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“Why Can’t We Go Home?”

Military Occupation of Land in Sri Lanka

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Summary

On April 29, 2017, the Sri Lankan navy high command announced it would release 100 acres of land that security forces had been occupying in the Mullikulam area since 2007 to the original owners. For the displaced residents of this coastal village in Mannar on Sri Lanka's northwest coast, the news came as a huge relief. More than one year later, however, as of August 2018, no land has been released and the people remain displaced, undergoing severe hardship living in semi-permanent shelters with limited livelihood options. Lamented Francis Croos, a village elder, "Now there is no war. It's now peacetime. So why can't we go back home?"

Military occupation of public and private property is a cruel legacy of the nearly three-decade civil war in Sri Lanka that ended in May 2009. Over the years, many Sri Lankans, particularly in the embattled north and the east, were displaced because of the conflict, often several times over.

Government forces occupied territory to set up military camps, or bases, for operations, and demarcated certain areas as High Security Zones (HSZs), thwarting their return. Over the course of the war, the separatist forces of the Liberation Tigers of Tamil Eelam (LTTE) had de-facto administrative control over large areas covering several districts and were also involved in forcibly displacing people, including a mass eviction of the Muslim community. Those displaced due to the conflict faced loss of their homes and livelihood, poor living conditions, including in squalid conditions at displacement camps.

By the end of the war, the military was in control of vast swaths of land, including the areas previously held by the defeated LTTE. While the administration of President Mahinda Rajapaksa took some steps to release land back to original owners, the military retained control over large areas and made use of it for both military and non-military purposes. The military consolidated its position and control, including shifting from de facto occupation to legal acquisition. It not only established barracks, but has used the land for agriculture, tourism, and other commercial ventures.

The current president, Maithripala Sirisena, came to power in 2015 on a platform of reform. His victory, followed by parliamentary elections in which pro-reform forces were further strengthened, raised the hopes of communities, mostly Tamil and to a lesser extent Muslim, whose land was occupied by the security forces.

In October 2015, at the United Nations Human Rights Council (UNHRC), Sri Lanka cosponsored a resolution in which it pledged to address longstanding issues relating to the conflict, including prompt return of occupied land. The government has since stated that it has returned nearly 80 to 85 percent of the land held since the war ended and will only retain control in areas needed for national security reasons. But there has been no transparency in the process and many affected communities dispute these claims.

While the government has released land in a number of sites across the north and east, in other sites the process has been delayed. In at least one location, the Sirisena government has actually moved backward, allowing the military to acquire land in a conflict-affected area, a practice under the Rajapaksa government that many observers hoped had ended.

In Mullikulam, discussed above, residents with the support of clergy and local activists had been campaigning for the return of their land since the war ended in 2009. Instead, the navy consolidated its presence, declaring the village the headquarters for their north-west command. The election of a new government in 2015 gave them hope. But when their land was not returned, in March 2017, they began holding demonstrations outside the navy camp located on their properties. In July 2018, the navy made yet another promise to release their lands “soon,” but it is yet to happen, and protests continue.

It is now nearly four years since the Sirisena administration took office, and discontent has risen among affected communities over continuing military occupation of land and additional acquisitions—often without adequate consultation, due process of law, or compensation for those displaced. In many parts of the country, those contesting these land seizures have been holding protests as they see little substantive progress. To a large degree, the earlier landowners remain vulnerable to the whims of the military and their decisions on whether to release land.

This report, based on 110 interviews conducted between June 2017 and August 2018, details cases of land occupation by security forces both during and after the armed conflict. It identifies failures of transparency and due process, lack of proper mapping of these occupations, inadequate support to affected individuals and communities, and ongoing delays in providing appropriate reparations to address the harms. It also examines evidence that the military is using some lands for commercial profit rather than national security, and in some cases has damaged or destroyed property prior to returning the land to owners. We conclude that, despite early progress in returning land and some positive commitments, the Sirisena government has since adopted an arbitrary and piecemeal approach. The failure to initiate a transparent process means that it has done

far too little to address the rights violations and provide remedies to those who have suffered or continue to suffer from military land occupation and its consequences.

Land Occupation by State Security Forces

Nearly a decade after the war, the Sri Lankan army, navy, and air force, as well as the police, continue to occupy private land that is owned and was used by civilians, and state land intended for non-military purposes. These occupations range from large areas that cut across multiple administrative divisions, to smaller areas encompassing several properties and even, in some cases, an individual house or farm. Private land includes homes, business establishments, cultivable areas, and other properties. Security forces also continue to occupy or control access to religious buildings, schools, communal wells, beaches, and arable lands that have long been used by communities, sometimes over generations, but where ownership lies with the state.

Military occupation of land is among the primary contributors to continuing displacement: according to the government, as of 2017, nearly 40,000 people remained internally displaced in the country, a majority from Jaffna.

In some instances, the local civilian administration agrees that there are no reasonable grounds for continued occupation but have been unable to enforce reform because of obstruction by the military. In others, district officials assert that the civilians who lived or used the land lack legal titles or proof of ownership. Contested land ownership is not merely a legal and administrative issue but reflects a wider problem: a failure of Sri Lankan authorities to fully consider the consequences of the conflict for the country's many affected populations. During the war, normal land administration was suspended. In addition, the land documents of many families who were forcibly displaced were destroyed, damaged, or lost. In some cases, other civilians occupied their land.

In several cases, even after residents were informed that their property had been released, they have found security forces unwilling to leave, or still occupying a portion of the area, leaving some families displaced. Partial land release, with security forces camped close by, causes practical problems over access to water or roads, and increases fear of surveillance or harassment by soldiers. The government's failure to act on pledges of releases have increased distrust and suspicions between local communities and the authorities.

In some cases, different state agencies have exchanged control over properties without releasing land back to civilian owners. For instance, after the war ended, 23 families in Pallimunai on Mannar were initially promised that their land and homes would be returned by the local police who were in occupation of these properties. Instead, the navy took over control of the land from the police, without any explanation, and have remained in control. The residents are blocked from returning by the navy, which has refused to vacate their properties. Residents have fought their case in court. Helena Perera, one of the residents said:

The police told us that they were leaving and that we could return to our homes. A police officer standing nearby, told us again, in front of the navy, that we can go back home. However, a navy high-up told us that they would only leave if the president [then Rajapaksa], were to order them to do so. And that until then, they would continue to live on our land. We've been made refugees in our own village.

In some areas that the military occupied during the war, the state has moved to formally acquire the land in the post-war period, including under the Sirisena-led administration. While it is apparent that the military has commenced acquisition of some such lands with consideration for the due process rights of former residents, its slow or stalled progress in releasing additional lands has intensified fear that it is biding its time and seeks to consolidate its hold.

Post-Conflict Occupation of Land

Military occupations of land occur frequently during armed conflicts. However, in Sri Lanka, the security forces have occupied new land even after the end of the war and the defeat of the LTTE, expanding their role and presence in civilian activities, including infrastructure development, tourism, and administration.

For instance, on July 17, 2010, a year after the war ended, a group of masked men, armed with clubs and assault weapons, entered the village of Ragamwela, Panama, in southeastern Ampara district. They burned down seven huts, assaulted villagers, and forcibly evicted residents in a midnight attack. Although the villagers filed a complaint with the police, no action had been taken at time of writing. Instead, when the residents tried to return to their land after the attack, the local police blocked them.

The navy and air force both established camps in the area and began construction of a resort and an international conference center. In this case, the villagers were largely from Sri Lanka's majority Sinhalese ethnic community who had been were forcibly displaced by the military after the war had ended.

Human Rights Watch has documented other cases of land grabs following the war, including in the Eastern Province, which the security forces claimed to have "liberated" entirely in July 2007. In November 2009, the security forces cut civilian access to the mosque in Karamalaiootru, in Trincomalee. On November 5, 2011, military personnel came into the village of Ashraf Nagar and demanded that all its occupants vacate. In all such cases the security forces created military camps or otherwise established a presence on the land.

"Land Grabs" for Profit

While the government typically defends the military occupation of land as important for national security, in most cases that rationale is suspect. The use of the land for tourism or agriculture points to the real interest rooted in commercial gain. In at least four sites included in this report, land occupied by the military under the pretext of national security is being utilized for commercial purposes.

Residents of Panama have alleged that military occupation of land there was not for national security at all but purely for tourism and generating revenue. During the Rajapaksa administration, the air force, which occupied 365 acres in the area, commenced the construction of an international conference center, and has been building beach-front chalets for tourists. The navy, which had been occupying about 300 acres, including residential and cultivation lands belonging to the people of Ulpasa, Egodayaya, and Horakanda since the end of 2009, have built a tourist resort, Lagoon Cabanas.

Flaws in the Release, Resettlement, and Reparation Processes

In instances where land has been released, there are continuing problems for returnees. The lack of adequate resettlement assistance has been a critical challenge. For war-affected internally displaced persons the state generally offers a package that includes a resettlement allowance, cooked food, and cash for land clearance. Other assistance such as permanent housing and livelihood aid depends on specific criteria set out by the state, humanitarian agencies, or donors.

However, Human Rights Watch found that in practice there is no uniform application of this policy. Some returnee families did not receive the full resettlement package when they returned to their lands formerly occupied by the military. In some cases, people who initially resettled from IDP camps and ended up in another form of displacement—living with friends and relatives, in rented properties, or even in IDP camps closer to their original properties, because their land was still under military occupation—were denied assistance when their land was eventually released.

Partial releases pose a problem for returnee communities as some land is released, while the military retains control of neighboring land without looking at boundaries and community infrastructure. For instance, Nadeswara College in Kankesanthurai (KKS), Jaffna district, was released in May 2016, but two of the school buildings remain under police occupation, as do many of the nearby houses and the school’s potable water well. Partly as a result, school attendance is still significantly lower than prior to the outbreak of the war, and the school is facing serious challenges in restoring full services.

Residents in different parts of north and east Sri Lanka have complained that the military destroyed property during occupation or immediately prior to release. In Pallimunai, Francis Rita Roche, who is part of a court case seeking the release of her house, says she watched the navy demolish her house on January 22, 2015:

My nephew had seen them [the navy] removing my roof tiles and alerted me. I rushed there and watched from outside the barbed wire fence, as they razed my house to the ground. My hopes and dreams of returning to my home someday, were crushed before my eyes.

Human Rights Watch also documented the destruction of Hindu temples, a mosque, a Buddhist temple, and a church that took place during the post-war period when these sites were still occupied by the security forces.

In some cases, instead of returning people to their original settlements, the previous government decided to relocate families. The haphazard manner of most of these relocations, implemented with little or no consultation with displaced communities, violated international standards. In addition, it has resulted in these populations being removed from the official IDP figures, creating a new problem of “hidden displacement.”

During the final months of the war, Tamil residents in the Vanni were forced to vacate their lands and retreat with the LTTE ahead of the advancing military. At the end of the war, the military transported many of these villagers, who had ended up as human shields during the fighting, to a large camp called Menik Farm, where they were detained. Under international pressure civilians held there were gradually released and families started returning to their homes. Menik Farm was eventually shut down in 2012. At that time, however, activists estimated that about 26,000 people remained displaced because the military had retained control over their land. They were later forcibly relocated.

For instance, Keppapulavu was home to 138 families prior to their displacement in 2008. When Menik Farm was shut down in September 2012, the former residents of Keppapulavu, with little advance notice or information, were transported by the military to a plot of land in Sooripuram, neighboring their former village, and told this would be their new home. The lack of due process and the minimal standards observed in the relocation fall far short of the standards set forth in the UN Guiding Principles on Internal Displacement and other international frameworks. Arumugam Villayutham Pillai, the Hindu priest of the Murugan Kovil of Keppapulavu said, the government had not prepared properly for the relocation:

We were one of the last groups from Menik Farm to be resettled. It was on September 24, 2012. There was UN pressure to close the camps. We were brought in trucks to Vattappalai school. We spent the night in the school. Then the elders were brought to a piece of land and told that we could not go home, that we would live there. Our belongings were then dropped in the area. It was like a jungle.

Need for Justice and Reparations

Although all three major ethnic communities in the country—Tamils, Muslims, and the Sinhalese—are affected by military occupation of land in the north and east, the vast majority of cases impact the Tamil community. The military occupation of land is a significant stumbling block to post-war normalization and reconciliation, heightening concerns that the Sinhalese-dominated state is seeking to diminish the rights of minorities through continued militarization and territorial aggrandizement. The scale of military presence and its involvement in multiple activities of civilian life is thus a key challenge in post-war Sri Lanka.

Both Sri Lankan and international law make clear that land occupation by security forces can be appropriate when necessary to serve legitimate security imperatives and when the rights of those affected are respected. Many members of affected communities have filed legal challenges, alleging lack of due process in the land acquisition process and pointing to discrepancies between the official stated purpose of military land occupations and actual uses of the land.

Although affected communities have focused on securing release of their lands and are demanding minimal assistance from the government, there is also a need to ensure justice and appropriate reparations for those harmed by the land occupations. The government has proposed an Office of Reparations, but it is yet to be seen if this institution will address the issue of military occupation of land.

In general, the government needs to improve both the quality and quantity of land releases, ensuring that more affected individuals and communities get their land back and that flaws in returns are addressed. The government's approach seems at best ad hoc, and decisions are too often left to the discretion of the security forces, without a serious effort to systematically map and review military use of land as well as the status of release and reparations initiatives.

One indicator of lack of transparency is the lack of aggregated data on military occupation of land. As the UN high commissioner for human rights noted in his report on the implementation of UN Human Rights Council Resolution 30/1 and 30/4 in January 2018, "The full extent of land under military occupation claimed by civilians remains in question." Although the government has provided statistics for occupation, its figures remain contested, a situation compounded by the fact that some land is claimed by other state agencies, such as the forest department and the Sri Lanka Ports Authority.

Continuing land protests, court cases, and the advocacy efforts of affected communities all highlight the urgency of dealing with military land occupation. The government should publicly commit to releasing all private and public lands currently occupied by the military unless specifically required for strategic state purposes, act promptly to fulfill that commitment, and provide meaningful compensation or other redress for those harmed to date by such occupations. Such actions are important in their own right and as an essential step toward ensuring lasting peace and justice in Sri Lanka.

Methodology

Human Rights Watch conducted research for this report from August 2017 to May 2018. Field research covered cases of military occupation and land release in 20 areas in six districts primarily in Sri Lanka's north and east. Additional interviews were conducted in Colombo and by telephone through August 2018.

Human Rights Watch interviewed 110 individuals whose land was or is occupied by the military and also spoke with activists, local officials, and lawyers. We informed all interviewees of the purpose of the interview, its voluntary nature, and the ways in which data would be collected and used and provided no remuneration or other inducement. We have sometimes concealed their full identity where requested by the interviewee.

Interviews were conducted in Sinhala or English, and in Tamil through independent interpreters.

In August 2018, Human Rights Watch provided a summary of the findings to the government of Sri Lanka but had received no response at time of writing.

I. Armed Conflict and Occupation of Land

The end of the civil war in Sri Lanka in May 2009 threw into sharp relief the destruction and damage wrought by nearly three decades of armed conflict. Several hundred thousand people were killed or were forcibly disappeared.¹ An estimated half a million were displaced within the country and hundreds of thousands became refugees abroad.² Amid this destruction, loss, and grief, there was some hope that post-war resettlement, rehabilitation, and reconstruction particularly in the embattled north and east would allow the displaced and others affected to return, rebuild, and restore their lives with some sense of normalcy.

At the end of the war, the military controlled thousands of acres that had been depopulated as a result of the fighting. In the ensuing years, significant swaths of land have been released, and the government has made public commitments to release additional land held by the security forces. However, the continuing occupation of several thousand acres has increased fears that this problem will never be substantively addressed and resolved.³

Land Occupation During the War

The armed conflict between the state and the secessionist Liberation Tigers of Tamil Eelam (LTTE) and other militant ethnic Tamil groups, which lasted from 1983 to 2009, resulted in numerous violations of the laws of war and human rights abuses.

Successive Sri Lanka governments carried out numerous and widespread violations of human rights, notably arbitrary arrests and detention, and extrajudicial killings.⁴ Other

¹ United Nations Human Rights Council, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, September 16, 2015, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed March 5, 2018).

² Ibid.

³ United Nations, “Joint Statement by United Nations Secretary General, Government of Sri Lanka,” May 26, 2009, <https://www.un.org/press/en/2009/sg2151.doc.htm> (accessed November 17, 2017).

⁴ “Awaiting Justice For Trinco Five,” Human Rights Watch news release, November 22, 2015, <https://www.hrw.org/news/2015/11/22/awaiting-justice-trinco-five> (accessed November 17, 2017); “Ganesan Nimalaruban: A damning murder, funeral and silence,” *Groundviews*, July 31, 2012, <http://groundviews.org/2012/07/31/ganesan-nimalaruban-a-damning-murder-funeral-and-silence/> (accessed November 10, 2017); Human Rights Watch, *Locked Up Without Evidence - Abuses under Sri Lanka’s Prevention of Terrorism Act*, January 29, 2018, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act> (accessed November 12, 2017); WATCHDOG, “PTA detainees – Ignored under “Yahapalanaya?” *Groundviews*, May 9, 2015, <http://groundviews.org/2015/09/05/pta-detainees-ignored-under-yahapalanaya/> (accessed March 14, 2018).

commonly reported abuses included rape and other sexual violence, enforced disappearance, torture and other ill-treatment.⁵ The last months of the fighting saw a sharp increase in indiscriminate attacks on civilians and massacres of persons in custody.⁶ The LTTE carried out frequent suicide bombings and other indiscriminate killings of civilians, torture, use of child soldiers, forced evictions of ethnic populations, massacres, targeted killings, summary executions, and the use of human shields.⁷ Both sides laid inherently indiscriminate anti-personnel landmines. The war ended on May 19, 2009, with the decisive defeat of the LTTE and the death of its leader, Vellupillai Prabhakaran.

During the war, the LTTE sought to secure territory and establish a separate state, Eelam. At the height of the war, the LTTE claimed administrative control over at least half of the

⁵ “Sri Lanka: ‘Disappearances’ by Security Forces a National Crisis,” Human Rights Watch news release, March 6, 2008, <https://www.hrw.org/news/2008/03/06/sri-lanka-disappearances-security-forces-national-crisis> (accessed October 20, 2017); Human Rights Watch, *Recurring Nightmare: State Responsibility for “Disappearances” and Abductions in Sri Lanka*, March 5, 2008, <https://www.hrw.org/report/2008/03/05/recurring-nightmare/state-responsibility-disappearances-and-abductions-sri-lanka> (accessed March 14, 2018); Human Rights Watch, “*We Will Teach You a Lesson: Sexual Violence against Tamils by Sri Lankan Security Forces*,” February 2, 2013, <https://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces> (accessed November 10, 2017); *Sri Lanka: “Disappearances” by Security Forces a National Crisis*, Human Rights Watch news release, March 6, 2008, <https://www.hrw.org/news/2008/03/06/sri-lanka-disappearances-security-forces-national-crisis> (accessed October 20, 2017); Human Rights Watch, *Recurring Nightmare: State Responsibility for “Disappearances” and Abductions in Sri Lanka*, March 5, 2008, - <https://www.hrw.org/report/2008/03/05/recurring-nightmare/state-responsibility-disappearances-and-abductions-sri-lanka> (accessed March 14, 2018); Freedom from Torture, “Tainted Peace: Torture in Sri Lanka since May 2009,” August 2015 https://www.freedomfromtorture.org/tainted_peace_torture_in_sri_lanka_since_may_2009 (accessed February 5, 2018); Freedom From Torture, *Tainted peace: Torture in Sri Lanka since May 2009*, August 2015, https://www.freedomfromtorture.org/tainted_peace_torture_in_sri_lanka_since_may_2009 (accessed March 14, 2018).

⁶ “Sri Lanka: 10 Years Since Aid Worker Massacre,” Human Rights Watch news release, July 31, 2016, <https://www.hrw.org/news/2016/07/31/sri-lanka-10-years-aid-worker-massacre> (accessed March 14, 2018); Marisa de Silva, “His name is Kamaleswaran,” *Groundviews*, February 11, 2017, <http://groundviews.org/2017/02/11/his-name-is-kamaleswaran-justice-denied-to-survivors-of-the-kumarapuram-massacre/> (accessed March 14, 2018).

⁷ Human Rights Watch, “*Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka*,” November 10 2004, <https://www.hrw.org/report/2004/11/10/living-fear/child-soldiers-and-tamil-tigers-sri-lanka> (accessed February 2, 2018); Human Rights Watch, *War on the Displaced; Sri Lankan Army and LTTE Abuses against Civilians in the Vanni*, February 19, 2009, <https://www.hrw.org/report/2009/02/19/war-displaced/sri-lankan-army-and-ltte-abuses-against-civilians-vanni> (accessed March 14, 2018); Law & Society Trust, “*The Quest for Redemption: The Story of the Northern Muslims: The Final Report of the Commission on the Expulsion of the Northern Muslims by the LTTE in October 1990*,” 2012, <https://www.lstlanka.org/wp-content/uploads/2017/12/The-Quest-for-Redemption-Book-English.pdf> (accessed February 2, 2018); UN Human Rights Council, *Report of the OHCHR Investigation on Sri Lanka (OISL)*, September 16, 2015, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed March 5, 2018); University Teachers for Human Rights (Jaffna), “*Let Them Speak: Truth About Sri Lanka’s Victims of War*,” Special Report Number 34, December 13, 2009, <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm> (accessed February 2, 2018).

territory in the northern province, including the entirety of Kilinochchi and Mullaitivu districts, portions of other districts, and swaths of land in the eastern province.⁸

As the security forces battled to drive out the LTTE, in many areas deemed militarily vulnerable the state established exclusive militarized zones referred to as High Security Zones (HSZs) where civilians were not able to reside or enter. Although not all these areas were legally declared HSZs, they de facto functioned as such.

Aftermath of the War and Militarization

At the end of the war in May 2009, land held by the military could be grouped into three main categories.

First were areas where the LTTE had functioned as the de facto administration prior to its final defeat.⁹ As the LTTE withdrew along with the predominantly Tamil civilian population, and the army secured control, these areas became completely depopulated. A second category included areas that once bordered LTTE-controlled areas such as the southern sections of the Jaffna peninsula and the northern portions of Mannar, Vavuniya, and Mullaitivu, which were heavily mined and had no or very few civilian settlements.¹⁰ A third category were areas where the security forces had exclusive control for years if not decades, and no civilian settlement or access was permitted. This included individual houses occupied by the security forces.

After the military victory in 2009, the government then led by President Mahinda Rajapaksa gradually released some of the military-controlled land for civilian resettlement, including some areas held previously by the LTTE in Kilinochchi and Mullaitivu districts. However, the government made no substantive effort to address the land ownership claims of many of the people whose land remained in military control. In fact, in the years

⁸ International Crisis Group, “*Sri Lanka: The Failure of the Peace Process*,” *Crisis Group Asia Report N°124*, November 28, 2006, <https://d2o71andvipowj.cloudfront.net/124-sri-lanka-the-failure-of-the-peace-process.pdf> (accessed February 26, 2018).

⁹ The area under de facto LTTE administration was called the Vanni covering almost all of Kilinochchi and Mullaitivu districts, and portions of the Mannar, Vavuniya, and Jaffna districts. See International Crisis Group, “*Sri Lanka: The Failure of the Peace Process*,” November 28, 2006, <https://d2o71andvipowj.cloudfront.net/124-sri-lanka-the-failure-of-the-peace-process.pdf> (accessed February 26, 2018).

¹⁰ Mines Advisory Group, “Sri Lanka declares first district safe from landmines, thanks to work by MAG deminers,” June 21, 2017, <https://reliefweb.int/report/sri-lanka/sri-lanka-declares-first-district-safe-landmines-thanks-work-mag-deminers> (accessed March 14, 2018).

immediately following the war security forces and police forcibly occupied new land, displacing more civilians or preventing their access to land they had long used.

As the Rajapaksa government sought to consolidate its power, it became increasingly authoritarian, eroding democratic systems and stifling public space for dissent.¹¹ The government claimed that it had fought a “humanitarian operation” with “zero civilian casualties.”¹² It refused to take any serious steps towards accountability, despite the mounting evidence of violations of the laws of war by government forces, particularly in the final months of the fighting.¹³

The Rajapaksa government also announced plans to expand the size of the military, as opposed to an expected demobilization.¹⁴ The estimated 243,000 active duty personnel served as an added rationale for the continuing demand for land for military camps or bases.¹⁵ Most were located in the north, where the fighting was most intense and most of the country’s Tamils lived. Three years after the war, the military-to-civilian ratio in the north was estimated by one study to be higher than in any of the world’s other conflict

¹¹ Rajapaksa’s government was increasingly characterized by a populist authoritarianism and a silencing of dissent, including of civil society groups, the media and activists. With increasing international attention and scrutiny, particularly to grave violations committed toward the end of the war, the Rajapaksa government created commissions that were supposed to identify ways forward. Fundamental issues such as a political solution to address the ethnic conflict, or efforts to trace the missing and disappeared, were set aside, as the government pushed forward its own vision of peace through development. The government continued to prioritize ostensible national security concerns over rights, which meant that on issues such as the release of land, the government approach proved to be both opaque and dilatory. See “Joint Civil Society Memorandum to the Human Rights Council and the International Community,” Centre for Policy Alternatives, 2014, <http://www.cpalanka.org/joint-civil-society-memorandum-to-the-human-rights-council-and-the-international-community/> (accessed February 15 2018); OHCHR, “Opening Remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference in Colombo, August 31, 2013,” <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13673> (accessed February 10 2018); Centre for Policy Alternatives, “A List of Commissions and Committees Appointed by the GoSL (2006-2013),” January 2013, <http://www.cpalanka.org/a-list-of-commissions-and-committees-appointed-by-gosl-2006-2013/> (accessed February 15 2018); ‘International Bar Association Condemns Attack on Judiciary,’ *Colombo Telegraph*, October 31, 2012, <https://www.colombotelegraph.com/index.php/international-bar-association-condemns-attacks-on-judiciary/> (accessed February 15, 2018).

¹² Keynote Address by President Mahinda Rajapaksa to the Honorary Consuls of Sri Lanka abroad, January 19, 2009, <http://www.mfa.gov.lk/keynote-address-by-president-mahinda-rajapaksa-to-the-honorary-consuls-of-sri-lanka-abroad/> (accessed March 14, 2018).

¹³ Office of the United Nations High Commissioner for Human Rights, *Report of the OHCHR Investigation on Sri Lanka*, September 16, 2015, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed February 24, 2018); Channel 4 News, “New Sri Lanka ‘war crimes’ evidence,” <https://www.youtube.com/watch?v=jZC1uclgbc0> (accessed March 5, 2018); Channel 4 News, “Sri Lanka’s Killing Fields by Channel 4,” <https://vimeo.com/26647448> (accessed March 5, 2018).

¹⁴ Charles Haviland, “Sri Lanka’s expanding peacetime army,” *BBC News*, June 29, 2009, http://news.bbc.co.uk/2/hi/south_asia/8121385.stm (accessed March 14, 2018).

¹⁵ International Institute for Strategic Studies, “*The Military Balance*,” February 14, 2017, p.329.

areas.¹⁶ According to another study by a research and advocacy organization based in the north:

A very conservative estimate of the Sri Lankan Army's presence in Mullaitivu District is 60,000 personnel—1 soldier for every 2 civilians—making it one of the most heavily militarized regions in the world. This presence is grossly disproportionate to the country as a whole – 25% of the Sri Lankan Army is deployed in a District comprising 0.6% of the Sri Lankan population.¹⁷

In addition to this growth in size, the military also expanded in terms of its functions, adding new tasks of governance and administration and becoming a more powerful actor in post-war Sri Lanka.¹⁸ The issue of land release is thus part of a larger challenge of demilitarization. The dominance of the national security agenda made it difficult for affected communities, activists, and politicians to advocate for the release of lands without being accused of anti-nationalism.

New Government and Promised Reform

In January 2015, Sri Lanka underwent a dramatic political shift with the election of a new president, Maithripala Sirisena, on a platform of good governance (Yahapalanaya).¹⁹ Following parliamentary elections in August of that year, the coalition government, which included both main national political parties, the United National Party (UNP) and the Sri

¹⁶ Notes on the Military Presence in Sri Lanka's Northern Province, *Economic & Political Weekly*, July 12, 2012, <https://www.colombotelegraph.com/index.php/notes-on-the-military-presence-in-sri-lankas-northern-province/> (accessed February 5, 2018).

¹⁷ Adayaalam Centre for Policy Research (ACPR) and People for Equality and Relief in Lanka (PEARL), *Normalising the Abnormal – The Militarisation of Mullaitivu*, October 4, 2017, <http://adayaalam.org/release-normalising-the-abnormal-the-militarisation-of-mullaitivu/> (accessed February 15, 2018).

¹⁸ Gotabaya Rajapaksa, brother of then-President Mahinda Rajapaksa, was defense secretary. Under his charge, the Ministry of Defense acquired additional civilian responsibilities such as urban development. The military even controlled the NGO Secretariat that is responsible for overseeing civil society organizations, leading to a chilling effect on freedom of speech and association. In addition, former military personnel were appointed to key roles of civilian administration, including as governors of the Northern and Eastern Provinces. This resulted in ever-increasing military involvement in the day-to-day governance of Sri Lanka, including in the evictions of persons from lower income settlements in Colombo, which were on occasion carried out in the style of a military operation. Further, the military expanded its operations to take on a variety of tasks including, but not limited to, running pre-schools, tourist resorts, whale-watching and helicopter tours, private security services, farms, and roadside retail and welfare shops and eateries.

¹⁹ Presidential Secretariat Sri Lanka, "People will benefit from the govt of good governance – President," March 19, 2016, <http://www.presidentsoffice.gov.lk/?p=2233> (accessed March 14, 2018).

Lanka Freedom Party (SLFP), was further strengthened. This offered a historic opportunity to address a host of problems including land returns.

The new government signaled an important policy shift due to a number of reasons including its alliance with the main ethnic minority parties, particularly the Tamil National Alliance (TNA).²⁰ Statements made over the course of 2015-16 suggested that the government acknowledged key problems relating to the conflict and was committed to addressing them.²¹

In October 2015, the Sri Lankan government co-sponsored Resolution 30/1 at the UNHRC to address transitional justice issues.²² The government established the Consultation Task Force on Reconciliation Mechanisms (CTF) to gather suggestions and remedies directly from the public, particularly victims, who among multiple issues raised concerns over military occupation of land.²³ The CTF held hearings across the country. The government also held consultations around a proposed new constitution.²⁴ In addition, in a sign of its commitment, the government passed key pieces of legislation, including acts on the Right to Information and Office on Missing Persons.²⁵ It also approved the National Policy on

²⁰ D.B.S. Jeyaraj, "How and why the TNA helped defeat the no confidence motion against Premier Wickremasinghe," April 16, 2018, <http://dbsjeyaraj.com/dbsj/archives/58780> (accessed April 17, 2018).

²¹ President of Sri Lanka, "The Inaugural Address of President Maithripala Sirisena from the Hollowed Precincts of the Most Sacred Sri Dalada Maligawa in Kandy," January 11, 2015, <http://www.president.gov.lk/the-inaugural-address-of-president-maithripala-sirisena-from-the-hollowed-precincts-of-the-most-sacred-sri-dalada-maligawa-in-kandy/> (accessed January 30, 2017); "Statement by Mangala Samaraweera at the of the UNHRC, Geneva," News.lk, September 15, 2015, <http://www.news.lk/fetures/item/9742-statement-by-mangala-samaraweera-at-the-30th-session-of-the-unhrc-geneva> (accessed January 30, 2017).

²² Human Rights Council, Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/RES/30/1, October 14, 2015, <http://www.refworld.org/docid/56b1bdb64.html> (accessed August 19, 2017). In the resolution the government agreed to set up four mechanisms to deal with transitional justice issues: an office of missing persons, an office for reparations, a truth commission and a judicial mechanism with a special counsel.

²³ Secretariat for Coordinating Reconciliation Mechanisms, Consultations, <https://www.scrm.gov.lk/consultations>, (accessed March 5, 2018).

²⁴ Final Report on Public Representations Committee on Constitutional Reform – Full Text in Three Languages, *Colombo Telegraph*, May 31, 2016, <https://www.colombotelegraph.com/index.php/final-report-of-public-representations-committee-on-constitutional-reform-full-texts-in-three-languages/> (accessed March 5, 2018).

²⁵ President Sirisena made a number of commitments including a 100 Day Program to achieve in his first 100 days. See <http://www.manthri.lk/en/maithrimeter> (accessed February 20, 2018); Right to Information Act, Parliament of the Democratic Socialist Republic of Sri Lanka, August 4, 2016, https://www.rti.gov.lk/images/resources/RTI_Act_Sri_Lanka_E.pdf (accessed March 5, 2018); "President signs Office of Missing Persons Act," *Daily Mirror*, July 20, 2017, <http://www.dailymirror.lk/article/President-signs-Office-of-Missing-Persons-Act-133187.html> (accessed March 5, 2018).

Durable Solutions for Conflict Affected Persons Affected by Conflict Related Displacement and the National Policy on Reconciliation and Coexistence.²⁶

However, by 2018, three years into its term, the government's progress on these issues has faltered. As noted by the UN special rapporteur on countering terrorism, Ben Emmerson, following an official visit to Sri Lanka in July 2017, progress in achieving the key goals "have ground to a virtual halt."²⁷

On issues of transitional justice, the government has reneged on some key commitments it made to the Human Rights Council.²⁸ This appears to be motivated, in part, by the Sirisena government's concerns with maintaining the support of the majority Sinhalese electoral base, particularly following its landslide defeat in February 2018 local elections.²⁹ The government's failure to move ahead on the constitutional reform process and the slow response to anti-Muslim violence in Kandy in March, have also raised concerns over its commitment to minority rights.³⁰

Although in recent interviews the army chief has said that the military supports land release and notwithstanding some prior positive symbolic gestures by authorities, the promise of demilitarization remains a distant goal.³¹ The victorious military commands

²⁶ Ministry of Prison Reforms, "Rehabilitation, Resettlement and Prison Reforms,"

<http://resettlementmin.gov.lk/site/images/stories/pdf/final%20policy.pdf> (accessed March 5, 2018); Office of National Unity and Reconciliation, "National Policy of Reconciliation and Coexistence Launched," March 1, 2018, <http://onur.gov.lk/2018/03/01/national-policy-on-reconciliation-and-co-existence-in-sri-lanka-launched/> (accessed March 5, 2018).

²⁷ United Nations, "Full Statement by Ben Emmerson, UN Special Rapporteur on human rights and counter-terrorism, at the conclusion of his official visit," July 14, 2017, <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/> (accessed August 19, 2017).

²⁸ Tharushan Fernando, "President rejects call for hybrid courts and foreign judges," *News First*, March 4, 2017, <https://www.newsfirst.lk/2017/03/president-rejects-calls-hybrid-courts-foreign-judges/> (accessed February 2, 2018).

²⁹ Of the 340 local authorities, the joint opposition headed by former president Mahinda Rajapaksa won the largest number of seats in 241 authorities. See "Local Government 2018 Result," *Daily News*, February 12, 2018, <http://www.dailynews.lk/2018/02/12/political/142565/local-government-election-2018-results> (accessed March 5, 2018).

³⁰ Nuksha Nafeel, "Sri Lanka Failed as a Nation," *Daily News*, March 15, 2018, <http://www.dailynews.lk/2018/03/15/features/145572/sri-lanka-failed-nation> (accessed March 18, 2018); Zaheena Rasheed & Irfan Cader, "Sri Lanka 'on the brink' amid fresh anti-Muslim violence," *Al Jazeera*, March 8, 2017, <https://www.aljazeera.com/news/2018/03/sri-lanka-brink-fresh-anti-muslim-violence-180307203031915.html> (accessed February 5, 2018).

³¹ Meera Srinivasan, "Sri Lanka is the only country that has eradicated terrorism," *The Hindu*, May 16, 2018, <http://www.thehindu.com/opinion/interview/sri-lanka-is-the-only-country-that-has-eradicated-terrorism/article23895657.ece> (accessed June 19, 2018); Then-Foreign Minister Mangala Samaraweera said in July 2016, that

popular support among the Sinhalese population and there is little pressure on authorities to demilitarize, demobilize, and introduce security sector reform.³² Recent statements have also raised concerns. The military has said that it is the only institution with the “capacity” to rebuild the north, and that therefore it is imperative to continue deployment indefinitely to restore normalcy.³³ Further reiterating its autonomy, the army chief “reminded” beneficiaries to a housing project that the military not only had the power give, but also take back.³⁴

The national budgets following the end of the war, including after the new government came into power, have seen an increase in real allocation and proportion to defense, although the country is undertaking no active military operations.³⁵

Humanitarian and Political Aspects

Individuals and families whose homes remain occupied by the military and who are unable to return face imposing barriers to rebuilding their lives and livelihoods, and to remedying the economic, social, and psychological impact of conflict.

Military occupation of land remains one of the primary contributors to conflict displacement. Some of those displaced during the conflict were forced into abject conditions in welfare centers. Sri Lankan authorities contend that they have made steady

the government hoped to “complete the demilitarization process, not only in the north-east, but the rest of the country too” by 2018. See “Sri Lanka aims to demilitarize island by 2018,” AFP, July 7, 2016, <http://saudigazette.com.sa/article/158600/Sri-Lanka-aims-to-demilitarize-island-by-2018> (accessed February 15, 2018).

³² “Army Commander Mahesh Senanayake warned war affected IDPs who were given 25 military-built houses last week in #Thellipalai that military can take back whatever it pleases; he repeated the message to the translator, making sure his warning gets translated from #Sinhala to #Tamil,” Garikaalan, Tweet, 6:31 a.m., April 3, 2018, <https://twitter.com/garikaalan/status/981167381211897858?s=19>, (accessed April 20, 2018).

³³ Meera Srinivasan, “Sri Lanka is the only country that has eradicated terrorism,” *The Hindu*, May 16, 2018, <https://www.thehindu.com/opinion/interview/sri-lanka-is-the-only-country-that-has-eradicated-terrorism/article23895657.ece> (accessed March 5, 2018).

³⁴ “Military can take back whatever it releases, SL commander tells uprooted people in Jaffna,” TamilNet, March 31, 2018, <https://www.tamilnet.com/art.html?catid=13&artid=39020> (accessed July 9, 2018).

³⁵ In the 2017 budget, defense was allocated a 2.7 percent increase, and remains the single largest item for expenditure at 260.7 billion Sri Lankan rupees (US\$1.7 billion) for recurrent expenditure and 30 billion rupees (US\$0.2 billion) for capital expenditure. This even after the Urban Development portfolio was taken out of defense ministry purview. “Defence tops 2018 budget,” *Daily News*, October 9, 2018, <http://www.dailynews.lk/2017/10/09/local/130614/defence-tops-2018-budget> (accessed March 5, 2018).

progress in the rehabilitation of displaced persons. However, in the northern city of Jaffna, thousands remain in welfare centers or with host families.³⁶

Military occupation of land also represents a challenge to long-term peace. Many affected individuals and communities see the continuing military presence and the extent of land still occupied almost 10 years after the war as a sign of a permanent militarization. The release of land is thus seen not merely as an issue of relocating troops and camps but also reducing military presence in the region. The failure to effectively settle grievances over military control of land will adversely impact reconciliation efforts because land is also commonly viewed as an underlying cause of the conflict, alongside discrimination based on language, religion, and ethnicity.

In addition, the central government's role in allocating state land to development projects and the settlement of Sinhalese from other parts of the country in Tamil-dominated northern and eastern areas under schemes such as Gal Oya and Weli Oya/Manal Aru has proved to be particularly contentious.³⁷ Many Tamils and Muslims perceive military occupation of land as being part of a longer historical, systematic pattern to alter demographics. Ongoing debates on constitutional reform thus feature efforts to more effectively devolve land powers to local governments.³⁸

³⁶ In 2016, the figures were 10,458 in welfare centers and 36,195 with host families according to the last official statistics on the website the Ministry of Rehabilitation, Resettlement, and Hindu Religious Affairs, July 31, 2016, http://resettlementmin.gov.lk/site/index.php?option=com_content&view=article&id=6&Itemid=22&lang=en (accessed May 5, 2018). The number still welfare centers have dropped since then according to local activists.

³⁷ Manal Aru or Weli-Oya (as it is known in Sinhala) is a state-sponsored population-transfer scheme. In the post-independence period under these schemes, families from the densely populated south of Sri Lanka were allotted land in the sparsely populated areas in the North Central, Eastern and Northern Provinces. These schemes were usually located near waterbodies and waterways such as the Mahaweli project, to create farming and fishing communities. Since irrigation settlements in the Northern and Eastern Provinces occurred under direct state sponsorship, and as most of these farmers were Sinhalese, the majority community, they appeared to be a deliberate attempt by the state to change the ethnic demography of the Tamil and Muslim-dominated areas. Over the decades, these schemes have been politically charged, and even became increasingly violent. See University Teachers for Human Rights (Jaffna), *From Manal Aru to Weli Oya and the Spirit of July 1983*, September 15, 1993, <http://www.uthr.org/SpecialReports/spreport5.htm> (accessed February 2, 2018); "Army Commander Mahesh Senanayake warned war affected IDPs who were given 25 military built houses last week in #Thellipalai that military can take back whatever it pleases; he repeated the message to the translator, making sure his warning gets translated from #Sinhala to #Tamil," Garikaalan, Twitter, 6:31 a.m., April 3, 2018. "<https://twitter.com/garikaalan/status/981167381211897858?s=19>, (accessed April 20, 2018).

³⁸ "Sri Lanka: Interim Report for Constitutional Reform: Principals of Devolution," *Sri Lanka Brief*, September 21, 2017, <http://srilankabrief.org/2017/09/sri-lanka-interim-report-for-constitutional-reform-principals-of-devolution/> (accessed March 5, 2018).

Protests

Protests by affected communities have compelled the authorities and others to recognize the issue of land occupation, and in specific instances, bring them to the negotiating table.

The reopening of democratic space following the electoral defeat of the Rajapaksa administration has given displaced communities more space to voice their concerns, and peaceful protests have proliferated. While many of these protests have been by families of the forcibly disappeared, there have also been several protests by displaced communities demanding the release of land occupied by the security forces.³⁹

Even prior to the change in government, affected communities organized demonstrations to highlight their situation. When the navy refused to vacate Silavathurai, a village on the Mannar coast in the northwest, on May 23, 2010, approximately 25 people from the local community staged a demonstration with placards demanding their lands be given back during a visit by Basil Rajapaksa, a minister and brother of the president.⁴⁰ Such was the environment at that time, 12 protesters were taken in for questioning and were allegedly threatened, resulting in an end to public protests by the community.⁴¹ The community in Keppapulavu also carried out a number of protests during the Rajapaksa period.

However, a significant feature of the protests since the election of a new government is that they have been continuous.⁴² From Mullikulam and Iranatheevu in the northwest, to

³⁹ There have also been sit-in protests by families of the forcibly disappeared and supporters in Maruthankerny, Killinochchi, Mulaitivu, Vavuniya, and Trincomalee. See Ruki Fernando, “We vehemently refuse to be deceived again”: Protests by families of disappeared, continuing abductions and empty promises,” *Groundviews*, August 30, 2017, <https://groundviews.org/2017/08/30/we-vehemently-refuse-to-be-deceived-again-protests-by-families-of-disappeared-continuing-abductions-and-empty-promises/> (accessed February 26, 2018); Selvaraja Ragasegar, “In Their Absence: Families of the Disappeared Share Their Keepsakes,” *Groundviews*, December 10, 2017, <http://groundviews.org/2017/12/10/in-their-absence-families-of-the-disappeared-share-treasured-keepsakes/> (accessed February 26, 2018).

⁴⁰ “Protestors Arrested in Silavathurai,” *Sri Lanka Guardian*, May 30, 2010, <https://www.slguardian.org/protesters-arrested-in-silavathuri-mannar/> (accessed March 10, 2018).

⁴¹ Human Rights Watch interview with community leader, name withheld, Silavathurai, October 30, 2017; Mujeeb ur Rahman tweet, https://twitter.com/Mujeeb_UrRahman/status/999200431476621312 (accessed March 10, 2018).

⁴² The mushrooming of protests seems to have been spontaneous rather than a coordinated response. In interviews with Human Rights Watch, protesters did not appear to have much knowledge of land protests in other locations. While they did mention outside support, including financial contributions from activists, civil society organizations, politicians, and the Tamil diaspora, it appears that decision-making is very localized as there is distrust that outsiders will betray the community. Especially given the failed promises in sites such as Mullikulam and Panama, the conversations within the community are of the need to carry out sustained protests since negotiations are considered ineffectual.

Keppapulavu and Puthukuduyirrupu in the heartland of the Vanni in the north, to Panama in the southeast, displaced communities are demanding land release by staging protests extending over weeks and months. In some instances, the protests have continued for over a year.⁴³

For example, the Keppapulavu families, who have held protests since 2012 demanding the release of their land, are now holding continuous protests.⁴⁴ The protesters insist that they will continue until all their land is released. “We first focused on Pilakudiyiruppu, as we felt that they may release that,” said protest leader K. Chandraleela. “But we are fighting for all. We will wait and see progress.”⁴⁵

Women play a central role in protests from Panama to Mullikulam. Chandraleela explained: “The first thing in Mullaitivu is the fear. Men are not willing to come forward. Women can talk to anyone and get something.”⁴⁶ The protests, however, take a toll on income generation, health, and the education of children.

The assurances of releases and partial releases have resulted in some cases in the weakening or calling off of protests. Earlier, under the Rajapaksa government, protesting and dissent carried significant risks of threats, intimidation, interrogation, and even violence. The current government has not taken similar action. However, families still remain apprehensive of surveillance and of future repercussions.

⁴³ The multi-day protests function via rotation, where participating families sign up to a roster so that day-to-day life, be it income generation, education, household work, or the care for children and the elderly, can be sustained. Food is cooked communally for the protesters, and surrounding villagers bring food. The exposure to the heat, monsoon rain, dust, and insects, coupled with the economic loss, has had a significantly adverse impact on the health and well-being of the protesters. Even with a roster, normal life has been severely curtailed.

⁴⁴ Ruki Fernando, Marisa de Silva, and Swasthika Arulingam, “Broken promises: Kepapulavu displaced to restart fast unto death next week,” *Daily Financial Times*, July 15, 2016, <http://www.ft.lk/article/554936/ft> (accessed March 10, 2018).

⁴⁵ Human Rights Watch interview with K. Chandraleela, Keppapulavu, November 20, 2017.

⁴⁶ Ibid.

II. Cases of Land Occupation by Security Forces During the Armed Conflict

The Sri Lankan government elected in 2015 has committed to the release of land occupied during the war. On March 22, 2015, at a high-profile ceremony led by President Sirisena, the government handed over 425 acres of land in Jaffna.⁴⁷ It was the first in a series of releases of land in the north and east. In January 2016, after visiting internally displaced person (IDP) camps in Jaffna, Sirisena said: “This is an unacceptable situation. I want to end this problem once and for all ... For many people the main issue was lack of land and that is something we will resolve in the next six months.”⁴⁸ With this, the president suggested that there would be a shift from the previous administration on the issue of land release.

After the first release in Jaffna, the security forces have released most of the land occupied by the state in Sampur in Trincomalee, multiple sites in Telipallai including Urani and Myliddy Harbour in Jaffna district, and plots of lands in Omanthai in Vavuniya and Keppapulavu in Mullaitivu.⁴⁹ As of May, there had been two land releases in 2018. In an interview in *The Hindu*, the chief of army staff, Lieut. Gen. Mahesh Senanayake, said that 80 percent of the land had been released. He explained that since the new government

⁴⁷ “Government releases 425 acres of former HSZ land back to its rightful owners,” *Colombo Telegraph*, March 23, 2015, <https://www.colombotelegraph.com/index.php/govt-releases-425-acres-of-former-hsz-jaffna-lands-to-its-rightful-owners/> (accessed February 5, 2018).

⁴⁸ “President pledges land for 100,000 war victims,” *Sunday Times*, January 3, 2016, <http://www.sundaytimes.lk/article/91988/president-sirisena-pledges-land-for-100000-war-victims>, (accessed February 5, 2018).

⁴⁹ President’s Media Division, “President handed over land deeds to people in Sampur,” August 23, 2015, <http://www.pmdnews.lk/president-handed-over-land-deeds-to-people-in-sampur/> (accessed February 5, 2018); Sri Lanka Army, “700 title deeds of released land in Jaffna distributed among original owners,” March 13, 2016, <http://www.army.lk/news/700-title-deeds-released-land-jaffna-distributed-among-original-owners> (accessed February 5, 2018); Sri Lanka Army, “Urani fishermen get back to their livelihoods after 27 years,” January 18, 2017 (accessed February 5, 2018); Sri Lanka Army, “Mylady fisheries harbour and more lands to be released,” June 30, 2017, <http://www.army.lk/news/mylady-fisheries-harbour-more-lands-be-released> (accessed February 5, 2018); Sri Lanka Army, “16-acre land portion in Omanthai area to be released,” January 16, 2017 <http://www.army.lk/news/16-acre-land-portion-omanthai-area-released> (accessed February 5, 2018) Sri Lanka Army, “189 acres of Mullaitivu lands released to civilians,” July 19, 2017, <http://www.army.lk/news/189-acres-mullaitivu-lands-released-civilians> (accessed February 5, 2018).

took office in 2015, the military had been making decisions on land returns without “politicization or pressure.”⁵⁰

Despite this progress, the pace did not match the six-month deadline set by the president in January 2016, and furthermore it appears to be slowing down, raising concerns about political will. A particularly worrying sign came in September 2017 when government representatives met the UN secretary-general in New York and provided a document stating that only 47 acres were to be released in 2018 with none proposed for 2019.

The steps taken by the government to release land, although positive, have brought out what appears to be a fundamental problem in the process: there is no a comprehensive approach to mapping and releasing the lands under military occupation in a systematic and transparent manner. The military remains the key, and largely unchecked, authority on release of land.

Described below are cases where land has been partially released, where land release is stalled, or where there are no assurances of return.

Partial or Stalled Release of Land

Described below are cases in which the authorities made promises of release. In some cases, the land was released, most often partially. In others, even after firm assurances following protests, there has been no substantive progress.

Keppapulavu, Mullaitivu district

Keppapulavu from 2015-2017 underwent a significant shift from being closed off to civilians due to occupation by the army and air force to a phased release of two portions of land. One of the longest protests against military occupation of land following the end of the war took place in Keppapulavu.⁵¹ Although the center of the village remains under army

⁵⁰ Meera Srinivasan, “Sri Lanka is the only country that has eradicated terrorism,” *The Hindu*, May 16, 2018, <http://www.thehindu.com/opinion/interview/sri-lanka-is-the-only-country-that-has-eradicated-terrorism/article23895657.ece> (accessed June 19, 2018).

⁵¹ Dilrukshi Handunnetti, “528 Acres of Residential and 684 Acres of Agricultural Lands in Keppapulavu Occupied by Military Without Paying Compensation to Displaced Owners,” October 14, 2012, <http://dbsjeyaraj.com/dbsj/archives/11651> (accessed November 15, 2017); The Social Architects, “Land Expropriation and Deception in Kepapilavu,” May 24, 2013, Sri Lanka Campaign for Peace and Justice, <https://www.srilankacampaign.org/land-expropriation-and-deception-in-Keppapulavu/> (accessed October 20, 2017).

occupation, the progress is still demonstrable. The release marks a significant success for the local community who have persisted despite intimidation and bribery offers.

Residents fled the area in December 2008, retreating with LTTE forces, as the fighting intensified. The advancing government forces later took the land, and over time set up army and air force camps. The authorities have often represented Keppapulavu as a *Maveerar* (martyr) village, where the LTTE relocated some families of their cadre killed in combat. However, the 54 *Maveerar* families constitute a small percentage of the village population, which includes many others that have lived there for generations.⁵² An *aiyar* (Hindu priest), Aarumugam Velayuthapillai, told Human Rights Watch: “Our family has been here 200 years. For eight generations we have served here. The army offered me money and land to stop protesting. I can’t sell them my motherland because I obtained it through my ancestors.”⁵³

While there are conflicting claims by original owners and families settled by the LTTE, those with original titles say they are willing to accommodate the later inhabitants. Chandraleela, one of the original residents, said that when they were summoned to meet the then-President Rajapaksa in 2010, the families clarified their claims: “He said that the land was provided to *Maveerar* families. But I had taken 60 deeds and 20 permits to prove that this was not the case. After that we received a letter from the Presidential Secretariat that this land was for the people. But nothing happened after the letter.”⁵⁴ In 2011, residents filed an appeal in the courts.

After the new government took charge in 2015, on January 30, 2017, the *grama sevaka* (local administrator) announced that land would be released. However, on the day, the release did not take place. In April 2017, protest leaders, accompanied by Tamil politicians, met with the army and reached an oral agreement that 100 acres would be released. The release date was again postponed, however.⁵⁵

⁵² In Keppapulavu and across the north and east, the emotional link between the land and communities was repeatedly stressed. “This is our *thai veedu*,” Chandraleela, one of the protest leaders, told Human Rights Watch, using a phrase in Tamil that literally translates to “mother’s house,” but connotes a larger concept of motherland.

⁵³ Human Rights Watch interview with K. Chandraleela, Keppapulavu, Mullaitivu, November 20, 2017.

⁵⁴ Ibid.

⁵⁵ In this case, the apparent delay was the allocation of finances to the military. In July 2017, the Ministry of Resettlement, Rehabilitation, Prison Reform, and Hindu Affairs allocated 143 million rupees for the relocation of the military from Keppapulavu. It is unclear why this allocation was provided by the Resettlement Ministry and not by the Ministry of Defense.

When Human Rights Watch visited the area in November 2017, protesters had been sitting outside the military headquarters for 265 days. This protest pushed the issue onto the national agenda. Numerous senior leaders and officials have attempted to persuade the protesters to go home, including Tamil political leaders. Velayuthapillai said the community has tried not to give in to pressure: “They did not say, ‘don’t strike.’ They said, ‘We will try to get your land back, so you should stop the protest.’ We said, ‘Release the land, and then we will stop the strike.’”⁵⁶

The releases eventually took place in phases. The first release was Pillakuduyirripu, the neighboring village, and on December 28, 2017, the military released a further 133 acres of land. The protesters, aware of properties that would remain in military custody, were already strategizing the next phase of their protest when Human Rights Watch met them in November. Chandraleela said:

We are told that 137 acres will be released, but my house is not a part of that. It is in the 70 acres that the army is trying to keep, which belongs to 37 families. The brigadier is living in my house. It’s a brick house. We built it in 2006. It’s a 2-acre land. It’s the land where I was born. It is our *purveeham kani* (ancestral lands). Eight generations have lived there.⁵⁷

As of May 2018, protests were continuing.

Mullikulam, Mannar District

On September 8, 2007, the people of Mullikulam were evacuated by the army ahead of a military operation to push out the LTTE and capture southern Mannar.⁵⁸ One of the villagers recalled, “We left without anything because the military told us that we could return in three days. Ten years later, we’re still waiting to go home.”⁵⁹

⁵⁶ Human Rights Watch interview with Velayuthapillai, Keppapulavu, Mullaitivu, November 20, 2017.

⁵⁷ Human Rights Watch interview with K. Chandraleela, Keppapulavu, Mullaitivu, November 20, 2017.

⁵⁸ Mullikulam was a fishing and farming village where about 400 Tamil Roman Catholic families resided for generations. Before their displacement, Mullikulam fishermen had access to nine *paadu*, where fishermen would fish for prawns and shallow water fish. Since 2013, the displaced villagers have only had access to four of the nine *paadu*. One *paadu* is an approximately 450 square-meter area of sea.

⁵⁹ Human Rights Watch group interview with villagers, Mullikulam, Mannar, October 30, 2017.

In April 2009, with the war nearing its end, the government commenced resettlement of southern Mannar, but the military retained exclusive control of Mullikulam. In 2010, in a move that signified its occupation of the land would be permanent, the navy established its North Western Naval Command Headquarters in Mullikulam.⁶⁰

More than 400 families were displaced and they started demanding their right to return.⁶¹ The Lessons Learnt and Reconciliation Commission (LLRC), established in 2010 by the Sri Lanka government to address conflict-related abuses, acknowledged this case.⁶² About 120 of these displaced families were eventually settled in Malankaadu, a forest area just beyond the Mullikulam border, where they live in squalid conditions. In 2013, the navy built 27 houses for some of the families in Malankaadu, but they are falling apart. The families insist they want to go home. Francis Croos, a village elder of Mullikulam said:

Now there is no war. It's now peace time. So why can't we go back home? I can understand that the navy needed to be here during the war for security purposes, but now there is no reason for them to remain in our home.⁶³

Villagers who had since the end of the war engaged in efforts to highlight their situation continued under the new government to sign petitions and hold protests. In March 2017, some of them decided to stage a continuous sit-in protest opposite the naval headquarters in Mullikulam.⁶⁴ A month later, on April 29, 2017, after negotiations between village representatives, the clergy, and the government, the navy agreed to release part of the

⁶⁰ Sri Lanka Army, "New North Western Naval Command Hqrs Declared Open," September 5, 2010, <http://www.army.lk/news/new-north-western-naval-command-hqrs-declared-open> (accessed March 21, 2018).

⁶¹ In 2010, Bishop Joseph wrote letters of appeal to then-President Rajapaksa and the additional secretary of defense, asking for the release of Mullikulam, all to no avail. See Kusal Perera, "Sky No Roof – A true story about Naval occupation of a village and a people's relentless to go back home," 2013, <https://drive.google.com/open?id=oBzO8SAlmDKanZmNoTXRRdjNyR1k> (accessed November 20, 2017).

⁶² The Lessons Learnt and Reconciliation Commission (LLRC), a presidential commission of inquiry, was established by the Rajapaksa government to examine the causes for the war and to recommend measures to address the war and its outcome. It was established in May 2010, reportedly due to international pressure relating to alleged war crimes. "Report of the Commission of Inquiry on Lessons Learnt and Reconciliation," November 2011, <http://slmbassyusa.org/downloads/LLRC-REPORT.pdf> (accessed June 19, 2018); A submission to the LLRC in 2011 by Bishop Joseph highlighted the case of the navy occupation of Mullikulam. The LLRC report acknowledged the land struggle in Mullikulam, and stated that "new land has been identified in Kayakuli" for 150 displaced families. Rt. Rev. Dr. Rayappu Joseph, Rev. Fr. Victor Sosai, and Rev. Fr. Xavier Croos, "LLRC: Submission by the Catholic Diocese of Mannar," *Sri Lanka Guardian*, January 10, 2011, <http://www.srilankaguardian.org/2011/01/llrc-submission-by-catholic-diocese-of.html> (accessed March 21, 2018).

⁶³ Human Rights Watch interview with J. Francis Croos, Mullikulam, Mannar, October 30, 2017.

⁶⁴ Human Rights Watch interview with Gloria Peiris, Mullikulam, Mannar, October 30, 2017.

land.⁶⁵ The vicar and leaders of the Tamil National Alliance (TNA) assured the people that they were getting “more than they had expected.”⁶⁶ Although the community was distrustful they agreed to call off the protest.

Subsequently, the navy requested an additional eight months to vacate the 27 private houses but did not even mention return of the surrounding land. Four months later, on August 6, 2017, the people of Mullikulam wrote to the vicar, asking him to follow-up with the relevant authorities and end their continued suffering.⁶⁷

Mullikulam had more than 1,200 acres of cultivation land as well as residential and community buildings. But the navy had only promised to return 100 acres. Gloria Peiris, a protest leader said:

In October, the survey department visited us and told us that a 100-acre plot had been surveyed and would be released to the people. This plot would include the main church, the school, 27 private houses, two tanks [man-made lakes] and some cultivation lands. This release, if it ever takes place, is barely adequate, as only a few of us will get our land back, when so many of us have been protesting over the years.⁶⁸

Until 2016, the villagers only had highly restricted access to their parish church, situated right in the heart of the village. The LLRC recommended prompt action to “remove any remaining restrictions on visiting places of worship.”⁶⁹ Since 2016, villagers have access to their church, with the navy providing a bus service to take them to Mass on Sundays. When Human Rights Watch visited in November 2017, the villagers, tired of waiting for the release of their land, were contemplating relaunching their protest.

⁶⁵ Sri Lanka Navy, “Navy assures to release approx. 100 acres of land for the Mullikulam public,” April 29, 2017, <http://news.navy.lk/eventnews/2017/04/29/201704291945/> (accessed March 21, 2018).

⁶⁶ Human Rights Watch interviews with Mullikulam villagers, Mullikulam, Mannar, October 30, 2017.

⁶⁷ Ibid.

⁶⁸ Human Rights Watch interview with Gloria Peiris, Mullikulam, Mannar, October 30, 2017. According to villagers, when they were forced out of their homes in 2007, they left behind 100 permanent houses and 50 mud and thatched houses. There was also the church, a cooperative, three schools, a pre-school, two hospitals, a library, a post-office, six public, and four private wells, and nine tanks. The people still do not have access to eight of the nine tanks, and only 27 houses, now occupied by navy families, of the 150 houses, remain intact.

Konapalam IDP Camp (Welfare Center), Jaffna District

For displaced people living in “welfare centers,” as IDP camps are called, or in other locations on the Jaffna peninsula, President Sirisena’s pledge of a six-month solution in January 2016 generated hope. Even as the military released some of the land it had occupied, the process has not met expectations.

Konapalam camp is one of the many temporary camps for displaced persons. While several families moved out after the end of the war, among the 75 families still living there is 63-year-old V. Dara Singh. His family was displaced from KKS in 1990. He says he has moved from place to place until he settled at the Konapalam camp. A daily laborer and father of three, he said it is hard to make ends meet: “The war is finished, but innocent people are still suffering in IDP camps. People think that now that the war is over, everything is okay. They must know the truth.”⁷⁰

In 2011, state-provided rations for “Old IDPs,” as they are termed in Sri Lanka, was phased out, leaving families to support themselves.⁷¹ The only assistance still provided is water and minimal camp maintenance. Living conditions within the camp are poor. A female resident said:

It is very difficult to live in makeshift houses especially during the monsoon, as the roof leaks and water seeps into the house. We can bathe at the common wells but we have to walk quite a bit to go to the toilet. Five families pooled together and bought a tube well and motor. We didn’t get any assistance from the government. As most, if not all, of this camp has been built on private land, our camp leader told us that the owners have asked that we too leave as soon as possible. The owners live in the vicinity, so they could evict us at any time.⁷²

⁷⁰ Human Rights Watch interview with V. Dara Singh, Konapalam Camp, November 16, 2017.

⁷¹ Mirak Raheem, “*Protracted Displacement, Urgent Solutions – Prospects for Durable Solutions in Sri Lanka*,” Centre for Policy Alternatives, September 2013.

⁷² Human Rights Watch interview with female camp resident, name withheld, Konapalam Camp, November 16, 2017.

Another man said, “The government wants to show that there are no IDP camps anymore, so they’re rushing to relocate people. But, even those from our camp who were relocated to Keerimalai in a housing scheme built by the military are still suffering.”⁷³

The government made a special offer to those in the camp that are landless, promising 400,000 rupees (US\$2,540) to purchase land and 800,000 rupees (US\$5,080) to build a house. But considering the shortage of land in Jaffna, the prices are high and the money offered is insufficient. T. Pilliyan Thavam, a 59-year-old president of the Mallakam North Konapalam Welfare Center, said the community is now disappointed. He contended that the army had tricked community leaders into signing their land over to the military:

The president [Maithripala Sirisena] visited my home when he visited our camp in 2015 and told me that we would all be resettled within six months. It has been more than two years now, and we’re still suffering here. In 2015, all the IDP camp leaders went with copies of people’s land deeds to meet the army commander in Palali, to appeal for the release of their lands. The commander got us to sign some documents written in Sinhala. Soon after we had signed, he told us that we had signed over our lands to the army, and that we should not complain any more. I tore my shirt in anger and shouted at them that they had tricked us. “We are poor people with no proper place to live. Please release our lands,” I begged him. He told us that the military needed land in Palali and offered us alternate land. We stuck to our demand to return to our own land.⁷⁴

Iranatheevu, Kilinochchi District

Iranatheevu is an example of residents successfully reclaiming their land by forcing their way back after years of stalled returns. The residents said they were forced to take these steps because the government repeatedly failed to respond to their requests to return their land.

Iranatheevu consists of two islands situated off the northwest of the mainland and is predominantly Roman Catholic. During the war, 225 families fled their homes in 1992 and the island was subsequently occupied by the navy. Over time, some of the displaced

⁷³ Human Rights Watch interview with male camp resident, name withheld, November 16, 2017.

⁷⁴ Human Rights Watch interview with Pilliyan Thavam, Konapalam Camp, November 16, 2017.

settled in one site on the mainland, which is treated as a de facto relocation site by the authorities, and is called Iranaimatha Nagar, in memory of their home village. Since the end of the war, the residents had been hoping to return to Iranatheevu. A former resident, R. Douglas said:

We had about 150 brick houses intact when we left in 1992. They were all located very near each other, as that's how we lived then. We had more than enough to live on before. Now we are living like beggars.⁷⁵

When Human Rights Watch visited in November 2017, the people of Iranatheevu had been protesting for nearly a year, demanding their right to return to their original homes. In May 2017, they had submitted a memorandum of demands to the Poonakary divisional secretary's office and then set up a protest site on the beach where they protested continuously for 99 days.⁷⁶ Thereafter, due to the onset of the monsoons, they were forced to shift to the Ave Maria church premises in Iranaimatha Nagar.

The protests compelled the authorities to pay attention, as the people staged demonstrations in front of government offices and blocked the main highway.⁷⁷ In response to an appeal from the Rural Development Society (RDS) of Iranaimatha Nagar, the additional secretary to the president, Sunanda Kariyawasam, instructed the defense ministry in a letter dated August 9, 2017 to "take appropriate actions in this regard."⁷⁸ In October 2017, the survey department visited Iranatheevu. The people offered their assistance to help show the staff their individual plots and boundaries, but the navy had denied them permission.⁷⁹

On April 23, 2018, residents of Iranatheevu boarded boats, went back to their island, and camped out. Finally, on May 7, the government relented and agreed that they could return permanently. At the time of writing approximately 200 families had returned to their homes.

⁷⁵ Human Rights Watch interview with R. Douglas, Iranaimatha Nagar, Kilinochchi, November 13, 2017.

⁷⁶ The District Secretary is the senior most official at the district level responsible for administration on behalf of the central government.

⁷⁷ On the 29th day of their protest, 10 busloads of protesters met with the district secretary of Kilinochchi; On the 54th day of their protest, the villagers blocked the main A32 highway for an hour, demanding a speedy resolution to their problem.

⁷⁸ Letter from Sunanda Kariyawasam to the defense ministry, August 9, 2017. Copy on file with Human Rights Watch.

⁷⁹ Human Rights Watch interview with displaced community from Iranaitheevu, Kilinochchi, November 13, 2017.

J/Nadeswara College, Kankesanthurai, Jaffna District

Once one of the leading schools in Jaffna, J/Nadeswara College was formally reopened after more than 26 years on March 12, 2016.⁸⁰ It had been closed since June 1990, when security forces dropped notices from helicopters asking residents to evacuate the area ahead of security operations. The area was then placed off-limits by the military as a high security zone (HFZ).⁸¹

A. Kunabalasingham, 70, president of the Valikamam North Rehabilitation and Resettlement Committee, said that since the war ended, J/Nadeswara College has been struggling to re-establish itself and restore its past reputation. During the war, the school continued to operate, with students attending classes in houses or other buildings. But the venue moved several times as the communities from which the school drew its students were displaced a number of times.⁸²

Even though the government claims to have returned the school to its administrators, security forces continue to occupy portions, contributing to low enrollment. In addition, the continuing occupation of some of the school land has also affected the school's ability to provide full services to its students. Kunabalasingham said,

At one time, there used to be 2000 students attending the school. But now, we only have 80-90 students, with no laboratory or library facilities. Why would anyone come here when we don't have any facilities? As many areas in the immediate vicinity are still under military occupation, numbers attending our school have been quite low. Two adjoining school buildings and the school well (on approximately one-half an acre), are still being occupied by the police to serve as their kitchen. Not having our own well is particularly difficult as the children don't have access to clean drinking

⁸⁰ J/Nadeswara College is one of Jaffna's oldest schools, founded in 1901 by prominent Tamil scholar, V.C. Thambipillai. It was one of the leading schools in Jaffna, producing hundreds of professionals in the fields of engineering, medicine, arts and sciences. It continues to educate both boys and girls in the area.

⁸¹ Human Rights Watch interview with A. Kunabalasingham, president of the Valikamam North Rehabilitation and Resettlement Committee, Jaffna, November 15, 2017.

⁸² Before the building was returned, classes were being held in Mallakam, where 70-80 students attended. Students from Mallakam, Needhavan and Konapalam IDP camp, Thaiyiddy, Myliddy, Palali, Keerimalai, and Maviddapuram went to school there.

water. The students have to wait for water distribution by the *grama sevaka*.⁸³

Sampur, Trincomalee District

Sampur was the first major land release following the 2015 elections and symbolized the new government's commitment to the issue. In August 2015, 818 acres were handed over to Sampur's original residents, and a further 177 acres were released in March 2016. Even while it is presented as a model case for release, lingering land problems remain more than two years after the release.

When Human Rights Watch visited Sampur in August 2017, families had constructed shelters and commenced livelihoods, cultivating their lands and setting up small shops. They said, however, there was confusion relating to at least three sets of land problems.

The first related to those who lost their land due to the relocation of the new navy camp. The Sampur community was initially told that for the release to take place, an alternate location was required for the existing Vidura navy camp. For this purpose, 240 acres were identified that included both state land and private farm land. Some of these residents agreed because they were assured alternate land. However, as of November 2017, affected families were still waiting for the promised land compensation. Furthermore, residents and community leaders said that more than the initially proposed 240 acres was being occupied, and that a further 30 acres might also be taken over. As provincial council member and community leader M. Naheswaran acknowledged, they acted hastily in accepting the government's proposal: "We were afraid that the solution before us will disappear."⁸⁴

The legal status of released land is also unclear. While the Board of Investment (BOI) released 818 acres under its administration, there is continuing confusion as to the legal status of the land and hence to the validity of the residents' ownership documents. The land was actually initially slated for release in 2015 because the BOI had failed to follow procedure under Land Acquisition Act. However, state agencies in Trincomalee, including the district secretariat and the provincial land commissioner's office, are still awaiting a

⁸³ Human Rights Watch interview with A. Kunabalasingham, president of the Valikamam North Rehabilitation and Resettlement Committee, Jaffna, November 15, 2017.

⁸⁴ Human Rights Watch interview with P. Naheswaran, Sampur, August 11, 2017.

directive from the central government—such as a declaration of handover—because they believe the land is still vested with the state.⁸⁵ The lack of legal documentation is not merely unsettling for resident returnees but also has created practical problems: without clear ownership, families are unable to use their land as surety for loans to rebuild.

The area adjoining the BOI area, which serves as an unofficial buffer, is also privately claimed. Some families, who forcibly entered the area to reclaim their property, are now facing court cases.

Failure to Release Land or Property

In a number of occupied sites, the government has not yet committed to release land even though individual military staff or local government officials have pledged to do so.

Pallimunai, Mannar District

In some cases, different state agencies have exchanged control over properties without releasing the lands back to civilians. After the war ended, 23 families in Pallimunai were initially promised that their land and homes would be returned by the local police who were in occupation of these properties. Instead, the navy took over control of the land from the police and remain in control.

In 1990, all 600 families residing in Pallimunai were displaced by the war. When some of them returned in 1991, 50 houses were being occupied by the army. After four years, the army left, but the police moved in. Following an LTTE attack on June 6, 1994, the police fenced off 2.2 acres of private land and about 2 acres of state land and established their quarters. In addition, the police demolished six houses. However, the police started paying rent to the owners of the occupied land and properties, including arrears from 1990. Although the amounts were small, this rental served to acknowledge the private ownership of these properties.⁸⁶ The navy also operated in the region.

On April 12, 2012, three years after the war ended, the police informed the owners that they could now return to their homes. However, on the agreed date, the residents were blocked from returning by the navy, who established their presence and refused to vacate their properties. Helena Perera, one of the residents, stated:

⁸⁵ Ibid.

⁸⁶ Human Rights Watch interviews with affected community in Pallimunai, Mannar, October 31, 2017.

The police told us that they were leaving and that we could return to our homes. A police officer standing nearby, told us again in front of navy staff, that we can go back home. However, a navy high-up told us that they would only leave if the president were to order them to do so. And that until then, they would continue to live on our land. We've been made refugees in our own village. They must leave our homes and go. That's all we want. We have suffered so much over 27 years now. We've cried and been sent from pillar to post.⁸⁷

Soon after the navy occupied Pallimunai, naval officers met with the owners and Fr. Peter Manoharan (the parish priest at the time), to negotiate a monthly rent. Perera said, "We told them 'we don't want any rent, we just want our homes back.'"⁸⁸

The villagers have filed a complaint with the Human Right Commission of Sri Lanka, and also sent multiple appeals and petitions to the district secretariat and the *grama sevaka*, but there has been no response. On February 11, 2013, 20 of the 23 owners (three had problems with their deeds), filed cases against the navy demanding release of their property.⁸⁹ Instead, the state counsel offered to pay the owners 20 million rupees (\$126,500) to be shared among them if they dropped the case. The petitioners refused. Since 2013, the elderly complainants have been to court more than 25 times.

In October 2017, the judge ordered the survey department to examine the occupied land and demarcate how much land would be acquired and how much could be considered for release. A navy lawyer said the navy had plans to install radar on 1.2 acres of the occupied land. The owners are still not clear if it will be set up on their land, or on state land falling within the occupied area.

Silavathurai, Mannar District

Silavathurai, a village on the Mannar coast, was abandoned by its residents after the LTTE expelled the entire Muslim population from the northern province in 1990. Some former residents, many of whom had settled in Puttalam on the west coast, returned during a

⁸⁷ Human Rights Watch interview with Helena Perera, Pallimunai, Mannar, October 31, 2017.

⁸⁸ Ibid.

⁸⁹ After one 83-year-old owner subsequently became ill and could no longer attend court regularly, her name was deleted from the list of complainants. At present, 19 complainants are pursuing legal action against the navy; Case No. L408-L426 Mannar Magistrate Court.

ceasefire in 2004. However, they fled again in 2006 because of tensions with the LTTE. A year later all other communities from southern Mannar were displaced as the fighting intensified.

Although the government commenced resettlement in the area after the war ended in May 2009, Muslims were prevented from returning until October. When they did eventually return, they found the navy settled on most of the residential land in the village. Despite protests, the navy has not been relocated. Abdul Azeez Raheem, president of the Rural Development Society, a community-based organization associated with farming villages, said:

In October 2009, after the navy told us that we could return by sea, 34 families made the trip. The war was over, we just came with joy. We did not look at the situation here, we just came. But in our village, everything was like a forest, and the navy was there. We could not enter. We stayed at Musali [a Muslim village further inland]. The people in Saveriyarpuram [neighboring Tamil village], allowed us to dock our fishing boats and fish from their pier. For two days we got no food from the government. It was only later that we got some assistance. But we did not speak about our lands [with the navy]. It was because of the security situation.⁹⁰

Since then, there has been no significant change in the situation. There are only about 280 families in the area around Silavathurai, while the remaining 220 families are living elsewhere. The navy continues to occupy the center of the village. A section of the beach also remains off limits.

The residents have rebuilt the village in adjoining land, which they call New Silavathurai. In 2011, the government provided land under an Indian housing project to 56 families. While this may have been offered as compensation for their original land, with families provided Land Development Ordinance (LDO) permits in July 2013, residents believe that their rights to their original land remained intact. “When we think of home it is that land. That is our village,” said Azeez.⁹¹

⁹⁰ Human Rights Watch interview with Abdul Azeez Raheem, Silavathurai, Mannar, October 30, 2017.

⁹¹ Ibid.

Sannar, Mannar District

Sannar is the site of a complex land problem that has been further complicated by military occupation. After the conflict ended, the area became the site of a bitter dispute between Tamils and Muslims, both claiming ownership to the land and attempting to return and rebuild their lives. The land was released for resettlement in March 2010, first for the Tamil residents, numbering 110 families. Some 600 Muslim families were subsequently permitted to return.

However, returnees found a military camp on what had previously been agricultural land. Both Tamils and Muslims claim ownership to the same plots of land. Tamils insist that the Muslims never settled in the village, but used the land for agricultural purposes, while the Muslims claim that the Tamils worked as laborers on Muslim land, and do not have any ownership rights.⁹²

A local activist said that Tamils built 17 huts on the land occupied presently by the military.⁹³ According to a Muslim farmer who did not wish to be identified, he along with around 40 other families owned roughly two acres each.⁹⁴ Access to the Sannar *Tank* was initially restricted, but residents have been able to fish, provided they avoid the military camp.⁹⁵ The main well that supplies clean potable water to the community is located within the military camp, reducing access to drinking water.

As a result of mounting tensions, the authorities organized a meeting with the Muslim and Tamil communities in May 2011 but were unable reach a settlement until October the following year. The compromise agreement was that the Tamils would retain residential lands closest to the main road as requested by them, and that Muslims would secure lands further inland but with guaranteed road access. However, access to land claimed and used by Sannar residents, both prior to and during the war, remains drastically restricted because of the military presence.⁹⁶

⁹² Mirak Raheem and Priya Thangarajah, "Tamil and Muslim Tensions and Coexistence in Mannar, Land Disputes in Sannar and Uppukulam," March 28, 2012, <http://www.cpalanka.org/tamil-muslim-tensions-and-coexistence-in-mannar-land-disputes-in-sannar-and-uppukulam/> (accessed on February 16, 2018).

⁹³ Human Rights Watch interview with affected community in Sannar, Mannar, October 31, 2017.

⁹⁴ Ibid.

⁹⁵ *Tank* is a term used in Sri Lanka for a man-made lake.

⁹⁶ Human Rights Watch interview with affected community in Sannar, Mannar, October 31, 2017.

House in Kuchchaveli Town, Trincomalee District

Some cases remain “hidden”—not recorded in documentation efforts that focus on occupation by the security forces—because the owners do not report them to civil society groups, to police, other state authorities, or because these claims are not recognized by the state authorities.

In Kuchchaveli town, Human Rights Watch interviewed a woman in her sixties who is seeking the release of a property where she once lived. Prior to her displacement in 1990, she lived on a beachside property, which was later occupied by the navy. The family had obtained the land on an annual permit but were not able to renew it following their displacement during the war. The government, instead of acknowledging that the conflict had affected the ability of families to keep up with paperwork, insisted that the family’s legal claims on the land had lapsed. The site has been fenced off and includes a brick building that serves as a small base for navy personnel. The owner said that the navy has broken its promise to return her property:

My husband and I cleared the land and built this house when we were young parents. With the fighting in 1990 we fled, and only returned when the situation improved. But, the navy was in occupation. We found another plot nearby to live temporarily. The navy kept telling us that once the war ends the property will be returned. With the end of the war, we appealed to the navy and the local authorities. The Kutchchavelli DS [district secretary] informed me that he has handed over the property to the navy. I can’t even look at that place I feel so angry ... Before I die, I want to go home.⁹⁷

⁹⁷ Human Rights Watch interview, Kuchchaveli, August 10, 2017.

III. Cases of Post-Conflict Land Occupation by Security Forces

It is not unusual for militaries to occupy land during armed conflicts. After the civil war ended in Sri Lanka, however, the Rajapaksa administration initiated new military land occupations in areas such as Sampur, Jaffna, and Kilinochchi. While states can determine the need for continued or enhanced security presence, acquisition of land for military camps or other purposes needs to be according to law and respect the rights of those affected. In several cases in Sri Lanka, the military simply entered residential areas and forced people to leave.

With the change in government in 2015, it initially appeared that this practice had stopped and at least in one case, a planned occupation was canceled. However, the new government also has proceeded in at least one case to acquire new land, allegedly without affording affected residents their due process rights.

Sri Lankan authorities have sought to justify post-war military land occupation as necessary for national security, making it challenging and even controversial to demand the release of land.⁹⁸ The details of land occupations over the last few years, however, raise serious questions as to whether they are truly necessary to advance national security. The siting of individual camps inside villages and towns, particularly in areas where there is alternative state land, suggests its more about expediency and ease in utilizing existing structures, rather than about a post-war military strategy.

Panama, Ampara District

Residents of Panama, a Sinhalese-majority area adjacent to the surfing destination Arugam Bay, trace their roots to colonial times.⁹⁹ Some villagers served in the armed forces during the war, and although there was fighting in neighboring areas, the community was not displaced during the decades of conflict for extensive periods.

⁹⁸ Meera Srinivasan, "Sri Lanka is the only country that has eradicated terrorism," *The Hindu*, May 16, 2018, <https://www.thehindu.com/opinion/interview/sri-lanka-is-the-only-country-that-has-eradicated-terrorism/article23895657.ece> (accessed March 5, 2018).

⁹⁹ Residents say their ancestors settled in area after the "1818 Kerella" (Great Rebellion) against the British. The Great Rebellion of 1817–18, also known as the 1818 Uva-Wellassa uprising, was the third uprising by inhabitants of Kandy against the British colonial government.

It was only after the war that the residents from the Panama villages of Sasthrawela and Ragamwela were forcibly displaced. A year after the LTTE defeat, on July 17, 2010, a group of masked, heavily armed men with clubs and military assault weapons entered Ragamwela at night, burned down seven huts, and assaulted villagers, one seriously enough to need hospitalization. A Buddhist temple was also razed to the ground. A villager and eye witness interviewed by Human Rights Watch alleged, “The air force and the STF [police Special Task Force], with the support of the former chairperson of the *pradeshiya sabha* [local government official], who was a goon of the Rajapaksas, burned our huts and chased us out of our land.”¹⁰⁰

Community members told Human Rights Watch that 75 families were evicted from Sasthrawela, and 34 families from Ragamwela. They ended up being forced to live with relatives or to rent housing. Multiple security force services occupied their land: the air force claimed 365 acres and the navy, 300 acres. The police Special Task Force (STF) already had a camp there for many years.

No assistance was provided to the displaced community, and there was no compensation. Prior to their displacement, the community relied on farming and fishing, but between 2010 and 2016, they had no access to these livelihoods. The community filed a Fundamental Rights case against the government and the air force on March 28, 2013.¹⁰¹ However, the case was dismissed by the Supreme Court, as the petitioners were unable to submit specific documents relating to their case within the stipulated one month of the violation.¹⁰²

Following the presidential election of January 2015, Panama was among the first areas identified for release by the government. In a cabinet decision on February 11, 2015, the new government decided “to release the land under the control of the Sri Lanka Air Force situated in Panama ... except for the 25 acres where some buildings are being constructed,

¹⁰⁰ Human Rights Watch interview with affected community from Panama, Ampara, November 6, 2017.

¹⁰¹ *Punchirala Somasiri and Others v. Divisional Secretary Lahugala and others*, SCFR Application No. 66/2013, section 18, p. 5, http://escrj.southasianrights.org/front/view_document/37 (accessed March 21, 2018).

¹⁰² Under Article 126 of the Constitution of Sri Lanka a fundamental rights case has to be filed within one month of the violation.

to enable it to be distributed among the landless persons of the area.”¹⁰³ The order was not implemented. Multiple state agencies have simply blamed each other.¹⁰⁴

Even the intervention of the Presidential Secretariat proved unsuccessful. The secretariat issued a letter on August 3, 2015 to the Ampara divisional secretary, identifying the 25 acres that would be retained by the air force. On August 24, the secretariat requested that remaining land be measured and returned to the community. Based on the location of the air force, the villagers assumed that the land of 15 families would not be returned, so they had arrived at a provisional consensus to divide the land – roughly 75 acres – between the original 36 families so that each would own 1.5 to 2 acres (not necessarily their original plots). But no action followed.

Instead, the divisional secretary raised questions seeking evidence of ownership, ignoring the realities of the war, and ensuing limitations of land administration.¹⁰⁵ With the authorities failing to resolve land claims and disputes, other state agencies began land grabs. For instance, residents were harassed by the forest department and by the police who claimed that they were “illegal occupants.”¹⁰⁶

With progress stalled, the people of Ragamwela forcibly entered their land on March 26, 2016.¹⁰⁷ The Pottuvil police and Lahugala divisional secretary attempted to convince the protesters to vacate, but they refused. The police then brought an interim order from the Pottuvil magistrate to evict the people. The protesters challenged the order two days later.¹⁰⁸ On March 30, the Pottuvil magistrate court ruled in favor of the original residents,

¹⁰³ Office of the Cabinet of Ministers-Sri Lanka, Press briefing of Cabinet Decision, Release of Land and Property in the High Security Zone, February 11, 2015, http://www.cabinetoffice.gov.lk/cab/index.php?option=com_content&view=article&id=16&Itemid=49&lang=en&dID=5948 (accessed March 21, 2018).

¹⁰⁴ Human Rights Watch interview with Punchirala Somasiri, leader of Panam Pattu Protection Organization (PPPO), Ragamvila, Panama, Ampara, November 6, 2017.

¹⁰⁵ The people of Ragamwela claim to have lived in their village since 1972, and had secured documents, mainly permits, but also deeds. In the 1970s the people had handed over all their original land documents to the Lahugala divisional secretariat (DS) for compensation following an incident of crop damage, but after the LTTE burned down the DS office in 1983, all the documents were lost. Thus, the titles are no longer available, leaving the original land owners extremely vulnerable.

¹⁰⁶ Forest Department officials came and spoke to the people while HRW was visiting the site.

¹⁰⁷ Prasad Purnamal Jayamanna, “Ragamwela villagers prevented from entering traditional lands,” *Daily News*, March 29, 2016, <http://dailynews.lk/2016/03/29/local/77733> (accessed March 21, 2018).

¹⁰⁸ Magistrate’s Court of Pottuvil Case No. 8455/PC/09.

granting the protesters the right to enter and remain on their land.¹⁰⁹ The court, in a written order, requested the authorities to survey the land and to find a durable solution. Yet, on May 24, 2016, the Lahugala divisional secretary issued a letter to the residents insisting that they leave their land. They refused to do so. Instead, they began clearing their land to rebuild their homes and to start cultivation.

The people of Ragamwela who have forcibly resettled on their own land currently live in thatched huts. They have received no assistance from the government, and, as of November 2017, the air force continues to reside in the vicinity and maintain control of the area, including entry points to the village. “The air force has maintained that they are awaiting orders from Colombo to leave our lands,” said Somasiri.¹¹⁰

While the state has appealed against the magistrate’s order, the Ragamwela people have filed a case against nine state officials, demanding that the cabinet decision be implemented.¹¹¹ The case was still pending at time of writing.

Ashraf Nagar, Ampara District

On November 5, 2011, the army arrived in the Kasankerni area of the village of Ashraf Nagar and told the residents to leave. “It was 2 o’clock in the afternoon. About 200 soldiers, all in uniform came to our village,” said A.L.M. Misfaq, a Kasankerni resident. “One by one they told us to leave.”¹¹²

The military did not offer any information. Most of the 69 families who were living or working their land packed their movable possessions and left the village. Six years later they remain displaced with no compensation for the land and property that they lost.¹¹³

Kasankerni is a small Muslim village that was amalgamated along with seven others into one large village, Ashraf Nagar, in 2006. Its residents rely on subsistence farming. In 1983, ethnic riots resulted in their displacement, but they returned, only to flee in 1990 following

¹⁰⁹ P.D. De Silva, “Govt. urged to return lands to people of Paanama,” *Daily Mirror*, January 6, 2018, <http://www.dailymirror.lk/article/Govt-urged-to-return-lands-to-people-of-Paanama-143485.html> (accessed March 21, 2018).

¹¹⁰ Human Rights Watch interview with Punchirala Somasiri, Ragamvila, Panama, November 6, 2017.

¹¹¹ They have filed cases against the secretary to the president, air force commander, navy commander, head of the Forest Department, and Panama Divisional Secretariat.

¹¹² Human Rights Watch interview with A.L.M. Misfaq, Ashraf Nagar, Ampara, November 6, 2017.

¹¹³ Human Rights Watch visited the site and spoke to families affected by the displacement, Ashraf Nagar, Ampara, November 6, 2017.

the LTTE's massacre of 16 Muslim men in the immediate vicinity. In subsequent years, some families attempted to return but were wary, often working the fields during the day and spending the nights elsewhere until 2009, when the war ended. At least 34 families moved back permanently by 2010, and constructed homes. For a community that has been impacted by the war, the post-war eviction came as a shock.

In November 2011, when the army evacuated the areas, nine families decided to defy the military and remain. But the army fenced off the area, and eventually the families had no choice but to enter through the checkpoints set up by the army. By November 2017, eight families had moved out due to the harassment they faced. Misfaq's family is the only one remaining, continuing to farm their land even as the military demolished neighboring huts, dug up crop land, and built brick structures for themselves. Said Misfaq: "I have no other place to live."¹¹⁴

The police refused at first to even take down a complaint. Misfaq, along with another resident, also filed a case before the Supreme Court, but the other petitioner, Khadija Umma, faced harassment and eventually moved out. The army maintains control of the land which is surrounded by barbed wire and has reportedly commenced mining gravel in the area.

Karamalaiootru, Trincomalee District

In Karamalaiootru, a Muslim village in Trincomalee, the security forces, instead of releasing land following the end of the war, imposed new restrictions in November 2009. Just day prior to the presidential election on January 8, 2015, community leaders were invited to the site. They found that their mosque had been flattened. In its place a mud structure with a tin roof had been constructed.

Residents showed Human Rights Watch documents citing ownership from the time of British colonial rule.¹¹⁵ Due to its strategic location at Trincomalee Bay, during the war both the navy and the LTTE attempted to assert their control and imposed restrictions on residents. Following the Indian Ocean tsunami of December 26, 2004, many relocated their homes inland from the beach. When the fighting intensified, from 2006, restrictions increased, and the navy established a camp near the beach.

¹¹⁴ Human Rights Watch interview with A.L.M. Misfaq, Ashraf Nagar, Ampara, November 6, 2017.

¹¹⁵ Human Rights Watch interview with community leaders, Karamalaiootru, Trincomalee, August 11, 2017.

The issue was raised in parliament by Muslim politicians. On April 27, 2017, the defense ministry wrote to the Sri Lanka Ports Authority claiming that it is in the process of acquiring five hectares of land for the 4th Armoured Regiment.¹¹⁶ Yet, there were mixed messages from the army, and also the air force, and navy forces who occupy various portions of land nearby, but eventually both the army and the air force agreed to withdraw while the navy continues to protest.¹¹⁷

Vattuwan, Mullaitivu District

In Vattuwan, the current government has decisively moved to establish exclusive state control through acquisition.

Puthumathalan, a small tract of land in the Mullaitivu district between the Nandikadal lagoon and the Indian Ocean, became infamous after an estimated 140,000 Tamil civilians were trapped there by the retreating LTTE and advancing Sri Lanka forces during the final weeks of the war in May 2009.¹¹⁸ The government finally started resettling people in Mullaitivu in 2011. However, on July 20, 2017, a land acquisition notice was issued to acquire 272 hectares in the villages of Vadduvaakal and Vellamullivaikkal in the Mullivaikkal area.

M.P.A. Nesarajah, who fled the country with his family in 1994 to escape the war, returned post-war with the expectation of rebuilding his life, and reclaiming his land in Vattuwan. But it was too late. “The land was occupied by the navy. ‘Gotabaya Camp.’ That was the name they called it when I came back in 2013,” Nesarajah said.¹¹⁹ Now, he says, it has been formally acquired by the government:

They said it’s for national security. There is so much land elsewhere but this is economically so important. Vattuvakal and Nanthikaddal lagoon was where 5,000 families had their livelihoods catching prawns and fish daily. If the navy takes it over and their boats start running and polluting the water, it affects all their lives.¹²⁰

¹¹⁶

¹¹⁷ Ibid.

¹¹⁸ OHCHR, *Report of the OHCHR Investigation on Sri Lanka*, September 16, 2015, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx> (accessed November 15, 2017).

¹¹⁹ Human Rights Watch interview with M.P.A. Nesarajah, Vattuwan, Mullaitivu, November 21, 2017.

¹²⁰ Ibid.

The family tried to reclaim their land. Several politicians promised assistance. But when Human Rights Watch visited the site, we found the area fenced off, with guard towers ringing the outer perimeter.¹²¹ A navy camp is situated in at least one part of the land. The beach on the northern section is a popular tourist spot maintained by the army. Nesarajah says he cannot understand the government's decision:

I could not come earlier as I was at risk from the LTTE. It is years since the war ended. The president and prime minister invited people who migrated to come back but, the police and military are holding lands in their custody. I came in 2013. How can I earn? How can I live?¹²²

Vattuwan forms the center of Puthumathalan where tens of thousands of Tamil civilians perished and possibly holds evidence of alleged war crimes.¹²³ Adjoining the camp is the site where commemoration ceremonies for the Tamils who lost their lives have been held, including most recently on May 18, 2017.¹²⁴

¹²¹ Human Rights Watch visit to Puthumathalan, November 21, 2017.

¹²² Human Rights Watch interview with M.P.A. Nesarajah, Vattuwan, Mullaitivu, November 21, 2017.

¹²³ "Sri Lanka war crimes: Main allegations," *BBC*, June 17, 2011, <http://www.bbc.com/news/world-south-asia-13158916> (accessed January 28, 2018); American Association for the Advancement of Science, "High-Resolution Satellite Imagery and the Conflict in Sri Lanka," <https://www.aaas.org/page/high-resolution-satellite-imagery-and-conflict-sri-lanka-o> (accessed January 28, 2018).

¹²⁴ "NPC commemorates civilians in Wellamulli Waikkal," *Daily Mirror*, May 18, 2016, <http://www.dailymirror.lk/article/NPC-commemorates-civilians-in-Wellamulli-Waikkal--109679.html> (accessed March 22, 2018).

IV. “Land Grabs” for Profit

Some communities that lost control of and access to their lands during the civil war, and who had expected that the end of military operations would result in their having their land restored have instead seen the land converted by the military for commercial endeavors.¹²⁵ In the north and east, the military runs farms, has established roadside eateries, and operates hotels for tourists, including on contested lands. The continuation of these practices raises concerns about military profit-making under the guise of national security at the expense of the rights of members of affected communities.

In addition to the costs to affected civilians, military land grabs also erode the authority of the civilian administration, expand the military into traditionally non-military sectors, and undermine the regulatory framework and transparency relating to military expenses and profits.¹²⁶ In July 2016, the government issued a policy statement committing to ensuring military disengagement from commercial ventures.¹²⁷ While there have been handovers to civilian authorities in some cases, they continue elsewhere, while a lack of transparency has impeded efforts to verify implementation of the commitment.

Shops, Eateries, and Farms

Since the end of the war, the military has been engaged in civilian commercial activities like running shops, restaurants, and hotels, which have mushroomed across the north and east.¹²⁸ They range from “Welfare Shops” that sell groceries, to farms and economic

¹²⁵ “Power and Profit: Investigating Sri Lanka’s Military Businesses,” *Sri Lanka Brief*, April 30, 2018, <http://srilankabrief.org/2018/04/power-and-profit-investigating-sri-lankas-military-businesses/> (accessed February 8, 2018); Bhavani Fonseka and Mirak Raheem, “Land Issues in the Northern Province: Post-War Politics, Policy and Practice,” Centre for Policy Alternatives, December 6, 2011, <http://www.cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices.pdf> (accessed March 14, 2018).

¹²⁶ “Power and Profit: Investigating Sri Lanka’s Military Businesses,” *Sri Lanka Brief*, April 30, 2018, <http://srilankabrief.org/2018/04/power-and-profit-investigating-sri-lankas-military-businesses/> (accessed February 8, 2018).

¹²⁷ “Sri Lanka aims to demilitarise island by 2018,” *AFP*, July 6, 2016, <https://www.straitstimes.com/asia/south-asia/sri-lanka-aims-to-demilitarise-island-by-2018> (accessed January 10, 2018).

¹²⁸ “Notes on The Military Presence in Sri Lanka’s Northern Province,” *Colombo Telegraph*, July 12, 2012, <https://www.colombotelegraph.com/index.php/notes-on-the-military-presence-in-sri-lankas-northern-province/> (accessed June 5, 2018).

centers. With costs and wages absorbed in the defense budget, these military retail outlets can undercut local traders and sell their products for far less than the market price.¹²⁹

The Sri Lanka Army also operates at least six agricultural and livestock farms administered by the Directorate of Agriculture and Livestock set up in 2011.¹³⁰ For instance, farmers residing in the Palaly, for decades a military High Security Zone (HSZ), have long sold vegetables in the village. But produce from the area, which now falls under the Palaly Cantonment, is sold by the military for profit to other parts of the country.¹³¹

Commercial operations are running in four sites investigated by Human Rights Watch. However, the military continues to make profits in other occupied areas as well, with ventures such as resorts, restaurants, shops, farms, sale of fish and other products, and natural resource extraction, including of timber and sand.¹³²

On March 23, 2018, a journalist used the Right to Information Act (RTI) to ask the defense ministry for a comprehensive list of businesses operated by the navy, army, and air force.¹³³ Although the army initially denied that they were running any hotels and canteens with public funds, the RTI Commission dismissed this claim, saying that the commercial ventures in question were “controlled, operated and maintained by officers of the Public

¹²⁹ Society for Threatened Peoples, *Under the Military's Shadow: Local Communities and militarization on the Jaffna peninsula*, October 2016, p. 24-25, https://www.gfbv.ch/wp-content/uploads/bericht_jaffnafinal_low.pdf (accessed March 10, 2018).

¹³⁰ “Power and Profit: Investigating Sri Lanka’s Military Businesses,” *Sri Lanka Brief*, April 30, 2018, <http://srilankabrief.org/2018/04/power-and-profit-investigating-sri-lankas-military-businesses/>, (accessed February 8, 2018).

¹³¹ Society for Threatened Peoples, *Under the Military's Shadow: Local Communities and Militarization on the Jaffna Peninsula*, October 2016, p. 24-25, https://www.gfbv.ch/wp-content/uploads/bericht_jaffnafinal_low.pdf (accessed March 10, 2018).

¹³² Society for Threatened Peoples (STP), “Dark Clouds over the Sunshine Paradise, Tourism and Human Rights in Sri Lanka,” February 2, 2015, <https://www.gfbv.ch/wp-content/uploads/pdf-e.pdf> (accessed March 22, 2018); Ethical Tourism, “Sri Lanka Campaign,” <https://www.srilankacampaign.org/ethical-tourism/avoid/> (accessed March 10, 2018).

¹³³ G. Dileepamuthan, a journalist for *Uthayan*, a Tamil newspaper, made an RTI request which also requested information on annual audits, accounts, and the number of personnel deployed in these ventures. At the Right to Information Commission of Sri Lanka, *G. Dileep Amuthan v. Ministry of Defense*, March 23, 2018, <http://www.rticommission.lk/web/images/pdf/rticappeal-70-2018/g-dileep-amuthan-v-min-defence-14072018.pdf> (accessed March 10, 2018).

Authority who are paid out of Government funds.”¹³⁴ The military has since agreed to provide the requested information.¹³⁵

Tourism

Strategic military locations during the war often included beachfront properties. After the end of the war, instead of returning land, the military has invested in tourism.¹³⁶ For instance, the Laya Group of Resorts falls under the army and operates four resorts in addition to a travel agency.¹³⁷

The military also runs the tourist resort Thal Sevana, Tanker’s Rest, a luxury bungalow for senior military officers in what was formerly the Tuberculosis Hospital in Myliddy, and another resort overlooking the Myliddy Harbour.¹³⁸ In Panama, there are half built structures of a convention center and resort which was constructed by the air force and a navy tourist resort called Lagoon Cabanas.

The post-war tourism ventures built on occupied lands also include Marble Bay Air Force Resort, the services of which include boat rides and whale-watching tours for local and foreign tourists.¹³⁹

¹³⁴ “RTI Commission Directs Sri Lanka Army to Give Info on Hotels and Canteens Run in The North And East,” *Colombo Telegraph*, July 19, 2018, <https://www.colombotelegraph.com/index.php/rti-commission-directs-sri-lanka-army-to-give-info-on-hotels-and-canteens-run-in-the-north-and-east/> (accessed March 20, 2018).

¹³⁵ Ibid.

¹³⁶ Sri Lanka Campaign for Peace and Justice, Holiday providers linked to human rights abusers, <https://www.srilankacampaign.org/ethical-tourism/avoid/> (accessed May 14, 2018).

¹³⁷ Laya Resorts, <http://www.layahotels.lk/> (accessed February 8, 2018).

¹³⁸ At the time of writing, the hospital had yet to be re-opened to the public even though it was officially released by the military in January 2018. Due to continued military occupation in the area it was locked up and handed over to the GA’s office; “Continued military presence prevents use of ‘released’ Myliddy TB hospital,” *Tamil Guardian*, January 31, 2018, <https://www.tamilguardian.com/content/continued-military-presence-prevents-use-released-myliddy-tb-hospital> (accessed March 9, 2018).

¹³⁹ Nirmala Kannangara, Is The Military Operating Within Legal Limits?” *The Sunday Leader*, February 12, 2012, <http://www.thesundayleader.lk/2012/02/12/is-the-military-operating-within-legal-limits/> (accessed March 24, 2018); The air force also operates helicopter services for tourist travel across the country, including through Heli-tours and Air Travel Service. Air Travel Service (private limited), <http://www.airtravel.lk/> (accessed February 8, 2018). See also “Power and Profit: Investigating Sri Lanka’s Military Businesses,” *Sri Lanka Brief*, April 30, 2018, <http://srilankabrief.org/2018/04/power-and-profit-investigating-sri-lankas-military-businesses/> (accessed February 8, 2018).

Case of Panama

It is apparent that Panama, on Sri Lanka's southeastern coast, is less a "hot spot" for national security than for tourism and revenue generation for the military.

During the Rajapaksa administration, both the air force and the navy were involved in constructing resorts. The air force, which occupied 365 acres in the area, commenced the construction of an international conference center and is currently building beach-side chalets for tourists, all on land claimed by the people of Ragamwela.¹⁴⁰ In addition, the navy, which had been occupying about 300 acres, including residential and cultivation lands belonging to the people of Ulpassa, Egodayaya, and Horakanda since the end of 2009, has built the Lagoon Cabanas referred to above.¹⁴¹

Panama is included in a 2010 Sustainable Development Project by the World Bank, with an investment of \$18 million. Zenaida Soriano, coordinator of the Asian Peasant Coalition (APC), asked: "Who really benefits in this project? For whom is this investment actually?"¹⁴² P. Somasiri, leader of the local Organization for the Protection of Panama Paththuwa (OPPP), asked Human Rights Watch:

The government's collaboration with the World Bank obviously, is the reason for Panama's conversion into a tourism zone. The World Bank must support us, the locals of Panama, to rebuild our lives. We have proposed to the government that we carry out both tourism activities and cultivation, as the tourism season is only six months, followed by the rains, so we can cultivate during the rains. They must create livelihood opportunities for us.¹⁴³

¹⁴⁰ Nirmala Kannangara, "Panama Land Grab Exposed," *The Sunday Leader*, March 1, 2015, <http://www.thesundayleader.lk/2015/03/01/panama-land-grab-exposed/> (accessed November 20, 2017); Hafsa Sabry, "A Prize Catch Called Panama-Paththuwa," *The Sunday Leader*, July 17, 2016, <http://www.thesundayleader.lk/2016/07/17/a-prize-catch-called-panama-paththuwa/> (accessed November 20, 2017); Maheesha Mudugamuwa, "Panama land grab: Environmentalists castigate Gamage," *The Island*, June 23, 2016, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=147433 (accessed March 14 2018).

¹⁴¹ Since the new government in 2015, the navy has been instructed to limit resort patrons to military personnel and their families; Navy run Lagoon Cabanas, Panama, <http://lagooncabanal.lk/> (accessed November 25, 2017).

¹⁴² April Porteria, "Peasant Groups Hit World Bank For Grabbing Ancestral Land in Panama," September 2013, <http://lawandsocietytrust.blogspot.com/2015/02/regaining-of-land-in-panama-by-people.html> (accessed November 24, 2017).

¹⁴³ Human Rights Watch interview with P. Somasiri, Panama, Ampara, November 6, 2017.

Residents complained that the security forces' occupation of land, coupled with its business activities, have had a cascading impact on the economic lives of those affected. Fishermen still do not have access to the area where the navy cabanas have been constructed.

In addition, several other state agencies are also laying claim to land. An additional 591 acres, which includes areas that civilians claimed that they used or owned in the past, has been claimed by the Departments of Forest, Archeology, and Coast Conservation. This has meant that Panama has become a site contested by various state agencies, leaving affected communities with little say or influence on how the zoning and land use decisions impact their lives. Their historic claims and grievances, particularly those stemming from the war, remain unaddressed.

Leasing Land

In at least one case, an area of military occupation has been leased out to a commercial company.

In Puthukuduyirippu, Mullaitivu, after protests, some properties in the town were released. However, a 10-acre plot that 19 families claim remains under occupation despite written government assurances that the land would be released by June 2017.¹⁴⁴ This property has a telecommunication tower owned by Hutchison Telecommunications Lanka, which was constructed after the war's end.

Human Rights Watch contacted telecommunication companies to ascertain monthly rentals for hosting such a tower. Currently telecommunication companies pay between 30,000-50,000 Sri Lankan rupees (US\$196 to \$327) per month with a 10 percent annual increase.¹⁴⁵ The families who own the land were not asked permission and do not receive a share of the rental income.

¹⁴⁴ Human Rights Watch interview with S. Sellamma, Puthukuduyirippu, Mullaitivu, November 20, 2017.

¹⁴⁵ Human Rights Watch telephone interview with personnel from one of the main mobile service companies, Colombo, December 2, 2017.

V. Willful Destruction of Property

Returning families have often found their buildings in poor condition—missing fittings, windows, and doors, for instance—or even flattened to the ground. The destruction and damage have multiple causes including shooting and shelling during the armed conflict, neglect, looting, and natural degradation.

However, in some cases, returning families complained that buildings, both private and public, including places of religious worship, appeared to have been deliberately destroyed, sometimes after the war ended.

In the cases of post-war destruction discussed below, the land had been under exclusive military control. In each case, witnesses asserted that the buildings were still standing after the fighting had ended, in some cases even days before their release.

Private Properties

The destruction of private properties after the war has been highlighted by affected communities and in the media.¹⁴⁶ For instance, in Pallimunai, former resident Francis Rita Roche saw the navy demolish her house on January 22, 2015, following the election of the new government, even while there was an ongoing lawsuit challenging the occupation.¹⁴⁷ In other cases described below the destruction took place immediately prior to return.

Pilakudiyiruppu, Mullaitivu

On March 1, 2017, after being displaced for nine years, the people of Pilakudiyiruppu were finally able to reclaim their land when the air force returned 42 acres that it had occupied.

N. Naguleshwari, a mother of five, said the family was repeatedly displaced by the war.¹⁴⁸ Like most Tamil residents from the Vanni, when the war ended, the government held Naguleshwari and her family along with others from Pilakudiyiruppu in closed

¹⁴⁶ “Military demolishes homes in former HSZ in Valikamam,” *Daily FT*, October 30, 2013, <http://www.ft.lk/2013/10/30/military-demolishes-homes-in-former-hsz-in-valikamam/> (accessed June 2, 2017).

¹⁴⁷ Human Rights Watch interview with Francis Rita Roche, Pallimunai, Mannar, October 31, 2017.

¹⁴⁸ Human Rights Watch interview with N. Naguleshwari, Pilakudiyiruppu, Mullaitivu, November 20, 2017.

displacement camps.¹⁴⁹ In January 2013, the authorities transported the residents from the neighboring village of Keppapulavu to adjoining land in Sooripuram — also referred to as the Keppapulavu Model Relocation village — and informed them that they could not return to their village but would have to accept relocation.

The residents protested for months demanding that their land and homes be returned. The protests proved successful and their land was released in March 2017. However, Naguleshwari said that before their property was handed back to them, soldiers destroyed buildings:

While our protest was still ongoing, we came to the air force fence and peeped in to check on our houses and land. They [the brick houses] were all intact. However, when the land was released to us, we saw bulldozer tracks. All five brick houses had been razed to the ground. This land was fenced off by the air force so nobody else could access them. Who else then could have done this?¹⁵⁰

When Human Rights Watch visited Naguleshwari in November 2017, she had constructed the most basic of shelters: a tin roof supported by sticks on a raised flattened earth surface. She is not receiving any state assistance as officials claim she has already been resettled in Sooriyapuram so cannot receive a second round of assistance. There was no talk of compensation or government support to construct her house.

Puthukkudiyiruppu, Mullaitivu

Singharatnam Sellamma, 84, and her family lived in Puthukkudiyiruppu until January 2009, when they were forced to leave due to the fighting. She said that her family had lived there for generations, cultivating paddy and crops. They owned 50 acres of land.¹⁵¹

¹⁴⁹ Menik Farm was located in the Vavuniya district in northern Sri Lanka, and held a population in excess of 200,000 Tamils who were displaced during the final year of the war. It was believed to be one of the largest displacement camps in the world, and was officially shut down only in 2012. See “Sri Lanka: Tensions Mount as Camp Conditions Deteriorate,” Human Rights Watch news release, October 10, 2009, <https://www.hrw.org/news/2009/10/10/sri-lanka-tensions-mount-camp-conditions-deteriorate> (accessed August 7, 2018).

¹⁵⁰ Human Rights Watch interview with N. Naguleshwari, Pilakudiyiruppu, Mullaitivu, November 20, 2017.

¹⁵¹ Human Rights Watch interview with S. Sellamma, Puthukkudiyiruppu, Mullaitivu, November 20, 2017.

Puthukkudiyiruppu, one of the major towns in the Mullaitivu district, also served as a hub for the LTTE, and saw intense shelling towards the end of the war. Sellamma and her family fled on January 21, 2009, leaving everything behind excepts their land deeds, key documents, and some clothes. At the end of the war, the family ended up in Menik Farm, and were eventually released in 2011. While Puthukkudiyiruppu was gradually opened for resettlement in May 2010, 49 families, including Sellamma's, remained displaced, their property occupied by the army's 68th Division. The family had built several houses on the property for their children. Sellamma's daughter, 52-year-old Arunthavarasa Kamalarani said:

When we came back to Puthukkudiyiruppu in 2011, we were told we would be taken to our own places. But they wouldn't let us go in. We came up to the barbed wire fence [that the military had put up in parts of the town], and not any further. The military allowed us to see our homes once, but, we didn't even get to see the inside. There were tarpaulin covers on some of the windows, but, all the doors were intact, and the houses looked fine.¹⁵²

After the war ended, although there was significant damage to most of the buildings in the property, including two of the houses that were demolished, at least one of the properties escaped almost unscathed, apart from bullet marks on the façade.

On the night before our houses were released, we heard the sound of breaking glass coming from our house. When we finally came home, all the doors had been removed. Even the kitchen door hinges had been removed. Shards of glass from alcohol bottles had been smashed and strewn all over the floor. There was kerosene and oil spilt all over the floor. We couldn't get rid of the smell for months. There was toilet waste in parts of the garden, and all the sinks and toilet mirrors had been removed. Only one toilet was in a usable condition. All the rest had been broken.¹⁵³

¹⁵² Ibid.

¹⁵³ Human Rights Watch interview with Arunthavarasa Kamalarani, Puthukkudiyiruppu, Mullaitivu, November 20, 2017.

The family has not been compensated for damage to their property during military occupation. “The roof leaks and the water level comes up quite high when it rains,” said Kamalarani. “Soldiers walk around in the neighboring area during night time, as the military is still occupying both sides of our home. We still live in fear.”¹⁵⁴

Places of Worship

Both state security forces and the LTTE attacked religious sites during the conflict.¹⁵⁵ Several places of religious worship were also destroyed after the end of the war in areas where the security forces had exclusive control. Notably, in recent years there has been a sharp rise in violence by extremist Sinhala Buddhist groups targeting minority religious communities, hence the issue of accountability for destruction of places of religious violence is an issue of concern.¹⁵⁶

St. Anthony’s Church, Tellippallai

In Tellippallai on the Jaffna peninsula, land held by a mixed community of Tamil Hindus and Christians was released in November 2016. The area had been under the exclusive control of the security forces with no civilian access, unless with the explicit permission of the military. When residents entered the area, they found that the main church had been demolished.

St. Anthony’s Catholic church had an imposing, high-ceilinged structure that could house 250 congregants. Residents said that the church was still standing after the war, and they had visited it in 2010. A. Kunabalasingham, president of the Valikamam North Rehabilitation and Resettlement Committee said:

When we saw that the church was destroyed, we spoke to the army general, who told us, “Whoever did this will suffer.” We last saw the church after the

¹⁵⁴ Ibid.

¹⁵⁵ Centre for Policy Alternatives, *Attacks on Places of Religious Worship in Post-War Sri Lanka*, March 2013, <http://f.cl.ly/items/3L2T1z0A1G1f3o0m2H3g/Attacks%20on%20Religious%20Places.pdf> (accessed February 24, 2018).

¹⁵⁶ Some of these groups include Sinhala Ravaya and Bodu Bala Sena. International Crisis Group, “Buddhist Militancy Rises Again in Sri Lanka,” March 7, 2018, <https://www.crisisgroup.org/asia/south-asia/sri-lanka/buddhist-militancy-rises-again-sri-lanka> (accessed August 22, 2018); Charles Haviland, “The darker side of Buddhism,” *BBC News*, May 30, 2015, <http://www.bbc.com/news/magazine-32929855> (accessed February 24, 2018); “The Violent Creed: Sinhala Ravaya Storms Buddhist, Christian Centres,” *Sri Lanka Brief*, March 27, 2013, <http://sri.lankabrief.org/2013/03/the-violent-creed-sinhala-ravaya-storms-buddhist-christian-religious-centres/> (accessed February 24, 2018); United States Commission on International Freedom, Annual Report 2014, <http://www.uscirf.gov/sites/default/files/USCIRF%202014%20Annual%20Report%20PDF.pdf> (accessed February 24, 2018).

war when the military allowed us to visit on June 13, 2010. It was for the St. Anthony's feast that we held after many years. The church was intact till 2012, we were told by people who passed by [on official, military approved work]. It was sometime after that, and before 2016, that the church was demolished.¹⁵⁷

Currently, the community has set up a temporary church structure.

Pillayar Kovil, Urani

The Pillayar Kovil, a temple that used to serve the neighboring Hindu community in Urani, in Jaffna was deliberately damaged, said residents. They said that they visited it after the war.¹⁵⁸

Some of the external walls of the temple are all that was left of the *kovil*, while the remains, including broken wooden statues used for ritual processions, lie scattered on the floor. When Human Rights Watch visited in November 2017, work had commenced to restore the temple, but the damage was still visible. Security forces were deployed in the area until well after the war ended.

Buddhist temple, Panama

On July 17, 2010, a group of masked and armed men stormed into Ragamwela, Panama, burned down seven huts and assaulted villagers. The local Buddhist temple, Ragamwela Sri Valukaramaya, was set on fire. A statue of the Buddha, the sermon hall, the monks' resting room, and shrine room were all burned to the ground. The Bo-Tree, viewed as sacred by Buddhists, had been pulled out from its roots.¹⁵⁹

From then until 2016, when Ragamwela villagers forcibly entered their lands and started cultivating there, villagers did not have access to the temple as the air force continued to occupy the land. A villager said that all that remains of their place of worship is a well, the toilet, and some remains of burned robes and books. "It's like they [the attackers], were

¹⁵⁷ Human Rights Watch interview with affected community in Valikamam North, Jaffna, November 15, 2017.

¹⁵⁸ Human Rights Watch interview with affected community in Valikamam North and Urani, Jaffna, November 15, 2017.

¹⁵⁹ Human Rights Watch interview with Punchirala Somasiri, leader of Panam Pattu Protection Organization (PPPO), Ragamvila, Panama, Ampara, November 6, 2017.

trying to erase any traces of a temple having been on the premises,” said community leader P. Somasiri.¹⁶⁰ The villagers have now constructed a small shrine elsewhere in the village, under the same name as the previous temple.

The Samudragiri Viharaya, a Buddhist shrine which is located in the middle of the neighboring villages of Ulpasa, Egodayaya, and Horakanda, has also been occupied by the navy since 2009, and the villagers and monks have not had any access to the temple since then. “As we haven’t been permitted to visit the temple since 2009, we have no idea in what condition it is in now,” said a villager.¹⁶¹

Mosque, Karamalaiootru

In Trincomalee, the residents of Karamalaiootru, a Muslim village, lost access to their seaside land following the end of the war. Residents have documents showing ownership from the time of British colonial rule.¹⁶² Due to its strategic location in the Trincomalee Bay, this largely fishing village faced a series of restrictions during the war from the navy and the LTTE, both attempting to assert their control.

Following the destruction wreaked by the Indian Ocean tsunami of December 26, 2004, the residents relocated their homes further inland. When the fighting intensified from 2006 the restrictions increased, and the navy established a camp near the beach. Instead of releasing the land after the war ended, in November 2009 the navy imposed new restrictions, preventing access to their mosque.¹⁶³ In 2014, the mosque was demolished. A community leader said:

Our fishermen were the ones who first told us about the destruction of the mosque. It was on August 15, 2014. They were out at sea at about 6 a.m., when they heard sounds of something being broken. Then they saw that the mosque wasn’t there. They had demolished the mosque and were using a backhoe to clear the debris. The mosque trust committee [responsible for the administration of the mosque] attempted to draw attention of Muslim political leaders and the authorities, and made complaints to the police

¹⁶⁰ Human Rights Watch interview with Punchirala Somasiri, leader of Panam Pattu Protection Organization (PPPO), Ragamvila, Panama, Ampara, November 6, 2017.

¹⁶¹ Human Rights Watch interview with villagers from Ragamvila, Panama, Ampara, November 6, 2017.

¹⁶² Human Rights Watch interview with community leaders, Karamalaiootru, Trincomalee, August 11, 2017.

¹⁶³ Ibid.

and the Human Rights Commission. The situation was such that we did not say who broke it in the complaints. We did not name them. We knew who did it. But we thought we would be abducted if we complained.¹⁶⁴

The demolition occurred during an intense climate of anti-Muslim violence in Sri Lanka, including attacks on mosques.¹⁶⁵ Although extremist Buddhist groups such as the Bodu Bala Sena (BBS) and their supporters were accused of carrying out these violent incidents in other parts of the country, the armed forces had exclusive control of this area.

Just a day prior to the presidential election on January 8, 2015, community leaders were invited to the site. They found that their mosque had been flattened. In its place a mud structure with a tin roof had been constructed. As of March 2018, the land continues to be under military occupation. Community leaders said there have been mixed messages from the army, air force, and navy:

In April 2017, just before the Kandarie [annual Mosque feast] the army told us we can rebuild the [cement] steps going up to the mosque. We started the work, but then the air force came and said stop.¹⁶⁶

Community members have received a series of contradictory official notifications and claims from state agencies, including the Sri Lanka Ports Authority and the Coast Conservation Department who all claim to have jurisdiction over the land.¹⁶⁷ Meanwhile, the mosque continues to be recognized by the Department of Muslim Religious and Cultural Affairs.

¹⁶⁴ Ibid.

¹⁶⁵ See Secretariat for Muslims, "Hate campaign against Muslims," <http://sfmsl.org/> (accessed March 14, 2018); Secretariat for Muslims, Stakeholder Report, UN Human Rights Committee, "Violations of Muslims' Civil & Political Rights in Sri Lanka," September 9, 2014, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_CSS_LKA_18204_E.doc (accessed November 29, 2017).

¹⁶⁶ Ibid.

¹⁶⁷ The military attempted to initiate an acquisition process as indicated by documents from 2012, including a survey document (which does not even acknowledge the presence of a mosque or the shrine but describes the land containing a permanent structure and a garden). In a letter dated April 27, 2017, the Ministry of Defense wrote to the Sri Lanka Ports Authority claiming that it is in the process of acquiring 4.7 hectares for the 4th Armoured Regiment. The Ports Authority claimed ownership of the land but would release it once they get clearance from the Coastal Conservation Department. The Divisional Secretary of Trincomalee also claims the land.

Construction of a Buddhist Temple on a Hindu Temple Site, Myliddy

Since the end of the war, Tamil communities have frequently asserted that the state has deliberately sought to replace Hindu temples with Buddhist places of worship, Buddhism being the religion of the majority Sinhalese population. The communities have alleged that that state security forces have been complicit in these efforts. In some sites, Buddhist temples reportedly have been built adjoining or even on the site of pre-existing Hindu temples. In other places, Buddhist temples have been built in areas where the only Buddhists are the armed forces. Buddha statues and *viharayas* have been built in places such as Keppapulavu, Kokkilai, Nyarau, Oddusudan, and Vattuvakkal.¹⁶⁸

In Kankesanthurai in Jaffna a Buddhist temple was constructed on the site of a Hindu temple with Pillaiyar and Murugan shrines. The site was released in September 2017. An interviewee told Human Rights Watch that the newly constructed Gemunu Viharaya has three Buddha statues and a bo-tree, and that a toilet had been built on the site, making it impure for Hindus.¹⁶⁹

Community members lodged a complaint at the Kankesanthurai police station. In addition, they wrote to the president on February 27, 2017, appealing for the return of their land, particularly to rebuild their temple, but there has been no progress in the case.¹⁷⁰

¹⁶⁸ Watchdog, *State Facilitated Colonization of Northern Sri Lanka – 2013*, September 19, 2013, <https://groundviews.org/2013/09/19/state-facilitated-colonization-of-northern-sri-lanka-2013/> (accessed October 15, 2017); Melani Manel Perera, Military building Buddhist temples against local wishes in northern Sri Lanka, *Asia News*, September 6, 2015, <http://www.asianews.it/news-en/Military-building-Buddhist-temples-against-local-wishes-in-northern-Sri-Lanka-34463.html> (accessed October 5, 2017); Sri Lankan army opens Buddhist temple in North-East, *Tamil Guardian*, August 6, 2015, <http://www.tamilguardian.com/content/sri-lankan-army-opens-buddhist-temple-north-east> (accessed October 28, 2017); Athua Vithanage, “Sri Lanka to spend millions on hundred Buddhist Temples in Tamil areas,” Journalists for Democracy in Sri Lanka, November 10, 2016, <http://www.jdslanka.org/index.php/news-features/politics-a-current-affairs/640-sri-lanka-to-spend-millions-on-hundred-buddhist-temples-in-tamil-areas> (accessed November 10, 2017).

¹⁶⁹ Human Rights Watch interview, details withheld, November 15, 2017.

¹⁷⁰ Ibid.

VI. Mapping Land Occupation

There is no publicly available accurate and comprehensive mapping of land occupation by the armed forces and police in Sri Lanka, particularly in the north and east. The government has on occasion presented statistics of land under occupation and land that has been released based on data provided by the defense ministry in its interactions with diplomats or UN officials, but this has not been publicly verified through an independent process.

As of September 2017, the government claimed that the military was occupying approximately 119,000 acres of land in the north and east, which includes 89,000 acres of state land and 30,000 acres of private land.¹⁷¹ It is unclear whether this includes land that the state provided to the military prior to and during the war with appropriate due process. Hence it is difficult to distinguish land that is legally possessed by the security forces, as opposed to areas currently occupied with no explicit legal rights.

The government claims to have released 40,000 acres between January 2015 and August 31, 2017.¹⁷² However, without a detailed breakdown it is difficult to ensure accuracy and comprehensiveness.

Given the lack of official information that can be verified, researchers and activists in Sri Lanka have attempted to piece together occupation-related data from multiple sources such as district officials, non-governmental sources, and affected communities themselves, but this has proved a difficult task. Even Right To Information (RTI) requests, seeking information from the government, have been denied or rejected based on national security or other grounds.¹⁷³

In 2015, a Colombo-based advocacy organization, the Centre for Policy Alternatives (CPA), collated statistics from the five districts in the northern province and found that nearly

¹⁷¹ These numbers were privately shared with Human Rights Watch by foreign diplomats.

¹⁷² Ibid.

¹⁷³ Adayaalam Centre for Policy Research and PEARL, "Normalising the Abnormal: The Militarisation of Mulaitivu," October 2017.

13,000 acres were occupied by state actors.¹⁷⁴ The research relied on data supplied by district officials, but the report pointed out significant gaps in the information provided.

In 2017, two civil society groups based in the north, the Adayaalam Centre for Policy Research and PEARL, cited three different sets of figures for the land occupied by the military in Mullaitivu district: first, from districts officials and other departments of the state obtained through RTI applications and anonymously; second, from a document circulated by district level officials in 2015; and third, from data collected by a member of the Northern Provincial Council. The differences are stark and vividly illustrate the problem: approximately 2,300 acres, 14,000 acres and 34,000 acres, respectively.¹⁷⁵ The CPA, meanwhile, found that the military in Mullaitivu was occupying 1,600 acres.¹⁷⁶

While military occupation of land is most commonly understood as and is a problem primarily impacting the Tamil community in the Northern Province, the reality is that occupation continues in the eastern province as well and that all major ethnic communities are affected.¹⁷⁷ A network of civil society organizations carried out a mapping of individual sites in five of the 11 divisional secretariats of the Trincomalee district, finding that the status of 28 sites—ranging from individual buildings to multiple properties in villages and larger settlements—were unresolved.¹⁷⁸

In some areas, the occupation of individual properties is not properly documented because the owners may not report it, relying instead on direct negotiations to try to win the return of their land. But the larger issue is lack of systematic documentation by the state and other actors, a failing that adversely impacts land returns and government efforts at restitution and other forms of reparations.

To address the problem, the government should prepare and publicly release a detailed list of land occupation that reconciles the information provided by various state

¹⁷⁴ Centre for Policy Alternatives “Land Occupation in the Northern Province: A Commentary on Ground Realities and Recommendations for Reform,” March 2016.

¹⁷⁵ Adayaalam Centre for Policy Research and PEARL, “Normalising the Abnormal: The Militarisation of Mullaitivu,” October 2017, <http://adayaalam.org/mapping-militarisation-in-mullaitivu/> (accessed March 30, 2018).

¹⁷⁶ Centre for Policy Alternatives, “Land Occupation in the Northern Province: A Commentary on Ground Realities and Recommendations for Reform,” March 2016.

¹⁷⁷ The Eastern Province consists of three districts: Trincomalee, Ampara, and Batticaloa. Human Rights Watch conducted interviews in the first two districts.

¹⁷⁸ Sri Lanka consists of 25 districts. Each district is divided into separate administrative divisions called Divisional Secretariats; Kutchchavelli 5, Trincomalee town and Gravets 7, Kinniya 2, Thambalagama 2, Muttur 12.

organizations, including the security forces and divisional secretariats, and allows for a public system of complaints. Pablo de Greiff, UN special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, stated in October 2017 that “although some of the land occupied by the Armed Forces, in some cases for decades, has been returned, the lack of clarity and comprehensiveness in the process – a process in which the Armed Forces are both a party and the Judge (they seem to solely determine which pieces of land are returned and when) has serious consequences from a developmental standpoint.”¹⁷⁹

The UN high commissioner for human rights too, in his report to the UN Human Rights Council (HRC) in February 2017, called for comprehensive mapping:

The restitution of land held by the military is still an unfulfilled confidence-building measure. Although significant areas of land have been released (according to government figures, an additional 2,625 acres of private land and 9,288 acres of State land have been released since October 2015), a mapping of both private and public land under the control of the military, and a release plan with clear benchmarks and timelines, have yet to be presented to the public.¹⁸⁰

Land Occupation by Multiple State Actors

A critical complicating factor in some occupation cases is that the security forces are not the only state actors involved. In some cases, other state actors have their own claims to the land and thus civilian claimants may find their property is not restored even if the military releases the land.¹⁸¹ In some of these cases the land dispute between state actors effectively thwarts a settlement.

¹⁷⁹ Full Statement by Pablo de Greiff, UN special rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, at the conclusion of his official visit, October 23, 2017, <https://lk.one.un.org/news/full-statement-by-pablo-de-greiff-un-special-rapporteur-on-the-promotion-of-truth-justice-reparation-and-guarantees-of-non-recurrence-at-the-conclusion-of-his-official-visit/> (accessed March 30, 2018).

¹⁸⁰ Report of the Office of the High Commissioner for Human Rights, February 10, 2017, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/A_HRC_34_20_EN.docx (accessed January 10, 2018).

¹⁸¹ Apart from the army, navy, and air force, there are also cases of control by the civil defense force, port authority, or forestry and other departments that are not covered in this report.

Farmers in Kiran Komari on the south-eastern coast, for instance, who were displaced in 1985-87 due to the war, said that when they returned in 2009 the military and forest department blocked them from entering their land.¹⁸² Although the military left in 2012, the forest department still maintains that that it is protected land. A farmer, K. Umar said:

We called for meetings. The authorities promise alternate land, but no concrete action is ever taken. Now we have no work, no land, we don't know what else to do. Transitional justice means nothing to these government officials.¹⁸³

¹⁸² Human Rights Watch interview with P. Kairudeen, president of the Ampara District Alliance for Land Rights (ADALR), 10, November, 2017. Group meeting with affected Muslim farmers was facilitated by the Alliance via Human Elevation Organisation (HEO), Ampara, 10, November, 2017.

¹⁸³ Human Rights Watch interview with K. Umar, president of the Kiran-Komari Farmers Society, Kiran-Komari, Ampara, November 6, 2017.

VII. Problems Implementing Land Releases

Since the end of the Rajapaksa administration in early 2015, the Sri Lankan government has sped up land returns, allowing affected populations to finally commence restoring lives, homes, and livelihoods. The process, however, has slowed and needs to be reviewed. A number of lingering problems in implementing agreed land releases have emerged, impeding efforts to return, rebuild homes and communities, and restore lives, livelihoods, and services.

A fundamental problem is the lack of a rights framework in the release process. The impact of displacement and occupation of property does not end with the return of property to civilian owners. The government also has a duty to ensure that affected individuals have adequate assistance in rebuilding houses that were damaged, and access to livelihoods, education, and essential services.

While the Sri Lankan government has introduced a transitional justice framework, its implementation should be evaluated with a focus on the concrete actions and institutional measures it has taken, and not only the laws and policies it has introduced.¹⁸⁴ For instance, the government has announced an office of reparations, but it is crucial to assess what compensation has been offered in specific cases, such as for failure to provide rent, or for damage to buildings.¹⁸⁵

Partial Releases

In some areas the government has proceeded with releases in a phased manner and continues to be in occupation of individual buildings or roads. Such continued presence can seriously impede the ability of returning communities to rebuild their lives and restore normalcy.

This has been the case in the Jaffna peninsula, where the military has released portions of land in Telipallali DS division, one of the largest areas under military occupation in the

¹⁸⁴ For instance, the current government approved the National Policy on Durable Solutions for Conflict-Affected Persons that recognizes the need for reparations measures to be undertaken, but there has been little move to review existing measures. Instead the government has awaited the establishment of the Office on Reparations.

¹⁸⁵ "Reparations Bill Ready, Compensation for War Affected People," *Sunday Times*, May 20, 2018, <http://www.sundaytimes.lk/180520/news/reparations-bill-ready-compensation-for-war-affected-people-294750.html> (accessed May 20, 2018).

north. In a notable development the military released Myliddy Harbor, the primary fisheries for the area.¹⁸⁶ However, the piecemeal approach, in which the military has made decisions about what land to release, has created challenges for returning communities.

For instance, in the case of J/Nadeswara College in Kankesanthurai, as detailed earlier in this report, this has proved to be an obstacle to access services and vital resources. The military placed the area off limits as an HSZ during the war and only allowed the college to formally reopen in March 2016, after more than 26 years. But A. Kunabalasingham, president of the Valikamam North Rehabilitation and Resettlement Committee, said students were reluctant to return because “many areas are still under military occupation,” including two adjoining school buildings and the school well.¹⁸⁷

Inadequate Resettlement Assistance

A recurring concern from areas that have been reopened for resettlement is that the government has provided inadequate assistance. Families have complained of a lack of consistency in the basic resettlement assistance packages.¹⁸⁸ The package consists of a resettlement allowance of 25,000 rupees (US\$161), land clearance payment of 13,000 (\$84), cooked food, and basic rations but this can significantly vary. Returnee families may also be selected for permanent housing projects and livelihood schemes depending on differing criteria set out by the government and implementing agencies.

Human Rights Watch found that there are clear disparities, with families in areas such as Pilakudiyiruppu in Mullaitivu receiving few components of the resettlement package, and families in Sampur in Trincomalee and Jaffna more likely to have at least received the resettlement allowance.

There are policy complications in dealing with families who have been displaced and resettled multiple times. This includes families designated as “resettled” by the authorities even though they were not able to return to their original homes due to military occupation. For example, some families who were displaced from the Vanni at the end of

¹⁸⁶ Meera Srinivasan, “Army vacates land, harbour after 27 years,” *The Hindu*, July 3, 2017, <http://www.thehindu.com/news/international/army-vacates-land-harbour-in-jaffna-after-27-years/article19205172.ece> (accessed February 3, 2018).

¹⁸⁷ Human Rights Watch interview with A. Kunabalasingham, president of the Valikamam North Rehabilitation and Resettlement Committee, Jaffna, November 2017.

¹⁸⁸ The government’s basic resettlement package consists of 13,000 rupees (US\$84) for land clearance, food rations (based on family size) for three months, temporary shelter material, and 25,000 rupees (\$161) as resettlement allowance.

the war in 2008-9 were released from closed welfare centers after the war and initially able to resettle elsewhere in Jaffna, including in “welfare centers,” but were unable to return to their original homes.¹⁸⁹ However, once their land was released, the authorities were unwilling to grant them further assistance because according to official statistics they already had been “resettled.”

For instance, M. Sivananthavel, 70, a fisherman and father of six, was displaced from Myliddy after fighting broke out in the area in June 1990. Now resettled in his home property, he said he was delighted to be home after 27 years. When he fled the war, he owned a trawler, three fiberglass boats, and a catamaran. He said that over the years his family was reduced to penury, displaced not just by the war but by the 2004 tsunami. The family eventually ended up in Menik Farm at the end of the war in 2009. After they were released from Menik Farm, the family was relocated to Karaveddy, and then to Thikkam.¹⁹⁰

Although Sivananthavel’s property was released by the military in July 2017, he said he did not get the full resettlement allowance, but only food stamps for three months and a land clearance payment. The government had promised him 786,000 rupees (\$5,070) in installments as he completes rebuilding, when he sends a photograph to the authorities. However, he said, that at every stage the costs have been far higher than the allocated amount.¹⁹¹ “I’m already hundreds of thousands out of pocket and in debt,” he said.

By 2017, we had lived in 24 houses over 27 years. We are sick and tired of moving. Over the decades, we were never compensated for any of our losses, be it from the war or the tsunami. We had to restart our lives so many times over the past 27 years and were never given any support from the government to do so. Finally, after 27 years, we can stop moving around and live the remainder of our lives on our own land, but we hope the government will at least help us restart our lives this one last time.¹⁹²

¹⁸⁹ “Welfare Camps” is the term used by the government for government-run, long-term displacement camps meant for internally displaced people throughout the course of the war.

¹⁹⁰ Human Rights Watch interview with M. Sivananthavel, Myliddy, November 2017.

¹⁹¹ For instance, he complained that the government underestimated both the price of sand and the quantity needed. He has also spent 60,000 rupees (\$387) on wiring and 17,000 rupees (\$110) for an electricity connection, which was not included in the estimates.

¹⁹² Human Rights Watch interview with M. Sivananthavel, Myliddy, November 2017.

Other families who were relocated, usually without consent, to sites near their original land face similar problems. For those whose land has been released, such as in Pilakudiyiruppu, families are denied assistance. When the land was released in March 2017, residents found that their houses had been destroyed during the fighting. Human Rights Watch visited eight months later and found the process of reconstruction and rehabilitation slow. While residents had cleared some of their land and put up fences, only a few had been able to rebuild their houses. Since the families were initially given alternate housing at Sooripuram and resettlement assistance at that time, officials tell them that they are not eligible for any further aid.

Naguleshwari, a daily wage laborer said that though glad to be home, her family is forced to live on credit. “Our house was destroyed, and we have not received any support from the government, but, at least we can die on our own land.”¹⁹³ With the destruction of their homes, and without proper state reparations, Naguleshwari and other villagers are dependent on nongovernmental groups, the clergy, and private citizens for subsistence. She said:

We have been living under these tin sheets for more than eight-and-half months now, with no assistance from the government at all. We got a box of some pots, pans and other essential items from SLRC (Sri Lanka Red Cross) upon our return in March. A parish priest and his community came and cleaned up our common wells. Another private donor recently built us three common toilets. It was a bit like a jungle when we returned, so it cost us 3,500 rupees (\$22) from our own pockets to hire a tractor to help clear our land.¹⁹⁴

Inadequate assistance has proved debilitating and has slowed the rate of return and reconstruction in some areas. Communities, particularly those who have lived in protracted displacement, are taking time to ensure that they can rebuild their houses, have access to essential services, particularly schools, and can find work. Not all areas

¹⁹³ Human Rights Watch interview with N. Naguleshwari, Pilakudiyiruppu, Mullaithivu, November 20, 2017.

¹⁹⁴ Ibid.

that have been released have been cleared and restored by civilian owners as many of the former residents fled during the war, including abroad.¹⁹⁵

In an odd development, the Ministry of Resettlement has, in two recent instances, allocated over one billion rupees (\$6.3 million) to relocate military camps from occupied lands in the north.¹⁹⁶ Military affairs should be handled by the defense ministry, with resettlement authorities' funds spent on rehabilitating the thousands of individuals from displaced communities returning to their homes.

Determining Land Title

During the war, there were numerous relocations, leading to disputes over land ownership. Sometimes these were settled informally or with mediation. In Jaffna, for instance, many disputes over land boundaries were resolved by the owners themselves or by district-level government staff, except in specific cases where the military had constructed roads through properties.¹⁹⁷

In many locations, the state has not yet provided new land ownership documents, creating apprehension among the returnees. This problem is compounded when there is confusion as to the exact area released and its status.

This was best exemplified in Sampur, which the Sirisena government often presents as the model case of land release. Prior to the parliamentary elections in August 2015, 818 acres were handed over to Sampur's original residents, and a further 177 acres were released in March 2016.

However, problems emerged relating to the relocation of the Vidura Navy Camp, which was constructed on residential and public land in the heart of Sampur village. To relocate this camp, the authorities identified 240 acres that consisted of some state land and some land owned by civilians used largely for cultivation. As of August 2017, several families

¹⁹⁵ Ashanthi Warnasuriya, "Search Operations launched for owners of unutilised land in Jaffna," *The Sunday Leader*, July 22, 2018, <http://www.thesundayleader.lk/2018/03/18/search-operation-launched-for-owners-of-unutilised-land-in-jaffna/> (accessed July 22, 2018).

¹⁹⁶ This includes SLR 866 million to release 522 acres in the north and SLR 148 million to release 100 acres in Keppapulavu. See Irangika Range, "Army to release 110 acres of land to owners," *Daily News*, July 27, 2017, <http://www.dailynews.lk/2017/07/27/local/123362/army-release-110-acres-land-owners> (accessed May 10, 2018).

¹⁹⁷ Human Rights Watch interview with government official, Jaffna, November 16, 2018.

who lost land to the relocated navy camp had not yet received land or compensation.¹⁹⁸ As provincial council member and community leader M. Naheswaran acknowledged, “We are afraid that the solution before us will disappear.”¹⁹⁹

A second problem concerned the process of release that contributed to a climate of uncertainty and also created practical problems, including families being unable to use their land as surety for loans. This stems from the Board of Investment, which was in legal possession of the land, releasing 818 acres in Sampur in August 2015. Due to confusion among state agencies, however, land documents have not been provided to the owners.²⁰⁰ The authorities in Trincomalee including the district secretariat and the Provincial Land Commissioner’s offices are awaiting a directive from the central government as they believe that the land is still vested with the state.²⁰¹

Relocation

The government, after deciding not to release specific land plots, has adopted relocation as the favored option to address the land and housing needs of those affected. The issue of relocation has proved highly contentious and politically charged.²⁰² This includes those who were relocated during the Rajapaksa administration and whose lands were later released or were likely to be released. Those that volunteered for relocation have often also not found a durable solution.

For instance, the Rajapaksa administration offered the displaced from occupied villages such as Mullikulum and Keppapulavu alternate sites for habitation, often presenting it as a humanitarian measure. However, as the case of Keppapulavu demonstrates, despite relocation, communities normally prefer to return to their original land. Involuntary

¹⁹⁸ Human Rights Watch interview with affected communities, Sampur, August 11, 2017.

¹⁹⁹ Human Rights Watch interview with M. Naheswaran, Sampur, August 11, 2017.

²⁰⁰ The government’s failure to follow the legislated acquisition process, in particular, section 3 of the Land Acquisitions Act, meant that the Board of Investment’s initial acquisition was null and void, hence the original ownership of civilian claimants remains unaffected.

²⁰¹ Human Rights Watch interviews with government officials, Trincomalee, August 10, 2017.

²⁰² For instance, the issue of military occupation was flagged in the Northern Provincial Council Resolution on Genocide of Sri Lankan Tamils on February 10, 2015: “The Sri Lankan government used this practice [systematic expulsion of people from their homes] extensively against Tamils, confiscating Tamils’ private lands. In May 2013, 1,474 northern Tamils filed a petition against the government’s confiscation of their land, stating that 6,381 acres were appropriated to build another Army base in Jaffna;” “Full Text: NPC’s Resolution on Genocide of Sri Lankan Tamil,” February 11, 2015, *Colombo Telegraph*, <https://www.colombotelegraph.com/index.php/full-text-npcs-resolution-on-genocide-of-sri-lankan-tamil/> (accessed February 20, 2018).

relocation both in terms of why and how it is carried out can run contrary to national and international law and standards.²⁰³

Keppapulavu was home to 138 families prior to their displacement in 2008. When the war ended, most of its residents ended up in Menik Farm. Facing international pressure to shut down Meink Farm and release civilians, in September 2012 the military forcibly relocated the former residents of Keppapulavu to a bare piece of land in Sooripuram. Arumugam Villayutham Pillai, the Hindu priest of the Murugan Kovil of Keppapulavu, said the government had not prepared properly for the relocation:

We were one of the last groups from Menik Farm to be resettled. It was on September 24, 2012. There was UN pressure to close the camps. We were brought in trucks to Vattappalai school. We spent the night in the school. Then the elders were brought to a piece of land and told that we could not go home, that we would live there. Our belongings were then dropped in the area. It was like a jungle.²⁰⁴

The community was forced to live like this for two years under military supervision. “We were surrounded by the army,” Pillai said. “We were not allowed to go out without permission. Nobody from outside was allowed to visit us. No media. No politicians. Nobody.”²⁰⁵

Eventually the army-built houses and named the area Keppapulavu Model Village. In 2013, the residents received permits for the land and resettlement assistance. The army apparently assured the community that this was temporary arrangement. It was only later that they realized that this was a permanent relocation. Eventually, as the community began public protests demanding the return of their original land, Keppapulavu Model

²⁰³ National laws and policies include article 14 of the Sri Lankan Constitution, the National Involuntary Resettlement Policy, and the Inter-Agency Standing Committee’s Guidelines for Durable Solutions for Internally Displaced Persons. See also United Nations High Commissioner for Refugees, Guiding Principles on Internal Displacement (2004) <http://www.unhcr.org/43ce1cff2.html> (accessed February 4, 2018), principle 28(1) (“Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country”).

²⁰⁴ Human Rights Watch interview with Arumugam Villayut, Aiyar of the Murugan Kovil of Keppapulavu, Mullaitivu, November 20, 2017.

²⁰⁵ Ibid.

Village became too controversial for UN agencies, international groups, and donors to support.

A second aspect of relocation has been the limited engagement of the government and policy makers in ensuring a durable solution. Even as authorities are pushing relocation, particularly in cases where return is not possible due to land occupation, affected individuals are not getting the services and assistance required.

As of November 2015, Jaffna had 1,158 families living in internally displaced persons (IDP) camps, of whom 869 families were identified as landless.²⁰⁶ Given the limited availability of land in Jaffna, the state has had to acquire private property, including sites of current welfare centers, to build houses. This has proved to be controversial as there is some resistance from sections of the Tamil community to accept persons of lower economic class and caste groups.²⁰⁷

In an effort to address the needs of landless persons in IDP camps, in October 2016, the new government set up the Keerimalai 100 Housing Scheme. The original plan was to provide 100 houses, but, an additional 33 families asked to be included. The involvement of the military in the construction was presented as a “step towards reconciliation” by the government.²⁰⁸ Yet a recent statement by the army chief, Lt. Gen. Mahesh Senanayake, who was previously commander in Jaffna, raises serious questions about the involvement of the military. Senanayake said that the army “is the only institution which has the capacity to help the civilian administration in the former war zone.”²⁰⁹

²⁰⁶ Landlessness occurs for various reasons including caste-based historical marginalization. Another more common factor is that land is divided among heirs and eventually the plots are too small to be further divided and to be sustainable. Thus, even if all occupied lands are released, there will be families who have no place to go and given their protracted displacement may prefer to even live in or near to their current location, such as where their welfare centers currently located. See Thanges Paramsothy, “Caste and Camp people in Jaffna: Landownership and Landlessness,” *Colombo Telegraph*, December 8, 2015, <https://www.colombotelegraph.com/index.php/caste-camp-people-in-jaffna-landownership-landlessness/> (accessed February 25, 2018).

²⁰⁷ Mirak Raheem, “*Protracted Displacement, Urgent Solutions – Prospects for Durable Solutions in Sri Lanka*,” Centre for Policy Alternatives, September 2013.

²⁰⁸ “100 Houses in Keerimalai as a step towards reconciliation – says Defence Secretary,” Rights Now, September 24, 2016, <http://www.right2lifelanka.org/newsview.php?id=2009> (accessed February 25, 2018).

²⁰⁹ “Lankan Army sets up special Directorate to defend itself against war crimes charges,” *NewsIn.Asia*, May 11, 2018, <https://newsin.asia/lankan-army-sets-up-special-directorate-to-defend-itself-against-war-crimes-charges/> (accessed May 12, 2018).

This housing scheme is meant to serve landless families from Myliddy, Thaiyiddy, Palali, and Urani currently living in at least four IDP camps. But for families who have land within areas currently occupied by the military, this is seen as a precursor to the army acquiring their land. The project was attacked by some in the Tamil community as a step toward building “slums” and to weaken the call for land return.²¹⁰

Under the scheme, each family was given 20 perch (0.12 acres) land with a house and an attached toilet. When Human Rights Watch visited the area, it was just over a year since the residents had moved in, and the monsoon had broken. Many complained that houses had developed leaks and cracks. But others like Ithayarani Inparasa said that she and her family, which includes her husband and three school-going children, chose to register for the scheme because of the poor conditions in the camp and because they did not believe they would ever have an option to go home. She said:

My husband has no land. Since 1990 we have been displaced. We lived in Konapalam camp since 1997. In 2016, we were told by the authorities if we want to relocate to Keerimalai that we should register. Everyone hopes to return to their native place. We feel unhappy that we could not return, even if we are landless. But we have chosen to be here. When we compare this to the camp, we now have a better life.²¹¹

²¹⁰ Tamilnet, “Colombo schemes permanent slum housing for uprooted Tamils at limestone quarry lands,” August 21, 2016, http://tamilnet.com/art.html?catid=79&artid=38386&fromNewsdog=1&utm_source=NewsDog&utm_medium=referral (accessed February 25, 2018).

²¹¹ Human Rights Watch interview with Ithayarani Inparasa, Keerimalai, Jaffna, November 15, 2017.

VIII. Domestic and International Law

The military's occupation of land in a post-war Sri Lanka can be both legally defended and challenged. The rights of those affected by these military land occupations are protected by both national and international law.

The Universal Declaration of Human Rights, which is broadly considered reflective of customary international law, provides that no one should be arbitrarily deprived of their property.²¹² The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees everyone the right to the opportunity to a livelihood and the right to housing.²¹³ The UN Guiding Principles on Internally Displaced Persons, the Inter-Agency Standing Committee's Framework on Durable Solutions for Internally Displaced Persons, and the UN Principles for Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles) also provide a framework to safeguard the rights to housing, return and restitution for those affected by displacement.²¹⁴

Although the Sri Lankan government can legally seize and occupy private property for military purpose, there are clear provisions under Sri Lanka's Constitution and domestic laws to ensure that its citizen's rights are guaranteed. Where the government failed to follow due process to acquire land for military purposes, particularly after the war ended, the legality of these occupations, including High Security Zones, can be challenged.²¹⁵

²¹² Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), article 17.

²¹³ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, articles 6 & 11.

²¹⁴ UNHCR, Guiding Principles on Internal Displacement; UN, FAO, NRC, UNHCR, OUCHR, UN Habitat, 'Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the Pinheiro Principles,' March 2007, https://www.pseau.org/outils/ouvrages/parasismique/croix-rouge-fr-construction-et-rehabilitation/Documents/Bibliotheque/ouvrages/FAO-NRC-OCHA-HABITAT-OHCHR-UNHCR_implementingPinheiro.pdf (accessed February 25, 2018); IASC Framework for Durable Solutions for Internally Displaced Persons, Inter Agency Standing Committee (IASC), The Brookings Institution University of Bern Project on Internal Displacement, April 2010 (accessed February 4, 2018); COHRE, '*Housing and Property Restitution in Sri Lanka, Learning from other jurisdictions*,' Seminar Report, October 2007, http://www.cepa.lk/content_images/publications/documents/217-S-COHRE-Housing%20and%20property%20restitution%20in%20SL.pdf (accessed February 25 2018).

²¹⁵ See Bhavani Fonseka and Dharsha Jegadeswaran, "Politics, Policies and Practices with Land Acquisition and Related Issues in the North and East of Sri Lanka," Centre for Policy Alternatives, November 19, 2013, <http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/> (accessed February 25, 2018).

Under the Constitution, there is no explicit provision guaranteeing the right to property or to housing. Article 14 relating to the right of freedom of movement and article 12 dealing with the right to equality serve to protect the rights of the displaced and those denied access to their homes and property.²¹⁶

There are several national policies that set out key standards. The National Policy for Durable Solutions for Conflict-Affected Persons passed by the Cabinet in September 2015 identified military occupation of land as a key challenge and suggested measures including the mapping out of lands occupied and the need to release these lands, except in exceptional situations where the land was identified, after careful scrutiny, to be necessary for military purposes.²¹⁷ The policy recommends compensation and relocation in keeping with national and international standards such as the National Involuntary Resettlement Policy (NIRP).²¹⁸

The NIRP sets out a policy framework for the resettlement of families and communities displaced by public and private sector development projects, but also provides standards, that should be used in instances of displacement because of to military land occupation. Key principles in the policy include the need to minimize or avoid displacement by exploring alternate project options, consulting communities on relocation sites, and ensuring economic and social reintegration of displaced communities.²¹⁹

²¹⁶ The Constitution of the Democratic Socialist Republic of Sri Lanka amended up to May 15, 2015, <http://www.parliament.lk/files/pdf/constitution.pdf> (accessed August 23, 2018). In addition, the Constitution contains Directive Principles for State Policy, article 27 C, that addresses key socio-economic rights including housing, but these are declarative rather than obligatory. See Centre on Housing Rights and Evictions, “*An Introduction to Housing and Land Laws in Sri Lanka*,” 2007, http://www.cepa.lk/content_images/publications/documents/213-S-COHERE-An%20intro.%20to%20housing%20and%20land%20laws%20in%20SL.pdf (accessed February 2, 2018); Bhavani Fonseka and Mirak Raheem, “A Brief Profile of the Trincomalee High Security Zone and Other Land Related Cases,” Centre for Policy Alternatives, May 2008, https://reliefweb.int/sites/reliefweb.int/files/resources/B5C1A3D90F6AE979C12574640047CDD9-Full_Report.pdf (accessed February 25, 2018).

²¹⁷ Website of Ministry of Prison Reforms, Rehabilitation, Resettlement and Prison Reforms <http://resettlementmin.gov.lk/site/images/stories/pdf/final%20policy.pdf> (accessed March 5, 2018).

²¹⁸ “National Policy on Durable Solutions for Conflict-Affected Displacement,” VII Major Obstacles to Durable Solutions, p. 20, <http://resettlementmin.gov.lk/site/images/stories/new.pdf> (accessed February 25, 2018).

²¹⁹ Sri Lanka National Involuntary Resettlement Policy (NIRP), May 2001, <https://landportal.org/library/resources/sri-lanka-national-involuntary-resettlement-policy-nirp> (accessed February 25, 2018).

The state has over the years used two laws – the Emergency Regulations and the Land Acquisitions Act – to justify its right to occupy land for national security purposes. The state of emergency was eventually allowed to lapse on August 30, 2011.²²⁰

Emergency Regulations

The Public Security Ordinance provides substantive powers, including to declare a state of emergency in the interest of national security, public order and to maintain essential supplies and services.²²¹ Emergency Regulations that were promulgated during the war, provided sweeping powers to the government, including to take possession of property and to acquire lands.²²²

Under the Emergency Regulations, the government established a series of HSZs across the country but had differing legal regimes. While some were established through a proper gazette notification, others, such as the majority of HSZs in Jaffna, were ungazetted, hence only relied on the Emergency Regulations for their legality. Thus, with the lapse of Emergency Regulations on August 30, 2011, HSZs or other military occupations, unless established under an acquisition process, no longer had any legal basis.

Land Acquisition Act

The government also used the Land Acquisition Act of 1950 to empower it to acquire lands required for public purpose.²²³ The gaps and limitations in the law provide significant space for abuse. The government can identify a broad public purpose as the act itself does not clearly define the term. Thus, although the Land Acquisition Act provides a legal basis for occupation of land, the legality of the acquisition is open to challenge and judicial review in terms of the purpose and compliance with due process.

²²⁰ “Sri Lanka: Bait and Switch on Emergency Regulations,” Human Rights Watch news release, September 7, 2011, <https://www.hrw.org/news/2011/09/07/sri-lanka-bait-and-switch-emergency-law> (accessed March 29, 2018).

²²¹ Public Security Ordinance, 25 of 1947, June 16, 1947, <https://www.srilankalaw.lk/Volume-VI/public-security-ordinance.html> (accessed November 15, 2017).

²²² Public Security Ordinance, 25 of 1947, June 16, 1947, 5(2)(b)i and ii, <https://www.srilankalaw.lk/Volume-VI/public-security-ordinance.html> (accessed November 15, 2017).

²²³ Sri Lanka also has the Requisitioning of Land Act that gives the President the power to approve possession of any land by a competent authority. In practice, this Act is no longer used by the State but continues to have legal validity. Requisitioning Of Land Act, December 9, 1950, <http://www.srilankalaw.lk/Volume-VII/requisitioning-of-land-act.html> (accessed February 25, 2018); See also Bhavani Fonseka and Dharsha Jegadeswaran, “Politics, Policies and Practices with Land Acquisition and Related Issues in the North and East of Sri Lanka,” Centre for Policy Alternatives, November 19, 2013, <http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/> (accessed February 25 2018).

In examining current usage by the security forces, there are questions of compliance to the stated purpose.²²⁴ There are instances of the land being used for commercial projects although the stated purpose is national security.²²⁵ In other instances, security forces have set up a camp right in residential areas when there is alternate public land available outside the town or village. The Supreme Court attempted to clarify the definition of public purpose in its ruling in the Water's Edge case, in which the military was using occupied land as a golf course.²²⁶ In ruling for the petitioners, the court defined public purpose “as the primary object, public utility and benefit of the community as a whole.”²²⁷

Acquisitions can also be challenged on compliance with due process as set out in the act. This includes whether the government has followed the procedures set out in section 2 – putting up public notices about the acquisition, and section 4 – providing notices of the acquisition to the owners and putting up notices by the land in question.²²⁸

Legal Solutions to Post-War Land Issues

In the wake of the war, people in the northern and eastern regions faced serious land-related problems, including loss, destruction, or damage of key documents, including those pertaining to land ownership; secondary occupation by civilians; complicated inter-ethnic disputes; occupation of land by other state authorities, including wildlife and forest conservation authorities and the Mahaweeli Authority; unexploded ordinance; contested

²²⁴ Bhavani Fonseka and Dharsha Jegadeswaran, “Politics, Policies and Practices with Land Acquisition and Related Issues in the North and East of Sri Lanka,” Centre for Policy Alternatives, November 19, 2013, <http://www.cpalanka.org/policy-brief-politics-policies-and-practices-with-land-acquisitions-and-related-issues-in-the-north-and-east-of-sri-lanka/> (accessed February 25, 2018), p. 9.

²²⁵ Ibid.

²²⁶ The petitioners complained of “infringement pertaining to the acquisition of land on the premise that such land would be utilized to serve a public purpose whereas by the impugned executive or administrative action the land was knowingly, deliberately and manipulatively sold to a private entrepreneur to serve as an exclusive private golf resort in Sri Lanka.” See *Sugathapala Mendis and another v Chandrika Kumaratunga and others* SC FR 352/07, 2008, <http://www.lawnet.gov.lk/wp-content/uploads/2016/11/037-SLLR-SLLR-2008-V-2-SUGATHAPALA-MENDIS-AND-ANOTHER-v.-CHANDRIKA-KUMARATUNGA-AND-OTHERS-WATERS.pdf> (accessed February 10, 2018).

²²⁷ *Mendis et al. v. Perera et al.*, S.C. (FR) No. 352/2007, Supreme Court. Two additional cases in which the Supreme Court clarified public purpose further are *Manel Fernando v D.M. Jayaratne, Minister of Agriculture and Lands and others*, 2000 (1) S.L.R. 112 and *Horana Plantations Ltd. v Minister of Agriculture and others*, SC Appeal No. 06/2009. See also, Bhavani Fonseka and Dharsha Jegadeswaran, “Politics, Policies and Practices with Land Acquisition and Related Issues in the North and East of Sri Lanka,” Centre for Policy Alternatives, November 19, 2013.

²²⁸ The Land Acquisition Act sets out a series of steps to be taken when acquiring land including the need to put up notices when the state is investigating the possibility of acquiring the land (Section 2) and once a decision has been made to acquire by the relevant minister so that objections can be made (Section 4). <http://srilankalaw.lk/Volume-V/land-acquisition-act.html> (accessed February 12, 2018).

land claims; the distribution of land by the LTTE and other militant groups; and the suspension of normal land administration.²²⁹

A 2011 government circular sets out a framework for the provision of land documents and addressing land disputes.²³⁰ Under this scheme many thousands of families laying claim to state land were able to secure title and new documents.

However, land under military occupation were excluded from the process which in effect meant that families were denied the opportunity to secure lost documents or claim legal title. In other situations, state agencies, determined to legitimize state occupation, choose a purely legalistic approach, relying on current land documents alone, failing to take conflict challenges into account. Hence, some families have been at risk of being effectively dispossessed of their land.

Legal Challenges

Military occupation of land has been challenged in Sri Lanka's courts ranging from the magistrate courts to the Supreme Court both during the war and after. Cases have been filed on and in relation to occupations in Sampur, Valikammam North, Keppapulavu, Panama, Ashraf Nagar, and Pallimunai.²³¹

The Supreme Court, during the period when Emergency Regulations were in operation, did not make any rulings on the legal status of HSZs, but proposed that solutions be

²²⁹ The mandate of the Mahaweli Authority is to implement the Mahaweli Development Programme, which is to construct a series of reservoirs and hydro-electricity plants and develop a large area of land with irrigation in the Dry Zone, to facilitate the establishment of new settlements and the development of agriculture. The authority was established in 1979 by an act of Parliament; Bhavani Fonseka and Mirak Raheem, "Land Issues in the Northern Province: Post-War Politics, Policy and Practice," Centre for Policy Alternatives, December 6, 2011, <http://www.cpalanka.org/wp-content/uploads/2011/12/Land-Issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices-.pdf> (accessed March 14, 2018).

²³⁰ Circular No. 2011/04/ of July 22, 2011, on "Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces." See "Brief Commentary Accelerate Programme on Solving Post Conflict State Land Issues in the Northern and Eastern Provinces, Land Circular: 2013/01," Centre for Policy Alternatives, March 2013, <https://www.cpalanka.org/wp-content/uploads/2013/04/Land-Circular-Brief-Commentary-March-20134.pdf> (accessed February 4, 2018).

²³¹ Bhavani Fonseka and Mirak Raheem, "A Brief Profile of the Trincomalee High Security Zone and Other Land Related Cases," Centre for Policy Alternatives, May 2008, https://reliefweb.int/sites/reliefweb.int/files/resources/B5C1A3D90F6AE979C12574640047CDD9-Full_Report.pdf (accessed February 25, 2018); "Appeal Court issues Notice on Respondents in cases by 2176 Jaffna Tamils seeking relief against land grab by Rajapaksa regime," *Colombo Telegraph*, May 30, 2013, <https://www.colombotelegraph.com/index.php/appeal-court-issues-notice-on-respondents-in-cases-by-2176-jaffna-tamils-seeking-relief-against-land-grab-by-rajapaksa-regime/> (accessed February 25, 2018); "Jaffna Tamils Land Grab FR Cases: Justice Sripavan advises DSG How to Grab Lands Correctly," June 12, 2013, <https://www.colombotelegraph.com/index.php/jaffna-tamils-land-grab-fr-cases-justice-sripavan-advises-dsg-how-to-grab-lands-correctly/> (accessed February 25, 2018).

negotiated between the state and affected communities.²³² However, after August 2011, these regulations were no longer valid.

There were a number of cases relating to military occupation filed by affected persons, but most are either ongoing or have not resulted in the release of lands.

²³² Bhavani Fonseka and Mirak Raheem, "A Brief Profile of the Trincomalee High Security Zone and Other Land Issues," Centre for Policy Alternatives, May 2008, p. 10.

Recommendations

To the Government of Sri Lanka including the President and Prime Minister

- Publicly commit to releasing all private and public lands that are currently occupied by the military unless specifically required for strategic state purposes. New land acquisitions by the military must demonstrate a strategic state purpose and the absence of alternate land that can be used for the said purpose.
- Ensure pledges on land returns are time bound and transparent to deter unnecessary delays in implementation, and to strengthen public trust and confidence.
- Remove the authority of state security forces as the primary arbiter on land occupation and instead ensure a public and transparent process.
- Conduct an immediate review and mapping to ascertain current occupation by the security forces and assess civilian claims of ownership or use of the land. This review should include both lands privately owned and public lands such as schools, hospitals, grazing lands, and beaches. This review should be conducted by either by an independent body such as the Human Rights Commission or a multi-stakeholder mechanism including representatives from the military, district level administrations, and civil society.
- Establish an independent body composed of stakeholder representatives to visit areas occupied by the security forces to determine the impact of continued military presence including checkpoints and access to farms, residences, schools, places of worship, and other facilities used for civilian activities.
- Ensure that legal processes of land acquisition are strictly adhered to, including providing affected communities appropriate notification in all languages.
- Where relocations are necessary, ensure the security forces identify suitable alternate land in full consultation with the affected community.
- Implement the National Involuntary Resettlement Policy (NIRP) and the National Policy on Durable Solutions for Conflict Affected Persons in the event of relocations.
- Ensure the basic needs of relocated communities are addressed, including with regard to housing, livelihoods, and access to basic services.

To the Office of Reparations

- Ensure that the issue of military land occupation and loss of property are included as grievances for which individual and collective reparations can be considered. This should include long-term occupation and usage without rent and destruction to buildings, infrastructure, and land.
- Follow up with state authorities to ensure that land released by the military is handed over to civilian owners along with proper documentation.
- Call for legal and policy reforms relating to land to ensure restitution and other forms of reparations can be effectively implemented.
- Ensure that recommendations from the Consultation Task Force, which reflect the views of displaced communities and domestic and international experts, are incorporated into the reparations office's policies and plans.
- Ensure the reparations policy addresses:
 - Loss of and damage to property and possessions (including livelihood equipment);
 - Loss of livelihood income over the time of displacement, e.g., paddy and crop harvests, fishing, cattle rearing, etc.;
 - Loss of rent from private entities for lease of land for commercial purposes, e.g., telecommunication towers.

To the Military

- Ensure that in areas where release of land is being undertaken in a phased manner, full properties are released, and access to roads, infrastructure, and sources of livelihood are provided.
- Ensure that lands and properties are released back to the public in proper and usable condition and that there is no deliberate damage or destruction prior to release.
- Investigate and take action against any military personnel who damage or destroy property, including disciplinary measures and, where appropriate, criminal prosecution.
- Comply with the government's commitment to cease military involvement in commercial ventures including, but not limited to, hotels, resorts, shops,

restaurants, farms, pre-school teaching, and natural resource extraction (e.g., illegal sand mining) in the north and east.

To Law Enforcement Authorities

- Promptly and impartially investigate allegations of post-war destruction of buildings, such as houses and places of religious worship, in areas held by the security forces. All those responsible, regardless of rank, should be appropriately prosecuted.
- Investigate all allegations of harassment and intimidation by security force personnel of people advocating the release of occupied land, including residents, and community and civil society activists.

To the Ministry of Lands

- Establish a process for addressing unresolved land claims and disputes, including complex land disputes involving different ethnic communities and multiple state agencies. A process for mediating and resolving such disputes should ensure that district level actors, affected communities, state agencies, civil society leaders, and politicians are involved, so as to reach sustainable solutions.
- Coordinate with key state agencies, including ministries of resettlement and defense, departments of forests and wildlife conservation, and the Mahaweli Authority, to examine land claims, while giving priority to claims made by displaced communities.
- Address the situation of the landless, including those currently displaced and originally from areas occupied by the military.

To the Ministry of Rehabilitation, Resettlement, Northern Development, and Hindu Religious Affairs

- Ensure implementation of the “National Policy on Durable Solutions for Conflict Affected Persons” passed by the Cabinet in 2016.
- Ensure that basic resettlement assistance to all persons returning to their lands, or being relocated, includes payment for land clearance, rations, and a basic allowance, in a systematic and consistent manner.
- Ensure assistance for sustainable housing to all those returning to their lands or being relocated including cost of materials and labor.

- Address community infrastructure needs including ensuring drinking and portable water, electricity, roads, public transport, and access to schools and health centers.
- Attempt as far as possible to restore original lands in the areas occupied by the security forces even in cases where persons have been provided houses in relocation sites.

To Private Companies and Investors

- Verify the status of the land, including previous ownership, before investing in new projects on land provided by the state, particularly where the land was occupied by the military.
- Review ownership of land before paying rent to the military for the use of land, and in case of occupation of private lands by the security forces, ensure payment to legal civilian owners.

To Foreign Governments and Financial Institutions

- Encourage the Sri Lankan government to carry out a mapping of lands held by the military that involves the participation of the public.
- Call upon the government to rapidly continue the process of land release.
- Press the government to take steps to implement UN Human Rights Council Resolution 30/1, including to release lands held by the military.
- Appraise plans for land acquisition for development projects to ensure no or minimum displacement of communities.
- Evaluate projects to ensure that no projects are for the profit of the military and exclude communities.
- Insist upon ensuring rehabilitation and compensation before funding housing or tourism development projects, in compliance with the NIRP.

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“Why Can’t We Go Home?”

Military Occupation of Land in Sri Lanka

The Sri Lankan military’s ongoing occupation of land is a cruel legacy of the nearly three-decade civil war in Sri Lanka that ended in May 2009. Over the years, many Sri Lankans, particularly in the embattled north and the east, were displaced because of the conflict, often several times over. The separatist Liberation Tigers of Tamil Eelam (LTTE) was responsible for forcibly displacing people, including a mass eviction of the Muslim community.

At war’s end and ever since, the military has controlled vast swaths of land. While some lands have been returned to the original owners and the Sirisena administration has promised to do more, government forces retain control over large areas, using the land for both military and non-military purposes.

“*Why Can’t We Go Home?*”—based on 110 interviews conducted in Sri Lanka between June 2017 and August 2018—details cases of land occupation by security forces during and after the armed conflict. It identifies failures of transparency and due process, lack of proper mapping of occupations, inadequate support to affected individuals and communities, and ongoing delays in providing appropriate reparations. It also examines evidence that the military is occupying some land for commercial profit rather than national security purposes, and in some cases has damaged or destroyed property, including churches, prior to returning the land to its owners.

Human Rights Watch calls on the Sri Lankan government to promptly release private and public lands currently occupied by the military that do not serve strategic state purposes and to provide remedies to those who have suffered or continue to suffer from military land occupation and its consequences.



A Sri Lankan Tamil man holds a placard during a protest in Colombo on August 21, 2018, demanding the release of lands still occupied by the military.

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