



**A REVIEW OF INFORMATION PERTAINING TO
LAND RIGHTS IN THE NORTH AND EAST OF SRI LANKA**

Habitat for Humanity Sri Lanka

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A REVIEW OF INFORMATION PERTAINING TO LAND RIGHTS IN THE NORTH AND EAST OF SRI LANKA

Introduction

Sri Lanka is just emerging from the debilitating effects of nearly 30 years of war, and proceeding to implement a re-building program in the North and East of the island, addressing both social and infrastructure development. Heavy bombardment of lives and property has left most of the North in ruins with serious damage to agriculture, lands and buildings. Sections of the Eastern province have also been badly affected by the effects of war especially the land previously held under LTTE control. A population of over 200,000 persons is still displaced and living in welfare camps, and awaiting re-settlement in both the North and the East.

Under the first Mahinda Chinthaya, the government pledged a Ten Year Development Framework for the whole island, and is now in the process of implementing a fast track development effort known as the Uthuru Wasanthaya (Northern Spring) and the Nagenahira Navodhaya (Eastern Resurgence). Under these two programs the government is building roads and railway lines, water tanks, electrifying areas et al.

Objectives and Scope of the Review

This review on the land rights of Northern and Eastern land owners and residents has been conducted, at the request of Habitat for Humanity Sri Lanka. The information requested included a summary of existing legislation on land rights in the North and East, the status of land registries in the North and East, public commitments by the government on land and development, key problems faced in establishing land rights in the North and East, policy and advocacy platforms with suggestions for advocacy campaign. The review consists of information gathered from publications by COHRE, legislative enactments on land and interviews with members of the legal fraternity and NGOs. The objective being to identify issues affecting land rights in the North and East, in order to raise awareness of the

residents and land owners of the North and East on claiming their land rights and empowering them to engage with local government both as individuals and as groups.

Summary of Land related Legislative Enactments

Land laws and inheritance laws in Sri Lanka originate from personal and State laws. In Annex 1, a list of both State and personal laws are listed with summaries of their contents. The two main personal laws Thesawalamai Pre-emption Ordinance which is both personal and territorial and the Muslim Intestate Succession Ordinance operate for residents and land owners of the North and the Mukkuvar law is the personal and territorial law of the Eastern Tamils.

Status of the Land Registries

The Land Registries of Jaffna, Mannar and Vavuniya in the Northern Province have survived the war and their records are intact. However those Land Registries in Mullaitivu and Killinochchi have been damaged and records unavailable. This lack of records with the Land Registries will compound the problems of the displaced populations in the event they too do not have their records with them. There is no evidence of missing records in the Land Registries of the Eastern Province.

Commitments by the Government to Land Rights

The government is committed to developing the North and East under the Uthure Wasanthaya and Nagenahira Navodaya in keeping with its commitment with the Ten Year Development Framework stipulated under the Mahinda Chinthanaya program. The Government's framework for interventions in the North and East are the three pillars: (i) integrating those displaced or affected by the conflict; (ii) resuming service delivery, including through investments in physical infrastructure; and (iii) strengthening the role of local governments.

It is estimated that approximately ninety percent of land in the Jaffna Peninsula is privately owned while ninety percent of land in the Vanni is State owned. State land laws will continue to operate alongside personal laws in the North and East. However due to the unique situation in the North and sections of the East, where government writ was de jure rather than de facto, land laws such as the Prescription Ordinance No. 22 of 1871, whereby a defendant who has occupied a land for ten years or more without disturbance and with uninterrupted possession is entitled to a decree in his favour, need to be amended at least for the North and the East.

Since the commencement of the war in 1983, many Northern and Eastern landowners and residents have left these provinces to migrate abroad, or to live in safer parts of Sri Lanka. This population exodus left vast areas of land available for occupation by unauthorized or sometimes not legally authorized persons to occupy these lands. The end of the war has created a suitable environment for many of these migrants to return to their homelands. As such the State will need to bring in amendments to the Prescription Ordinance possibly time bound and geographically restricted, in order to ensure that the rightful owners are able to stake a claim to their properties, in the interests of justice.

When IDPs or refugees, who have no records of the licenses granted to them for lands in Kilinochchi and Mannar where the Land Registries have been destroyed, try to return to lands granted to them on licenses under the State Lands Ordinance No. 8 of 1947, they will not be allowed to hold on to the land and would be vulnerable to eviction by the State under the State Lands (Recovery of Possession) Act No. 7 of 1979. In order for these grantees to return to their agricultural lands, there will need to be a Special Provision made to the State Lands Ordinance, facilitating a means of verifying previous occupation by the claimant, for example through witness by Grama Niladharis, and other community leaders.

Furthermore the government needs to implement the 13th Amendment to the Constitution with regard to land powers which lie with the Provincial Councils. Though PCs are vested with these powers by law, the Central government has not devolved land powers to the Provincial Councils. As a result, decisions for infrastructure development and urbanization continue to be taken by the Central government. In the interest of justice, it is important that the Central government devolves land powers de facto to the Provincial Councils in

order to prevent ad hoc planning and private land acquisition under the Land Acquisition Act No. 9 of 1950 or of State land under the State Lands (Recovery of Possession) Act No. 7 of 1979.

Problems Faced by Returnees in Claiming their Land Rights

As indicated above, returnees without legal documents, the Muslim community who were evicted from Jaffna overnight, and even those holding title to land and buildings occupied by the military and also unauthorized persons, and the lack of records in the two Land Registries of Kilinochchi and Mullaitivu face difficulties in recovering their rightful ownership.

Another problem faced by residents in the Vanni is that families in a bid to protect their children from being conscripted by the LTTE, often arranged for under-age marriages to take place. These unions are not registered marriages and neither do the children from these unions have birth certificates. In the last days of the war, many young boys were forcibly taken from their families to fight and are now missing and presumed dead. Due to the lack of proof of death, no certificate can be issued, and their young widows and children are not able to claim their inheritance if any. The lack of birth certificates compounds the problems faced by this beleaguered people in establishing proof for succession.

While it is said that the military is assisting rightful owners in taking back their property from unauthorized occupants on an ad hoc basis, there needs to be a policy and legal framework which can be enforced for the recovery of such land and buildings. Many areas of land have been razed to the ground due to heavy bombardment, and as such identifying boundaries is a near impossibility further exacerbating the problems faced by returnees when claiming their stake.

In the Eastern province, residents of Sampur who were displaced when fighting commenced between the government forces and the LTTE in 2006 are not able to return to their lands since the government has declared the area a high security zone due to the establishment of a coal power plant and a proposed Naval base.

Another problem being faced by both returnees and current residents of the East, is that when families fled the fighting they sometimes sold their property at prices way below the market value. They are now trying to get back these properties at the price they sold them, and when the original buyers refuse to comply, there have been instances of intimidation reported by politicians and even some military personnel.

Under the Tourist Board Act, State lands on the Eastern coast such as Kalkudah and Pasikudah identified for tourism are being made available to hoteliers in a bid to promote the tourism industry. This has caused severe hardships to fishermen in these areas, since they are no longer able to park their boats along the coast line.

Policy and Advocacy Platforms

It is important that in the development of awareness raising programs and advocacy strategies that both the State authorities and the residents of these provinces are brought together to discuss and arrive at mutually acceptable solutions to the problems faced. It is imperative that the perceptions of the roles and functions of the State authorities by the various stakeholders are clear and that they realize that their needs and expectations are being considered in the planning and execution of government policy. Central government and Provincial government authorities need to work with empathy towards the residents and land owners, since land issues are highly sensitive and can lead to discontent and fear among claimants. Insensitive and authoritarian decision making can result in an environment that is conducive to elements that seek to create disharmony between the State and its citizens and between communities. Situations such as that which arose post-tsunami in the Eastern province, whereby land was re-allocated to male heads of households, without considering that land is also inherited from mother to daughter under the personal Mukkuvar Law, can be avoided.

Possible advocacy platforms include advocating and lobbying for new amendments to be enacted with regard to the State Lands Ordinance No. 8 of 1947 and the Prescription

Ordinance No. 22 of 1871 in the interest of justice. These amendments could be time bound and geographically restricted.

Full land powers should be granted to the Provincial Councils as enacted under the 13th Amendment to the Constitution of Sri Lanka.

Full implementation of the 10 year Development Framework, Mahinda Chintanaya – Vision for a new Sri Lanka. The Government's framework for interventions in the North and East being the following three pillars: (i) integrating those displaced or affected by the conflict; (ii) resuming service delivery, including through investments in physical infrastructure; and (iii) strengthening the role of local governments.

An effective advocacy campaign should include a team of lobbyists calling for legislative amendments and a team of advocates who would closely interact with the central government, local government and military authorities for the purposes of intervening on behalf of the public's land rights in the Northern and Eastern provinces. Furthermore, mini-task forces could be established at district level with representation from central, provincial and military authorities and community leaders (of all communities) to reach decisions on land issues through consensus.

Summary of existing legislation on land in the North and East

There are 2 categories in lands of N and E.

1. State lands
2. Private lands

Legislation connected with State lands:

1. The State Lands Ordinance No. 8 of 1947
2. The Land Grants (Special Provisions) Act No.43 of 1979
3. Forest Ordinance No.16 of 1907
4. Lands Resumption Ordinance No. 4 of 1887
5. Land Settlement Ordinance No. 20 of 1931
- 6 Land Acquisition Act No. 9 of 1950
7. Mahaweli Authority of Sri Lanka Act No. 23 of 1979
8. Irrigation Ordinance No.32 of 1946
9. State Land Encroachment Ordinance No. 12 of 1840
10. State Lands (Recovery of Possession) Act No. 7 of 1979
11. State Landmarks Ordinance No.7 of 1909
12. Definition of Boundaries Ordinance No. 1 of 1844
13. State Land (Claims) Ordinance No. 21 of 1931
14. Land Reform Law No.1 of 1972
- 15 Temple Land Ordinance No. 28 of 1944
- 16 Requisitioning of Land Act No. 33 of 1950

17 Land Development Ordinance No. 19 Of 1935

18. Land Surveys Ordinance No. 4 of 1866

Legislation connected with private land

1. Matrimonial rights and inheritance ordinance (Jaffna) No. 1 of 1911
2. Muslim Intestate Succession Ordinance No.10 of 1931
3. The Thesawalamai Ordinance No 18 of 1806
4. Thesawalamai Pre-emption Ordinance No. 59 of 1947
5. Wills Ordinance No.21 of 1884
6. Prescription Ordinance No. 22 of 1871
7. Partition Law No. 21 of 1977
8. Apartment Ownership Law No.11 of 1973
9. Prevention of Frauds Ordinance No. 7 of 1840
10. Trusts Ordinance No. 9 of 1917
11. Public Trustee Ordinance No. 1 of 1922
12. Mortgage Act No. 6 of 1949
13. Riot Damages Ordinance No. 23 of 1915
14. Execution of Deeds Ordinance No.17 of 1852
15. Civil Procedure Code
16. Penal Code
17. Primary Procedure Code

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2. Interviews

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- Mr Prathiba Mahanamahewa, Attorney-at-Law
- Mr Rohana Ratnayake, Attorney-at-Law
- Mr Sanka de Almeida, Attorney-at-Law
- Land Registrars of the North and East
- Representative of WERC