

Trincomalee High Security Zone and Special Economic Zone

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Centre for Policy Alternatives

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

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Table of Contents

1. Introduction	4
2. Status of the High Security Zone (HSZ) in Sampur	5
Changes in the HSZ	5
Legal Issues Related to the HSZ	7
The Sampur HSZ in relation to other HSZs	
3. Developments within the HSZ and plans for a Special Economic Zone (SEZ)	8
Special Economic Zone	9
Sampur Coal Power Station	10
Outer Circular Road	12
Bund	13
4. Approaches to Relocation	14
The Affected Communities' Position on Relocation	14
Government push for relocation	16
Humanitarian Agencies Involvement in Relocation	19
Relocation Sites in Progress	22
5. Recommendations: Way Forward	24

1. Introduction

The High Security Zone (HSZ) in Trincomalee brings to the fore critical issues of national security, development and the fundamental rights of the citizens. Legally established in May 2007 and stretching across eleven Grama Niladhari (GN) divisions, the HSZ threatened to prevent over 4,000 families from returning to their homes and properties.¹ Subsequently the HSZ was re-gazetted and reduced to four GN divisions in October 2008. The reduction of the HSZ has allowed some of the displaced families to return to their land, but there are still over 6000 internally displaced persons (IDPs) from the HSZ who are presently residing in transit camps and with host families in Batticaloa and Trincomalee. With the war between the Government and the Liberation Tigers of Tamil Eelam (LTTE) over, the necessity of a HSZ, especially of that scale is clearly in question. On capturing Sampur, President Mahinda Rajapakse declared that it was for the “welfare and benefit” of its people. A site in Sampur has been selected for the construction of a coal power station. According to Government actors, the existing HSZ will lapse in favour of a Special Economic Zone (SEZ). That such a large tract of land, both private and public, could be taken from its original inhabitants is a critical issue. The overall process being followed raises concerns whether, under the cover of first national security and then economic development, the inhabitants of Sampur are being dispossessed of their land.

As the situation currently stands the option favoured by the Government for those families affected by the new HSZ is that they will be relocated. Relocation is taken to mean the settling of people in a location not of their origin.² In the Sri Lankan context resettlement and return are terms used interchangeably to mean the return of families to their original homes and properties. There are diverse views among the affected families, but a number of these families have continued to demand their right to return to their homes and communities. In addition to this there are issues arising from the manner in which the civilians displaced by the HSZ have been treated in respect of their fundamental rights, the lack of basic information, transparency and due process. While humanitarian agencies have attempted to ensure that basic humanitarian standards are maintained, it is unclear if they are now more likely to assist in the relocation plans of the Government. In addition, the Trincomalee HSZ also raises concerns as to whether this model of declaring HSZs and SEZs, without taking adequate consideration of local people’s rights and wishes, will be used in the North.

The Centre for Policy Alternatives (CPA) has presented policy alternatives, actively challenged and critiqued the HSZ and SEZ in Trincomalee since 2007.³ The present brief is an update of the status of the HSZ, the situation of the IDPs from the HSZ who remain displaced and on the implications of the HSZ and SEZ. It is based on four field visits undertaken in 2009, two to Trincomalee and two to Batticaloa where discussions were held with government officials, humanitarian actors, donors and affected communities.

¹ Speech delivered by Hon. R. Sampanthan, Member of Parliament, Trincomalee District and Parliamentary Group Leader, Illankai Tamil Arasu Kadchi (ITAK) on the Adjournment Motion relating to the declaration of Muttur East- Sampur as HSZ on June 20 2007 where he claimed that 15,648 individuals from 4249 families would be affected..

² CPA, “A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District” May 2008, Page 19

³ CPA filed a fundamental rights case in June 2007 challenging the creation of the HSZ. In 2008 CPA hosted a round table discussion on the HSZ and subsequently issued a policy brief in 2008. For more information, please check www.cpalanka.org.

2. Status of the High Security Zone (HSZ) in Sampur

Although the Government claims to have restored normalcy having liberated the East, over 6,000 persons from Sampur area cannot return to their homes and have been living in displacement for more than two and a half years.⁴ A significant number have been living in transit centres such as Killivetti since 2007 as the Government claimed that they would be resettled and the transit centres were meant as a temporary measure. President Mahinda Rajapakse, on September 4 2006 stated that “Our armed forces have captured Sampur for the welfare and benefit of the people living there”⁵ - however, the communities of the four GN divisions have yet to experience these benefits. Over the last two-and-a-half years, the displaced people from areas in and bordering Sampur have not been allowed to resettle, mainly on account of the creation of the HSZ. Land which is a fundamental part of people’s lives has been robbed from people who have already suffered greatly, having experienced multiple displacements and the loss of loved ones. Adequate information regarding the fate of their properties and homes has yet to be provided. Likewise, compensation and land acquisition processes that have commenced should proceed in accordance with existing laws and in a transparent manner giving full recognition to the rights and dignity of the affected persons.

2.1 Changes in the HSZ

In May 2007, a HSZ was established by the Government in Muttur East and Sampur in the Trincomalee district. The HSZ zone was established by regulations issued by H.E. the President under Emergency Regulations (Section 5 of the Public Security Ordinance) published in Gazette Extraordinary No.1499/25 of May 30 2007.⁶ The HSZ as created in May 2007 covered eleven Grama Sevaka (G.S.) divisions in their entirety. The delineation of the ‘Muttur East/Sampur’ as it was referred to in the Gazette was unclear as it spoke of boundaries

⁴ As of August 2009

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

⁶ For more information, please refer to CPA report, “A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District” May 2008

established by lines between specific locations, rather than in G.S. terms.⁷ The Gazette specifies that no person shall enter or remain in the area unless written authority is obtained by the Competent Authority. The Gazette names Major General, Parakrama Pannipitiya, Commander Security Forces (East) as the Competent Authority. With the removal of Major General Pannipitiya as Eastern Commander in December 28, 2007⁸ no new Competent Authority has been appointed in accordance with the Gazette as of August 5 2009.⁹

Almost one and a half years later the HSZ was reduced in size. The reduction was published in the Gazette Extraordinary No. 1573/19 of October 30 2008 which amends the previous Gazette and reduces the area to four GN divisions namely Sampur East, Sampur West, Koonativu and Kadarkaraichenai.¹⁰ The shrinking of the HSZ has resulted in the area being opened up to resettlement. A phased resettlement is taking place with as many as 8,437 IDPs having returned to their lands as of August 3 2009 in the GN areas that were released from the previous HSZ. While villages such as Navaratnapuram have been opened up for resettlement, some families in these villages have not been able to resettle in their original homes. Some of these affected families have moved back to the village but are living in other shelters. Presently there are discussions to relocate them within the same GN divisions.

As mentioned previously, there is no Competent Authority appointed for the HSZ at present. Several consequences follow from this. According to the previous Gazette no person is allowed to enter and remain in the area unless written approval is obtained from the Competent Authority. In the absence of a Competent Authority questions remain regarding the legality of entering and remaining in the HSZ. With part of the Special Economic Zone (SEZ) falling under the existing HSZ and reports of construction of a coal power plant in the area, as to how development in the area is to take place and with whose approval has yet to be ascertained. According to the information publicly available, those presently entering the HSZ for various reasons including for economic and development reasons are in fact in contravention of the said Gazette of 2007 which was subsequently amended.

It is striking that there is no sunset clause in the gazette, hence the only option is for another gazette which will revoke or further shrink the HSZ in the future. Given the military victory over the LTTE it is unclear why such an extensive area has to be taken up for a HSZ, let alone why a HSZ is required in the first place in the post-war context. CPA has been informed that a new Gazette is to be issued renaming the HSZ as a SEZ, though no public information is available on what the Gazette is to provide including the right of civilians to access the land as well as their right to remain on it.¹¹ Therefore relocation is presented as permanent and not temporary. There is confusion as to whether families who own the land will be able to exercise this right and access and control

⁷ "All that area of land and water bounded as follows:-

East: From a line drawn along the Eastern Coast of Sri Lanka joining the villages of Foul Point, Illankanthai, Kalladichanai and Uppural;

South: From a line drawn joining the villages of Uppural, Selvanagar, Thoppur and Pachchanoor;

West : From a line drawn along the Western Bank of the Kaddaparichchan Aru, joining the villages of Pachchanoor, Kaddaparichchan South, Muttur and the Kaddaparichchan Aru Estuary;

North: From a line drawn along the Southern Beach of Koddigar Bay, Joining Kaddaparichchan Aru Estuary with the villages of Sampoor, shell Bay and Foul Point;" (Gazette Extraordinary No.1499/25 of May 30 2007)

⁸ "I was not given a chance to explain, says Maj Gen", www.sundaytimes.lk, March 2, 2008

⁹ No name has been mentioned in the amended Gazette of 2008. Many of those interviewed regarded the Government Agent of Trincomalee as the de facto authority and key decision maker on the HSZ in the district.

¹⁰ All that area of land and water bounded as follows:- North : by the sea ; East : by the sea and a part of Ring Road ; South : by a part of Ring Road and the main road ; and West : by Kaddaparichchan Aru and the Sea."

¹¹ Interview with Government Official, May 5, 2009

their land. IDPs interviewed by CPA stated that they are willing to continue living in displacement/transit centres for longer periods, as opposed to relocating provided that they can return to their homes and land in the future. In several discussions, it has been brought to light that decisions related to the HSZ in Trincomalee are being taken by the Central Government and its agents rather than in consultation with and the involvement of local level actors including the IDPs themselves and the Eastern Provincial Council.

2.2 Legal Issues Related to the HSZ

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

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

On June 29, 2007 CPA filed a fundamental rights petition challenging the establishment of the HSZ in parts of the Trincomalee district and the subsequent prohibition on entering and residing in lands in the HSZ by residents of the area. Another fundamental rights petition was filed on the same issue by four IDPs who own land in the HSZ. In its petition, CPA stated that Article 12 and Article 14 have been violated and noted that although commercial activity is allowed within the SEZ thereby enabling commercial enterprises to enter and remain in the area, the HSZ prohibits civilians from entering and residing in their lands, leading to discrimination.

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

The two petitions were taken up before the Supreme Court in July 2007. The Deputy Solicitor General representing the Government stated that steps were taken for the resettlement of IDPs in accordance with international law and that any person wanting to return can correspond with the Competent Authority through the Attorney General's department. The Supreme Court refused leave to proceed citing national security but stated that resettlement should take place in the area in a timely manner: "it is in the national interest that resettlement and development should be carried out on a planned basis." Resettlement has taken place in areas which were part of the previous HSZ zone, excluding the four GN divisions constituting the new HSZ. However, the present policies of the Government seem inclined to relocate the IDPs from the four GNs rather than to resettle them. An additional cause for concern is the lack of information or transparency in this relocation process, raising fears among the affected population of discrimination, unfair and unjust treatment. The plight of over 6,000 IDPs whose lands fall under the HSZ is still unclear. According to reports received, there are plans to relocate these IDPs to other sites, discussed below.

CPA was informed by those affected that the Government has initiated measures in relation to acquiring land including putting up public notices in the transit centers. A letter to the Grama Sevaka in Muttur by the Divisional Secretary (DS) of Muttur dated 08/07/2008 states that public notices were issued on 08/07/2008 complying with Section 2 of the Land Acquisition Act to acquire lands for the coal power plant and these notices were displayed in Sampukali and Katakaraichenai from 08/07/2008 to 19/07/2008. Further, in a public notice by the DS Muttur issued on 09/07/2009, it states that compensation is to be paid to those whose land is acquired for the coal power plant and situated in Sampur East, Sampur West, Katakaraichenai, Koonativu and Navaratnapuram. The notice further states that those eligible for compensation need to apply to the DS Muttur with the relevant paper work. In August CPA was informed that Land Acquisition is to be speeded up under Section 38A of the Land Acquisition Act, though no one was aware why the process has been fast tracked and for what purpose.¹² CPA was also informed that compensation will be paid for those who either had deeds or grants (but not those with permits) and the first phase of compensation will be awarded to those whose land has been taken over for the construction of the coal power plant.¹³ As with other instances, secrecy shrouded the decision to fast track the acquisition process and why compensation was to be paid for a certain group of people and why it was dependent on specific land documentation.

Although notices have been issued, none of the IDPs whom CPA spoke to were aware of the implications of such notices and whether it entailed land acquisition. In fact only a few of the IDPs were even aware of the acquisition notices. Further, none of the IDPs were aware that the public notices and acquisition process initiated by the Government would result in them completely losing their rights over their land. CPA was informed by government officials that the Government has commenced certain processes including surveying the land for the purpose of acquisition.¹⁴ Further, the Government in its official news site claims to have acquired 300 acres¹⁵ but none of the actors such as the humanitarian agencies or the affected communities seemed to be aware of this. Even in the event that the Government does claim that land has been acquired by it, questions of process and transparency remain. It is hoped that any future initiatives by the Government to acquire land will follow procedures established by law and that those affected will be informed of these initiatives and its implications.

2.3 The Sampur HSZ in relation to other HSZs

The Sampur HSZ is one of the many HSZs in the country. CPA's previous report on the Trincomalee HSZ discusses some of the key aspects relating to other HSZs.¹⁶ It is clear that in a post-war context the issue of HSZs needs to be addressed. Given that the LTTE has been defeated there are questions as to why extensive HSZs are required. In Jaffna, in particular the HSZs cover roughly 18% of the territory and have resulted in the displacement of more than 30,000 families¹⁷. The Government has yet to make a commitment that it will review the HSZs and scale them back allowing for resettlement and a reduction in the number of IDPs. There are fears that new HSZs will be declared in Mullaitivu and Killinochchi Districts. While the Government has

¹² Interview with humanitarian actor, August 2009

¹³ Interview with humanitarian actor, August 2009

¹⁴ Interview with Government official, April 5 2009.

¹⁵ The Official Government News Portal of Sri Lanka, "Coal power plants work to begins," March 13 2009

¹⁶ CPA report, "A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District" May 2008

¹⁷ CPA report, "A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District" May 2008

security concerns, in a post-war context this needs to be balanced with humanitarian concerns. As such the Government should carry out an assessment for the need for HSZs and commit to a phased reduction of HSZs.

3. Developments within the HSZ and plans for a Special Economic Zone (SEZ)

In CPA's previous report a number of key developments in the area demarcated for the HSZ were discussed. There have been some changes since the last report on these issues, but the overall problem of a lack of information and public consultation remain. Local communities are supportive of development which, could improve their standard of living and their access to facilities, but too often Central Government assumes that national development and local development are one and the same and dictates terms. Overall, the manner in which this issue of Eastern Trincomalee has been dealt with raises the question of the positive impact of the liberation on the people who were most directly affected by it. It was expected that the 'liberation' of the East would result in a new era in terms of restoration of full rights, public participation in local issues and development for all communities. The mode of development in Eastern Trincomalee has however not lived up to this expectation and has even resulted in the dispossession of key rights for particular communities.

3.1 Special Economic Zone

While legally a HSZ exists in these four GN divisions there is confusion as to its exact status in the future. Humanitarian and other local actors who were interviewed, pointed out that the Government representatives in Trincomalee are increasingly using the phrase 'Special Economic Zone' (SEZ) instead of HSZ to describe this area.¹⁸

The ambiguity of the future status of the HSZ has created further confusion as to whether the HSZ will 'lapse' in favour of a SEZ. If this is the case, questions remain about the legality of the area and whether the HSZ will be in effect. For the HSZ to be removed, the gazette mentioned above needs to be revoked and replaced by a new gazette specifying the legal status of the land contained in the area. In the absence of this, the HSZ in the area will stand, regardless of it being called a HSZ or SEZ. The lapse in the appointment of the Competent Authority to the HSZ, begs the question as to who is in charge of imposing restrictions and providing approval. A key question is whether the authorities will support a SEZ which has all the characteristics of a HSZ but only different in name. This was reinforced when CPA was informed by a Government actor that a new Gazette is to be

¹⁸ The SEZ in Trincomalee is a vast area which includes the HSZ in Sampur. For more information please refer to CPA, "A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District" May 2008

issued in the future renaming the HSZ as a SEZ.¹⁹ What remains unclear is whether the same restrictions, including the one in the HSZ prohibiting residents from resettling on their own land, will apply to the SEZ under a new Gazette.

This proposed SEZ for Eastern Trincomalee is therefore unique as there are no other SEZ's in Sri Lanka which have similar restrictions. It is hoped that a new Gazette is an opportunity for the Government to allow IDPs to access, remain on and control their land – all of which cannot be considered a security threat. It is speculated that if the Government goes ahead with creating an exclusive SEZ, the land will be acquired and turned over to private and international companies for industrial purposes. This model of development has been increasingly criticised in India especially with the Nandigram and Singur SEZs' controversies in West Bengal.²⁰ In addition to the effective dispossession of the original inhabitants, there are added fears in the context of Trincomalee that the SEZs will result in significant demographic changes, thereby building on a history of state-sponsored 'colonisation.' There are also fears that this model of declaring an area a HSZ and then creating a SEZ in the same area will create a precedent for other areas, including the territory in the North.

There is added confusion as to the relationship of the present HSZ\SEZ covering the four GNs and the SEZ gazetted in 2006 for the Trincomalee District. "Certain areas within the Trincomalee district were declared a Special Economic Zone (SEZ), a Licensed Zone under Section 22A of the BOI Act No. 4 of 1978 published on 16th October 2006 by an extraordinary gazette notification No. 1467/03."²¹ This gazetted SEZ however is more extensive than four GNs, covering an area around the Trincomalee Bay from Nilaveli in the north through Trincomalee Town and Gravets, past Kinniya and Muttur into Sampur (including the four GN divisions) and with an extension towards Kantale.²² As stated in CPA's last report on Land Issues in Trincomalee "Unlike the HSZ, there are no restrictions placed on movement to and within a SEZ, unless additional legislation is passed which would result in land being acquired by the State."²³ The Government needs to publicly clarify the status of the SEZ and any restrictions imposed within it.

In addition to the HSZ and SEZ, there is an Urban Development Authority (UDA) proposal dated January 2007 setting out an Integrated Urban Development Plan for 2030 which would establish Trincomalee as a Metro Urban Development Area. According to the UDA proposal, a significant area, which is currently within the demarcated HSZ, would be a 'Special Zone.' An area has also been demarcated as a utilities zone for a Coal Power Project. There is no clarity with regard to the demarcated area that will be taken up by the 'Special Zone' and that of the rights of the people affected by this 'Special Zone' including their freedom of movement and their right to access their homes and properties. In effect, according to the present proposal, there is no legal basis for families and individuals to be denied access to their land.

¹⁹ Interview with Government official, April 5 2009

²⁰ The business standard, "NGO criticises Nandigram, Singur handling", September 24 2007, Tehelka Magazine, Cover story, by Shantanu Guha Ray and Avinash Dutt , May 03 2007

²¹ CPA, "A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District" May 2008, page 12

²² CPA, "A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District" May 2008, page 12

²³ CPA, "A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District" May 2008, page 12

3.2 Sampur Coal Power Station

There is very little public information on what has been taking place within these four GN divisions, particularly regarding the construction of the coal power station. The very limited media reports which quote Government officials, only reflects this confusion.²⁴ As noted in the previous report, a memorandum of understanding was signed between the Government, Ceylon Electricity Board and a Government of India Enterprise NTPC to construct a 500 MW power plant. According to the Ceylon Electricity Board the plant will be expanded to increase capacity to 1200 MW. The site is adjoining Kodyar Bay and just South of Sampur Town.²⁵ According to the Government's official news site the plan was for 1,000 mega watt station to be constructed by the Indian Company while the project will be supervised by the Ceylon Electricity Board.²⁶ In addition to the power plant, a port facility capable of handling 4 million tonnes of coal annually and a 220kV transmission line from Trincomalee to Veyangoda via Habarana will be developed.²⁷

According to the Government's news website report the land was to be surveyed by the end of April 2009 and would be constructed in June 2009.²⁸ There is no confirmation that construction has gone ahead. Instead, it appears that feasibility studies are currently being undertaken. Two such studies have already been awarded.²⁹ According to the CEB 500 acres of land will be taken for the project.³⁰ When compared to the total extent of land taken for the SEZ, this raises questions as to why so much land is being taken over by the State.³¹ Some media reports, suggest that the project has hit a snag. Articles by private media organisations state that the Indian Company, National Thermal Power Corporation (NTPC) is concerned about the political fall out in India and that the construction was delayed due to the Indian general elections held in May 2009.³² Since, then there have been no media reports which claim that the construction process has progressed.

According to the CEB the process for conducting an environmental impact assessment (EIA) has been initiated.³³ 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).³⁴ There are two basic levels to the EIA: an Initial Environmental Examination which is a brief study for projects which are not expected to have a significant environmental impact or an EIA which is a more comprehensive report for projects which are

²⁴ The Official Government News Portal of Sri Lanka, "Coal power plants work to begins," March 13 2009, Times of India, "NTPC in final talks for 500 mw Lanka plant", February 26 2009

²⁵ Ceylon Electricity Board presentation, 'Coal-fired Power Plant Developments in Trincomalee,' August 27 2009

²⁶ The Official Government News Portal of Sri Lanka, "Coal power plants work to begins," March 13 2009, Times of India, "NTPC in final talks for 500 mw Lanka plant", February 26 2009

²⁷ Ceylon Electricity Board presentation, 'Coal-fired Power Plant Developments in Trincomalee,' August 27 2009

²⁸ The Official Government News Portal of Sri Lanka, "Coal power plants work to begins," March 13 2009

²⁹ Ceylon Electricity Board presentation, 'Coal-fired Power Plant Developments in Trincomalee,' August 27 2009

³⁰ Ceylon Electricity Board presentation, 'Coal-fired Power Plant Developments in Trincomalee,' August 27 2009

³¹ The Nation, Santhush Fernando, "Indo-Lanka undersea cable, Sampur power plant put on hold," March 29 2009

³² The Nation, Santhush Fernando, "Indo-Lanka undersea cable, Sampur power plant put on hold," March 29 2009; Times of India, "NTPC in final talks for 500 mw Lanka plant", February 26 2009

³³ Ceylon Electricity Board presentation, 'Coal-fired Power Plant Developments in Trincomalee,' August 27 2009

³⁴ Under the gazette construction of thermal power plants with a generation capacity exceeding 25 megawatts are included.

expected to have a more significant impact. EIAs must be open to public scrutiny for 30 working days in the divisional secretariat and pradeshiya sabha offices.³⁵

There are a number of potential benefits to the proposed coal power project including:

- Employment for locals: Media reports quoting sources from the Power and Energy Ministry claim that 4,000 youths will be employed,³⁶ in addition to providing indirect employment such as food shops.
- Improvement in infrastructure: It can be assumed that the electricity supply will improve for local areas while roads built for the power plant could also improve access for local residents. There are obvious benefits at the national level as the coal power station would help address the growing demand for electricity.

The decision to set up a coal power plant in Sampur has been critiqued for a number of reasons including:

- Site suitability for a power plant: There were claims that NTPC was pushing for an alternate site rather than Sampur. The sites included were China Bay or Tambalgam Bay.³⁷ The Ministry of Defence reportedly turned down the site because it is planning to build a Air Force Flying Academy.³⁸
- Political choices: A site in Hambantota was also proposed but has been dropped probably due to opposition to the idea of land being taken over and pollution issues. Instead Sampur is going ahead with little consultation with local people or even information. While some of the political actors have taken up the issue, including R. Sampanthan TNA MP for Trincomalee and the JVP in parliamentary speeches, there has been no sustained political campaign on the issue.³⁹
- Economic benefits: While there are reports stating that locals will get employment, the project both in construction and maintenance will most likely need skilled labour. Hence the employment benefits for locals may be limited unless specific action is taken to ensure that affected persons will be given preference and training. While the acquisition of land may, hopefully, be compensated, this may not off set the negative impact on livelihoods, especially the loss of agricultural land.
- Environmental impact: Despite plans to use low sulphur imported coal “to meet Sri Lankan emission and ambient air quality standards,”⁴⁰ the development of a coal power station could have many environmental impacts particularly air pollution. There has been little agitation by environmental groups unlike the Norochollai Coal Power Plant and the Weerawila Airport.⁴¹

³⁵ Central Environmental Authority website, www.cea.lk

³⁶ The Official Government News Portal of Sri Lanka, “Coal power plants work to begins,” March 13 2009

³⁷ Times of India, “NTPC in final talks for 500 mw Lanka plant”, February 26 2009

³⁸ Times of India, “NTPC in final talks for 500 mw Lanka plant”, February 26 2009

³⁹ Speech Delivered by Hon. R. Sampanthan, M.P. Trincomalee District on the adjournment motion relating to the declaration of Muttur East-Sampur as a High Security Zone, June 20th 2007; Daily Mirror, “Lands Given to India to build coal power plant: JVP,” August 21 2009

⁴⁰ Ceylon Electricity Board presentation, ‘Coal-fired Power Plant Developments in Trincomalee,’ August 27 2009

⁴¹ The Sunday Times, “Kalpitiya residents protest coal power plant”, December 31 2006, The Sunday Times, “Norochcholai no, coal power yes: UNP” September 04 2005, The Island, “Our objections to Norochcholai still remain as firm as ever, Bishop of Chilaw”, October 18 2001, The Sunday Times, “Birds and planes can’t fly together”, February 25 2007, The Island, “Central Environment Authority rejects Weerawila Airport EIA”, August 14 2007, The Island, “Farmers object to proposed Weerawila airport”, November 09 2007

- Individual and community rights: In addition to the social and individual impact of losing one's home and community, a number of rights including of ownership of private properties and access to public land may be lost.

3.3 Outer Circle Road

The Outer Circular Road (OCR and also known as the ring road) is meant to connect Kuchchaveli in the North to Sampur. An earth road has been constructed and can be observed crossing through the Habarana-Trincomalee Road near Sardhapura and the Somapura-Muttur road near Pachanoor. It is not clear if the road will be tarred. While it is the military and high-up government officials who have the primary use of the road, on occasion other government officials and even some humanitarian agencies are permitted to use the road. While there is a clear need for roads to improve access to the area, there has been little explanation to the population of Trincomalee as to what purpose this road will serve. CPA heard a range of reasons including a transport route for coal to Sampur, access for the military or a part of the development of Trincomalee's highway network. Looking at the current map of the road, it appears the road ends abruptly a few kilometres from the coast in Nawarathnapuram, without ending near a major town or village. Furthermore, there is no public information on what funds have been used for the construction of the road and if the road has been constructed using public funds. There are serious questions as to why other key roads have not been repaired and improved such as the Muttur-Somapura-Eachalampattu road which would assist a number of villages and towns from all ethnic communities. This highlights a fundamental gap in the development plans of the Government where the direction and decision making is from Colombo with little or no input from the elected representatives, let alone the people of the affected district.

Questions remain regarding the land used for the construction of the OCR. CPA met individuals with land outside the HSZ who fear that the road goes through their land.⁴² CPA was informed that private citizens of the district are not allowed to access the land and have not been able to check if their land has been taken by the authorities for the road. There have been no efforts by the Government to take affected communities and community leaders on a 'go-and-see' visit so that land owners can identify the status of the land even though the road commenced construction from at least 2007 onwards. None of those interviewed by the CPA team were aware of any process to acquire their land and of compensation being paid. In 2008 there were claims that the road had a 100m buffer zone which was reportedly reduced to 50m. Again the purpose of the buffer zone and the legal basis for the buffer zone is unclear. As a humanitarian worker noted "buffer zones seem to be very popular in Sri Lanka"⁴³ referring to post tsunami attempts by the Government to establish a buffer zone around the coastal areas of Sri Lanka.⁴⁴ The Government needs to immediately inform the public on the status of the road and the reason for its construction. It is also hoped that the Government will take immediate steps to address the acquisition of land used for the construction of the road and follow established processes provided under national laws.

⁴² Interviews with residents in Muttur, April 2009

⁴³ Interview with humanitarian agency, April 2009

⁴⁴ Please refer to CPA Memorandum on "Land Issues arising out of the Ethnic Conflict and the Tsunami Disaster" (March 2005)

3.4 Bund

There are also reports of a large bund constructed on the perimeter of the 'HSZ' in effect demarcating a boundary for the HSZ. The purpose of the bund appears to be defensive but it is unclear what is being defended and from whom. The fundamental problems relating to the OCR including the purpose and the legality also apply to the bund. The Government needs to make public the reasons for the construction of the bund and its use. As raised in this report, if private land is utilised for the bund, the Government needs to immediately adhere to the legal processes for land acquisition and provide adequate compensation.

4. Approaches to relocation

Relocation has been put forward by the Government as the only option for those affected by the HSZ. While many in the affected communities and humanitarian agencies have resisted permanent relocation, there have been key developments suggesting that there could be some shifts. The following section argues there is a need for the Government and humanitarian to give full recognition to the rights of the affected persons. Return should take priority as the first option. Permanent relocation should be considered only once the Government clarifies and makes public its plans for the use of the full extent of the land.

4.1 The Affected Communities' Position on Relocation

As noted above the Government is currently resettling IDPs in areas which have been released as a result of the reduction in the HSZ. The future of IDP communities whose homes and lands are situated within the four GN divisions within the HSZ is clearly in question. As it currently stands the HSZ is a military facility and the Government has claimed that it will compensate those affected by providing them alternate permanent shelter and a piece of land.⁴⁵

The affected communities have in general expressed a clear preference to return to their original villages and home, rather than relocate to other sites. In January 2007 the Government conducted a survey asking affected families two relocation sites to choose from, Raulkulli or Pallikudiyirippu. Most of the respondents reportedly refused to choose either one of the sites and demanded that they be allowed to go back home.⁴⁶ This refusal to relocate by a majority of respondents was subsequently verified by humanitarian agencies in surveys that they have conducted and through a series of conversations that they have had with the displaced persons.

As discussed below it needs to be noted that there are some families and even a few villages within the current HSZ who are willing to relocate, however it is clear that there are many including some whom CPA spoke to in Killivetti and Paddithadal Transit Centres and in Batticaloa IDP camps who were adamant that they wanted to return to their original properties, or at least to their villages. As such, a number are willing to live in displacement until they can return rather than be permanently relocated. Other families however see relocation as a better option than displacement in camps, but see it as a temporary option until their houses and properties are released. There is a high degree of confusion among the IDPs as they are not sure whether they will ever be allowed to go back to their properties or whether the relocation being offered by the Government is temporary or permanent. There is unwillingness on the part of many IDPs to accept that the Government can and will take over all the land in the four G.N divisions. Hence they ask questions such as 'why so much land is required for the coal power station?' and, 'what will happen to our lands?'⁴⁷ In CPA's interviews with other stakeholders in

⁴⁵ Interview with Government official, May 5, 2009

⁴⁶ Interviews with humanitarian agencies and displaced in Batticaloa and Trincomalee, April, May and July-August 2009

⁴⁷ Interview with displaced in Batticaloa and Trincomalee, April, May and July-August 2009

Trincomalee a number expressed fears that with the displacement of Sampur's original inhabitants and the establishment of a SEZ there could be demographic changes and that under the guise of development, Sinhalese from other districts would be relocated.⁴⁸

In addition to the uncertainty, there are other factors at play influencing the decision making of affected families as to whether to relocate or not. A large number of the affected families have been living in displacement in welfare camps, transit centres and host families for at least two and a half years so people are tired of the poor living conditions, the dependence on hand outs and the uncertainty regarding the future. There are also some families and even some communities who did not legally own land and therefore see the relocation as an opportunity to finally secure ownership. There are even some poorer families who view relocation as a potential improvement in their standard of living. The seeming lack of movement on return, the poor displacement conditions, the lack of options and the constant discussion of relocation as the only choice, creates pressure on the communities and impacts the decision making of families and individuals.

With the mass displacement in the North and agencies increasingly focussing on the North, there are concerns among the IDPs in the East that they will be forgotten or that there will not be resources for them as well. One significant factor is Government intransigence on the issue. The Government's position has been that regardless of whether it is a HSZ or SEZ, the original residents will have to relocate to alternate sites. This in turn raises questions as to what degree decisions are voluntary and informed. During CPA's visit to Killivetti Camp in July-August 2009 CPA spoke to a number of women IDPs, some of whom expressed their lack of choice. Many stated that they wanted to keep ownership of their land but may consider relocating to alternate plots of land which are situated near water sources, necessary for farming. In all the discussions with IDPs in the various transit and welfare camps, it was apparent that none were given proper information on the status of their land and implications of relocation and resettlement. What was most striking was that there was a unanimous agreement among the IDPs was that the options that they had to choose between was severely limited.

Currently, affected persons are living in welfare camps and with host families in both Trincomalee and Batticaloa. Around 1,800 IDPs live in camps and with host families in Batticaloa. A significant number, amounting to over 2,200 IDPs, are living in transit sites in Killivetti, Paddithidal and Manaichenai in Trincomalee. Killivetti was set up as a Transit Site on March 2007 as a temporary shelter for displaced persons being moved from welfare camps to permanent shelters. These transit sites have now become long-term displacement sites. The conditions in the transit sites are poor and even sub-standard. CPA visited the Paddithidal Transit Centre in April 2009. The centre was set up in April 2007 as the Killivetti Transit Centre was already full. At the time of CPA's visit, Paddithidal Transit Centre housed some 460 individuals from Sampur West, Sampur East and Kadakarchchenai, the shelters consist of multi-family living units of tin shed structures. These shelters were originally built for a few weeks at the most and they were not envisioned to last for two years. While there is a regular water supply, the quality of the water is poor so the camp residents claimed to have dug a well as an alternate source of water. The toilets are in need of repair and the camp residents said they needed cleaning agents. The government and agencies providing assistance need to explore options in improving living conditions.

It seems that while the uncertainty over their future looms there is little effort being made to improve their current living conditions. For instance, the Paddithidal residents claimed that they no longer receive the supplementary

⁴⁸ Interview with civil society members, Trincomalee, April, 2009

food from humanitarian agencies and that they are completely reliant on the WFP rations. While some of the camp residents work as day labourers, the lack of livelihoods to support families is a serious challenge for families. There is a clear need to focus on ensuring that adequate assistance is being provided to the displaced population. There is also a larger question of whether the shelters should be upgraded especially if the displacement is to continue.

The resistance to return among IDPs is also based on the fact many of these IDPs owned large properties and/or lived in relative comfort before displacement. A number of families, including those whom CPA spoke to either had deed or permit lands, so have clear ownership claims. According to humanitarian actors who are working with the IDPs from the four GNs a significant number of them claim to have permit and deed land. CPA interviewed affected families who had documentation, which included deeds from the colonial period. Not all of these individuals have their paperwork as they had to flee their houses during heavy fighting. In some cases it is reported that the IDPs had extensive land areas. CPA was informed that those relocating will be given 20 perches of state land regardless of the size of the property they had before.⁴⁹ CPA was also informed that the government-run mobile services will be initiated to provide information and address lost documentation including land documentation in August.⁵⁰ Thus, a number of the displaced seem to fear that with relocation their quality of life will be significantly lower than the life they led prior to their displacement.

4.2 Government push for relocation

While the reduction of the HSZ from eleven GNs to four needs to be welcomed, there are serious questions as to how responsive the Central Government is to the concerns of the affected people, their wishes or their rights. The current Government proposal appears to be that all the land in the four GNs will be acquired and that the HSZ will become a SEZ, hence the displaced from these areas will have to relocate. The Government has proposed a number of relocation sites in Eastern Trincomalee over the last couple of months including Raulkulli and Pallikkudiyiruppu, and later Chennayoor, Kaddaiparichchan North, Kaddaiparichchan South, Nallur and Navaratnapuram.

While the loss of land to the coal power station itself needs to be questioned, there are significant concerns as to why four entire GNs are being taken over for a SEZ. A question asked by affected families is why some of the land cannot be released to them, so that even if the families cannot go back to their homes they can move to alternate plots in their village or an adjoining area. This is a valid question which needs to be seriously considered by the authorities, donors and agencies supporting relocation. At present, there is no public information available as to why such a large land area is needed for the coal power plant and what other projects, if any are currently being planned for the area.

The relocation sites proposed by the Government have not been approved by many of the IDPs not just because they do not wish to relocate but also because the sites are not deemed suitable. The site in Raulkulli is reportedly susceptible to flooding while Pallikkudiyiruppu and the other sites identified are dry and there are concerns about the availability of water throughout the year. The Government initially intended to relocate 69

⁴⁹ Interview with Government official, May 5, 2009

⁵⁰ Interview with humanitarian actor, August 2009

IDPs and constructed two model houses in Raulkulli Village 2 but since then has turned to humanitarian agencies to take up the task. CPA was informed that no further construction has commenced in this site.

It needs to be noted that relocation is being advocated by the Government not just for persons displaced by the HSZ but even in other areas where resettlement has been allowed, There are restrictions on return due to the military occupation of certain public and private buildings and property.⁵¹ It has been reported to CPA that around 350 private houses are presently being occupied by the Navy and Police in Muttur East. For example, in the village of Navaladdy around 27 houses are occupied by the Police and Navy and families have not been allowed to return to their houses. It is unclear whether these families will be able to retain ownership of their properties, which have been taken over by the Navy. Further, there is no public information available as to whether the Navy will be paying rent to the families, and as to the duration of the occupation. As this example shows, relocation can take two forms; it does not have to be permanent. Families can move to alternate housing for a particular period while efforts are made to release their properties in the HSZ. This decision of whether relocation is to be temporary or permanent however rests with the Government. An additional question that arises is as to why the military continues to occupy private properties and public buildings. It is not clear if the sole rationale is that occupation of houses and public properties are a cost-saving and easier option, compared to setting up new military camps. In a post-war context, the Government needs to take steps to release these properties, to find alternate sites for military personnel and camps, and to pay compensation.

The Government's approach to relocation appeared to have undergone some changes. There was significant improvements at the district level with the authorities becoming more involved in securing the consent of affected families by offering alternate sites and taking families on 'go-and-see' visits. Affected families have made clear that they do not wish to relocate to either Raulkulli or Pallikudiyirippu which seems to have been accepted by the current authorities. This is a marked change from the approach in 2007 where the authorities were pushing for the IDPs to be relocated to two sites with the authorities even suggesting that they would choose where families would go based on their livelihood.⁵² As will be discussed in the following section relocation has commenced but it is barely a hundred families have been identified for relocation, so there are questions as to how the Government will proceed.

There is an effort underway to 'encourage' IDPs from the Trincomalee HSZ currently in Batticaloa District to shift to transit sites in Trincomalee District. The IDPs presently displaced in camps in Batticaloa have been visited by government officials from Trincomalee who have asked them to return to Trincomalee. The inter-district camp consolidation has been presented by the Government as a practical one which would make it easier for the IDPs to make choices. The process of information sharing and the very fact that it was presented as a choice rather than a forced option needs to be welcomed. There are questions as to the effectiveness of this information sharing however. The IDPs that CPA spoke to in May 2009 in Batticaloa stated that they were encouraged to return to Trincomalee and live in transit sites such as Killivetti and Padithedal with no concrete information on whether they could actually return to their own land.⁵³ It seems that the Government wanted to bring back all IDPs to Trincomalee immediately, regardless of whether they were provided information on future plans and status of whether they could return to their land.

⁵¹ CPA, "A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District" May 2008

⁵² Interview with humanitarian agencies CPA, "A brief profile of the Trincomalee High Security Zone and other land issues in Trincomalee District" May 2008

⁵³ Interview with IDPs in Batticaloa, May 6, 2009

However, the Government has also recently used coercive tactics, which are a violation of the international humanitarian standards including the Guiding Principles on Internal Displacement. In May 2009, CPA was informed that the IDPs from the Trincomalee displaced in Batticaloa had been threatened that they would be de-registered as IDPs unless they agreed to move to the camps in Trincomalee. If they choose to reside in Batticaloa and the de-registration goes ahead, the IDPs will lose any future aid, be it rations or resettlement assistance. On 16th June the Government moved IDPs from an IDP camps in Batticaloa- Killimutti. The IDPs of Killimutti were given prior information by the Government that they were to be moved on June 16 but they refused. On the day, a large number of policemen and army moved into the camp and started hitting on the shelters and shouting at the IDPs. Two IDPs were reportedly beaten up.⁵⁴ The use of intimidation and coercion by the Government is a matter of serious concern. CPA was informed that not only violence was used, but the movement was badly planned. Due to the haste with which IDPs were put into busses, some families were separated from their children who were schooling at the time of the incident. Further, due to the movement, there was also worry that there would be disruption to the education of displaced children, some of whom were sitting for their advanced level (A/L) exams in August 2009. It was unclear what measures the Government had taken to reunite families and address needs of the IDPs including the education of the displaced children.

In addition to the urgency for moving fast on the infrastructure projects, there appears to be another motivation for the Government to go ahead with relocation. Local actors and humanitarian agencies believe that the current District Secretary of Trincomalee Major General (Retired) T.T.R. De Silva wants to bring the number of IDPs in Trincomalee to zero.⁵⁵ While ending displacement and providing durable solutions is a critical goal, which should be supported by all actors, it should not be done undermining national and international standards, including forced resettlement or relocation. In the present Sri Lankan context, large numbers of IDPs are viewed as an embarrassment in an area which has been 'liberated' for over two years. Hence, there have been efforts to reduce numbers of IDPs in the East. Therefore the first preference on the part of the Government is immediate relocation, rather than to make clear whether the HSZ will be withdrawn and whether a SEZ will be established over the four GN divisions.

The lack of information is a critical issue for all actors including the lower levels of government (such as the G.Ss who have to interact with the affected persons), humanitarian actors and of course the affected persons themselves. The affected families whom CPA interviewed in the Paddithedal Transit Centre made clear that the Government had told them that they could not go back to their homes. They had however been told that they would be provided employment at the power project.⁵⁶ There also seems to be confusion in the Government's public rhetoric. While district actors claim that IDPs cannot return to land in the HSZ, some officials from the Eastern Provincial Council have given assurances to the IDPs that they could use a pass to access their land in the HSZ for agricultural purposes.⁵⁷ Without knowing exactly what the Government intends to do with the land, IDPs are unable to make an informed decision, as they continue to live in hope, holding out for the most preferable option – return to their own land. This highlights the general issue of the lack of information among the affected families and even among humanitarian agencies.

⁵⁴ Interview with humanitarian agency, June 2009

⁵⁵ Interviews with local actors and humanitarian agencies in Trincomalee, April and August 2009

⁵⁶ Interview with IDPs in Trincomalee, April 2009

⁵⁷ Interview with IDPs in Batticaloa, May 6, 2009

The lack of information and the heavy handedness has intensified fear and distrust among the communities to such an extent that even humanitarian agencies are finding it increasingly difficult to have open dialogues with these communities on the issue of relocation. The IDPs fear that pressure will be applied, forcing them to relocate. While there is a need for ensuring security and providing development and infrastructure projects it should not be at the cost of local communities. The Government needs to recognize its responsibility to treat its citizens with due respect and dignity and adhere to national and international standards including the rights protected under the Constitution of Sri Lanka. Furthermore, the residents of Eastern Trincomalee have suffered repeatedly during the 26-year old war, including during the last phase of the war from 2006 which resulted in the death of individuals from the community, the destruction of property and mass displacement. The return of these communities to their homes and assistance to them to help them re-build their lives will be a substantive measure towards a process of reconciliation.

4.3 Humanitarian Agencies Involvement in Relocation

Humanitarian agencies play a critical role in how the process of return and relocation proceeds. At the moment, the Government is relying on donors and has to provide assistance to the displaced. Several of the humanitarian actors are unwilling to move ahead with relocation as they are unsure as to exactly why the IDPs are being permanently relocated and the legal basis for that relocation. At a time when senior officials are adamant on relocation and with no space available for affected communities to question the government policies, the onus is upon donors and agencies to seek clarification on return and relocation policies and the future of the HSZ/SEZ and keep all relevant persons informed of the plans in place, especially if they are funding such projects. It needs to be noted that donors and agencies who support relocation without sufficiently exploring options of return and who use forms of coercion to relocate, are in violation of international and national standards and are complicit in government initiatives to discriminate against the affected population.

There are increasing concerns relating to the manner in which humanitarian agencies and donors are approaching the question of relocation. There is a noticeable shift from last year where agencies were very reluctant to get involved in relocation mainly due to the fears of being associated with funding the dispossession of communities. It appeared that agencies had arrived at a common position based on key international standards that they would push for return and would not expressly support permanent relocation. Humanitarian agencies have played a key role, not just in providing assistance to displaced persons during displacement and resettlement, but they have also helped ensure that the rights of affected persons are protected and that they are better treated. For instance agencies have advocated 'go-and-see visits' and better preparedness in the resettlement sites. Since 2006 there has been a significant shift from large scale resettlement drives with limited information for those being resettled. Over the last few resettlement drives 'go-and-see visits' has become more of a norm in Trincomalee. The role played by humanitarian agencies in advocating this change cannot be underestimated.

The concerted efforts of humanitarian agencies have impacted the relocation process in positive ways. Initially, the Government offered two sites (which were later increased) where those affected by the HSZ were to be sent to. Agencies raised concerns on the process and did not come forward to support the construction process. Raulkulli Village 2 was meant to support some 26 families but there were concerns relating to the inability of the site to sustain so many new families, including the lack of water. The Government attempted to go ahead in Raulkulli and built two model houses but there has been little movement since. The lack of humanitarian

agencies and donors to fund these houses may have been a crucial factor in why the housing project did not expand.

As will be discussed below, agencies are becoming more willing to get involved in the relocation of the Sampur IDPs. As one Trincomalee actor pointed out, some humanitarian agencies are using the terms resettlement and relocation interchangeably even though they have very distinct meanings and implications in the Sri Lankan context.⁵⁸ It is difficult to assess whether agencies have become resigned to the idea of relocation, and do not see it as potential dispossession of rights given that some form of consent can be obtained. There are a number of factors, which could account for this change including the smaller number of IDPs, the lack of vocal political or civil society advocates for the Trincomalee IDPs which would make agency involvement embarrassing and the logic of humanitarian funding which requires money to be spent as soon as possible. A significant factor appears to be Government pressure on agencies to co-operate as the GA has made clear that apart from the new IDPs, the main areas for humanitarian work in Trincomalee District are the returns to Moraweva (which has a sizeable Sinhala population) and the relocation of the people from the four GN divisions. The dangers of agencies becoming involved in the relocation without ensuring appropriate guarantees from the Government, including full consent and the right of ownership retained by the families or an assurance of properties being returned where possible, are clear.

On the part of humanitarian agencies it seems that there is a lack of clarity on whether they should be supporting relocation or not. This has resulted in humanitarian agencies sending mixed messages to IDPs. While it is clear that agencies are faced with a dilemma and is looking to the Government to provide clarity, the lack of a firm stance means that the issue could be decided on a piecemeal basis and even ad hoc unless the agencies develop a joint position. First and foremost this position must recognize the rights of the affected persons.

UNHCR Relocation Policy: UNHCR is the lead agency on IDPs, hence it plays a key role in setting standards within the humanitarian community. UNHCR put forward a Policy on IDP Relocation in relation to the High Security Zone or Special Economic Zone in Muttur East/Sampur dated October 7, 2008 which states their position on possible relocation in the area (hereafter called the 'Policy'). The UNHCR policy puts forward two forms of relocation: relocation within the same GN division and permanent relocation. The first option is considered an interim measure "... for persons who cannot return to their homes in the medium term because their homes are occupied by security forces or located in buffer zones or other areas with restricted access due to security, which may change over time."⁵⁹ UNHCR goes on to state that relocation within the same GN division will be supported if key issues are met including the principle of voluntariness, IDP participation and informed decision, safety and dignity, right to adequate and safe housing, land title, right to restitution, equity, livelihoods and integration assistance and site and IDP preparation are met.

UNHCR states that permanent relocation needs to be considered "... when the Government of Sri Lanka has permanently declared certain areas inaccessible" for those living within the four GN divisions "... which will remain within the reduced SEZ and may therefore not be opened for return."⁶⁰ The policy does state that return is the preferable option. The policy goes on to state that IDPs whose land falls within the area should be allowed

⁵⁸ Interview with humanitarian actor, March 2009

⁵⁹ UNHCR Policy on IDP Relocation in relation to the High Security Zone or Special Economic Zone in Muttur East/Sampur, page 2, October 2008

⁶⁰ UNHCR Policy on IDP Relocation in relation to the High Security Zone or Special Economic Zone in Muttur East/Sampur, page 1, October 2008

access to their homes and land despite the establishment of the SEZ. How IDPs are to be allowed access to their homes and land is unclear and questionable, especially in light of present practices where entering and remaining in the HSZ is prohibited. Similar to the relocation within the same GN division, conditions that need to be met are highlighted including the re-gazetting the HSZ or SEZ, land title, right to compensation, local communities role and livelihoods.

In the policy, UNHCR takes the position that HSZ will be reclassified as a Special Economic/Industrial Zone. There are a whole series of questions regarding this assumption including the legality of such reclassification and what such a move would entail (discussed previously). Questions need to be asked as to the rights that those affected will have over their land in the event a reclassification takes place and whether the same limitations in entering and remaining in the area experienced with the present HSZ would remain. UNHCR appears to be taking the Government's current stated position at face value in stating that the four G.N divisions "... will remain permanently closed due to plans to construct a coal power plant in the area."⁶¹ As raised previously, questions remain as to why four GN divisions are necessary for the construction of a coal power plant and it is essential that UNHCR, other agencies and donors keep pushing for the greater transparency and information of Government plans for the four GN divisions. While UNHCR's listing out of key guidelines is constructive, the policy can be read as an endorsement of and a willingness to engage with the Government's decision to go ahead with relocation, rather than a clear position as to UNHCR's concerns of being involved in the permanent relocation of IDPs due to development. Even though these are conflict-affected IDPs, the on-going displacement is development induced. UNHCR may in fact through its position end up encouraging the Government to go ahead with relocation, when the Government may in fact be having second thoughts on whether relocation should take place. It is to UNHCR that other humanitarian agencies look to for leadership on issues such as this as it is the lead shelter agency. As such UNHCR has a clear role to ensure that rights of the affected are protected and promoted and they adhere to a principled stand.

It is essential that all actors, including humanitarian agencies clarify the present status of the HSZ and future plans for the area including reclassification and re-gazetting of the area. Given that the war officially ended in May 2009 with the Government's victory over the LTTE, it can be assumed that a process of de-militarisation including the shrinking and elimination of HSZs will commence. Lack of clarity on the legal standing of the area, be it called a HSZ or SEZ, can lead to confusion and future problems including the uncertainties faced by the affected communities. While the UNHCR policy is clear on voluntary and informed return as the first option, information from the ground indicates that there is increasing support for relocation. Given the pressures on IDPs, there are questions as to how voluntary and informed these choices are.

It should be noted that as of July 2009 very few agencies have initiated programs to construct permanent houses at the relocation sites. Agencies risk funding the dispossession of families affected by the HSZ/SEZ. If agencies do not make their positions clear to IDPs they will become part of the pressure on IDPs to relocate, as IDPs increasingly fear that if they do not accept the relocation option they risk losing their rights to any land altogether. As already mentioned, forms of coercion used to relocate IDPs is a violation of the freedom of movement and other rights. Further, pressure to relocate can be interpreted as discriminating against particular IDP groups. In effect agencies risk being complicit with the government in its violation of IDPs fundamental rights. As will be discussed below, ZOA was one of the first INGOs to get involved in the relocation initiative, along with UNDP and UNHCR.

⁶¹ UNHCR Policy on IDP Relocation in relation to the High Security Zone or Special Economic Zone in Muttur East/Sampur, page 1, October 2008

Since the end of the war, agencies appear to be putting forward another option of temporary relocation for communities who cannot immediately return. It is not clear to what extent humanitarian agencies will be willing to support such a position and whether the Government will go ahead with such an option. This would allow families from Transit Sites in particular to have improved housing standards and access to livelihoods.

4.4 Relocation sites in progress

The relocation process appears to be now gathering speed. These current efforts at relocation highlight some of the key concerns raised above.

Navaratnapuram and Ilakanthai: There are two villages of roughly 248 families where agencies have been asked to relocate. According to humanitarian agencies a number of the families from Ilakanthai are very interested in relocating while most of the families from Navaratnapuram are not. Ilakanthai is a coastal village which was affected by the tsunami. The desire to relocate is reportedly due to most of the families not having ownership of the land. The village was affected by the tsunami and most of the villagers were reportedly living in tsunami transitional shelters during the time of displacement in 2006. Furthermore the land is not fertile. The villagers went on a 'go-and-see' visit to their previous village and given that an army camp has been constructed in close proximity to the village they are wary about resettling. The military selected a site within the Navaratnapuram GN division but the families did not accept the location. According to a humanitarian agency and a government actor whom CPA interviewed an alternate site has been identified on the border of Navaratnapuram and Padallipuram G.N. divisions, which the IDP families visited and agreed to.⁶²

There are some issues regarding land ownership but there appears to be a constructive approach between the Government and humanitarian agencies involved which also takes into consideration the need to protect the rights of the affected families which could result in some of these issues being resolved. During the visit in April 2009 the information that CPA was able to gather was that the Government plans to carry out a land survey in the near future to ascertain if the land is private or state land. The villagers who have consented to relocate are likely to get 20 perches. While there are assurances that the relocated families will be granted ownership it is unclear if they will be immediately given deeds in the case of private land or permits (for state land) which can be transferred into grants or whether the Government will impose a ten-year waiting period before issuing any land documents. This waiting period has also been used by the Government and humanitarian agencies in tsunami housing, especially in relocation sites, both in the South and East of Sri Lanka where the handing over of legal ownership is delayed in order to make sure that the beneficiary does not sell the house upon receiving it. The underlying thinking seems to be that if the family lives in the house for a few years they will become used to the location and therefore will not sell it. The use of a more consultative approach by the Government in dealing with the affected villagers needs to be recognised. As of July 2009 the housing construction process had commenced.

ZOA is the main humanitarian actor presently involved in this particular relocation. ZOA had been previously involved in the tsunami housing for Ilakanthai and therefore had links in the area. ZOA's initiative represented a break in ranks from the line taken by humanitarian actors to not support the relocation of Trincomalee IDPs.

⁶² Interview with humanitarian agencies in Trincomalee, April 2009; Interview with Government actor, May 2009

CPA was informed that UNDP had announced plans that it would be willing to construct some 300 relocation houses of which 50 will be part of a pilot project in the above site. UNDP and ZOA adopts a comprehensive approach to resettlement going beyond the core housing and basic Non-Food Relief Items (NFRIs) which includes community infrastructure, and livelihood assistance. CPA was informed that UNDP usually commences construction once UNHCR has selected the families and provided temporary shelters for these families. As of July 2009, no families have been relocated to this site.

The involvement of two key UN agencies in Navaratnapuram indicates a shift in the position of the humanitarian communities in relation to resettlement, relocation and the rights of IDPs. All three agencies are very clear that they will not provide housing unless the process is in line with international standards including the voluntary nature of relocation, but have agreed to engage in the permanent relocation being pushed by the Government even when the IDPs themselves have reservations in relocating. By providing assistance for permanent relocation at a time when IDPs are not in favour of return and the necessity of the HSZ is in question, it raises questions with regards to the commitment of humanitarian actors to solutions in line with the rights of IDPs.

5. Recommendations: Way Forward

Planned phase out of Trincomalee HSZ: It is difficult to recommend any measures for dealing with the people from the four GNs unless the issue of the gazetted HSZ is firmly resolved. While there may have been a military rationale for the establishment of the HSZ in 2007, it is unclear why such a HSZ is required in the future, especially given that the LTTE stands defeated. It can be assumed that the Government will continue to impose military restrictions, which will be eased as the ground situation improves and normalcy is restored. The Government needs to make clear that the HSZ is for a restricted period and that it will shrink the HSZ over time allowing for IDPs to return to their land. Hence, there has to be a sunset clause. That the affected persons do not lose the right to their lands and property in the interim period must be made clear. The Government needs to understand that continuing 'militarisation' especially in the form of HSZs raises serious questions among the affected communities of the Government's commitment to recognising the rights of all its citizens and communities.

Assessment of all HSZs and commitment to reduce/withdraw HSZs: The Government should carry out an assessment of all HSZs in Sri Lanka, balancing out national security with humanitarian concerns. The assessment team should comprise a mix of military officials and public officials. A commitment by the Government to reduce and release lands currently under the HSZ in a phased manner will be a significant step to ensure the return of IDPs back to their homes and help restore normalcy in the area.

Clarify Status of the Trincomalee SEZ: As noted above there is considerable confusion as to whether the HSZ has given way to a SEZ which will also prevent local residents from entering their villages of origin. The SEZ being proposed in Eastern Trincomalee will result in the handing over of state and private land by decree, land on which people have been living for decades if not centuries to commercial and public enterprises. The seizure of villages and private lands by the Government amounts to a dispossession of rights and calls into question the commitment of the Government to protect the rights of its citizens. There is a lack of information about why only one section of the Metro Trincomalee SEZ will be extremely restrictive. Information sharing and consultation with local actors is a critical first step to moving ahead on the economic development of Trincomalee. The SEZ and the development of Trincomalee needs to include its people and not disregard them and their rights. The economic plans for the area must find ways of building up local economies and strengthening the capacity of local communities, rather than marginalizing and disempowering them.

Assess Location for Sampur Coal Power Plant: The site for the coal power plant is problematic not just for the IDPs but also for the Indian coal company involved in the construction. The Government needs to re-assess the site and look at the implications of the site on local communities, not just on national requirement or convenience. The assessment also needs to look at the actual land area that is required for the coal power plant

rather than using the coal power plant as a tool for acquiring land, possibly for other projects. The affected people are willing to negotiate and give up plots of land but not multiple GN divisions.

Temporary Relocation offered with assurances for Right of Return: The Government needs to recognise the fundamental rights of its citizens, including the right of freedom of movement as guaranteed under the Constitution. As such the Government needs to recognise that people have a right of return to their homes and villages. Adopting a more civilian friendly approach will help make clear that relocation is not the first option, and should be the last option or a temporary alternative at best. In the case of temporary relocation, transitional shelters need to be provided with support for starting up employment and a continuation of food rations. It needs to be made clear that accepting temporary relocation does not amount to relinquishing the right of ownership and the right to return. If the Government is looking to avoid temporary relocation then it needs to ensure that current displacement sites are repaired and improved, with increased assistance for livelihood support, food and NFRI assistance.

In the cases where permanent relocation is required, all efforts need to be taken to ensure that it is voluntary and informed. As such, the affected family needs to be provided an exact rationale for why their land has been taken; provided compensation and restitution; be shown multiple relocation sites which suit their livelihood and are suitable for housing and community life; adequate assistance is provided to build up the community.

Humanitarian agencies and donors arrive at a joint and principled position: Humanitarian agencies need to ensure that their assistance adheres with basic humanitarian standards and recognises the human rights of the beneficiaries. In a context where IDPs are being denied the right of return it is questionable whether humanitarian agencies should be supporting the relocation of these IDPs, especially in cases where the voluntary and informed nature of the decision to relocate is in question. Agencies and donors should arrive at a clear and principled position as to whether to support relocation or not, else they risk aiding the Government-driven program to relocate and dispossess citizens of their land. By getting involved in relocation, agencies could end up creating irreversible facts on the ground, with civilians conceding their ownership rights due to fear and pressure.

Without engaging in piecemeal relocation projects humanitarian agencies need to arrive at a consensus that they will not get involved in relocation unless the Government makes clear the future of these four GNs, while pushing for resettlement. Return should be the first option with agencies providing assistance for IDPs in the interim period whether it be in displacement camps, with host families or transitional shelters. Permanent relocation should only be in clear cases where the Government has followed legal processes to acquire the land and provided adequate compensation which is the duty of the Government not of humanitarian actors. The lead agency, UNHCR has to provide leadership in this.

Clear information sharing and consultations with affected persons: While the Government has made recent efforts to engage with affected persons it needs to make a concerted effort to provide clear information to affected persons and to hear their grievances. The process needs to be viewed as a confidence building process not as an operation where instructions are issued and the civilians are expected to agree and follow these instructions. Adopting a more participatory approach in this issue would assuage fears of the community and be part of a much larger process of restoring the confidence of the people in the authorities.

Acquisition of land for development projects and compensation: In the event land is acquired, the Government needs to follow the existing procedures for land acquisition, including issuing public notices and providing compensation for affected families. Compensation needs to be provided for both deed and permit land. Affected families need to be informed of the process and implications of land being acquired.

Compensation and guarantees of return of houses and properties occupied by security forces: Houses and properties occupied by the security forces in areas that have already been opened up for resettlement need to be returned to their original owners. As such, the security forces need to provide guarantees that the land and houses will be returned in the near future. In the interim, measures need to be introduced to ensure that rent payments are made to the affected families in relation to the occupied houses.

Involvement of Local Communities: Local communities should be kept informed of resettlement and relocation plans in their areas of residence. The Government, humanitarian agencies and donors should ensure that providing assistance in resettlement and relocation programmes should also include a component of support to host communities.

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