sup> Those to be relocated need to be taken on a 'go-and-see' visit and consent to the relocation site. In addition, relocation cannot be viewed merely as a process by which alternate land is provided and a donor is identified to construct houses. It has to be a concerted effort to ensure that there is sufficient infrastructure at the relocation site and that livelihoods can be carried out.

<sup>511</sup> Interview with displaced from Mullikulam in two villages in Southern Mannar, June 2011.

<sup>512</sup> Interview with displaced from Mullikulam in village in Southern Mannar, June 2011.

<sup>513</sup> Interview with displaced from Mullikulam in village in Southern Mannar, June 2011.

<sup>514</sup> One interviewee was reportedly told by the navy that those displaced would receive military housing but it appears that at least a few will be beneficiaries of the Indian housing project on the southern boundary of the town (CPA interview with community leader and other residents, Silavathurai, June 2011.)

Housing Project has been cleared in land adjoining the village. CPA met at least one family whose house was under military occupation and who was receiving an IHP house who believed that the new house and land would be their compensation.<sup>515</sup> However, there has been no official confirmation as to whether their original land will be returned nor has an acquisition process been announced. There are serious questions in this instance of whether the Indian Government is de facto contributing to the Government's compensation for military occupation when clearly this is a responsibility of the Government and not that of a third party. As in the Silavathurai and Kombavil cases, it is apparent that the Government is looking to humanitarian agencies and donors to support relocation, although in the latter the military had constructed transitional shelters as a result of donors and humanitarian agencies expressing reluctance to come forward. International donors and humanitarian agencies who fund relocation or provide new housing in such instances also have a responsibility to ensure that the rights of their beneficiaries and key guiding principles for humanitarian and development work are not being violated through their projects.

In certain areas the military has attempted to acquire the land it occupies. Joseph Camp in Vavuniya is the principal military base in the district, housing both the army and air force in one sprawling compound. Over the years, the camp has expanded and taken over surrounding civilian land. At least 10-15 families may be unable to reclaim their land. An individual affected by the military occupation reported to CPA that the military has said that it cannot return the property and that it would provide compensation of Rs. 7,000 per perch. CPA was informed that as at September 2011 some families had obtained compensation.<sup>516</sup>

In some areas there have been efforts to provide rent for occupied lands, but it appears that the onus is with the owners rather than the occupiers. For instance, the owner of a property in Jaffna town, which was occupied by the military, was able to demand rent from 2005 onwards and even received arrears for the previous ten years. The rent paid at that time was Rs. 1,000 per month but was subsequently increased to Rs. 3,000 per month until the property was released.<sup>517</sup> Additionally, in areas such as Kayts where the police occupy some private properties, owners have received a token amount.<sup>518</sup> Nonetheless, it appears that there is no standardised policy on compensation and that the onus is on the owner to demand payment. Furthermore, there appears to be no uniform process, and it is instead at the discretion of individual camp commanders to

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<sup>515</sup> CPA met one beneficiary who owned ½ acre of land with a well. This land is being occupied, and instead has been offered 20 perches, a house constructed under the Indian Housing Project and has to rely on water brought by a bowser (CPA interview with beneficiary, Silavathurai, June 2011).

<sup>516</sup> CPA interview with humanitarian actor in contact with affected families, Vavuniya, April 2011.

<sup>517</sup> Interview with the relative of property owner, Jaffna Town, June 2011.

<sup>518</sup> CPA interview with a prominent citizen in Kayts, May 2011.

decide whether to pay rent and what the required paperwork is.<sup>519</sup> According to CPA's interviews, the practice of rent payment is more prevalent in urban areas but, as one interviewee put it, the ability to secure rent depends on the owner's level of influence.<sup>520</sup> In the case of HSZs, as opposed to individual properties that have been occupied by the military, the ability to seek compensation depends on whether the military was actually occupying the building. If it was vacant - but still restricted for civilian usage - the military, at least in the Jaffna HSZs has not paid compensation.<sup>521</sup>

## **Conclusion**

In conclusion, it is clear that there has to be an effort to speed up the process of demilitarisation and to ensure that rights and needs of civilians are re-prioritised while ensuring that national security interests are re-calibrated to a post-war context. Else there are serious risks in undermining the current context and increasing tensions and suspicions between communities in the North and the Government. Military occupation of land and the larger process of militarisation are serious obstacles to the restoration of normalcy and building peace. As such the Government and other actors need to take immediate steps to address this problem.

## **Recommendations for Government and Military**

- Carry out an assessment of properties - public and private - currently being occupied by the military. The assessment team needs to include actors from the District Secretariat and local community. The assessment should be shared with communities and others involved in assistance projects to inform them of the status of occupation.
- Carry out a post-war security review to assess security threats and costs, including of political, social and economic costs of the occupation of properties, not just to the Government but society at large.
- Increase public information regarding the occupation and release of properties to all stakeholders.
- Compensation should be provided for continuing occupation. An assessment should also be done regarding occupation in the past to decide whether payment can be made for the occupation during the conflict. This should be done taking on board payments already made and in conformity with international and national standards.

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<sup>519</sup> CPA interview with humanitarian actor, Jaffna Town, June 2011.

<sup>520</sup> CPA interview with civil society actor, Jaffna Town, June 2011.

<sup>521</sup> CPA interview with humanitarian actor, Jaffna Town, June 2011.

- In terms of short-term occupation, compensation needs to be provided to the owners and efforts taken to ensure that alternate arrangements are found to address the needs of those affected, including in terms of housing and livelihoods.
- Move towards a process of rapid demilitarisation and scaling down the military in the North, while building up the police force, civilian administration and community institutions.

### **Long-term Occupation Relocation**

- If a property/area is required for long-term use, the Government must attempt to minimise the impact on civilians who lived in that area, avoiding heavily settled areas and land with significant economic utility.
- The Government and military should realise that relocation is the last and not the first option and that relocation needs to be looked at holistically so as to ensure that it is sustainable.
- The Government need to adhere to existing legislation when acquiring land including the payment of compensation. The Government should clarify the purpose for acquisition.
- Humanitarian agencies and donors need to adopt a principled approach as to whether they support relocation, and if they do need to ensure basic humanitarian standards, including ensuring that those being relocated have been provided information and are doing so voluntarily.

# Chapter 11

## Complexities of Land Appropriation and Competing Claims

There is significant variation between the histories of various communities and the land they occupy with some communities have been resident in the area for centuries if not longer, while others are more recent residents. Some have valid legal documents and others make their claims based on the number of years spent on the land, or rather a claim based on local history. These claims are made all the more complex by significant changes in land ownership and population movement even prior to the war. While the population concentration and landlessness in Jaffna led to outward migration, communities have migrated to the North due to security threats since the 1950s, land schemes introduced by the government and others, and the search for viable livelihoods. As a result of the war, there were mass displacements with some populations settling in areas other than that of their origin. Among those who fled the areas of conflict some emigrated from the North, including abroad, and yet continue to own land in the North. The strain on and limitations in governance, including in land administration, as a result of the war, coupled with the loss of documentation, displacement, secondary occupation by armed actors and other civilians also resulted in a complex environment where the history of the land is critical to arbitrating who has best claim to the land, resolving disputes and avoiding future tensions. This chapter will discuss two recurring issues related to land in the North: allegations of illegal land acquisition or land appropriation and competing claims. The history of the land is interlinked and critical to both issues. For the purpose of this report, CPA has provided a broad definition of these terms to better understand what is meant by their use in the present context.

**Illegal Land Acquisition and Appropriation of Land:** This could mean land that is illegally acquired, seized or taken over with little or no due process in the name of security, development, settling new communities, agriculture, businesses or other purposes that simultaneously dispossess communities from land that they previously owned, used, occupied, managed or controlled. There is significant leeway for State actors to claim that they are following legal procedures, while in fact their actions could be considered unlawful. Adding to the complexity is not just the processes which are questionable and may amount to being illegal but also the numerous allegations by different actors exacerbating the fear and apprehension among communities.

**Competing Claims:** The issue of competing claims over land is a result of more than one individual claiming ownership and control over a particular plot of land. This situation can be attributed to several reasons, largely related to the conflict and its impact but also other factors not directly linked to conflict such as problematic or illegal land sales, inheritance disputes, and lack of documentation.

## **(I) Illegal Acquisitions and Appropriation of Land**

Illegal land acquisition and appropriation is not always clear and may have different dimensions. For instance, there have been cases where land is seized or acquired in accordance with the law. There have been instances where communities in the area are provided information, agree to acquisition processes and accept compensation or alternative land, but do not fully realise the implications of such action.<sup>522</sup> Poverty as well as the prospect of a better title and more assistance may influence communities to accept alternative land. This raises the pertinent question of whether providing incentives and not informing owners of the real reasons for the acquisition of the land can be considered an illegal acquisition or appropriation of land. This report documents cases where contestation over land ownership raises questions of whether there has been appropriation of land, possibly leading to a 'land grab'. Significant issues have arisen in the North as a result of conflict, displacement, destruction of documents and confusion resulting from successive administrative control over the area by several different actors. Such uncertainties have exacerbated existing tensions and raised the question of what is a land acquisition and whether it may amount to a possible land grab.

As discussed in Chapter Ten, there have been allegations of outright land grabs, but the documentation of these individual cases has been poor. Charges have been made against state actors taking over public and private property on the grounds of national security, development or in certain instances without any clarification as to how long the property will not be available for civilian use and for what purpose, let alone following procedures laid down under the law. As discussed in Chapter 10, military occupation of numerous properties in the North has fuelled the fears of state-backed land grabs for the military to consolidate rather than reduce its presence. The TNA has raised in Parliament specific cases of land grabs by state actors. Most recently the TNA in its Situation Report claimed that in Kokilai, Mulaitivu, a kovil damaged during the war was demolished and a Buddhist temple erected in its place.<sup>523</sup>

In the post-war period, new programmes and projects have been introduced in the name of economic development, security, addressing landlessness and increased productivity. These initiatives have the potential to threaten previous trends of land tenure and bring in new actors to the area. There may also be instances where an informed decision was not made due possible coercion, raising the question whether there was an illegal acquisition or appropriation that may amount to a land grab. Thus, even in situations where a legal process has been followed, there may

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<sup>522</sup> A Brief Profile of the Trincomalee High Security Zone and other Land Issues in the Trincomalee District, CPA, May 2008, Report on Trincomalee High Security Zone and Special Economic Zone, CPA, September 2009.

<sup>523</sup> Situation Report: North and East Sri Lanka, TNA, 21 October 2011.

be a perception of a land grab as affected civilians may be powerless to refuse and the State or other powerful actors are able to use the law and power to justify their actions. For instance, if land is acquired by the state on the grounds of national development and nominal compensation is provided to those who have lost land, the process may meet minimal legal standards but may still be perceived as a land grab in political and social terms.

A variety of actors have been accused of carrying out land grabs, including State actors, the LTTE, other armed actors, politicians, corporate and private citizens. As such, both the individual history of the land as well as documentation are critical in deciding whether the land was acquired legally or whether there are concerns over illegal appropriation. Due to the impact of the conflict, the task of collecting and verifying information about the land, including how and whether it was owned, whether there are legal documentation to prove ownership, what it was used for—i.e. agriculture, residential—, who was in control of the land is challenging.

Alleged illegal acquisitions and appropriation of land took place prior to war, during the war and after. While during the war, the Government and the LTTE attempted to seize control over territory through the use of force and violence, there were also efforts by these and other actors such as PLOTE and TELO (discussed later in the chapter) to wrest control over individual plots of land or even entire villages. Nevertheless, the issue pre-dates the war, as settlements, particularly those of Sinhala communities, were established and/or facilitated by the Government in the North and East.<sup>524</sup> These instances have fed allegations of state-sponsored 'Sinhalisation'. On the other hand, there are counter-claims that Tamil government servants and civil society organisations have also set up Tamil colonies.<sup>525</sup> These schemes included giving arable land in the North to middle class and educated groups of Tamil origin. Critiques claim that these initiatives are similar to allegations of 'Sinhalisation', with little regard to addressing issues of landlessness and needs of those vulnerable including the poor and lower caste communities.<sup>526</sup> Cases have also been reported where the LTTE was involved in appropriation and acquisition of land which was illegal, providing land to those loyal to them including families of LTTE cadres.<sup>527</sup> The current initiative by the Government to decide on land claims in the North and East as provided by the most recent land circular is meant to examine these cases and raises the issue of whether those provided land by state and non state actors during the war period have legal title (Discussed in Chapter Three).

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<sup>524</sup> Interviews with civil society actors in Colombo and the North, January-July 2011.

<sup>525</sup> Interviews with civil society and humanitarian actors in Colombo and the North, January-July 2011.

<sup>526</sup> Interviews with civil society actors in Colombo and the North, January-July 2011.

<sup>527</sup> Land that was given by the LTTE include in areas such Dharmapura, Visvamadu and Redbarner. Interviews with civil society in the North and Colombo, May, June and July 2011.

As limited information is available about these practices, communities are apprehensive that changes to boundaries and administrative units will be made in the name of development or security, but are in essence illegal and unlawful and may amount to a land grab. The fear among the community has been exacerbated by the secrecy with which such action is taking place as well as the involvement of key political actors and military. Additionally, tensions are high over land issues as such practices have large implications for ownership, control and access to land and livelihoods.

## **Allegations of Illegal Land Acquisition and Appropriation in the Post-War North**

The section will look at a variety of cases where there are allegations of unlawful practices where there is involvement of the State and non-state armed political groups.

Allegations of State involvement: This section briefly maps out various government actors who have illegally acquired, seized and occupied land that belongs to others. Chapter Ten discusses the significant military presence in the North and details the vast areas of land occupied and used by the military, both on private and permit land. This section will look at other forms of illegal acquisitions and appropriations by or supported by state actors such as by government ministries, departments and authorities, politicians and other officials.

Land can be acquired by the State for specific reasons and purposes in accordance with established laws including the Land Acquisition Act. The Land Acquisition Act provides that land can be acquired for a public purpose and provides a framework in which land can be obtained including the necessary process of providing information to and the appeal mechanism available to any affected communities.<sup>528</sup>

Previously, specific emergency regulations provided that land to be taken by the State for the purpose of creating a high security zones, such as those in Sampur, Katunayake, Kandy and Colombo. Although emergency rule was lifted in August 2011, the Public Security Ordinance and the Prevention of Terrorism Act (PTA) provides broad powers for the enactment of regulations.<sup>529</sup> During the course of the research CPA was not able to find any new regulations creating HSZs in the north, although significant amounts of land have been taken over by the military and police for security purposes, such as seen with the HSZ in Tellipallai and Palali in Jaffna.<sup>530</sup> In addition to military installations and camps, this report discusses land that has been acquired or is in the

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<sup>528</sup> Land Acquisition Act No. 9 of 1950.

<sup>529</sup> The Government introduced new regulations under the PTA in August 2011 which were challenged by the CPA and TNA.

<sup>530</sup> Discussed in detail in Chapter 10.

process of being acquired for purposes including development, construction, tourism and settlements. Given the numerous ongoing projects and programmes in the North, cases involve both large tracts of land as well as small plots.

As mentioned in this chapter, questions have been raised over land titles as certain individuals have occupied land for decades, if not longer, but might not have proper documentation. Destruction and loss of documents as a result of the conflict has created further confusion. What is hard to verify is whether claims of ownership actually amount to legal ownership, especially in the absence of documentation. Additionally, some actors have notably exploited this type of situation where the title is in question.

### **Case: Testa Restaurant in Murukandi**

An example of the problem of land titles would be the case of the restaurant Testa, which was built in 2010 in Murukkandy by the side of the A9 road. The famous Murukkandy temple is in close vicinity to the restaurant and the temple trustees and locals in the area claim that the two-acre land plot around the temple is in fact owned by the temple. The ownership is proved by a deed dating back to 1886, but there is no survey plan that can show the extent of the ownership and the boundaries. As such, government officials claim that the land is actually state land. In 2010, this land was given as a 30-year lease to a business owned in the South. The Thiru Murikandi Pillayar Kovil filed a case in the Kilinochchi District Court in 2010<sup>531</sup> but without the presence of a valid survey plan, the government was able to successfully claim that the land is state land.

Government officials state that the land was surveyed and after an eight-month period the land was leased to Testa.<sup>532</sup> CPA was informed that the usual practice to identify state land, survey and approve a lease takes around two years, but an exception was made with this particular case with the entire process taking only eight months.<sup>533</sup> Locals interviewed during the research regularly referred to this case as an example of land grabbing and political patronage being used to assist southern actors to seize land belonging to others. These perceptions indicate fears of politicisation, ethnicisation, and dispossession of land interwoven into government policy.

This case is one of many that highlight the need for more public information regarding the process of obtaining land for business ventures. It also demonstrates the nexus between possible land appropriations that maybe illegal and competing claims. Although it seems that the established procedure in this case was followed, questions still remain regarding the real ownership of the land

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<sup>531</sup> SC FR No. 393/2010

<sup>532</sup> CPA was informed that this process involved the approval by several actors including the DS, Northern Provincial Land Commissioner, the Governor, Land Commissioner General, the land ministry and the President.

<sup>533</sup> CPA was also informed that the land was valued at Rs200, 000. Interview with government official, 23 June 2011.

in the absence of a survey plan and the presence of a deed dating back to 1886. Thus it is important that the government provides more information regarding how the land has been identified as state land in order to address and mitigate the fears of the communities.

A popular perception in the North is that land in the area is being given to external actors without following the proper procedures or in the case of Testa speeding up the procedures and that local land owners will be adversely affected. While many could not point to specific individuals involved in such practices, there was mention of government actors at the district and national levels who are supporting such practices. Such perceptions fuel fear and apprehension among communities of large plans. Additionally, there are claims that land acquisitions and appropriations are being done under the guise of changing ethnic demographics in the area. A fear among the communities in the area is that the military presence, development, tourism and other programmes are being used for the purpose of providing land to other communities, without following established procedures. Some of the cases highlighted in this chapter underscore these fears, but further study is required to have a comprehensive picture of the situation.

### **Mahaweli Development Authority: A Mechanism for Land Grabbing?**

Chapter One discusses the role of the Mahaweli Authority and the Development Scheme presently underway. CPA was informed that under System L<sup>534</sup> around 3,364 families were given land by the Mahaweli Authority in 1988, predominantly to Sinhalese families.<sup>535</sup> Due to the conflict many were displaced from these areas with only around 1,500 remaining during the war. Many Sinhalese were displaced to areas in Anuradhapura and Tamil families to areas in the Vanni are now gradually returning to their land in System L. CPA was informed that around 2,600 Sinhalese have resettled on their land in villages such as Nikawewa and that the process is ongoing.<sup>536</sup> CPA also received competing accounts that some of those resettled may be ‘new’ settlers and not members of the original population.<sup>537</sup> CPA could not verify these allegations.

The Mahaweli Development Scheme is significant as state land can be alienated by the Mahaweli Authority for agricultural and residential purposes. Unlike with other land alienation schemes where the local actors including the DS is involved, the Mahaweli Authority is an autonomous body with broad powers and can work with limited or no consultation with local actors. Through the broad

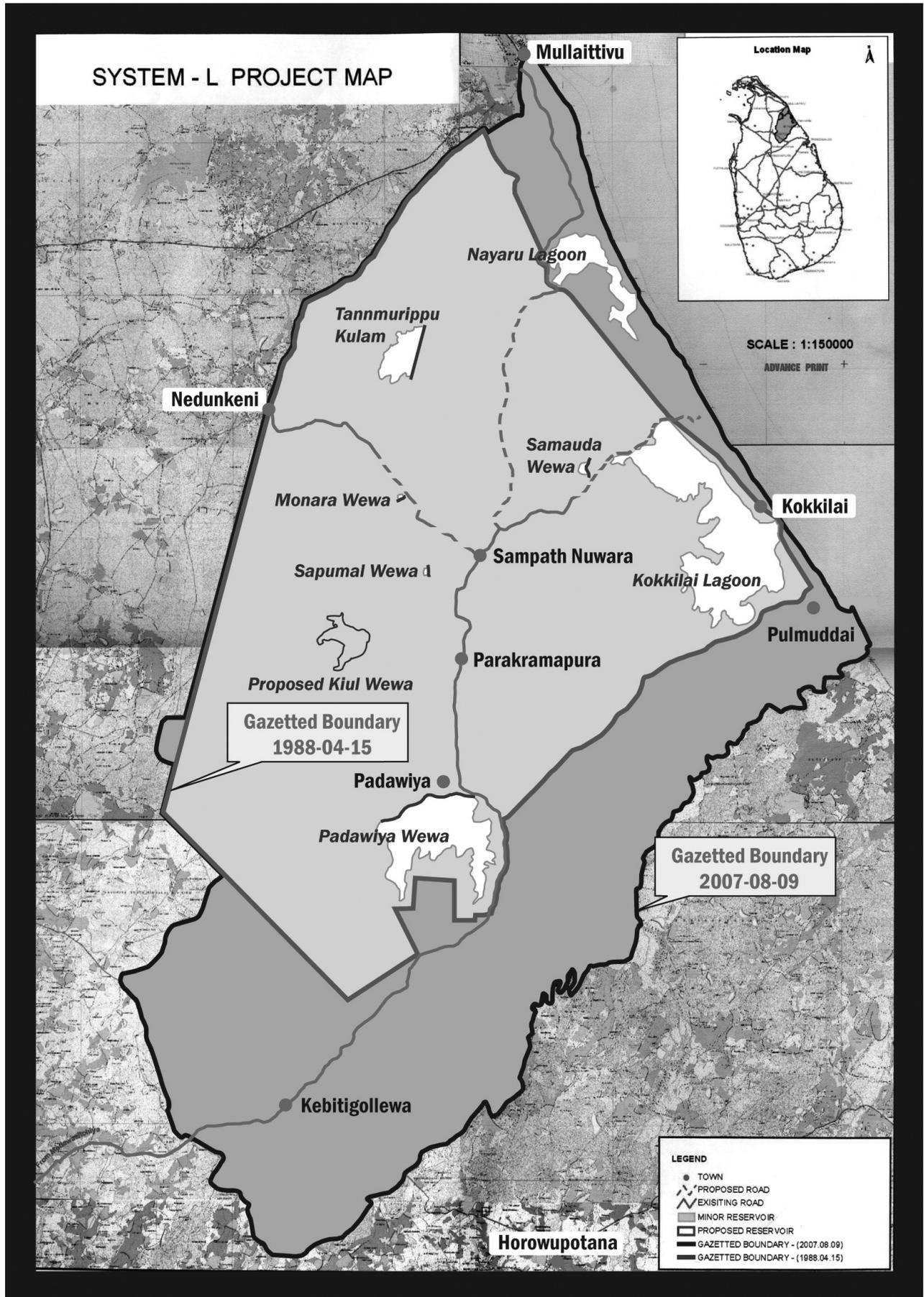
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<sup>534</sup> System L covers parts of the districts of Anuradhapura District, Mullaitivu District, Trincomalee District and Vavuniya District.

<sup>535</sup> Interview with government official, 6 July 2011.

<sup>536</sup> Interview with government official, 6 July 2011.

<sup>537</sup> Interview with politician in Vavuniya, June 2011.



powers provided in the Act, the Minister can also bring in new areas under the Mahaweli Authority through a gazette. The broad powers of the Authority include alienating state land, holding land kachcheris and issuing documents. This seems to have happened in areas within System L where the Mahaweli Authority provided state land to individuals since 1988. CPA was also informed that the majority of those given state land under System L were Sinhalese.<sup>538</sup> At present the Mahaweli Authority is supporting those displaced from their lands to return, providing them assistance to restart their livelihoods and issuing temporary documents. This corresponds with reports from Tamil farmers in Vavuniya North and Mullaitivu (discussed below). What is unclear is as to who has claim over some of the disputed land, whether land provided by the Mahaweli Authority has precedence over land of Tamil farmers, some of whom have documentation dating back prior to the establishment of System L.

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<sup>538</sup> Interview with government official, 6 July 2011.

## **Allegations of Land Grabs in areas of Vavuniya North and Maritaimpattu DSs**

Vavuniya North DS is distinct to other DS divisions in Vavuniya District as much of it was previously under LTTE control. Residents of the Vavuniya North DS area lived under the control of the LTTE for many years. With returns commencing in March 2010, those resident in areas of Vavuniya North were able to return to their land, but faced problems accessing their land given the heavy military and police presence in their area. In Maritaimpattu DS, returns took place more recently in 2011.

CPA met with farmers and other actors residing and working in Oddiyamalai, Thanikallai, Karadipillaw, Senapillaw villages in Vavuniya North and Maritaimpattu DSs.<sup>539</sup> These individuals have been residing in these areas for between 80 and 90 years and farming in land that is both private and LDO lands. These villages originally had around 175 families but since the end of the war only around 45 families have returned to their homes and land. Those who have not returned to their lands live elsewhere with host families and/or rent homes due to problems accessing their land.

While most interviewees stated that they had documents to prove ownership or LDO permits, a few had lost their documents during displacement. Some had LDO permits issued in the 1950s, although most admitted that as a result of the conflict they did not always make the required payments for the permits. Some admitted they had annual permits that needed to be renewed yearly, but due to the war renewal had not been consistent. Nevertheless, during the conflict they were able to reside on the land for decades with no questions being asked by the civil administration or the LTTE. This issue of non-payment and satisfying certain criteria of permit land is one that is evident across the North and East. It is directly attributed to the conflict and must be addressed with care. The most recent Land Circular is meant to address these issues but it is yet to be seen how it will be implemented and whether those who were displaced as a result of the war can claim back their land (Discussed in Chapter Three.)

Those villagers who returned face problems accessing their farmland. Farmers informed CPA that since 2010 Sinhalese farmers from the South, including from Padaviya, have been cultivating this land. CPA was informed that about 4 or 5 families have taken up residence near the farmland while others migrate only for livelihood purposes. CPA was also informed that the military present in the area were not allowing the Tamil farmers to access their land claiming that the area is not yet demined, but the farmers discovered that Sinhalese farmers from Anuradhapura area were allowed to come in and cultivate.<sup>540</sup> The residents of the area had questioned one of the Sinhalese as to

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<sup>539</sup> Discussions in Vavuniya and Mullaitivu in June-July 2011.

<sup>540</sup> The Tamil farmers also state that they have witnessed lights and movement in the area in the nights, but were not clear what this meant.

how they obtained access and were informed that the land was given to them on lease by the Mahaweli Authority.

The Tamil farmers were finding it increasingly difficult to carry out their livelihoods and to feed their families, as the assistance for return—including the WFP rations—have now ended. Instead of the post-war period offering these farmers the opportunity to re-build their lives, they were facing dispossession and poverty. CPA was informed of a visit made to the area by Sinhalese officials in mid 2010 who had asked the residents to clear an area in the jungle nearby identified as Karavapanmurrikku in Mullativu District and requested them to begin farming in that area. The residents had informed the officials that the land in Karavapanmurrikku is very far and that they prefer to recommence farming on their own land. Several subsequent meetings were held in the area and the issue was raised in Colombo with government officials. At the time of writing, CPA was informed that some of the Tamil farmers had been informed that they could reclaim their land and it is to be seen whether they would be able to cultivate the land without any obstacles in the future.<sup>541</sup>

This particular case raises several issues in addition to possible land grabbing and competing claims. There are concerns that government actors, politicians and the military are helping the Sinhalese to access and cultivate land, thereby adding an ethnic as well as political dimension to this case. As such, Sinhalese farmers were allowed to reside and continue with their livelihoods while Tamils were left dispossessed, and displaced. While a solution was found for some farmers, the case raises the question as to what extent government and state actors are ensuring that return and rehabilitation are sustainable, especially in terms of ensuring the restoration of land rights.

Officials interviewed in the course of the research informed CPA that Sinhala farmers were issued permits by the Mahaweli Authority as the land came under System L.<sup>542</sup> If this is the case, questions arise as to how a particular plot of land could have several types of permits issued and the validity of such permits. Also whether any investigations were done by the Mahaweli Authority to ascertain whether permits had been issued previously for this land. There is concern as to how the Mahaweli Authority and other officials seems to have missed the fact that some lands had permits issued previously and some are privately owned. Additionally, as to whether there was a deliberate move to ignore or cancel the existing documentation and issue new permits in 1988. Finally, a question related to this area also raises the issue of as to why only Sinhalese were issued permits by the Mahaweli Authority when Tamils have been residing and farming lands in the area for many decades. In addition to the ethnicisation and politicisation of this issue, there is also

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<sup>541</sup> CPA interview with humanitarian agency in Vavuniya, November 2011.

<sup>542</sup> Interview with government official, 6 July 2011.

evidence of the centralisation of land authority as approvals are being administered by the Mahaweli Authority and other actors from Colombo. If that is the case, it is a further indication of central government actors playing a critical role in land issues and of the limited information and involvement of local actors. The information presented in this report was obtained during a short time frame. It is paramount that more attention is given to this issue, a comprehensive review done of past practices and on how to move on this issue without creating further disputes.

**Other cases of Government involvement in questionable processes:** In addition to the case discussed above there are several cases where there are allegations of land appropriated in connection with the Mahaweli Development Scheme and there is evidence of competing claims. CPA was informed of a case in Pattikuddiruppu GS in Vavuniya North DS, which involves land that has been farmed by Tamil farmers in the past.<sup>543</sup> Several actors, both state and private, have a variety of deeds and permits that show ownership over the same 400 acres of land. Previously, administrative oversight of this area fell under Vavuniya North DS. CPA was informed that in January 2011 the farmers were informed by Sinhala-speaking officials from the Padaviya DS and the military that the area would now be coming under the Weli Oya area and the Mahaweli system L.<sup>544</sup> CPA has yet to obtain information or any written documentation explaining on what basis the land was acquired by the Mahaweli Authority and how the administration changed from Vavuniya North DS in Vavuniya District to Padaviya DS in Anuradhapura District.

In addition to larger national schemes, CPA was also informed of initiatives to give state land to private individuals using fraudulent documents to show ownership. In Parapukaddan in Manthai West, Mannar District there was an initiative in 2010 where a jungle area of around 500 acres was cleared and around 25 individuals were given deeds on what was apparently state land allegedly in connivance with a local MP who is also a Minister.<sup>545</sup> CPA was informed that the individuals were from outside the area and no locals were included in the list.<sup>546</sup> CPA was also informed that a lawyer was involved in producing the deeds, which have been called 'Japan deeds' as they are illegally produced and fraudulent. This case would have continued without any problem if not for agitation it has caused in the area, prompting a complaint to be made to the DS. As a result the project has been stopped. CPA was informed that a powerful local politician was involved and many were hesitant to raise questions or stop the illegal transaction due to fear of reprisals.<sup>547</sup> It is

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<sup>543</sup> Meeting in Vavuniya, 29 June 2011.

<sup>544</sup> Interview with government official in Colombo, July 2011.

<sup>545</sup> Interview with civil society and others in Mannar, May 2011.

<sup>546</sup> Interviews in Vavuniya, June 2011.

<sup>547</sup> Interviews with civil society and others in Mannar, May 2011.

noteworthy that in the description of the case above, it was not the central government that was accused of carrying out the land grab but a local politician who was using the state structure. Hence, the involvement of the state and the district level administration in land grabs is not merely perceived to be in favour of the Central Government or the Sinhala community but can also be in fact or in perception for the benefit of specific minority political actors or minority communities.

Providing more land for an existing Tamil settlement or establishing a new Tamil settlement in areas previously seen to be Muslim has exacerbated suspicions and fears between communities. Mannar District, which was home to the majority of Northern Muslims before the war, has seen a number of land disputes emerge. For instance, Muslims allege that before 1990 there was no Tamil village called Saveriyapuram that now neighbours the largely Muslim town of Silavathurai. They allege that Saveriyapuram was established with the support of the Tamil dominated district level administration after the Muslim community was expelled as an effective land grab by the Tamil residents. Saveriyapuram is the site of an old church and currently has approximately 127 families resident with a few families still living in India. The majority returned on 30 April 2009, but found that their houses had been looted and that their windows and doorframes were stolen, while a few houses had been damaged by elephants.<sup>548</sup> Despite these accusations and counterclaims, on the ground in Silvathurai and Saveriyapuram there is little observable hostility. As one Muslim community leader claimed “we had no problem with Tamils when we left... still no problem”<sup>549</sup> and a Tamil community leader categorically stated “we have no problems [between the two villages].”<sup>550</sup>

**Involvement of Non-State Actors:** CPA documented several cases where political parties and armed political groups have distributed state and private land without following proper procedures. In many of these cases, the individuals provided the land have no documentation to prove ownership but instead relied on a verbal assurance or an informal piece of paper to demonstrate ownership. A general issue in the North is the lack of awareness among communities about their right to land, ownership issues and who is responsible for resolving land administrative issues. This is a reoccurring issue with many of those who were given land by non-state actors.

In a number of areas in the North, especially the Vanni, the LTTE seized control over both state and private land. While in some cases it occupied the land for its own uses, including military camps and political offices, it also was involved in creating settlements. CPA met Muslim property owners in Kilinochchi Town who stated that during the CFA period they experienced pressure to sell their land.<sup>551</sup> In such cases where intimidation was used by armed actors against civilians, there is a

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<sup>548</sup> Interview with resident in Saveriyapuram, June 2011.

<sup>549</sup> Interview with Muslim community leader in Silavathurai, June 2011.

<sup>550</sup> Interviews with Tamil community leader in Saveriyapuram, June 2011.

<sup>551</sup> Interview with Muslims in Kilinochchi Town, May 2011.

clear question as to whether it was a fair land sale. As pointed out in Chapter Ten, some property owners whose land was occupied by the LTTE, and is now controlled by the military, are finding it difficult to claim this property. It is to be seen how the government will address such cases but the recent land circular states the government stand on cancelling any land alienation that was done by 'terrorist organisations'.

Other armed groups were also involved in alleged illegal land practices and re-distribution. CPA was informed that in the Vavuniya District in particular there are a number of such settlements where armed political groups such as PLOTE, TELO and Sri TELO provided land to their supporters and other Tamil civilians.<sup>552</sup> Some of these are briefly discussed below:

- In Achchipuram village, Vavuniya DS, around 750 lived on a large area of state land that was provided to them by PLOTE. The families had moved to the area beginning in 1998 from various locations including areas of Vavuniya, Mullaitivu, Mannar, Kilinochchi and Jaffna Districts. CPA was informed that all families were given ½ acre plot of land when they had moved to the area. Some families stated that they were displaced during the conflict and had moved to the area as they had heard that land was being given out. Some families paid PLOTE around Rs. 1,300 for the land and were given a receipt. Some had paid the RDS appointed by PLOTE a sum of Rs 3,000-4,000. Several who had approached the GS regarding owning land were informed that the village is not registered at the kachcheri and that they need to get the village registered in order to ensure assistance. Although several efforts were made to register the village, there has been no progress. This is an example of a non-state group arbitrarily providing land to IDPs and landless people without following government procedures. Subsequently the people had paid for road construction and received family cards signed by the DS. The family card included a box ticked in the affirmative regarding ownership of land. CPA was informed in October 2011 that the state has taken initiatives to provide documentation for the land in the area and it is to be seen how the process is to be implemented.<sup>553</sup>
- Similarly in Kumankulamvillage in Vavuniya DS, around 66 plots of ¼ acre state land were given by PLOTE to their cadres and families. In some instances CPA was informed that people who were resident in the area were trying to sell their land to others regardless of them not having the proper documentation and ownership.
- In Katpagapuram village in Vavuniya DS around 1,080 families were resettled by TELO on state land. This area was earlier cleared by another group but was subsequently taken by TELO and given to families. The village has not yet registered with the government and therefore the area

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<sup>552</sup> CPA interviews in Vavuniya, January-June 2011.

<sup>553</sup> Interviews with humanitarian organisations in Vavuniya, October 2011.

has received no assistance. Residents of the village stated that they had built the road as part of a shramadana. No external assistance was received.

- Around 250 families had been given land in Kurukumkadu village from Sri Telo but no one had documents. Sri Telo had contracted a private surveyor to mark land and people had written letters to the government, but there have been no further developments. Around 20 families had been assisted by the SLA to build houses. The majority of the people were day labourers. There were problems of lack of water and the area was not getting any external assistance.
- Similarly in Kappehapuram near Pampaimadu in Vavuniya District Sri Telo had given ¼ acre land to people who were originally from other areas.

In some instances the problems may be over lands currently owned by one actor, which were encroached on by another. During the war, settlement patterns have changed due to the displacement of populations and the expansion of settlements. When returnees come back to their villages, they may find that new occupants have settled in their village or that neighbouring settlements have expanded. These changes in settlements can prove contentious particularly when the issue of ethnicity, religion, caste or even district of origin comes into play. Returning northern Muslims who were expelled in 1990 claim that Tamil communities have taken over their lands. Tamil communities claim they managed to survive in the very difficult circumstances of war by expanding into these lands and having developed these lands do not want to give them back. For the Muslim community, however, there is a suspicion that this is not merely Tamil civilians attempting to stake out a living, but that in certain instances there was an underlying political agenda by the LTTE, Tamil bureaucracy or even civil society actors such as the Church and NGOs to strengthen Tamil control over land.

During the conflict many actors, including non-state actors, were involved in land administration and distribution. The above cases demonstrate that certain areas had a strong presence of particular groups who used land as a tool to assist communities that supported them or as a means of increasing their support base. There were also cases reported to CPA where land was given to families of cadres within each group. For many IDPs, landless and those living in poverty, any initiative that gave them land was welcome and none questioned whether the process was legal. Nonetheless, these people identify the land that they have been occupying for many years—decades even—as their own, and many have nowhere else to go. Some have grown trees and developed the land, and question why there should be an issue of ownership when so much effort has been put into the land. In some of these cases, local government officials have recognised the plight of the communities and promised to give them documentation, but this has yet to be processed.

With the new land circular being introduced and new initiatives in the pipeline to decide on land claims, questions remain about the status of communities who were provided land by non-state actors. While the handing of state land by non-state actors is illegal, it is important that the government examines these cases and provides a solution, either regularising the land or providing residents alternative land. In all these cases, decisions should be arrived after consultation with the communities and after informing them of procedures and options.

## **(II) Competing Claims**

Competing claims over land in parts of the North has become a recurring issue faced by officials and other actors in the area. CPA has documented several categories of people claiming ownership of the same plot of land in the North. A particular issue documented is in relation to whether a particular plot is state or private land. This confusion has been heightened due to the frequent instances of destruction of documentation, migration or displacement of the original owner/permit holder, settlement schemes and provision of land during the conflict. For example, CPA was informed of a case in Mullaitivu district where the Government recently provided land identified as state land to an agency to build temporary shelter.<sup>554</sup> This land is now claimed as being owned by an individual in Colombo, who insists that the original owner was her father and that the land was subsequently gifted to her by a deed. The claimant has written to the government and particular agency with copies of her documentation. The government in the meantime issued a letter to the agency giving clearance to build the shelters. And yet, the government has provided no legal documentation or clear title that proves the particular plot of land is in fact state land, with the only proof being a letter from the DS stating that the land can be used by the agency to build shelter.

This letter raises several issues. It is not a legally binding document and therefore does not prove ownership of the particular plot of land. It thus raises the question as to why a government official would issue such documentation as well as with regard to the sustainability of the shelter built on the premise of such letters. These questions are further compounded by the government's new policy direction regarding land claims and documentation in the north (discussed in Chapter Three), which has temporarily halted the issuing of new documents and sets out a process of identifying claimants to land. It seems that this practice of providing letters was carried out by DS officers across the Vanni in the post-war period in order to address housing demands and land claims. The letters may serve as evidence of long-term occupation, but are not standard documentation of ownership as provided by existing legislation. It is hoped that the most recent land circular for the

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<sup>554</sup> Interview with agency working in Mullaitivu, May 2011.

North can address these issues and will set in place a process that arbitrates disputes in a transparent and participatory manner.

Another source of contention between what is private and what is state land has to do with religious sites. In the case of Testa, discussed above, there is a competing claim between the government, which claims the area is state land, and the Thiru Murikandi Pillayar Kovil- backed by local communities—which claims it to be temple land. This is yet another case where no proper documentation was available, whether due to the conflict or some other factor. In the absence of such documentation the claim of ownership is considerably weakened. Several important issues have been raised by this case including the importance of genuine documentation to prove ownership as well as the pertinence of public perception, even if based on past practices and commonly held beliefs as opposed to law. In this particular case public perception among communities in the North indicates that the construction is illegal and that it is a form of land grabbing by the state and its supporters.

Other claims involve competing permits for the same plot of state land. CPA documented such cases in Kandavalai DS and other areas where permits were issued during the conflict to the people residing on the land. Incidentally, individuals who were displaced from the area during the conflict are now returning, claiming that they had permits dating back prior to the conflict. There are also cases where individuals who fled during the conflict ‘sold’ their permits to others in the area and are now returning to claim possession of their land. In Pavatkulam in Vavuniya District, Sinhalese farmers who previously lived in the area but fled during the war are returning and attempting to claim their land. In some instances, these lands were ‘sold’ to Tamil neighbours.<sup>555</sup>

The different types of land documents and administrative practices may also contribute to the problem. The government has previously issued both LDO permits and annual permits for land in the North.<sup>556</sup> The government line at present is that state lands that were not issued under the proper process, such as without the land kachcheri, will not be considered legally valid and there is a possibility of the said permit being cancelled.<sup>557</sup> This issue raises several questions about administrative practices during the conflict period and the status of those who were given land during this period, and the issue of competing claims.

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<sup>555</sup> CPA field visit to area, June 2011.

<sup>556</sup> Permits are usually issued after a land kachcheri is held by the respective DS and in accordance with the process set out under the Land Development Ordinance. Annual permits have usually been issued when questions remain regarding the particular state land and when further investigation is needed. If upon the first year any questions regarding the land are clarified then the annual permit can be transferred to a LDO permit.

<sup>557</sup> Interview with land official, Ministry of Land, 22 June 2011.

## Ethnic Dimension to Competing Claims

The ethnic dimension of land is becoming more prominent in the North and could lead to future disputes if not addressed carefully. The Mahaweli Development Scheme and other irrigation schemes, land distribution for specific schemes such as for farming, educated youth programmes and others resulted in the creation of settlements in the surrounding districts of the North and East. These settlements were given state land through the issuance of permits. As discussed above, there is evidence of specific projects providing land to a particular ethnic group. Such projects not only raise concerns of illegal acquisitions and possible land grabs and ethnicised land alienation but also of possible competing claims for the same plot of land. Several of these claims are between different ethnic groups and have the potential to lead to the dispossession of land of one or another community.

The case discussed above involving land in Vavuniya North and Maritaimputtu where there is a contestation of ownership and control between Sinhala and Tamil farmers is an example of how ethnicised the issue can become. In other areas contestation of land ownership and control can be between other ethnic groups. For example, several land disputes have been documented in this and other reports in relation problems faced by the Muslim community, attempting to claim back their land.<sup>558</sup> There are also cases where other ethnic groups perceive that Muslims are favoured due to political patronage. Mussali is the only Muslim majority division in the North. For Tamils in the area in the post-war context, there are concerns that the state and military are more hostile to the Tamil community and more sympathetic to Muslims. They allege that the majority of land taken up by the military is in Tamil areas while the Muslim community is protected by their connection with a particular Government politician from the area, which allows them to effectively circumvent existing processes. This is an area where further study is needed to verify accusations but one cannot ignore perceptions of communities and the belief that political patronage on ethnic lines has a bearing. In this particular case both the ethnic and political aspects of returns and land issues are highlighted.

A disturbing issue raised during the course of the research was the involvement of the military and politicians from the South who seem to be assisting the Sinhala farmers to access and occupy the area. There are unconfirmed reports of certain politicians in the South bringing in Sinhalese into this predominantly Tamil area with the possible intention of changing the demographics of the area in order to impact the electoral representation.<sup>559</sup> The potential support or even perception of support, on the part of state actors for the Sinhala farmers feeds into the existing apprehension

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<sup>558</sup> The Quest for Redemption: The Story of the Northern Muslims, Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990, Law & Society Trust, 2011.

<sup>559</sup> Interviews with civil society and humanitarian actors in Vavuniya, Jaffna and Colombo, June-August 2011.

among communities in the North regarding the possibility of a government plan to change the area's demographics, electoral boundaries and, ultimately, the existing electoral system and representation.

Such concerns are further compounded by reports of resettlement, relocation and introduction of new settlements of Sinhalese communities in the North. At the outset it must be noted that Sinhala communities were previously present in parts of the North, some owning land and others who came north for livelihood purposes. CPA was informed that the seasonal migration of Sinhala fishermen from areas such as Puttalam, Negambo, Chilaw, and Wennapuwa arriving in the Mullaitivu coast during the fishing season was a common practice prior to the war. Some even married and had families in the North.<sup>560</sup> There were other Sinhalese communities, including some purana villages and other more recent arrivals that moved to the North and owned land for residential, agricultural and other purposes. During the war, much of this changed and many fled the area, selling their land and terminating livelihood activities in the region. When the war ended, several returned to the North in search of their land and property and began to restart their livelihoods. While some have legitimate claims, there are concerns that there is a state sponsored scheme to encourage more Sinhalese to claim land in the North, reside in these areas and commence livelihoods.

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<sup>560</sup> Interview with civil society and fishing community in Mullaitivu, June-July 2011.

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## **Kokilai case: Fishing Restrictions and Competing Claims**

There are concerns that Sinhala farmers and fishermen, some who were in the area before the war as well as others who were not, are arriving with the support of government actors in Kokilai, an area located in Maritampattu DS south of Mullaitivu District and bordering Trincomalee district. Their arrival has led to competing claims over plots of land, issues with fishing rights and access to secure areas. CPA met with a group monitoring fishermen's issues in Mullaitivu and was informed of new developments involving Sinhalese and Tamil fishermen.<sup>561</sup> In a gazette dated 1<sup>st</sup> February 1965 the government had provided fishermen with permission to use the padus (the place where fishermen can keep their boats, nets and other gear) on the Mullaitivu coast. The gazette's schedule names Vallamullivaikal, Arichchal, Kallapadu, Chilawatte, Periyapathai, Thoondai, Alampil, Chermalai, Nayaru, Kokkuthoduwai, Thathanthali and Kokilai as areas where padus are to be located and also given the names of individuals allowed to use the padus. The list comprises both Tamil and Sinhala names, indicating that Sinhala fishermen used to migrate to this area for several months at a time from the South to fish.

Locals in the area confirmed the long-standing migration of Sinhalese fishermen to Kokilai and commented on the prior ability of Tamil and Sinhala fishermen to coexist and work together. Despite the migration of the fishermen, most of the padus and fishing was still done by local Tamils. CPA was informed that after the commencement of the war the military ordered the Tamil fishermen to vacate the Kokilai area, giving them 24 hours to leave while allowing around 26 Sinhalese fishermen to remain.<sup>562</sup> According to the fishermen who were evicted, the Sinhalese allowed to stay had no documents but were given land by the government and military. CPA was informed that this land has increased in size and the fishermen are now permanently residing in the area.<sup>563</sup>

With the end of the war migration from the South has increased and the local fishermen claim that people not listed in the gazette are using the padus by claiming that the government gave them access to the area. It seems that this is occurring predominantly in the southern part of the coast of Mullaitivu near the border with Trincomalee in the padus of Nayaru, Kokkuthoduwai, Thathanthali and Kokilai. CPA was informed that since 2005 Southern Sinhalese have been given temporary licenses to use the padus by the government. Locals believe that the fishermen must be issued licenses by the Additional Director for fishing in Mullaitivu as the area comes under Mullaitivu in

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<sup>561</sup> CPA interviews with locals in Mullaitivu, June 2011.

<sup>562</sup> CPA interviews with locals in Mullaitivu, June 2011. Also refer to *A Sovereign Will to Self-Destruct- The Continuing Saga of Dislocation and Disintegration*, Report 12, University Teachers for Human Rights (Jaffna) Sri Lanka, 1993.

<sup>563</sup> CPA interviews with locals in Mullaitivu, June 2011.

order for the licenses to be legal, but these temporary licenses were issued instead by the Additional Director for fishing in Trincomalee. CPA was informed that these temporary licenses were then converted to permanent licenses in 2011.<sup>564</sup> Locals are concerned as to the validity of the licenses as the issuing authority is from another district and the new licenses ignore the generally accepted practice of padus transferred from father to son, though in some cases daughters may also be able to claim the licenses. Furthermore, there is growing concern among communities in Mullaitivu that the Sinhalese fishermen are unfairly supported by the government and military.

The possibility of state supported migration of Sinhalese to the area and the biased granting of fishing permits needs further examination. Locals claim that padus originally given to Tamil fisherman have without any notice now been transferred to Sinhalese fishermen. In one particular case the daughter of one of the Tamil fishermen who used a padu in the Kokilai area applied for the renewal of the licenses after her father passed away. A letter dated 21 February 2011 from the Acting Director, Department of Fisheries and Aquatic Resources to the Assistant Director of Fisheries granted permission for the license for the year 2011. In a letter dated 9 May 2011, the same Acting Director requests the Secretary of Defense to provide MOD permits for eight Sinhala fishermen to operate in Kokilai. One of whom was given access to Madelwadi No K117 in Thattantale, the same padu that has been used by a Tamil fisherman for decades and was approved for use by his daughter in 2011. At present the Sinhala fisherman is occupying the padu and not allowing anyone else to access the area. There has been no action taken regarding this competing claim by the local officials and the community has been informed that the military is in charge of this issue. As a result the livelihood of this particular Tamil family has suffered.

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The case above demonstrates how day-to-day issues in the North have an ethnic, political and military dimension. CPA was informed that this was one of many cases where the military and local officials gave Sinhalese fishermen preferential access to padus that Tamil fishermen had previously used for decades. CPA could find no underlying rationale as to why Sinhalese have been given exclusive access to these padus and there is no information publicly available regarding alternative padus provided to the Tamil fishermen. Communities that have raised the issue with local officials feel that the decisions are taken by high officials and the military in Colombo and fear that this trend of preferential treatment will continue or even increase. A serious concern for these communities is how to provide for their families if their livelihoods are affected because they cannot access the padus. These communities have been reliant on the fishing trade for decades and know no other

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<sup>564</sup> Interview with locals, Mullaitivu, June 2011.

form of livelihood. Additionally, a larger issue is whether the state is supporting possible settlements in the area through the provision of licenses to individuals from the South, without providing any information or alternative to local communities.

There is a clear need for efforts to mediate between local communities making competing claims and also ensure state policies do not exacerbate ground level tensions. For instance, in Sannar, Manthai West returnee Muslims who were originally from neighbouring villages such as Perriyamadu are claiming that there were promised land in that village during the 1980s. Displaced Tamils were also provided land by local government actors and built houses on these sites and were promised permits which they have not received. The issue has become increasingly politicised with various political actors attempting to secure votes from both the Tamils and Muslims have made conflicting promises. The GS in the lead up to the LG elections in March 2011 informed the villagers that the land would be divided between the three ethnic communities, but in a subsequent meeting in Thalladi Army camp in May the military said the land would be handed over to the returning Muslims and that the Tamils would have to move. The issue is further complicated by the military occupying part of the land that had been allocated to the Tamils which has further intensified this particular land conflict. As of November 2011 the situation remains unresolved.<sup>565</sup>

## **Conclusion**

There is a surge of activities related to the claiming and re-claiming land in the North by a host of actors including the Government, military, local communities, among others that make the context extremely dynamic. The multitude of actors, projects and plans is confusing at best, but most worrying is the absence of a comprehensive plan that sets out what is planned for the North and its implications for land. In this context, the possibility of illegal land acquisitions and appropriations that may amount to land grabs, new settlements and colonisation schemes raises serious concerns and fears among the local communities. The chapter has documented several cases where there is evidence of illegal land acquisition and appropriation, and has highlighted the government actors, politicians and others – name or delete that have supported such initiatives. Such cases not only create apprehension among the communities but on a practical level result in competing claims. These issues are compounded by lack of documentation to prove ownership resulting in competing claims.

In the transition period from post-war and post-conflict, it is extremely important for the government to act as a neutral arbiter and ensure that it acts fairly to address injustices and

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<sup>565</sup>Interviews with actors involved in the Sannar issue, Mannar, March, June and November 2011.

provide recourse for those at risk of losing their lands. Furthermore, the various government actors, including the Central Government, military, district level staff and key authorities need to act in a transparent manner and make public their plans for the North. Most importantly, they must involve communities and local actors in decision-making and discussions as to what is a suitable solution for land issues in the North. Illegal land acquisitions, seizures and introduction of new settlements that do not follow established procedures breeds suspicion, fear and apprehension among communities. This undermines efforts by others carrying out rehabilitation and reconciliation work and may lead to future disputes. It also leads to perceptions of possible land grabbing motivated by ulterior reasons, such as protecting one ethnic group over the other. In such a context, it is paramount for all actors to adhere to established legal and policy frameworks, while being sensitive to problems on the ground.

## **Recommendations**

- A comprehensive survey needs to be done to map land in the North, including the demarcation of what is state and private land. The survey should be done in a transparent manner where information is widely available and in consultation with local actors including communities. Such a process will inform all actors regarding the status of the land including whether there is a legally valid claim to the land.
- The lack of resources and man power within the Survey General's Department needs to be immediately addressed. If needed private surveyors should be hired to conduct a comprehensive land survey, which provides information on the status of state and private land in the North.
- The survey results should be publicised widely and those claiming ownership and control who may be dispossessed by the survey findings should be provided with a hearing by civilian authorities. The process set out by the most recent land circular may be a possible avenue but should be conducted after changes are made to specific provisions including the composition and mandate of the committees and the time frame for applications and appeals.
- The Government should disseminate widely and in all languages the processes it establishes for addressing land competing land claims, such as the most recent land circular and ensure that all those with claims are provided an opportunity to apply and be heard.
- As provided in Chapter Three, all modalities that decide on land claims should involve the civil administration and should have greater civilian participation involving representatives from communities in the areas.
- Additional measures towards promoting co-existence may be required involving local political and civil society actors particularly at the community level.

- The Government should provide information regarding development and other projects that may acquire land, informing local communities and others regarding plans for the area. This should also include greater transparency in existing projects such as the Mahaweli Development Scheme and others, which have created apprehension among local communities of leading to possible land grabs.
- All land acquisitions should be in accordance with existing legislation such as the Land Acquisition Act. Such processes should inform affected communities of acquisitions and provide an opportunity to be heard. Compensation and alternative land should be provided, in consultation with the affected communities.
- Land documents that are lost, destroyed or damaged should be replaced. This entails a comprehensive review of land documentation for both state and private land and investigating whether land is state or privately owned. Assistance will be needed to restore land registries and other offices that housed land documents and were damaged or destroyed as a result of the war and the tsunami.
- Land titling in the North should commence immediately after the land survey is completed and should be in accordance with the process set out under legislation.

# Conclusion

Through documenting individual cases and key developments related to land, this report seeks to make the case that there is an urgent need to address land issues in the North. Even while significant effort, funding and energy have gone into driving and facilitating the on-going transition from post-war to post-conflict, it is apparent that land has emerged as a significant problem that cannot be avoided. While multiple issues have been highlighted in this report, it is evident that there has to be a basic discussion and improved understanding of the full range and scope of these problems and action followed to identify how to resolve them.

Delays in providing solutions to families whose land and property is occupied by the military have resulted in a range of problems, including loss of livelihoods, marginalisation and distrust of the Government and military, thereby offsetting processes of normalisation and recovery. Furthermore, given the large scale of developments in the North, including mass resettlement, housing projects and development schemes, it is clear that addressing the land issue cannot be postponed. It needs to be recognised that the war created specific problems related to land, but some of these problems pre-date the armed conflict and are tied into larger structural issues relating to poverty, social injustice, political discrimination and the displacements from the South resulting from pre-war riots. Hence, even though providing solutions for land issues seems overwhelming, this current moment offers a historic opportunity for addressing land problems.

There is a clear need for an agenda for policy reform that addresses issues relating to both state and private land, including, but not limited to: loss of documentation, competing claims and landlessness. Any such agenda would require both new policies, laws and circulars as well as amendments to existing ones. It is also clear that this agenda cannot be set, driven or designed by actors in Colombo, but requires a participatory and consultative process that includes local-level government, academics and civil society actors. Careful consideration with regard to the impact of any new policy agenda must be given in order to ensure that basic goals are met and that policies do not further exacerbate the problems confronting communities struggling to rebuild and recover. The current efforts to address land problems in the North do entail limited consultations, but the processes are largely secretive. Yet, while the apparent willingness of some ministry and provincial officials to take on board suggestions is welcomed, the scope of the participation needs to be broadened.

The Government's approach to a number of on-going initiatives is characterised by a significant level of opacity, which has contributed to an overall suspicion of the Government's agenda for land in the North. These fears have been exacerbated by the manifestation of some of these

policies, where individual rights to land have been over-ridden by national security and development needs. A concerted effort to provide more information to the general public, especially to those affected, is critical.

Too often policy reform is understood as a legal process largely involving government administration and laws. However, the complexity of the problems on the ground and the very nature of land conflict, with its multiple political, social and economic dimensions, require the involvement of various actors, especially at the district and community level. It is difficult to discuss reform and solutions, however, without necessary improvements taking place to the current political situation in the North, given the high levels of militarisation as well as constraints on and overwhelming sense of fear underlying civil society interventions. The solutions for addressing land problems can and should be strengthened by parallel efforts to address other political, economic and social issues.

# Annex I

## Brief Description of Some Laws Related to Land Issues in the North

Several laws govern state and private land, which are briefly discussed below.

### I STATE LAND

#### 1. Land Documents under State Land

There are several forms of documentation that divests state land to those in need of land and done through either permits or grants/deeds.

**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.

Permits can be issued under the Land Development Ordinance (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.

**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.

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. (Swarnabhoomi, Jayabhoomi, Ranbhoomi and Ranbima)

## **2. Relevant Laws Governing State Land**

There are several laws that govern state land and provide for divesting land to those in need.<sup>566</sup> Some of these are discussed below:

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

Under the LDO, certain families may be granted state land vested with the Land Commissioner Department for the purpose of developing the land. According to existing law, 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

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<sup>566</sup> For more information refer to- R.K.W. Goonesekere, Select Laws on State Lands, Law & Society Trust, 2006.

Divisional Secretary. It is to be seen if this may change with the introduction of the new land circular.

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. 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. 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.

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 recognise joint ownership and enable inheritance resulting from joint ownership. 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.

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

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. 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. 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 Land 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 authorities 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.<sup>567</sup> This development provides for joint ownership of land and puts a stop to practices of giving land to only the 'head of the household'.

## **II 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.

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

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<sup>567</sup> CPA interview in Colombo, May 2011.

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.

## **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. The Ordinance also protects owners who have a disability, against claims of prescriptive title.

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. 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 defense to a claim based on prescription. 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.<sup>568</sup>

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 26 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 26 December 2005. Moreover, the period between 26 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 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.

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<sup>568</sup> "Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni", CPA , September 2005.

### **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. In practice though, ad hoc processes have been followed where owners of land including 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.

### **Registration of Title Act No. 21 of 1998**

The Registration of Title Act provides for

- i) The investigation and registration of title to land parcels
- ii) The regulation of land transactions

The Provisions of the Act apply to those provinces, districts, or divisions as gazetted by the Minister. 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. The Act has been implemented in parts of Sri Lanka and is being proposed for the North. At the time of writing the five districts in the North were gazetted and with it the process had commenced.<sup>569</sup>

### **Tesawalamai Law**

Tesawalamai Law No. 5 of 1869 is the regulation for giving full force to the customs of Malabar inhabitants of the province of Jaffna as collected by order of Governor Simons in 1706.

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<sup>569</sup> Discussed in Chapter Three.

The customary Law applicable to the Tamil population of Northern Province is the Tesawalamai.<sup>570</sup> In general, the Tesawalamai and the amendments thereto relate only to matrimonial property and inheritance issues, such that Tamils of the Northern Province are subject to the general law of Sri Lanka with respect to marriage and divorce. The provisions of the Tesawalamai currently in force are codified in the Tesawalamai Regulation No. 18 of 1806 (the Tesawalamai Regulation) and the Matrimonial Rights and Inheritance (Jaffna) Ordinance No. 1 of 1911 (the Jaffna Matrimonial Ordinance). These Laws have been amended by the Tesawalamai Preemption Ordinance of 1947 (the Preemption Ordinance) and the Jaffna Matrimonial and Inheritance Rights Amendment Ordinance No. 58 of 1947.

Tesawalamai Regulation sets forth two requirements for the Tesawalamai to apply:

- i) Party be a Malabar
- ii) Party be an inhabitant of the province of Jaffna

Judicial interpretation indicates that the term “Malabar” is synonymous with Tamil. While the province of Jaffna originally consisted of the Jaffna peninsula and the islands of the North, subsequent judicial interpretation has defined Jaffna province to mean the Northern Province, including Mannar. Certain branches of the Tesawalamai including property law (for example, otti mortgage and servitudes) apply to parts of the Northern Province irrespective of race or nationality. As such the Tesawalamai is both a territorial and personal law.

Much of the jurisprudence regarding the applicability of the Tesawalamai focuses on the question of whether an individual is an “inhabitant”. In *Velupillai v. Sivakampillai*, the court held that inhabitancy applies to a person who has acquired a permanent residence in the nature of a domicile in Jaffna. The Tesawalamai Regulation also provides that the Tesawalamai applies to all questions between Tamils in the Northern Province, or in those matters where such a person is the defendant.

The Jaffna Matrimonial Ordinance makes the following additional provisions regarding the applicability of the Tesawalamai

- i) A woman subject to the Tesawalamai who marries a man who is not subject to the Tesawalamai will not be governed by the Tesawalamai during the marriage.
- ii) A woman not subject to the Tesawalamai who marries a man who is subject to the Tesawalamai will be governed by the Tesawalamai during the marriage.

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<sup>570</sup> For more information on Tesawalamai refer to- Dr. H. W. Tambiah, *The Laws and Customs of The Tamils of Jaffna*, WERC, 2009.

Property rights of women governed by the Tesawalamai are described in the Matrimonial Rights and Inheritance (Jaffna) Ordinance No. 1 of 1911.

A married woman's separate estate consists of the property she

- i) Acquires before or during a marriage
- ii) Becomes entitled to without prejudice to any trusts or wills that affect the property

Her estate will not be liable for the debts of her husband except for those expenses incurred in relation to the property itself.

Section 6 of the above ordinance, provides that a married woman may dispose of all profits and rents arising from her separate property, provided that she must obtain the written consent of her husband to dispose of immovable property. She may however dispose of her separate immovable property by will without the consent of her husband, "as if she was unmarried". When a husband withholds his consent, the woman may apply to the District Court for an order authorising her to dispose of the property in question after a summary inquiry. Such order may be appealed to the Court of Appeal. A husband's consent is not required only where there has been a separation a mensa et thoro by a competent court. Where there is a dispute between spouses over the separate property of the wife, either party may apply to the District Court by summary motion for the judge to conduct an inquiry. A right of appeal lies to the Court of Appeal.

Under the Jaffna Matrimonial Ordinance, a woman may only dispose of her immovable property with the consent of her husband. The Ordinance does not impose a similar condition on the disposal of the husband's property, whether movable or immovable. This distinction between the rights of married men and married women to alienate immovable property under the ordinance results in discriminatory treatment of women.

# Annex II

## Government Structures Relevant to Land in the North

Chapter 1 discusses several actors relevant to land issues in the North. This Annex provides more details of some other actors, at the national, provincial, district and local level.

### **National Level Actors**

As discussed in Chapter 1, national level actors continue to be directly responsible for much of the day to day governance and administrative affairs of the Northern Province. A key actor at the national level related to state land is the Land Commissioner General:

### **Land Commissioner General**

The LDO provides for a Land Commissioner General, who is to administer the LDO and supervise and control all other administrative actors when they are discharging their duties under the LDO.<sup>571</sup> The Land Commissioner is responsible for the management of all state lands. For example the Commissioner is responsible for administering the process of disposing state lands under the State Land Ordinance, Disposal of lands under the Land Development Ordinance, Disposal of lands under the Land Grant (Special Provisions) Act. To this end the Commissioner is responsible for coordinating relevant policy with all other provincial and regional actors. The most recent Land Circular discussed in Chapter 3 was issued by the Land Commissioner General.

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<sup>571</sup> Land Development Ordinance 19 of 1935 (As Amended.)

## **Provincial Level Actors**

Chapter 1 discusses the powers the provincial councils have over land with special reference to the set up in the Northern Province. In relation to land, the following play a key role in the North.

### **Northern Province Land Commissioner**

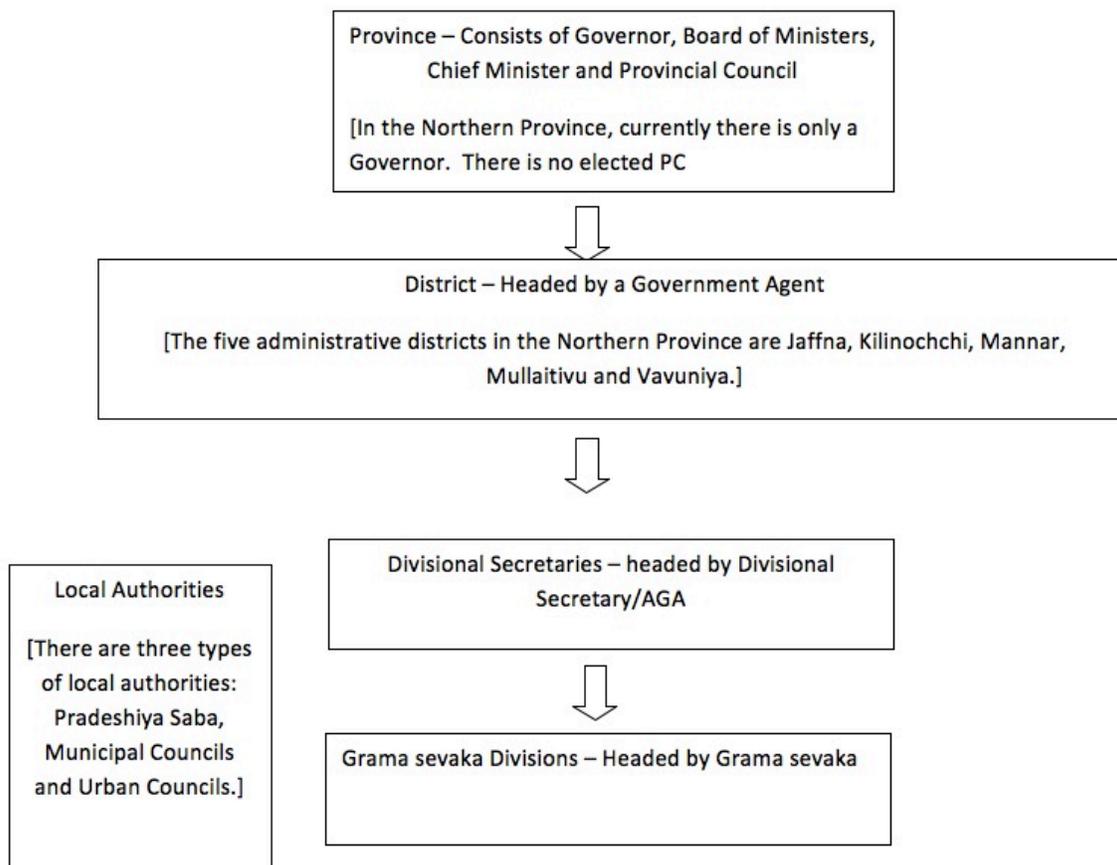
The Provincial Land Commissioner is responsible for formulating land policy at the provincial level. With the Thirteenth Amendment to the Constitution, Provincial Councils administration became operational. The provincial land commissioner's officers were established under the Thirteenth Amendment to the Constitution.

At present the Northern Provincial Land Commissioner plays a key role in documenting land ownership and control patterns in the North which is done at each DS level.<sup>572</sup> The Northern Provincial Land Commissioner has been identified to play an active role as provided in the most recent policy reform that has been suggested by the government. For example, the land claims that will be heard by the different mechanisms set up under the Land Circular is to involve to Northern Provincial Land Commissioner.

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<sup>572</sup> Interview with government officials- January - June 2011.

## Other Regional Actors



The nine provinces are subdivided into 25 districts and they form the main bases of regional administration. Each district is headed by a Government Agent (GA). Each district is made up of administrative divisions, and each division is headed by a government official known as the Divisional Secretary (DS). There are further administrative units known as the Gramasevaka Divisions, each headed by a government official known as the Gramasevaka (GS). The GS assist the DS and Police in administrative matters and maintenance of law and order.

There are three types of local authorities, Municipal Council, Urban Council and Pradeshiya Sabha. Each council is elected for four years on the basis of proportional representation. The Municipal Council is headed by the Mayor and the Urban Council and Pradeshiya Sabha is headed by a Chairperson.

At the district level various land related administrative functions are performed. For example each district maintains a land registry which registers deeds and issues copies of deeds and so on.<sup>573</sup> Further many other administrative functions that affect land rights such as issuing powers of attorney, issuing birth, death and marriage certificates, verification of accuracy of certificates, payment of compensation for low income earners, resettlement grants, and livelihood grants and so on are also issued at the district level.<sup>574</sup>

## **District Level**

The Administrative Districts Act No. 22 of 1955 establishes administrative districts across Sri Lanka. Each administrative district is assigned to a Government Agent who heads each district. Even though such districts may fall within the territorial jurisdiction of a province, the district is the Government Agent's area of authority instead of a province.<sup>575</sup> Other officers such as Additional Government Agents, and Additional Assistant Government Agents can be appointed for an administrative district.<sup>576</sup> The specific powers and functions of Administrative Agents are given in a piece meal fashion, under different legislation. For example under the Land Development Ordinance the Land Commissioner can give directions to the Government Agent to perform various tasks related to land administration<sup>577</sup> and the Government Agent that is empowered to map out Crown land.<sup>578</sup>

## **Divisional Secretariats**

Under the Transfer of Powers (Divisional Secretariats) 1992 Divisional Secretariats (DS) have been given powers that were formally vested in other regional actors. In the Northern Province, sixteen assistant government agents were upgraded to DSs.<sup>579</sup> The upgrade was made by a decision of the Cabinet, for the purposes of improving service delivery to local residents.

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<sup>573</sup>District Secretariat Jaffna, <[http://www.ds.gov.lk/dist\\_jaffna/english/service\\_offered.html](http://www.ds.gov.lk/dist_jaffna/english/service_offered.html)>

<sup>574</sup> Ibid.

<sup>575</sup> Administrative Districts Act No. 22 of 1955, s 4.

<sup>576</sup> Administrative Districts Act No. 22 of 1955, s 5.

<sup>577</sup> Land Development Ordinance No. 19 of 1935, s 3.

<sup>578</sup> Land Development Ordinance No. 19 of 1935, s 8.

<sup>579</sup> Sandun A Jayasekara, 'Northern agas upgraded to dss', Daily Mirror, 8 April 2011.

## Local Authorities

Another local actor that functions along the side of divisional secretariats is local authorities. There are three types of local authorities: municipal councils, urban councils and Pradeshiya Sabhas. Each of these types of local authorities exists in the Northern Province.

Broadly their functions are to regulate matters relating to public health, public utility services and public thoroughfares.<sup>580</sup> The local authorities consist of elected officials; they are elected for four years on the basis of proportional representation. Currently there is an ongoing debate as to their reform. In 2010, the Government sought to change the local authority electorates and the process by which they were elected. These proposed changes were criticised inter alia for undermining the participation of minor and independent actors as well as females and youth in local government.<sup>581</sup> In particular the changes sought to change the local electorates and the manner in which candidates were elected, that would reinforce the dominance of the major parties. However, these proposed changes have not yet been enacted in to law.

Further the increased activities with respect to reforming local authorities have been viewed with cynicism. In particular despite making efforts at decentralisation, the Government has been careful to ensure that the Centre retains tight control of local authorities. In particular, the fact that reform of local authorities is taking place amidst wider conversations about devolution and implementation of the Thirteenth Amendment, it has been suggested that, perhaps the Government will attempt to pass off increased decentralisation as a solution to demands for greater devolution.

## Non-State Actors

Non state actors have played an important role over land in the past and continue to play a role in parts of the North.

LTTE - It is important to note that for a significant period, the LTTE had control over various parts of the Northern Province. The LTTE had drafted its own laws and established a separate system of police and law courts to enforce laws. LTTE legislation covered a broad range of issues including dowry, national property and evidence.<sup>582</sup>

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<sup>580</sup> Pradeshiya Sabhas Act 1987 (As Amended).

<sup>581</sup> See Bhavani Fonseka, Supipi Jayawardena and Mirak Raheem, A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill 2010 (2010).

<sup>582</sup> For more information, refer to Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni, CPA, September 2005.

In addition to the LTTE, other groups have played a role over land in the North and include the EPDP, PLOTE, TELO and Sri TELO.<sup>583</sup>

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<sup>583</sup> Discussed in Chapter Eleven.

# Annex III

## Housing: NEHRP Housing

Until the Indian Housing Project was announced NEHRP was the largest on-going housing project in the North.

### **Donor and Government Commitment to the Provision of Houses in the North**

**May 30 2011**

<b>Name of the agency</b>	<b>New</b>	<b>Partly</b>	<b>Core</b>	<b>Total</b>
NEHRP	15308			15308
UN-HABITAT	2794	4275		7069
ASB	3231			3231
SLRCs	1500	400		1900
SDC	1050	750		1800
Indian Pilot Pro	1000			1000
REPPIA		739		739
Caritas	367	126	149	642
NRC			439	439
UNDP	351	20		371
UMCOR		200	100	300
Sarvodaya		42	217	259
SEED	250	8		258
Swiss Labour Assistance	160			160
FCE	125			125
CTF	70	24		94
Offer Ceylon		64		64
Muslim Aid	55	6		61
PIN		50		50
Y GRO		44		44
FHP	25			25
Total	26,286	6,748	905	33,939

*Based on conversations with housing agencies (June 2011)*

The NEHRP offers some insight into the challenges related to permanent housing.

**North East Housing Reconstruction Programme (NEHRP):** The NEHRP project was conceived during the CFA period and attempted to address the needs of the more vulnerable in the North and the East. While there were a variety of on-going permanent housing projects, the NEHRP project was quite unique in terms of scale, as there were no other larger scale housing projects until the IHP. With the completion of the project by the end of 2011, it is expected to have built over 59,332 houses. The NEHRP project attempted to provide funding for the reconstruction of roughly 17% of the destroyed and damaged houses in the two provinces. Using the 2002 assessment as a baseline, the project used the level of damage in order to determine the break down per district.

District	Houses committed to in 2004	Houses completed 25/06/09	Houses completed and committed to 2004-2011
Jaffna	13,196	6,359	15,480
Kilinochchi	5,391	611	4,501
Mullaitivu	2,841	613	3,555
Vavuniya	2,143	2,143	2,078 [?]
Mannar	3,045	1,771	3,800
Total	26,616	11,487	29,414

Source: *NEHRP Operational Manual and interview with NEHRP official, June 2011*

The project has faced a number of challenges including delays. The project that commenced in 2004 was meant to conclude in 2008 but was stalled primarily due to the overall security situation, particularly after the renewal of hostilities in 2006. In the Vanni, the project was suspended in Kilinochchi and Mullaitivu, while in other areas the construction process also slowed down due to difficulties in obtaining material, general insecurity and even re-displacement.<sup>584</sup> Faced with a new wave of destruction, the NEHRP housing project was expanded to include a new caseload and its deadline was extended. Following the re-assessment of 2010, the number of houses to be constructed in the North under the NEHRP project was increased so that 59,000 houses could be constructed, as opposed to the initially planned figure of 46,000. The project had a number of in-

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<sup>584</sup> Even though the project did experience delays in the East as well the housing caseload for NEHRP was completed by 2009.

built structures to streamline implementation, such as an autonomous unit with district level offices<sup>585</sup> and to address problems that could emerge.<sup>586</sup>

Acknowledging the complexities of building new houses, including that of proving title and the infrastructure required for construction,<sup>587</sup> the project offered two forms of assistance: to construct new houses and repair existing houses. A key requirement in the selection of beneficiaries was that the owner had to own and be in control of the land. While the NEHRP project document suggests that the possession of valid documentation such as a permit or deed was essential, it is not clear if letters from DS officers were also considered valid. At the very outset the project made clear that it would not be involved in addressing the problems of landlessness or relocation.<sup>588</sup> A particularly useful initiative that was developed to resolve the issue of land ownership was the Land Task Force (LTF) to address some of the less complex land problems. It proved effective in tackling problems pertaining to a lack of documentation and boundary disputes. As of 26 April 2004, the LTF had received 44,248 grievances from the five districts of the North,<sup>589</sup> more than 79% of which were inquired into and of which 59% were resolved and land permits issued.<sup>590</sup> District Land Tribunals consisting of three qualified individuals were also set up under this project in order to mediate land disputes so as to avoid delays with court proceedings.

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<sup>585</sup> The project is supported by the World Bank. It was initially implemented by the North-East Provincial Council, later moved to the Ministry of Nation-Building and presently is with the Ministry of Economic Development.

<sup>586</sup> The project developed a series of framework documents to guide the project which outlined the process for implementation and additional mechanisms. It details the process for beneficiary selection as well as redress mechanisms for those who were not selected. Two separate appeals committees were set up one at the divisional level and another at the district level. A District Level Grievance Redressal Committee with government, civil society, gender and ethnic representation was suggested in the NEHRP Operations Manual. Acknowledging the environmental impacts of construction including the use of material such as timber and sand on neighbouring areas, the project created processes such as Environmental Impact Assessments (EIA) and Environmental Assessment and Management Framework (EMF), but it is not clear to what extent this proved effective.

<sup>587</sup> NEHRP Operations Manual, pg. 4

<sup>588</sup> NEHRP Operations Manual, pg. 4

<sup>589</sup> Unsurprisingly Kilinochchi and Mullaitivu had the highest number of reported grievances, 12,724 and 10,785 respectively (“Progress on Land Task Force,” NEHRP, House News Bulletin, Volume 1, Issue 2006/2, April 2006-June 2006, page 3.)

<sup>590</sup> The median averages were calculated from the table of “Progress on Land Task Force,” NEHRP, House News Bulletin, Volume 1, Issue 2006/2, April 2006-June 2006, page 3.)

The project aimed at assisting some of the more vulnerable families in the most affected villages.<sup>591</sup> From the beneficiaries' perspectives, a key problem they faced was that the estimated figure was insufficient to cover costs for housing unit requirements as laid out by the NEHRP – 500 square building with four walls, a roof and two rooms. The problem presented with inflation of construction costs was identified as a key challenge at the very outset.<sup>592</sup> According to the NEHRP estimates, the cost of construction had increased to approximately Rs. 500,000 by 2010, and thus it was expected that beneficiaries would make contributions of labour and material. This was not possible for some families, resulting in them having to take loans. The NEHRP process of selecting the most vulnerable within the community as its beneficiaries makes the issue all the more complicated, as single headed households find it difficult to maintain an income to support a family in addition to raising money for housing. In this respect it is remarkable that so many houses have been completed.

### **Puttalam Housing Project**

The World Bank also supported a housing project for Northern Muslims in Puttalam. The Puttalam Housing Project (PHP) was intended to support the local integration of these IDPs in their area of displacement.<sup>593</sup> While responding to the poor living conditions of the displaced,<sup>594</sup> the PHP project proved controversial. The project was founded on the idea that a significant number of IDPs would opt for local integration rather than return, which was a key finding of the survey conducted by UNHCR in 2006; the findings of which were also contested. Furthermore, the fact that 74.2% of the IDPs had bought land in Puttalam was seen as “demonstrating a resolve to remain there.”<sup>595</sup> There was criticism from Northern Muslims groups who felt that the survey findings were misleading and that the project would serve as a pull factor for the displaced to opt for local integration in Puttalam rather than choosing to return.<sup>596</sup> One condition for providing assistance

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<sup>591</sup> Beneficiary villages are chosen based on the intensity of the damage in areas. The intensity of damage also impacts the number of beneficiaries from each site. The potential beneficiaries need to meet four eligibility conditions. The four conditions are (i) the beneficiary, including the main breadwinner must be settled permanently in the village; (ii) the beneficiary should have a formal title to the land (iii) beneficiary should possess only one house which is fully or partially damaged (iv) the family income should be less than Rs 2,500 per month .and are then prioritized based on a number of vulnerability criteria including number of times displaced, number of family members, disabilities, among others. (See NEHRP Operations Manual page 10-11 for further information on selection process.)

<sup>592</sup> At the inception the budgeted amount per house was Rs150,000 but was increased to Rs 250,000 in DATE and later to Rs 325,000 in 2007. The last increase took place against the backdrop of the tsunami housing reconstruction programme, where housing units reaching the value of Rs 600,000 were not uncommon (CPA field research in Galle and Batticaloa, 2007-8.)

<sup>593</sup> Project Information Document, Puttalam Housing Project, World Bank, 6 February 2007.

<sup>594</sup> Project Information Document, Puttalam Housing Project, World Bank, 6 February 2007.

<sup>595</sup> Project Information Document, Puttalam Housing Project, World Bank, 6 February 2007.

<sup>596</sup> Interviews with Northern Muslims community leaders, 2007-2008.

was that the families would not be eligible to receive assistance in an area of return. Within the camps, one of the main grievances raised in the initial period was from families who were not selected or those who were identified as having semi-permanent shelters and therefore would not be eligible for a new house as opposed to assistance for repairs.<sup>597</sup>

The project was also critiqued by locals in Puttalam, who objected to further assistance being provided to the IDPs, due to the fact that it would encourage a large number of displaced to permanently relocate in the region, also critiqued the project. However, the project did attempt to respond to the needs of the local population, through providing some housing assistance to locals, in addition to providing water and sanitation facilities that would assist both the Northern Muslims and locals. It is important to note that land ownership and occupation is a source of tension between the Northern Muslims and locals. The displaced bought up significant portions of land around Puttalam town and in Kalpitiya, driving up local land prices and thereby making it more difficult, particularly for the poorer and landless, to secure ownership rights.<sup>598</sup>

The project targeted poorer families who had land ownership in the form of permits, grants or deeds. CPA encountered at least three examples of families who had none of the above documents but a letter from the DS stating that they would get a permit. As of June 2011 they have still not obtained documentation regarding land ownership.<sup>599</sup> By June 2011, roughly 4,400 houses new houses had been constructed and 1,100 had been upgraded.<sup>600</sup> As with the NEHRP housing project a key problem faced by beneficiaries was that the funds were insufficient for covering the full construction. The project has been extended by six months until the end of 2011 as most of the components have yet to be fully completed, especially housing repairs.<sup>601</sup>

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<sup>597</sup> Interviews with Northern Muslims community leaders and visits to housing projects, Puttalam 2007-2008.

<sup>598</sup> Interview with Northern Muslims living in Puttalam, June 2011.

<sup>599</sup> Interviews with PHP beneficiaries, Puttalam, June 2011.

<sup>600</sup> 'Restructuring Paper on a Project Restructuring of the IDA Credit 42610- CE, 20 February 2007 to the Democratic Socialist Republic of Sri Lanka,' World Bank, 29 June 2011.

<sup>601</sup> 'Restructuring Paper on a Project Restructuring of the IDA Credit 42610- CE, 20 February 2007 to the Democratic Socialist Republic of Sri Lanka,' World Bank, 29 June 2011.

# Annex IV

## CPA Publications and Cases 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)
- Land in the Eastern Province: Politics, Policy and Conflict (2010)
- Commentary on Returns, Resettlement, and Land Issues in the North of Sri Lanka (2010)
- A Brief Commentary and Table on the Local Authorities Elections (Amendment) Bill (2010)
- A Short Guide to "Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces" Circular: Issues and Implications (2011)

## **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)
- 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)
- Fundamental Rights Petition challenging the Eighteenth Amendment (2010)
- CPA and two other parties filed a Fundamental Rights Petition challenging the Local Authorities Elections (Amendment) Bill (2010)
- Fundamental Rights application challenging the Registration of Civilians in Kilinochchi and Jaffna
- Fundamental Rights application filed by affected communities who were assaulted in Navanthurai, Jaffna in August 2011
- Fundamental Rights Application and a Writ Application filed respectively in the Supreme Court and the Court of Appeal challenging the legality of the Land Circular (2011)
- Challenging the Town and Country Planning (Amendment) Bill (2011)