



# A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka

## Background Information and Guidelines to establish Special Mediation Boards



Ministry of Justice



ADDRESSING  
THE CRITICAL ISSUES  
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# **A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka**

## **Background Information and Guidelines to establish Special Mediation Boards**

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# Table of Contents

Acknowledgements	iv
Introduction	v
A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka	1
• Background	1
• Methodology	1
• Review of Literature	3
• Key Findings	8
• Views on the suitability of Special Mediation Boards	
Recommendations to establish Special Mediation Boards	14
• Establishment of Special Mediation Boards to address land disputes	14
• Apex body or Committee on Lands	16
• Land Tribunal	16
• Resolving problems (that are not disputes) relating to land faced by people in the two Provinces	17
• Amendments to the Mediation (Special Categories of Disputes) Act 2003	17
Key Background Documents	19
• Concept for an Accelerated and Integrated Housing, Land and Property Dispute Resolution Programme/System in Sri Lanka for Settlement of Disputes over State and Private Property in Conflict Affected Areas	19
• Data under the 2013/01 Circular	26
• Circular No: 2013/01 : State Land Disputes and Problems/Issues in the Northern and Eastern Provinces as at January 31, 2014	
• A list of Land Disputes in the Northern and Eastern Provinces of Sri Lanka from literature	31
• Macro level land issues in the Northern and Eastern Provinces	35
Annexes:	
Concept Note - A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka	37
Tools	
• Questionnaire – Public Officers	
• Questionnaire – Non State Sector	
• Guideline – Focus Group Discussions	



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# Introduction

The protracted violent civil conflict which afflicted Sri Lanka for over thirty years has created innumerable problems for the people in the Northern and Eastern Provinces of Sri Lanka. One of the main issues being the loss of, or disputes over, both public and private housing, land and property. In the years following the end of the war, the Sri Lanka Government concentrated on issues surrounding land, led by the recommendations put forth in the Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC) and the subsequent National Action Plan for the Protection and Promotion of Human Rights. A perusal of literature on macro level representations of post war land issues highlights a range of issues including ownership issues, boundary and boundary related issues, issues arising from actions of the State and non-state parties, and grievances associated with the lack of land.

In order to address issues and redress disputes relating to land in the Northern and Eastern Provinces of the country, the Ministry of Justice proposed setting up Special Mediation Boards to facilitate resolution of land related issues and disputes. To support the setting up of Special Mediation Boards, The Asia Foundation, at the instance of the Ministry of Justice, commissioned this ‘Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka’ to study the nature, type, and scale of the prevailing disputes and problems in selected areas in these two provinces.

The Rapid Assessment has studied the nature and characteristics of post war land related disputes and difficulties faced by people at village level, sought views of the people directly affected by disputes over land as well as the difficulties faced in resolving disputes, and has explored mediation as a mechanism for resolving these disputes at community level.

The Rapid Assessment provides an overview of the extensive array of disputes faced by people in the Northern and Eastern Provinces. These disputes and issues are categorized into issues over State land and issues over private land and the Assessment provides instances and incidences as well as information on parties and the impact of such disputes on those affected by them. Among these issues and disputes are loss of documents, forged land documents, loss or destruction of land records in government land registry offices at central, provincial, district and divisional levels, secondary occupation, encroachment of reservations, land alienation by unauthorized sources and the transfer of land through false deeds.

In addition the study finds further vulnerabilities faced by displaced people and female heads of households. The complexity of disputes and issues surrounding land and land ownership is clearly visible in this narration. The Rapid Assessment further provides information on the suitability of and mechanism for setting up Special Mediation Boards to address land issues. This Assessment is expected to provide the background for setting up Special Mediation Boards to address land issues and disputes and form the core of the conceptualization, training and implementation of such Boards to bring relief to people and communities living in the post war environment of the Northern and Eastern Provinces of Sri Lanka.





# **A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka**

## **Background**

The protracted violent civil conflict which afflicted Sri Lanka for over thirty years has created innumerable problems for the people in the Northern and Eastern Provinces of the country. Some of the most serious issues being disputes and problems relating to land ownership, possession, and use by the people in the conflict affected provinces. These disputes have, in turn, generated other and further disputes amongst people and these continue to disturb the peace and be a hindrance to normalcy in those areas. These disputes and issues warrant urgent, efficient and effective handling to ensure sustainable peace and harmony amongst the people in the country. This fact has been recognized in the Report of the Lessons Learnt and Reconciliation Commission (LLRC) which affirms that *“problems concerning land were a key issue that was brought to the Commission’s attention by a large number of persons of all communities who appeared before it; particularly during the Commission’s visit to the affected areas in the North and East. The Commission believes that measures and policies ensuring legitimate land rights, especially among the returning IDPs, would contribute significantly to restoring normalcy and promoting reconciliation”*.<sup>1</sup>

In order to address issues and redress disputes relating to land in the Northern and Eastern Provinces of the country, the Ministry of Justice has proposed setting up Special Mediation Boards to facilitate resolution of issues and disputes. In order to support the setting up of Special Mediation Boards, The Asia Foundation, at the instance of the Ministry of Justice, commissioned a ‘Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka’ to study the nature, type, and scale of the prevailing disputes and problems in selected areas in these two provinces. The Rapid Assessment further sought to find out whether the proposed scheme of Special Mediation Boards is conducive and appropriate to handle these land related disputes and issues.

The objectives of the Rapid Assessment:

- To understand the nature and characteristics of post war land related disputes and difficulties faced by people at village level;
- To seek views of the people directly affected by the above disputes and understand difficulties as to how these disputes can be best resolved according to their best interests; and
- To explore the use of mediation as a mechanism for resolving these disputes at community level.

## **Methodology**

The Rapid Assessment comprised a review of literature on land disputes in the Northern and Eastern Provinces of Sri Lanka, Key Informant Interviews at national, district and divisional levels, and Focus Group Discussions at divisional level.

## **Research areas and sample sites**

The primary research areas were 27 Divisional Secretariat Divisions (DSD) representing all eight Districts in the Northern and Eastern Provinces of Sri Lanka. The Research Sites were selected based on the high numbers of land related disputes and issues reported, as well as the composition of Tamil, Muslim and Sinhala ethnic representation and their specific issues with regard to land. The

<sup>1</sup> vide para 6.2 of the LLRC Report

selection of research sites was finalized in consultation with the Northern and Eastern Provincial Land Commissioners, Land Officers – Head Quarters (District Land Officers), selected Chairpersons of the Community Mediation Boards and on suggestions of Legal Aid Commission Officers in the respective districts. The areas for Focus Group Discussions (FGD) were based on the same sites.

Province	District	Number of DS Divisions in the District	Number of DS Divisions selected for assessment	Names of DS Divisions selected for assessment
Northern	Jaffna	15	4	Maruthankeni Jaffna Valikamam North – Thellippalai Velanai
	Vavuniya	4	2	Vavuniya North Vengadachettikulam
	Mannar	5	2	Mannar Town Manthai West
	Mullaitivu	5	5	Maritime Pattu Manthai East Oddusuddan Puthukkudiyiruppu Thunukkai
	Kilinochchi	4	4	Karachchi Kandawalai Poonakary Pachchilaippalli
01	05	33	17	
Eastern	Batticaloa	14	4	Vaharai Chenkalady Batticaloa Town/Kattankudy Kaluwanchikkudy
	Ampara	19	3	Thirukkivil Lahugala Ninthavur/Pottuvil
	Trincomalee	11	3	Kuchchaveli Padavisiripura Mudur
01	03	44	10	
02	08	77	27	

### Tools and sources of information

The tools and sources of information included a Desk Review of literature on community level disputes and issues over land, Key Informant Interviews (KIIs) based on a pre-designed questionnaire and Focus Group Discussions (FGDs) with guide questions.

## Limitations

- The Rapid Assessment is limited to 27 purposely selected Divisional Secretariat Divisions due to time constraints and resources. This represents 35% of the 77 Divisional Secretariat Divisions in the Northern and Eastern Provinces.
- Certain difficulties were faced in accessing land related information as the availability of such information is limited due to lack of systematic record keeping as well as records being destroyed during the war.
- Reluctance on the part of some public officers in certain localities to provide information relating to land issues. For instance, the assessment could not be done in the Divisional Secretary's Division of Valikamam North (Thellipalai) which was selected as a sample site, as the Divisional Secretary refused, without any stated reason, permission to conduct Focus Group Discussions in the area.
- A substantive volume of disputes and issues raised relates to disputes, issues and difficulties faced with regard to State land and not privately owned land. Despite efforts being made to explore and gather information on disputes and difficulties faced by the people in the Provinces relating to private lands, the information gathered is less in comparison to State land. This is due to the paucity of primary data with regard to private lands. However in an attempt to fill this gap, information has been gathered from those who participated at the Focus Group Discussions from their knowledge of problems faced by people in regard to private land.
- Certain discriminatory and arbitrary provisions in the vast amount of laws in Sri Lanka that deal with land (both State land and private land) create many disputes and issues between people around the country. These issues and disputes are not particular to the people who live in the Northern and Eastern Provinces; nor do they arise due to the war that lasted in the country for well over two decades. The analysis of such laws and the problems they create is not undertaken in this exercise as that requires a separate study from different perspectives.

## Review of Literature

### Law reviews in macro level studies

- There have been some macro level analytical studies<sup>2</sup> on issues and problems relating to land – both State and private – in the country as a whole and in the Northern and Eastern Provinces in particular during and after the civil war. These studies have identified some of the problematic aspects of the laws which have been in existence in the country. The problems so identified relate to, but are not restricted to, the right to equality in particular from a gender perspective, the right of inheritance, the right to compensation when lands are subjected to acquisition by the government, the loss of ownership by prescription, and terms and conditions subject to which land grants and land permits are issued.

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<sup>2</sup> Sriskandarajah, S., Karunakaran, R.C., and Sumanthiran, M. A., *Legal Analysis of Property Issues affecting Internally Displaced Persons and Refugees of Sri Lanka*, A Publication by the National Protection and Durable Solutions for Internally Displaced Person's Project of the Human Rights Commission of Sri Lanka, 2004; Jayantha de Almeida Guneratne, Kishali Pinto-Jayawardena and Radika Guneratne, *Land Rights and Justice in Sri Lanka – Legal Lacunae*, Political Abuse and People's Plight, Law & Society Trust Review Vol 23 Issue 301 & 302, 2012. See also R. K. W. Goonesekere, *Select Laws on State Lands*, Law & Society Trust, 2006; Bhavani Fonseka and Mirak Raheem, *Land in the Northern Province : Post-War Politics, Policy and Practices*, Centre for Policy Alternatives, December 2011 and Bhavani Fonseka and Dharsha Jegatheeswaran, *Policy Brief – Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka*, Centre for Policy Alternatives, November 2013.

- The following laws have come into focus in this respect:
  - *Roman Dutch Law (RDL)* – Sri Lanka still treats the RDL as the common or the general law of the country. Though the RDL has several uses in various branches in Sri Lanka, Land is one of the important areas which give effect to the RDL by courts and judicial system.
  - *Land Grants (Special Provisions) Act No. 43 of 1979* - This law provides principles relating to alienation of agricultural and estate lands to be granted to landless persons.
  - *State Lands Ordinance, No. 8 of 1947* – This Ordinance deals mainly with Grants and Disposition of State Lands, and manages and controls these lands. This legislation contains provisions relating to issue of Annual Permits, Long Term Lease, Grants, Vesting Orders and Releasing Certificates.
  - *Land Resumption Ordinance No.4 of 1887* – This law deals with lands alienated by the Crown (State) and abandoned by the owners.
  - *Land Acquisition Act No.9 of 1950* – Under this Act private land and servitudes of individuals may be acquired by the State for public purposes.
  - *State Lands (Recovery of Possession) Act 7 of 1979* – This law deals with the recovery and possession of State Lands. It applies to recover unauthorized possession/occupation of State Lands.
  - *State Lands Encroachments Ordinance No. 12 of 1840* – This law makes provisions to prevent encroachment into State lands. It deals with information of encroachment, orders in relation to delivery of possessions and penalty on disobedience of orders made under this law.
  - *Prescription Ordinance No. 22 of 1871* – This Ordinance plays a key role in order to give effect to the possessory rights and to ownership of a property to the possessor of the land.
  - *Land Development Ordinance No. 19 of 1935* – This Ordinance is the key legislation with regard to systematic land development and alienation of State Lands and Permits, Grants and Free Grants are provided under this to specific categories of people (low income, high income and educated youth).
  - *Land Settlement Ordinance No. 20 of 1931* – The Ordinance is a primary piece of legislation in relation to Land Settlement in Sri Lanka and its application relates to identify, distinguish and declare state lands and private lands.
  - *Land Reform Law No.1 of 1972* – This legislation restricts the extent of agricultural land that could be owned by any one individual.
  - *State Land (Claims) Ordinance No. 21 of 1931* – This legislation provides for considerations and decisions on claims made with regard to the applications made under the Land Settlement Ordinance.

- *Definition of Boundaries Ordinance No. 1 of 1844* – This Ordinance provides powers to the State to more easily ascertain the boundaries of pieces of land in Sri Lanka.
- *State Land Marks Ordinance No.9 of 1909* – This Ordinance deals with the erection and maintenance of permanent landmarks to define the boundaries of land alienated by the State.
- *Requisitioning of Land Act No. 33 of 1950* – This Act authorizes the taking of possession and use of land required for essential purposes such as maintenance of supplies or services to the life of the community, implementing any such scheme for importation, storage or distribution of essential commodities by government departments, local authority, corporation or co-operative society and/or use or occupation by the armed forces or any visiting force. It also deals with determination of compensation and acquisition of such lands.
- *Forest Ordinance No. 10 of 1907* – The Ordinance makes provisions to amend and consolidate issues pertaining to conservation, protection and management of forest and forest resources. It also emphasizes and regularizes the felling and transport of timber.
- *Registration of Documents Ordinance No. 23 of 1927* – This Ordinance is the primary piece of legislation which regularizes the registration of documents and other instruments with regard to the immovable property in particular.
- *Registration of Title Act No. 21 of 1998* – The Act provides for the investigation and registration of title to a land parcel. It also regulates the transaction relating to a land parcel registered under this Act and to better manifest the ownership and enjoyment of the property.
- *Prevention of Frauds Ordinance No. 7 of 1840 (as amended)* – The purpose of this ordinance is to prevent frauds and perjuries. It provides conditions for transactions such as sale, purchase, transfer, assignment, mortgage of land or other immovable properties contracts or agreements.
- *Notaries Ordinance No. 1 of 1907* – This Ordinance is for the appointment of Notaries and to introduce all rules and regulations pertaining to the Notaries Public of Sri Lanka and provide instructions and enumerate several duties, responsibilities and liabilities and some rights of the Notary.
- *Ceiling on Housing Property Law No.01 of 1973* – It restricts the number of houses and property which could be owned by an individual.

The studies referred to above<sup>3</sup> have adequately analysed the laws as well as the case law pertaining to these laws, and can be perused for more information on laws and legal provisions not covered in this Rapid Assessment.

However the above mentioned studies do not specifically capture the problems and issues relating to lands faced at community level by people in the post conflict scenario in the Northern and Eastern Provinces, though the work of Sriskandarajah, Karunakaran and Sumanthiran<sup>4</sup>, does focus on legal analysis of property issues at community level that affect internally displaced persons in the country.

<sup>3</sup> See footnote 1.

<sup>4</sup> Sriskandarajah, S., Karunakaran, R.C., and Sumanthiran, M. A., Legal Analysis of Property Issues affecting Internally Displaced Person and Refugees of Sri Lanka, A Publication by the National Protection and Durable Solutions for Internally Displaced Person's Project of the Human Rights Commission of Sri Lanka, 2004

## **The Land Commissioner General's Circular No. 2013/01**

The Provincial Land Commissioners of the Department of Land Administration in the Northern and Eastern Provinces provide authoritative information with regard to the number of complaints received by their officers in pursuance of the Circular No. 2013/01 titled "Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces" and issued by the Land Commissioner General in January 2013. These apply only to State land and do not deal with private land.

Under this Circular, officers of the Provincial Departments of Land Administration placed at each Divisional Secretary's Office are required to receive and register all complaints made by members of the public with regard to land.

According to the data available at the Department of Land Administration in the Northern and Eastern Provinces as at January 2014, a total of 159,166 complaints relating to land disputes and issues/problems have been received by the Department of Land Administration of the Northern and Eastern Provinces. Of these, only 18,457 (12%) complaints have been already solved and 140,709 (88%) complaints remain to be settled.

According to the Circular the nature of disputes or issues/problems has been categorized into three types, namely (a) Land Requests, (b) Regulating Documents and (c) Other Land Problems. Some of the issues/problems under Category (b) and most of the issues/problems under Category (c) fall under land disputes, which can be settled through Mediation and/or appropriate legal means to expeditiously resolve them.

Although this data provides information relating only to State Lands in these provinces, they throw light on the size of the land disputes and issues/problems in these areas that need to be settled.



**State Land Disputes and Problems/Issues in the Northern and Eastern Provinces as at January 31, 2014**  
Circular No: 2013/01

No	Districts	No. of Land Requests				No. of Land Problems Solved				No. of Land Problems to be Resolved				
		Land Requests	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Percentage (100%)
<b>NORTHERN PROVINCE</b>														
01	Jaffna	5199	1395	1148	7742	285	202	220	707	4914	1193	928	7035	90.87
02	Kilinochchi	18610	6395	10048	35053	2537	1561	1504	5602	16073	4834	8544	29451	84.02
03	Mullaittheevu	12344	17413	10594	40351	316	685	2288	3289	12028	16728	8306	37062	91.84
04	Mannar	19689	450	1634	21773	5660	97	309	6066	14029	353	1325	15707	72.14
05	Vavuniya	40408	725	1452	42585	1073	330	130	1533	39335	395	1322	41052	96.40
<b>PROVINCIAL SUB TOTAL</b>		<b>96250</b>	<b>26378</b>	<b>24876</b>	<b>147504</b>	<b>9871</b>	<b>2875</b>	<b>4451</b>	<b>17197</b>	<b>86379</b>	<b>23503</b>	<b>20425</b>	<b>130307</b>	<b>88.34</b>
<b>EASTERN PROVINCE</b>														
01	Ampara	1142	3714	905	5761	11	198	12	221	1131	3516	893	5540	96.16
02	Batticaloa	231	1976	1124	3331	102	293	291	686	129	1683	833	2645	79.40
03	Trincomalee	1438	56	1076	2570	305	4	44	353	1133	52	1032	2217	86.26
<b>PROVINCIAL SUB TOTAL</b>		<b>2811</b>	<b>5746</b>	<b>3105</b>	<b>11662</b>	<b>418</b>	<b>495</b>	<b>347</b>	<b>1260</b>	<b>2393</b>	<b>5251</b>	<b>2758</b>	<b>10402</b>	89.20
<b>GRAND TOTAL N&amp;E</b>		<b>99061</b>	<b>32124</b>	<b>27981</b>	<b>159166</b>	<b>10289</b>	<b>3370</b>	<b>4798</b>	<b>18457</b>	<b>88772</b>	<b>28754</b>	<b>23183</b>	<b>140709</b>	<b>88.40</b>

*Source: Department of Land Administration, Northern and Eastern Provinces*

See **Data under the 2013/01 Circular** for detailed particulars that give the quantum of disputes and issues which have surfaced in the study carried out.

## Macro level land issues in the Northern and Eastern Provinces

Available literature highlights macro level issues over land in the Northern and Eastern Provinces. These issues include problems related to land alienation for macro development projects, issues between and within religious groups, dissatisfaction with land allocations and housing projects, disputes associated with large scale resettlement, encroachment and possession of land, forest land occupation, high security zones and political interferences and influences.

These macro issues (listed in the Key Background Documents) require further in depth exploration and analysis if they are to become a part of the proposed mediation mechanism.

## Key Findings

### Issues and disputes relating to State Land

In relation to State land in the Northern and Eastern Provinces, the following issues and disputes were identified:

- Encroachment of State land (Permit Land/Grant Land) is seen in large numbers of cases due to the displacement that resulted during the war. These encroachments have resulted in diverse complicated, contentious and serious issues amongst people.
- Unauthorized possession of State land due to the lack of available land. People have occupied State land without authorization as they see these lands as being safe and conducive to engage in livelihood activities. This land includes land of the State, as well as State land parcels granted to people by way of Government Permits/Grants.
- Occupying of land by persons who are not the holders of Government Permits/Grants and therefore the valid owners of the land. At the end of war in May 2009 people who had been occupying State lands subject to Permits/Grants, with or without the leave and license of the holders of Permits/Grants are confronted by persons who hold valid Permits/Grants to the said pieces of State land, who have been away from their Permit/Grant lands due to the war. These 'owners' returning to their lands demand the said land from the present 'occupiers', who have been living in and developing the said land for a substantial period of time, thus resulting in ownership disputes.
- Some long-term 'encroachers' or 'occupiers and developers' have been placed in those State lands (belonging to others who hold Permits/Grants) by those with power during the war (i.e. LTTE). Some of these 'encroachers' or 'occupiers and developers' have been so settled with the express or tacit approval and/or 'conveyance' by the lawful 'owners'. Some 'encroachers' or 'occupiers and developers' have been encouraged to engage in living on and developing such land due to political patronage.

*A piece of land was encroached in 1976 by "S"'s grandfather (mother's father). The Survey Plan was issued in the name of her grandmother (mother's mother). The Permit was issued in the name of her uncle. Later, the land was divided and defined as allotments, and one acre was given to her mother. Her mother has been living there since 1976. After the grandmother's demise, the copy of the grandmother's Death Certificate was lost during the tsunami. A copy of the Death Certificate is needed to acquire the one acre (given to the mother) on an official permit from the Divisional Secretary so that the mother could give the land and the permit to "S" and write the land in "S"'s name. This situation can create family disputes when the land owner dies without nominating a successor.*

- Documents relating to permits, grants, leaseholds and other legal bonds executed between the Government and beneficiaries of State land have been lost or destroyed in the war or in the 2004 tsunami. Therefore, the lack of documents to prove ownership, coupled with the long delay on the part of the original owners to assert their 'rights' over these lands makes the issues more complex, intricate and, at times, intractable.

*"A" lost her private land deed belonging to her parents during displacement. Before displacement, the deed was drafted and entered into, but it was not registered by the Notary Public. The Notary Public who made the deed also died and the documents (Protocols of the deeds written) were not handed over to the Land Registry. "A" wanted to get the property mortgaged to obtain a loan facility from a Bank. The Bank is asking for the Title Deed as well as all documents connected to the Deeds such as Water Bills, Electricity Bills, and the Assessment Tax Registration which are not in "A"'s name.*

- Related to the above is the critical issue where people are unable to get copies of legal documents such as Permits which were lost due to displacement during war. There is an inordinate delay in processing requests for such copies due to administrative rules and practices. This is further aggravated where relevant government institutions do not possess these documents due to documents being destroyed during the war.
- There are many disputes with regard to locating the exact boundaries of land. It is difficult to demarcate the land because there is no Surveyors' Plans available for these lands.
- Issues relating to right of way, access to main roads, right to fetch water for domestic and agricultural purposes have been surfacing in lands allotted to people following the end of the war. The lack of clarification with regard to these matters and lack of documents in the relevant offices hinder the settlement of these issues and disputes.
- There are issues of 'outsiders' or 'recent trespassers' forcibly taking over land from long term occupiers and developers. This is particularly the case when these lands are 'owned' or 'occupied' for a considerable period of time by women headed families.
- There are contentious issues of 'outsiders' (people not from the specific community) or people from other provinces and areas being permitted or encouraged to occupy lands with the express or implicit support of those with political power and/or police/security powers. This occupying of land by 'outsiders' has generated mistrust, displeasure, disputes and other issues amongst people belonging to different ethnic and religious groups.
- There are many landless people in the two Provinces. A lack of efficient and timely mechanisms with humane approaches to the problems of the landless in the said Provinces is a concern and a source of disharmony amongst the people as they perceive different and unfair treatment by authorities in other provinces in granting land to people.
- Those who have been the recipients of houses/homes in the newly established 'resettlement villages' face hardships due to poor quality infrastructure and facilities provided in the newly built homes.

- Some of the long term occupants of lands who have been living as owners of the said land for more than a generation face the future with uncertainty as relevant officials fail to take any meaningful steps to provide them with the necessary legal instruments and documents regarding ownership or right to the land they are living in.

*“X” was living in Mannar. During the conflict he bought a piece of land from “Y”, which had been given under a Government Permit. The transactions were done legally by a Conditional Transfer, stating that, when the Grant is processed it has to follow the proper administrative procedures and take all the necessary steps to write the deed in the Purchaser’s name. “Y” could not follow up on the proper procedures and the final Grant Permit was issued to the previous owner “X”. Now “X” is not ready to transfer the grant unto to “Y” according to the conditions agreed.*

- There have been instances where the Permit/Grant land has been given as dowry by the holders of Permits/Grants when their children got married, without following proper administrative procedures on transferring land held on Permits/Grants which makes the ownership of the dowry property invalid.

- State land cannot be sold and thus owners of State land through Permits and Grants cannot sell and transfer the land. There are instances where the holders of Permit/Grant have sold their title illegally to others who have not realized the illegality of buying such land and the conditions applicable to ownership of State land. Following these illegal sales, the holders of the Permits/Grants reclaim the same land from the present ‘owners’ leading to disputes over ownership.

*“A” was living in Trincomalee. During the conflict in 1998, he bought 160 acres of land from “B” as “B” could not live in the area due to the conflict situation. After a year, in 1999 the land was regularized by a permit issued by the respective DS division. At the time “A” had been living on the land and had written some portions of the land to his children keeping the rest of the land for himself. But later, in 2012, two sisters of “B”, the original owner claimed the land as theirs, as it is an ancestral land. Now the Divisional Secretary has instructed them to claim the title of the land.*

- There are issues relating to lands which were owned by people but which have been acquired by the Army after the tsunami. These owners have not been granted other land in substitution to the ones which have been acquired by the Army.
- Disputes have cropped up between spouses who have separated with regard to the ownership of land given by Permit jointly to husband and wife, in the event of their separation.
- Issues relating to inheritance of the land have arisen between the children of Permit holders when the Permit holder marries for a second time and he has children by the first marriage as well as from the second marriage.
- Annual Permits of the land have not been renewed annually, due to the non-existence of the civil administrative machinery in the war affected areas. Issues have cropped up in renewing these Permits now.
- Issues have arisen where people who have been relocated have occupied land adjoining the land given to them or made changes to the boundaries to expand their land plots.
- In the event of resettlement, people are confronted with problems when getting housing scheme assistance as the land they live in is undivided or the land has not been divided according to law.

- Issues over land seized by the LTTE have not been resolved yet leaving ownership obscure.

*“R” was living in Kilinochchi, was displaced to Vavuniya and was living in a Welfare Camp with his family. “R” had a Permit for 5 Acres under the Mahaweli Development Scheme. During the war his land was forcibly taken by LTTE to build camps. Later the land was taken by the Army and who is now of the view that it was LTTE land captured by the Army. The Army will not give it back.*

### Issues and disputes relating to Private Land

- Ownership disputes have arisen due to two or more people claiming one, and the same piece of land. Both or all of these claimants possess valid Deeds that prove ownership for the same land.
- Disputes over prescriptive issues with regard to private lands.

- Disputes where land owners leaving the country have given Powers of Attorney to lawyers to attend to matters pertaining to the land and these powers have been abused or misused by the lawyers including the illegal sale of such land by the lawyers with the power of attorney.

*Family “A” went as “refugees” to India and have been living in India for the past 13 years due to the conflict. They mortgaged their house to a bank back in 1978 prior to their displacement. Due to the non-payment of monthly installments to the bank, the house was to be auctioned by the bank. Family “A” gave a Power of Attorney to relatives and sent money to redeem the house from the bank. The house was redeemed and the Power of Attorney holder possessed the premises. Now Family “A” has returned to Sri Lanka. But the Power of Attorney holder is not returning the house to the owner.*

- Disputes where people appointed as caretakers of property belonging to land owners who left their land during the war are now claiming prescriptive title to the land (having lived on the land for decades) through Deeds of Declaration.

*When “Q” was displaced to Puthukkudiyiruppu in Mullaitivu in 1990, he did not have any land to live on. Therefore, he lived on a piece of land belonging to a relative, as the relative was living outside Sri Lanka. The relative asked “Q” to look after the land and promised he would give ½ or ¼ acre of land to “Q”. “Q” believed his word and looked after the entire land and developed the land. The relative is now back in the country and with the help of a neighbor is asking “Q” to leave the land. “Q” claims that he has not lived merely as a Caretaker, but has developed the land hoping to be given the promised ½ or ¼ acre of land. “Q” has no money to buy the piece of land and nowhere else to go.*

- Boundaries of private lands are not identified. The lack of boundary demarcation is more acute where owners are living outside the country and where land owners have been displaced. Further where such displaced land owners are not alive, their children face many difficulties in identifying boundaries of the land they own but are not familiar with.
- There are further boundary disputes over agriculture lands destroyed during the war where documents to these lands have also been lost or destroyed during the war.
- There are disputes due to claims of ownership of land by people who have once owned the land and disposed the said land during the war. These people state that they transferred their



title/ownership to others due to duress or threat from those in power at the time and therefore that such transfers and sales are not valid.

- Private land owned by people displaced during the war have been encroached upon by persons who have 'prepared' deeds (illegal deeds) for the land. These lands have subsequently been transferred to other persons or granted to/inherited by children creating more complex disputes over ownership.
- There are disputes over inheritance of private land due to landowners living outside the country.
- Deeds destroyed and/or lost during the war and by the tsunami.
- Disputes arise where in the event of a dissolution of marriage, parties, particularly women face difficulties in reclaiming ownership of private land given as dowry.
- A substantial number of parcels of private lands have been acquired by Security Forces.

## **Other Issues:**

### **Lack of effective links and coordination among public institutions dealing with land**

There are many public and statutory institutions mandated to deal with State lands under powers given by different legislation. There appears to be a lack of coordination among these institutions or where there is coordination, it is not effective in terms of settling disputes and issues people have over land. There is a need to streamline duties and coordination between these institutions to make processes less cumbersome for people who have already undergone severe hardships due to the prolonged war and devastating tsunami.

### **Revisiting policy decisions with regard to issues connected with State Lands in the Northern and Eastern Provinces**

During the war, the country's laws relating to the matters of ownership, occupation and possession of both State and private land did not operate and were not used properly by those in power in war affected areas. The adverse results of this are being experienced by people at community level. Currently, in a post war situation, this situation with regard to land issues has to be viewed from a humane and human rights perspective; not from a black-letter law perspective. There is a need for policy changes as well as specific regulatory and administrative directions from a humane and humanitarian approach in order to settle and resolve land related disputes and issues faced by people, not only to resolve these issues but also to strengthen the reconciliation process.

### **Gender implications**

While issues, problems and disputes relating to land have affected all people (men and women) of the Northern and Eastern Provinces, women are more affected and more marginalized due to their vulnerability in largely patriarchal communities in the war affected area. It is reported that there are 40,000 female headed households in the Northern and Eastern Provinces. A recent report<sup>5</sup> states "*... they (men and women in the study locations in the Northern and Eastern Provinces) are*

5 Jayasundere, R. and Weerackody, C. (2013). *Waiting for the Peace Dividend*. Gendered implications of economic development in the post war Northern and Eastern Provinces of Sri Lanka with a special field focus in the districts of Mullaitivu, Jaffna and Batticaloa. CARE International Sri Lanka.



*burdened by myriad economic and social issues that place both men and women in vulnerable situations. However the impact on women is far more serious than on men due to restrictions in mobility, fear of personal and family safety, lack of equal access to resources and opportunities, restrictions caused by traditions and norms in largely patriarchal communities and social stigma against women who step out traditionally accepted roles for women”.*

The women, widows or whose husbands have disappeared during the war are identified as heads of their households due to the physical absence of men (fathers, husbands, brothers and sons) in the house. They have become heads of their households largely out of necessity, and due to war related circumstances over which they lacked control, and not out of choice.

The personal laws applicable in the North and East as well as some of the written laws enacted before the introduction of the present Constitution contain provisions which are discriminatory against all women when it comes to succession and transfer of land and the implications of this on women heads of households are serious especially for those women who are poor, lack education and acceptable and accessible employment opportunities. Those who are not so marginalized and engage in profitable income generating activities and manage their households are also affected by discriminatory laws and practices in relation to land that favour men in these provinces.

One of the serious observations made by the researchers when interviewing women who spoke of disputes and issues relating to land and land ownership was that some did not have the awareness and information to realize that existing laws and processes relating to land were discriminatory of women and that women are not being given equal treatment when it comes to land related issues. They appear to accepting the fact that it is the ‘order of things’ and that it cannot be changed or challenged. Legal literacy is low among many women interviewed while some are aware but unwilling to challenge the unequal treatment of the law. Instead of challenging such, they state that they prefer to look for ways to obtain a piece of land so that they can rebuild their children’s and their own lives.

### **Views on the suitability of Special Mediation Boards**

- There is acceptance by the majority of people consulted about plans to establish Special Mediation Boards, that these boards would be suitable to deal with most disputes and issues over land that are being faced by people. Those consulted are of the opinion that the existing judicial system (with the District Court hearing and disposing of land related issues and disputes) will not be suitable to remedy the current situation as they feel that the District Court will cause further constraints and hardships for the people due to the time taken, and the adversarial nature of the proceedings in the judicial process.
- People are of opinion that trained mediators with adequate knowledge of law should be appointed as Special Mediators to deal with these matters and issues in a sustained and continuous manner. They expressed their reservations with regard to mediators attached to the Community Mediation Boards currently functioning in the areas taking on these land related disputes and issues.

## **Recommendations to establish Special Mediation Boards**

The preliminary findings of this study have shown that Special Mediation Boards could play a vital role in resolving land disputes and issues relating to State lands and private lands in the Northern and Eastern Provinces. Due to its nature and characteristics, the mediation process could play a major role in resolving these disputes in an amicable manner and facilitate a harmonious and peaceful environment amongst disputing parties. It is clear that rules and processes relating to settlement of land related issues by adjudication in formal courts of law cannot address the complex nature of issues that have arisen due to the war and will not be able to facilitate peaceful settlements ensuring equity and justice amongst parties. The law relating to civil procedure and evidence governing the formal courts of law promotes an adversarial nature of trial and adjudication which represents a 'winner takes all' approach to litigation. This approach neither promotes peaceful resolution of disputes nor provides for harmony and co-existence among the disputants through a 'give and take' approach to settlement of disputes.

The courts are primarily required to interpret and apply black letter law and decide cases accordingly. The courts are expected to confine proceedings to legality. Within the framework of legality courts might enjoy a certain degree of flexibility when it comes to equity and justice but this is within limits that do not always provide for facilitated and amicable settlements that benefit both parties to a dispute or issue.

On the other hand, settlement through mutual consensus is the main focus promoted by the process of mediation, which will not strictly adhere to legality arising out of a construction of the black letter law.

It is refreshing that there is support and encouragement from the Provincial Land Commissioner's Department for the need to establish Special Mediation Boards to support and promote the resolution of disputes relating to land which are brought before the Department. It is observed that the present mechanisms (such as 'Holding Land Kachcheris' and 'Holding Division Day Programmes') established under the Circular Number 2013/01 titled 'Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces' can be further complemented if the mechanism of mediation is introduced at some point when a resolution cannot be found or arrived at by the officers working under the powers of the said mechanisms. It is felt that an issue, which could not be resolved at the Division Day Programme, could be referred to a Special Mediation Board before it is referred to the Mobile Service Programme.<sup>6</sup>

### **Establishment of Special Mediation Boards to address land disputes**

Special Mediation Boards are welcomed by most who participated in this study. It is clear that the establishment of Special Mediation Boards will not resolve all problems relating to land, but it is a mechanism that people appear to view as suitable and capable of providing relief especially at community level.

It is important that the people who will undertake the process of mediating land related disputes be qualified and further trained to handle the complex and difficult issues pertaining to land and do so with a humane and humanitarian approach promoting 'give and take' among parties to foster amity and harmony amongst disputing parties rather than further separation and discord.

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<sup>6</sup> For more details refer the Concept Note appended to this report as an Annex.

## Piloting of Special Mediation Boards

It is most appropriate to establish Special Mediation Boards at DS Division level. One Board per district will not be effective due to the nature and geographic distribution of the areas that would impact on access to Special Mediation Boards and also will have issues in regard to selection in addressing the representation from each DS Division and GN Division.

In order to pilot the process, Special Mediation Boards could be established in DS Divisions where the magnitude of disputes is very high. In certain locations two or more DS Divisions could be combined. The following DS Divisions in all the districts in the Northern and Eastern Provinces are recommended for the pilot effort.

Jaffna	-	(1)	Maruthankeni
		(2)	Velanai
Kilinochchi	-	(3)	Karachchi
		(4)	Poonakary
Mullaitivu	-	(5)	Puthukkudiyiruppu
		(6)	Maritime Pattu
Vavuniya	-	(7)	Nedunkeni
		(8)	Chettikulam
Mannar	-	(9)	Manthai West
		(10)	Musali
Ampara	-	(11)	Addalachchenai
		(12)	Thirukkivil
Batticaloa	-	(13)	Vaharai
		(14)	Kaluvanchikudy
Trincomalee	-	(15)	Kuchchaveli
		(16)	Muthur

## Qualifications of Mediators

Mediators on the Special Mediation Boards need to possess knowledge and experience on land related matters. They must have specific educational and professional qualifications necessary to deal with the issues that will have to be mediated as well as knowledge broadly on alternative dispute resolution. As the qualities of a negotiator/problem solver/mediator could not be imparted only through the Mediation Training Process that is given by the Ministry of Justice, the careful evaluation and assessment need to be ironed out when selecting the suitable candidates as mediator trainees. Good intra and interpersonal skills (communication skills), sensitivity towards vulnerable community/ persons such as the poor, the marginalized and vulnerable women, goodwill towards relationship building/peace building among disputants/communities and great sense of understanding of land issues are some of them.

Mediators must be from the areas where Special Mediation Boards will be established and should be accepted and respected by the community. Mediators must comprise women and men, represent all ethnic and religious groups, and represent all Grama Niladhari Divisions in the respective DS Divisions.

## Training of Mediators

Persons selected for appointment to the Special Mediation Boards have to be provided with extensive training on mediation and negotiation skills and be provided comprehensive knowledge on legal and administrative procedures pertaining to land issues. Follow up training and mentoring is very

necessary for an effective mediation process once they are appointed as Mediators. While they are trained on the Mediation Process using the existing training module, there must be a special module on Mediating Land Disputes and Training. Further a well-designed reference module/s on Legal and Administrative Practices of State and Private Lands needs to be developed and training on these aspects needs to be ensured.

### **Management of Special Mediation Boards**

Procedures and processes regarding the management of the Special Mediation Boards need to be drafted. The Chairperson and Vice Chairperson appointed to each Special Mediation Board and/or selected mediators should be given a comprehensive training on the Management of a Mediation Panel with regard to planning, managing, coordinating and reporting in general as well as all specifics pertaining to land related disputes and issues. A proper guideline reference (tools and resources) needs to be developed on Management of Special Mediation Boards including reporting, monitoring and evaluation processes for the effective and efficient implementation and functioning of the Special Mediation Boards.

### **Apex Body or Committee**

In terms of adherence to settlements that are arrived at the Special Mediation Boards in disputes where the State is a party to the disputes and/or where the disputes are with regard to State land it is recommended that an Apex Body of Persons or Committee be created to ensure adherence to the settlement arrived at. The Apex Body or Committee should consist of representatives of decision making authorities over land related issues and other areas as detailed already in this Assessment. The role and function of this Apex Body or Committee including the relationship between the Special Mediation Boards and this Apex Body or Committee have to be carefully considered, defined and written out in order to prevent any confusion or conflict between the Special Mediation Boards and the Apex Body or Committee in terms of authority, roles and functions.

### **Land Tribunal**

It is unchallenged that disputes and issues relating to land, both State land and private land are complex and have a telling impact on affected parties. In offering a mechanism to address these disputes and issues, there must be special importance placed on access to equitable justice for all parties concerned and that justice should not be denied to any person.

While the mediation process will facilitate negotiated settlements between disputing parties where settlements will be arrived at by both parties together, there will be some instances where one or more persons are not completely satisfied with the settlement reached at the mediation process or with the process itself. In instances where there is dissatisfaction, it is recommended that such persons be provided the opportunity to take the issue to a specially established Land Tribunal (or a body with adjudicatory powers by another name) for the purposes of hearing reasons for dissatisfaction over settlements arrived at the Special Mediation Boards and 'adjudicating' on the specific issues of discontent. The members of this Tribunal must be appointed by the Judicial Service Commission as to ensure that their appointment does not offend the Constitutional provisions relating to the exercise of 'quasi-judicial' power. The Tribunal should be a dedicated institution confined to dealing with the issues arising from the Special Mediation Boards. The jurisdiction, powers, and functions of this Tribunal can be deliberated and decided on.

### **Resolving problems, that are not disputes, relating to land faced by people in the two Provinces**

This Assessment has brought out disputes relating to land as well as problems and issues which could not be termed or categorized as 'disputes'. For instance, these issues include loss of deeds or instruments authenticating title or ownership to a property or land; landlessness; and inability to identify boundaries as there have not been any survey plans for a particular piece of land.

The above referred to Circular No. 2013/01 attempts to address these issues and problems through Land Kachcheris and Division Day (DD) Programmes. However, the frequency of holding these Kachcheris and DD Programmes has to be increased considerably if the large numbers of problems and issues faced by people are to be addressed and remedied efficiently and without delay. In particular, the alienation of land consequent to holding Land Kachcheris must not take an inordinately considerable period of time; and there should be mechanisms to expedite the processing and awarding of State land where such decision is recommended by the relevant authorities.

### **Amendments to the Mediation (Special Categories of Disputes) Act 2003**

In terms of setting up Special Mediation Boards to address land related disputes and issues, the present law relating to Special Mediation may need some amendments to ensure that the process is made use of effectively and efficiently with certain degree of finality attached to settlements/decisions arrived at the process.





## Key Background Documents





**Concept for an  
Accelerated and Integrated Housing, Land and Property Dispute Resolution  
Programme/System in Sri Lanka  
for  
Settlement of Disputes over State and Private Property in Conflict Affected  
Areas**

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## Introduction

The protracted conflict in Sri Lanka has resulted in numerous dislocations of citizens in the North and North East of the country. One consequence of displacement has been the loss by citizens of both public and private housing, land and property.

Currently, 18 % of land in Sri Lanka is held privately and 82% by the state. At this time, it is important for the government to assist parties who have lost either state or private land or property to reclaim it, receive compensation or obtain equivalent land in other locations in the country.

A decision was taken by the Cabinet on 04.05.2011 on regularizing land management in the Northern and Eastern Provinces, as recorded in Cabinet Memorandum No: 11/0737/533//015 of 07.03.11. The Land Commissioner General's Department (LCGD) has made this initiative a high priority.

Addressing housing, land and property conflict and related issues can be done by developing separate mechanisms for state and private land. However, a better methodology may be to develop an integrated conflict management system that links resolution of land issues in both sectors. Although these disputes have some significant differences, they also have similarities, which may be more efficiently addressed if they are handled by an integrated system.

An integrated conflict management system is an entity created to address and efficiently resolve a specific category of issues or problems. It has multiple components that are linked, interact with each other and are coordinated to achieve a desirable outcome. Below is a description of how such a system to address housing, land and property disputes in Sri Lanka might work.<sup>7</sup>

The proposed system would involve collaboration among the Ministry of Land and Land Development (MLLD) (specifically the Land Commissioner General's Department, Provincial Land Commissioner's Department), the Ministry of Justice (MOJ), the Mediation Boards Commission and the Legal Aid Commission (LAC) and others as appropriate and draws on their past experience and expertise. (See Figure 1: Flowchart for a Housing, Land and Property Dispute Resolution Program/System in Sri Lanka for Settlement of Disputes over State and Private Property in the Conflict Affected Areas)

The process would involve coordination of government agencies to conduct case intake, analysis, and referral to the appropriate entity or entities for resolution assistance; voluntary dispute resolution procedures; back-up third party decision-making processes where voluntary agreements are not forthcoming; and enforcement mechanisms in the event of one or more parties' non-compliance with either negotiated agreements or third party decisions.

### Public Awareness, Identifying Problems, Intakes and Referrals

Successful resolution of housing, land and property disputes is dependent on broad public awareness by affected members of the public – those “who have abandoned an area and who have resettled after being displaced”,...”for those people who are expecting to settle again and who have problems with state lands” or those with conflict-affected private properties – of mechanisms available to them to settle issues of concern (Circular2013/01, 2.1.1, p 3).The LCGD circular describes its proposed methodology for educating affected parties and public officials involved in State Land Administration and Management on the process for applying for, recognition and registration of land rights and

<sup>7</sup> The proposed system is based on Moore's research and experience in establishing and building capacities of government agencies and civil society organizations to implement housing, land and property dispute resolution systems in Afghanistan, East Timor, Democratic Republic of Congo, Guatemala, Liberia, South Sudan and Uganda; and research and experience of Thirunavukarasu with the MOJ's Mediation Boards and other organizations in methods to resolve land disputes in Sri Lanka.

uses which were lost due to the conflict. The Land Commissioner General's Department will conduct publicity at the national level, and the Divisional Secretaries at the divisional level. The public awareness initiative also should include media outreach and community meetings.

The MOJ, through its national Mediation Boards Program, has a cadre of Mediation Board Trainers and Program Assistants who work throughout the country to educate citizens and potential sources of case referrals about dispute resolution services available to them through regular Mediation Boards. Information provided by Trainers and Program Assistants could easily be expanded to include data on how citizens can access a new land and property dispute resolution system and mechanisms to resolve issues involving both state and private land.

Best practices in the development of dispute resolution systems indicate that multiple sources for referrals and case intake are desirable. Ideally, referral sources should be cultivated and sought from local government agencies and officials, courts, police, non-governmental and community-based organizations. Referrals from courts should be sought by Special Mediation Boards for cases involving private land.

Case intake would be conducted through Divisional Secretaries or Assistant Government Agents, and the MOJ, through Special Mediation Boards (which will be described later). Depending on whether a party is making a claim related to state or private land, the issue would be routed to the appropriate entity and dispute resolution mechanism and pathway.

### **Document Searches and Legal Assistance**

Processing claims requires a search for relevant documents - grants, lease bonds and permits legally issued by the government; or titles, deeds or other relevant documents. In many cases, as a result of the protracted conflict, many people may lack documentation of proof of ownership or possessory rights of housing, land or property. Alternative documentation such as receipts, bills or testimony by credible witnesses may need to be secured and accepted as the basis of claims. The process proposed by the LCGD includes this step, which will be provided by the Divisional Secretary in cooperation with the Provincial Land Commissioner or Deputy Land Commissioner.

Cases involving private housing, land or property will require similar searches, often which claimants are unable to do on their own. In the proposed system, the assistance of the LAC, NGOs or CBOs with expertise in conducting searches would be secured to provide this service. Special Mediation Boards can also assist disputing parties to arrive at consensus by amicably agreeing on certain documentation, where multiple claims or conflicting documentation are concerned.

In addition to document searches, claimants may also need advice and/or legal assistance on how to most effectively pursue their claim. This help, for both public and private cases, can be provided by the LAC or other qualified entities as yet to be identified

### **Problem Solving Mechanisms and Procedures to Resolve Land Claims**

#### ***Resolution of Disputes over State Land***

Claims related to public land will be received by the Divisional Secretariat, or referred as a result of intake by the Special Mediation Boards, and will be resolved by the way of Division Day based on evidence discovered during the document search, interviews, testimonies etc. Division Day is a process in which Divisional Secretaries take action to solve problems identified at the Grama

Niladhari Divisions based on information gathered during the data gathering process described above. Division Day participants will include the Divisional Secretary and the Assistant Divisional Secretary, Land Officer, Colonization Officer, Field Officer, Public Management Assistant (Land) and Grama Niladhari as appropriate or needed. Additionally, Trainee Graduates/Program Officers may also be involved, and the assistance of officers of the Provincial Land Commissioner's Department, Land Commissioner General's Department, divisional level officers or relevant departments such as the Department of Surveys, Department of Archeology and the Department of Forest Conservation may take part as needed or appropriate.

The Circular does not describe whether or not a claimant is to be directly involved and participate in the Division Day process, or whether the procedure is exclusively an administrative review and outcome determination process. (Participation and the outcome of the process need to be clarified.)

In general, participants in Division Day would likely have the following functions and use one or more of the procedures described below:\*

- 1) *Review of applications for restoration of state land to an applicant that have been investigated, found to be valid and are uncontested.* In this event, participants in Division Day would recognize the claim and make arrangements for issuing appropriate documentation.
- 2) *Review of applications for restoration of state land to an applicant that have been investigated and found to be valid, but for some reason the applicant cannot or does not wish to return to land previously held.* In this event, participants in Division Day would make a decision and provide the legitimate applicant with alternative land.
- 3) *Review of documentation and testimony, as appropriate, of applications that are contested, and utilize one or more of the following procedures to affect a settlement of contested issues:*
  - a) *Serve as a mediator and engage contending parties in collaborative problem solving to resolve contested issues.* (Mediation Boards Trainers could provide training to participants in Division Day if it is desired and requested.)
  - b) *Refer the case to the Special Mediation Boards for collaborative problem solving.*
  - c) *Make an advisory recommendation on a settlement of contested issues and determine if contending parties will conciliate and accept it.*
  - d) *Make a binding decision regarding the application and contested issues, and make arrangements for issuing appropriate documentation.*
  - e) *Refer contested issues to a Mobile Services Program, to be conducted at the Divisional Secretariat Level, for further dispute resolution assistance.* (The Circular does not describe exactly what Mobile Services are to do – mediate or make a final binding decision. This remains to be clarified.)

### ***Resolution of Disputes over Private Land***

Mediation in Sri Lanka conducted by the MOJ's Mediation Boards has a long history of success. The MOJ has the authority and experience to set up Special Mediation Boards to address specific kinds

of issues and disputes, such as the Post-Tsunami Boards established after the national disaster to address housing, land, property and inheritance issues.

The proposed dispute resolution system would involve the MOJ creating Special Mediation Boards in conflict affected districts with members who are experienced and trained to settle financial, housing, land and property disputes. Boards would use a process of interest-based mediation to assist disputing parties to reach voluntary settlements of issues in dispute.

Disputes related to private housing, land and property claims would be handled by Special Mediation Boards after intake by the Boards themselves, or as a result of referral from the LCGD. Special Mediation Boards will provide dispute resolution assistance through mediation, a voluntary dispute resolution process involving assisted negotiation by an impartial third party.

It is desirable that housing, land and property disputes be referred to Special Mediation Boards, either by its own intake mechanism or by the Division Day process, as soon as possible, to try and seek a voluntary resolution of contested issues and to avoid unnecessary polarization of parties or escalation of adversarial action. This should occur before any final decision is made by a third party, either in the Division Day process or by a court. Voluntary settlements generally address and meet a broader range of interests, are often much easier to implement and help promote community reintegration and peace better than imposed third party decisions.

A voluntary settlement of a claim or dispute over state land reached through mediation by Special Mediation Boards would be referred to and processed/given effect through the Mobile Services at the Divisional Level. If involved parties are unable to reach a voluntary agreement that settles issues in dispute, the issue would also be referred to the Mobile Services for a final and binding decision.

Voluntary agreements over private land would be taken by former disputants to appropriate private surveyors, government agencies and Notary Publics for surveys and registration.

## **Surveys**

Surveys, as needed or required, would be conducted for the resolution of issues related to both public and private land. Surveys may be conducted as part of the dispute resolution process itself, or to confirm and implement voluntary agreements.

The District Survey Department would handle surveys for state land, and private surveyors for private land. (Note: financial assistance may be needed by parties involved in disputes over private land to conduct surveys during or as a result of the dispute resolution process.)

## **Implementation Issues**

Often resolution of use or ownership issues or rights is not adequate to effect a final settlement of contested housing, land and property disputes. There are often a range of other related issues that require resolution before a claimant can regain their house, land or property, receive compensation or secure alternative land. These include, but are not limited to, disputes over women's property rights; unauthorized occupation and possession of contested property by an unrelated private person; compensation for improvements to property made by an unauthorized occupant; ownership of crops in fields; the previous occupant who was a licensee, tenant or lessee demanding that their rights be respected; refusals to hand over land; partition of property; purchase and claims of lands by relatives or others with money sent by people residing overseas; "default of bank mortgages; extensive damage and destruction of property; loss of essential servitudes such as rights of way,



use of wells or watercourses; destruction/encroachment of property boundaries; loss of title due to unlawful forced transfers; disputes over religious property such as temple lands; problems related to succession and proof of property inheritance; and landlessness among displaced persons. Special Mediation Boards, in collaboration with Division Day and the Mobile Service, will be invaluable in helping the government and citizens resolve these issues, which are often distinct but related to decisions on rights of use or ownership".<sup>8</sup>

### **Back-up Decision Making Procedures**

All dispute resolution systems need to include back-up decision making procedures if voluntary agreements cannot be reached. It appears that either the Division Day or Mobile Services processes will provide this mechanism to address issues related to state land.

The back-up decision making process for disputes over private land that cannot be amicably resolved is going to court. If a satisfactory agreement cannot be reached through the Special Mediation Boards process, one or more disputants are free to seek a judicial decision. Special Mediation Boards can use the same reporting process for cases that do not reach settlements as are used by regular Mediation Boards.

### **Promoting Compliance with Voluntary Agreements or Third Party Decisions**

Compliance with voluntary agreements, third-party administrative decisions or even judicial rulings is often an issue for dispute resolution mechanisms. Past experience with Mediation Boards in Sri Lanka indicate that there is generally a high level of compliance with agreements that have been reached voluntarily.

Non-compliance can be the result of many factors: changed circumstances of disputants that prevent them from executing an agreement or decision as expected; non-cooperation by a party who has not been directly involved in the use/ownership dispute and its resolution; contested interpretations of the settlement or decision, and so forth. Non-compliance may also be the result of bad-faith negotiations or a recalcitrant losing party.

If there is not compliance with either a voluntary agreement or a third party decision concerning state land, an aggrieved party might have two options: 1) bringing the case back to the Special Mediation Board to provide assistance with implementation issues, or 2) taking the case to Mobil Services for implementation assistance and/or referral to the appropriate institutions for enforcement.

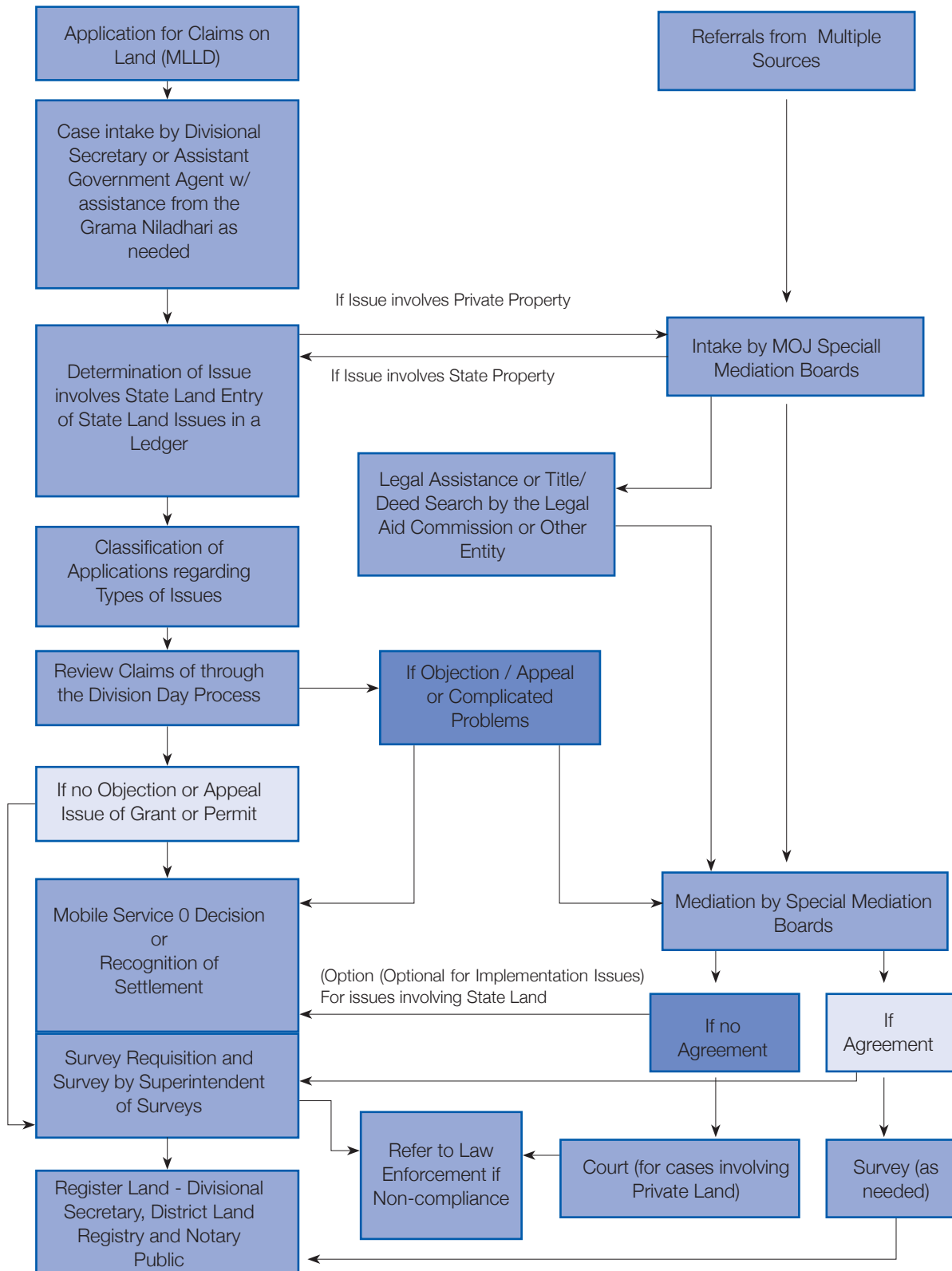
For compliance related to private land, an aggrieved party might have two options: 1) bringing the case back to the Special Mediation Board to provide assistance with implementation issues, or 2) taking the case to a court to resolve issues related to implementation or referral to the appropriate institutions for enforcement.

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<sup>8</sup> *Legal Analysis of Property Issues affecting Internally Displaced Persons and Refugees in Sri Lanka*. Colombo, Sri Lanka; National Protection and Durable Solutions for Internally Displaced Person's Project of the Human Rights Commission of Sri Lanka, n.d.

### Process for State Property

### Process for Private Property



**Data under the 2013/01 Circular**  
**State Land Disputes and Problems/Issues in the Northern and Eastern Provinces as at January 31, 2014**  
 Circular No: 2013/01

**NORTHERN PROVINCE**

No	Districts/ Divisional Secretariats	No. of Land Requests				No. of Land Problems Solved				No. of Land Problems to be Resolved				Percentage (100%)
		Land Re- quests	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	
<b>Jaffna District</b>														
01	1. Kopay	1600	56	75	1731	31	29	29	89	1569	27	46	1642	94.91
02	2. Chavakachcheri	35	0	64	99	4	0	0	4	31	0	64	95	95.95
03	3. Uduvil	624	8	135	767	26	8	107	141	598	0	28	626	81.61
04	4. Point Pedro	532	0	63	595	0	0	12	12	532	0	51	583	97.98
05	5. Nallur	41	0	526	567	0	0	0	0	41	0	526	567	100
06	6. Sandilipay	10	0	0	10	0	0	0	0	10	0	0	10	100
07	7. Jaffna	656	2	1	659	1	1	1	3	655	1	0	656	99.54
08	8. Velanai	495	0	0	495	0	0	0	0	495	0	0	495	100
09	9. Thellipalai	205	1	1	207	80	1	1	82	125	0	0	125	60.38
10	10. Chankanai	31	0	0	31	0	0	0	0	31	0	0	31	100
11	11. Karaveddy	330	4	261	595	0	0	70	70	330	4	191	525	88.23
12	12. Maruthankeny	640	1324	22	1986	143	163	0	306	497	1161	22	1680	84.59
<b>DISTRICT SUB TOTAL</b>		<b>5199</b>	<b>1395</b>	<b>1148</b>	<b>7742</b>	<b>285</b>	<b>202</b>	<b>220</b>	<b>707</b>	<b>4914</b>	<b>1193</b>	<b>928</b>	<b>7035</b>	<b>90.87</b>
<b>Kilinochchi District</b>														
16	1. Karachchi	12158	3592	2648	18398	1836	1371	1469	4676	10322	2221	1179	13722	74.58
17	2. Poonagari	4057	505	553	5115	547	80	25	652	3510	425	528	4463	87.25
18	3. Palai	347	0	654	1001	44	0	10	54	303	0	644	947	94.60
19	4. Kandawalai	2048	2298	6193	10539	110	110	0	220	1938	2188	6193	10319	97.91
<b>DISTRICT SUB TOTAL</b>		<b>18610</b>	<b>6395</b>	<b>10048</b>	<b>35053</b>	<b>2537</b>	<b>1561</b>	<b>1504</b>	<b>5602</b>	<b>16073</b>	<b>4834</b>	<b>8544</b>	<b>29451</b>	<b>84.02</b>

No	Districts/ Divisional Secretariats	No. of Land Requests				No. of Land Problems Solved				No. of Land Problems to be Resolved				
		Land Re- quests	Regulating Documents	Other Land Problems	Total	Distribution Of Lands	Regulating Documents	Other Land Problems	Total	Distribution Of Lands	Regulating Documents	Other Land Problems	Total	Percentage (100%)
<b>Mullaitththeevu District</b>														
20	1. Meritempattu	3084	8485	709	12278	0	519	70	589	3084	7966	639	11689	95.20
21	2. Puthukkudyiruppu	3982	3640	6310	13932	300	0	1561	1861	3682	3640	4749	12071	86.64
22	3. Thunukkai	2402	3263	87	5752	0	135	65	200	2402	3128	22	5552	96.52
23	4. Manthai East	2259	285	344	2888	16	31	58	105	2243	254	286	2783	96.36
24	5. Oddusuddan	617	1740	3144	5501	0	0	534	534	617	1740	2610	4967	90.29
<b>DISTRICT SUB TOTAL</b>		<b>12344</b>	<b>17413</b>	<b>10594</b>	<b>40351</b>	<b>316</b>	<b>685</b>	<b>2288</b>	<b>3289</b>	<b>12028</b>	<b>16728</b>	<b>8306</b>	<b>37062</b>	<b>91.84</b>
<b>Mannar District</b>														
25	1. Mannar	3213	0	342	3555	31	0	128	159	3182	0	214	3396	95.52
26	2. Nanattan	2695	51	804	3550	233	48	56	337	2462	3	748	3213	90.50
27	3. Madu	4717	0	29	4746	1245	0	0	1245	3472	0	29	3501	73.76
28	4. Musali	5038	157	152	5347	3313	0	109	3422	1725	157	43	1925	36.00
29	5. Manthai West	4026	242	307	4575	838	49	16	903	3188	193	291	3672	80.26
<b>DISTRICT SUB TOTAL</b>		<b>19689</b>	<b>450</b>	<b>1634</b>	<b>21773</b>	<b>5660</b>	<b>97</b>	<b>309</b>	<b>6066</b>	<b>14029</b>	<b>353</b>	<b>1325</b>	<b>15707</b>	<b>72.14</b>
<b>Vavuniya District</b>														
30	1. Vavuniya	26412	47	939	27398	272	35	49	356	26140	12	890	27042	98.70
31	2. Vavuniya North	5931	117	348	6396	617	2	2	621	5314	115	346	5775	90.29
32	3. Vavuniya South	1937	331	59	2327	91	157	29	277	1846	174	30	2050	88.09
33	4. VengalaChettikkulam	6128	230	106	6464	93	136	50	279	6035	94	56	6185	95.68
<b>DISTRICT SUB TOTAL</b>		<b>40408</b>	<b>725</b>	<b>1452</b>	<b>42585</b>	<b>1073</b>	<b>330</b>	<b>130</b>	<b>1533</b>	<b>39335</b>	<b>395</b>	<b>1322</b>	<b>41052</b>	<b>96.40</b>
<b>PROVINCIAL SUB TOTAL</b>		<b>96250</b>	<b>26378</b>	<b>24876</b>	<b>147504</b>	<b>9871</b>	<b>2875</b>	<b>4451</b>	<b>17197</b>	<b>86379</b>	<b>23503</b>	<b>20425</b>	<b>130307</b>	<b>88.34</b>

**EASTERN PROVINCE**

No	Districts/ Divisional Secretariats	No. of Land Requests				No. of Land Problems Solved				No. of Land Problems to be Resolved				
		Land Re- quests	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Percentage (100%)
<b>Ampara District</b>														
34	1. Pottuvil	1049	0	1	1050	0	0	0	0	1049	0	1	1050	100
35	2. Damana	0	242	0	242	0	0	0	0	0	242	0	242	100
36	3. Irakkamam	0	21	0	21	0	10	0	10	0	11	0	11	52.38
37	4. Thirukkovil	0	2898	492	3390	0	0	10	10	0	2898	482	3380	99.70
38	5. Akkaraipattu	0	63	0	63	0	0	0	0	0	63	0	63	100
39	6. Padiyathalawa	0	0	0	0	0	0	0	0	0	0	0	0	0
40	7. Sainthamarudhu	0	0	0	0	0	0	0	0	0	0	0	0	0
41	8. Sammanthurai	0	97	175	272	0	90	0	90	0	7	175	182	66.91
42	9. Alayadivembu	4	196	39	239	2	0	0	2	2	196	39	237	99.16
42	10. Ampara	11	0	0	11	0	0	0	0	11	0	0	11	100
43	11. Karaitheevu	0	48	0	48	0	25	0	25	0	23	0	23	44.91
44	12. Kalmunai (MD)	0	0	13	13	0	0	0	0	0	0	0	13	100
45	13. Kalmunai (TD)	0	39	0	39	0	2	0	2	0	37	0	37	94.87
46	14. Addalachenai	0	69	174	243	0	63	0	63	0	6	174	180	74.07
47	15. Ninthavur	0	10	0	10	0	8	0	8	0	2	0	2	25.00
48	16. Navithanveli	0	15	0	15	0	0	0	0	0	15	0	15	100
49	17. Mahaoya	0	6	0	6	0	0	0	0	0	6	0	6	100
50	18. Lahugala	78	10	11	99	9	0	2	11	69	10	9	88	88.88
<b>DISTRICT SUB TOTAL</b>		<b>1142</b>	<b>3714</b>	<b>905</b>	<b>5761</b>	<b>11</b>	<b>198</b>	<b>12</b>	<b>221</b>	<b>1131</b>	<b>3516</b>	<b>893</b>	<b>5540</b>	<b>96.16</b>

No	Districts/ Divisional Secretariats	No. of Land Requests				No. of Land Problems Solved				No. of Land Problems to be Resolved				
		Land Re- quests	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Percentage (100%)
<b>Batticaloa District</b>														
51	1. Valaichenai (KPC)	0	25	79	104	0	19	0	19	0	6	79	85	81.73
52	2. Paddipalai	36	919	486	1441	36	54	278	368	0	865	208	1073	74.46
53	3. Kaluwanchchikkudy	0	83	5	88	0	0	0	0	0	83	5	88	100
54	4. Kattankudy	0	0	0	0	0	0	0	0	0	0	0	0	0
55	5. Chenkalady	40	217	158	415	0	32	2	34	40	185	156	381	91.80
56	6. Vakara	38	0	19	57	0	0	0	0	38	0	19	57	100
57	7. Vavunatheevu	0	101	36	137	0	2	0	2	0	99	36	135	98.54
58	8. Eravur Town	27	19	0	46	0	0	0	0	27	19	0	46	100
59	9. Valaichenai (KP)	8	56	0	64	0	25	0	25	8	31	0	39	60.93
60	10. Vellavelly	3	388	16	407	0	68	2	70	3	320	14	337	82.80
61	11. Manmunaiipattu	72	21	5	98	66	0	0	66	6	21	5	32	32.65
62	12. Manmunai North	0	0	270	270	0	0	7	7	0	0	263	263	97.40
63	13. Oddamawady	0	35	27	62	0	32	2	34	0	3	25	28	45.16
64	14. Kiran	7	112	23	142	0	61	0	61	7	51	23	81	57.40
<b>DISTRICT SUB TOTAL</b>		<b>231</b>	<b>976</b>	<b>1124</b>	<b>3331</b>	<b>102</b>	<b>293</b>	<b>291</b>	<b>686</b>	<b>129</b>	<b>1683</b>	<b>833</b>	<b>2645</b>	<b>79.40</b>

No	Districts/ Divisional Secretariats	No. of Land Requests				No. of Land Problems Solved				No. of Land Problems to be Resolved				
		Land Re- quests	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Distribution of Lands	Regulating Documents	Other Land Problems	Total	Percentage (100%)
<b>Trincomalee District</b>														
65	1. Gomarankadawala	130	0	737	867	29	0	0	29	101	0	737	838	96.65
66	2. Seruwila	6	0	114	120	2	0	2	4	4	0	112	116	96.66
67	3. Kuchchaveli	189	45	89	323	0	1	0	1	189	44	89	322	99.69
68	4. Town and Gravets	23	6	2	31	0	0	0	0	23	6	2	31	100
69	5. Thambalagamuwa	322	0	0	322	0	0	0	0	322	0	0	322	100
70	6. Muthur	218	0	0	218	0	0	0	0	218	0	0	218	100
71	7. Morawewa	37	2	4	43	0	0	0	0	37	2	4	43	100
72	8. Padawasiripura	494	3	73	570	270	3	42	315	224	0	31	255	44.73
73	9. Verugal	0	0	43	43	0	0	0	0	0	0	43	43	100
74	10. Kinniya	19	0	14	33	4	0	0	4	15	0	14	29	87.87
<b>DISTRICT SUB TOTAL</b>		<b>1438</b>	<b>56</b>	<b>1076</b>	<b>2570</b>	<b>305</b>	<b>4</b>	<b>44</b>	<b>353</b>	<b>1133</b>	<b>52</b>	<b>1032</b>	<b>2217</b>	<b>86.26</b>
<b>PROVINCIAL SUB TOTAL</b>		<b>2811</b>	<b>5746</b>	<b>3105</b>	<b>11662</b>	<b>418</b>	<b>495</b>	<b>347</b>	<b>1260</b>	<b>2393</b>	<b>5251</b>	<b>2758</b>	<b>10402</b>	<b>89.20</b>
<b>GRAND TOTAL</b>		<b>99061</b>	<b>32124</b>	<b>27981</b>	<b>159166</b>	<b>10289</b>	<b>3370</b>	<b>4798</b>	<b>18457</b>	<b>88772</b>	<b>28754</b>	<b>23183</b>	<b>140709</b>	<b>88.40</b>



# A list of Land Disputes in the Northern and Eastern Provinces of Sri Lanka from literature

Prepared by Manela Karunadasa, Project Intern, Partnership for Security and Justice,  
The Asia Foundation Sri Lanka. (7th August 2013)

## Ownership related issues

1. Incapability of IDP's to submit restitution claims due to loss and damage of legal documents.<sup>9</sup>
2. Illegal land sales by both individuals and state actors.<sup>10</sup>
3. Post-war context of new land settlements and land grabbing by both private individuals and other armed actors.<sup>11</sup>
4. War related abandonment or non-usage. This could also lead to secondary occupation and thereby creating another land dispute.<sup>12</sup>
5. Secondary occupation of properties. Eg: Occupation of abandoned properties by armed actors or other civilians.<sup>13</sup>
6. Irakkandy and Kuchchaveli in Trincomalee: Those who displaced previously have returned to claim their lands but face problems as others are occupying their land.<sup>14</sup>
7. Displacement, loss and destruction of legal documents such as land titles and deeds, illegal sale of land, informal handing over of land and lack of clear and apolitical land records. Eg: In nearby Karbala, both Tamils and Muslims claim to have valid deeds and permits for the land, arguing that the others' are forged.<sup>15</sup>
8. Displacement and resettlement of people, secondary occupation of land by state and non-state actors; and loss or invalidation of property and other legal documents (such as death certificates) which affect succession.<sup>16</sup>

## Boundary and boundary related issues

1. Fencing off of lands in Muttur.<sup>17</sup>
2. Confusion and contestation over boundaries not just between individual landowners but also between administrative units. Eg: The boundary of the Kathankudy DS Division which lies between Batticaloa to the north and Arayampathy DS division to the south is contested and is both a bureaucratic hassle and a source of tension.<sup>18</sup>
3. Encroachment. Eg: illegal encroachment of land between MaduruOya and Punnani of State land by farmers.<sup>19</sup>

## State actions

1. Settlements under Mahawali irrigation schemes. Eg: Tamils have perceived these State backed Sinhalese settlements in Trincomalee, Muliativu and Vavuniyaas a strategic military move to disrupt the settlement pattern from North to East and the establishment of a militarized Sinhalese settlement corridor.<sup>20</sup>

9 Human Conflict in Sri Lanka with relation to Land acquisition, Amarasekera A.

10 Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 8

11 Ibid

12 Ibid

13 Ibid

14 Ibid

15 Sri Lanka's Eastern province: Land, Development, Conflict, International Crisis Group, 15 October 2008, P 18-19

16 Post-War Land Grabs in Sri Lanka, Canagarajah R, Sri Lanka Brief.

17 Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 21

18 Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 52

19 Ibid, P 28

20 Human Conflict in Sri Lanka with relation to Land acquisition, Amarasekera A.

2. Establishment of High Security Zones and Special Economic Zones. Eg: Following the military liberation of the East, the Government declared a HSZ in Sampur, Eastern Trincomalee under the Emergency Regulations. The HSZ in Muttur in May 2007 prevented the return of 15, 648 IDP's.<sup>21</sup> A High Security Zone (HSZ) established in the eastern half of Mutur division, south of Trincomaleeharbour, has pushed an estimated 8,000 Tamils off their land without due legal process.<sup>22</sup>
3. Security restrictions and military occupation have somewhat curtailed full enjoyment of land rights. Eg: There are a variety of military restrictions which prevent civilians from accessing their land including official high security zones which cut across entire GS divisions.<sup>23</sup>
4. Obstacles in accessing land. State and private land being taken for various development projects, resulting in civilians losing access to these lands have intensified over recent months. Eg: In Ottamavadi, the road construction has resulted in at least three businessmen losing their shops entirely.<sup>24</sup>
5. Lack of comprehensive, coherent and clear constitution, laws and policies that focus on land. Eg: Use, management and control of land. Lack of a national land policy.<sup>25</sup>
6. Change in ethnic demography as a result of state sponsored land distribution. More often there projects are viewed as State-driven colonization projects. Eg: Gal Oya resettlement scheme.<sup>26</sup>
7. Land disputes due to failures in fair and effective administration. Eg: Ethnic partiality. Original deeds in the Batticaloa Land Registry are either lost or destroyed, but there are fears that this could have been deliberate.<sup>27</sup>
8. Land grabbing and the involvement of powerful actors. Eg: LTTE was accused of taking land from Muslims who had fled and of handing it over to landless Tamil families, while State actors such as the Army were accused of assisting Sinhala farmers to secure lands previously cultivated by Tamils.<sup>28</sup>
9. State occupation and acquisition of land by state authorities.<sup>29</sup>
10. Military occupation of land and property. Eg: "The Army was attempting to secure State and private lands in areas captured from the LTTE in Vellaveli, Paddipalai, Vavunatheevu, Karadiyanaru, Pulipanchakal and Vakaraai to set up permanent camps." P. Ariyanenthiran.<sup>30</sup>
11. Police occupation of land. In most cases these properties were used as camps or sentry points by the forces.<sup>31</sup>

21 Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 39

22 Sri Lanka's Eastern province: Land, Development, Conflict, International Crisis Group, 15 October 2008, P iii

23 Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 8

24 Ibid, P 38

25 Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 13

26 Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 23

27 Ibid, P 27

28 Ibid, P 28

29 Ibid, P 27

30 Ibid, P 32

31 Ibid, P 42

12. Militarization of lands. Eg: In southern Trincomalee district, the entire village of Eechilampattu, formerly under the control of the LTTE, has been taken over by the army.<sup>32</sup>
13. Efforts to block ethnic expansion. Eg: Muslims in Batticaloa accuse TMVP of deliberately attempting to block Muslim expansion by building houses and temples for Tamils.<sup>33</sup>
14. Fear of "Sinhalization". Eg: New Sinhalese to be settled in the east in an attempt to dilute Tamil and Muslim political power and weaken their claims to the land. As a result of Sinhalization facilitated by Development of the Eastern Province, Sinhalese population in Eastern Province has increased from 4% in 1911 to 25% in 2007.<sup>34</sup>
15. Occupation of land belonging to private individuals by military and LTTE.<sup>35</sup>
16. Politicization and ethnicisation of land ownership. Eg: Refusal of Police to take down complaints against Sinhala farmers from the members of Tamil speaking Community. Refusal of Muslim Divisional Secretary to give a hearing to the Sinhala returnees attempting to claim their property.<sup>36</sup>

### **Action of non-state parties**

1. Alienation of land by LTTE for Maha Weera families. <sup>37</sup>
2. Violence against particular communities that resulted in abandoning properties. Eg: Due to LTTE problems Sinhalese settlers were compelled to abandon their properties and move into predominantly Sinhalese areas.<sup>38</sup>
3. Arbitrary seizure of land belonging to Muslims by the LTTE. <sup>39</sup>
4. Role of religious actors. Involvement of religious actors in protection of religious sites has been used as a ground to prevent minorities from accessing and occupying land. Eg: In Morawewa Division, Tamil farmers from Chaanthipuram alleged that they could not cultivate their paddy land in the 13th Unit in MahaVilaangukulam because a Buddhist priest had told them that the land is part of an archeological site. <sup>40</sup>
5. Redistribution of Muslim lands to Tamils by the LTTE. Eg: In some cases, the LTTE directly seized the land and distributed it to local Tamils. <sup>41</sup>

<sup>32</sup> Sri Lanka's Eastern province: Land, Development, Conflict, International Crisis Group, 15 October 2008, P 13

<sup>33</sup> Ibid, P 19

<sup>34</sup> Sri Lanka's Eastern province: Land, Development, Conflict, International Crisis Group, 15 October 2008, P 21

<sup>35</sup> Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 7

<sup>36</sup> Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 20

<sup>37</sup> Human Conflict in Sri Lanka with relation to Land acquisition, Amarasekera A.

<sup>38</sup> Land in the Eastern Province, Politics, Policy and Conflict, Fonseka B. Raheem M, Centre for Policy Alternatives, May 2010, P 7

<sup>39</sup> Ibid

<sup>40</sup> Ibid, P 33

<sup>41</sup> Sri Lanka's Eastern province: Land, Development, Conflict, International Crisis Group, 15 October 2008, P 17

## Lack of Land

1. Scarcity of Land in Muslim DS Divisions. Eg: Tamils and Sinhalese in various parts of the east complain of Muslims “encroaching” onto “their” land. At the same time Muslims complaint that they are trapped within too little land. (In Batticaloa, Muslim divisions only cover 2 per cent of the land). Also Muslims claims for nearly 38% of the population in the Eastern Province but have access for a much lesser percentage of land.<sup>42</sup>

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<sup>42</sup> Sri Lanka’s Eastern province: Land, Development, Conflict, International Crisis Group, 15 October 2008, P 18

# **Macro level land issues in the Northern and Eastern Provinces**

## **Issues raised during field work conducted for the Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka**

### **Eastern Province:**

- Deegavapi land issues –Ponnamveli Kandal, Deegavapi – Addalachenai
- Deegavapi Tsunami Housing Project
- Pottuvil land in Kirankowai, Sengamam, Southaveli, Vehamam, Amawadduwan, Irathal and Karuvilpatana
- AddalachenaiAshraff Nagar land issue
- Land compensation issues at Oluvil Ports Project
- Forceful encroachment and possession by people at Bawapuram
- Establishment of ethnically oriented DS Divisions and issues pertaining to geographic demarcations and jurisdictions – this has resulted land related admin issues between Public Officers
- Vaddavan, Kuhanesapuram, Ahaththipallam and aVamanankadu land permits and grants issue
- New land circular, which confines land alienation to 1 acre
- Declaration (Gazettes) of permit land as Forest by the Forest Department (Vaharai)
- Sambur land issue
- Kaddapparichan land issue
- Chena Cultivation in PaniyawasarSittaVettai in the SooriyapuraGN Division, Kanthale
- The Buddhist Monks are becoming land lords in the Trincomalee area, especially in Thiriyaya (Kutchveli) and Seruwila

### **Northern Province:**

- Cement Factory issue. There are many allegations in relation to environmental hazard, where tons of Gypsum having been taken from the Keerimalai, Mavittapuram areas.
- High Security Zone issues
- Political influence is high in Special Development Projects carried out in Mannar, it led to many issues on the Land Ownership in Private Land as well as State Lands.
- Conflicting policy issues relating to Resettlement and State Land Policy. According to the Resettlement Policy, the IDPs or Returnees need to be settled in the place, where they lived, when they were displaced. The present land policy according to the 2013/01 Circular, all the displaced might not be the real owner of the land in which they lived before displacement.





**A Rapid Assessment of Community Level Land Disputes in the Northern  
and Eastern Provinces of Sri Lanka**

**Conducted by  
The Asia Foundation for the Ministry of Justice, Sri Lanka**

**A Concept Note**

August 2013



## 1. Background

In the aftermath of Sri Lanka's protracted war that ended in 2009, numerous issues continue to surround the dislocation, as well as the return of displaced people in the Northern and Eastern Provinces of Sri Lanka; a main issue being the loss of or disputes over both public and private housing, land and property. In the years following the end of the war, government focus has concentrated on issues surrounding land led by the recommendations put forth in the Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC) and the subsequent National Action Plan for the Protection and Promotion of Human Rights. The LLRC identifies a series of land related issues and grievances faced by those affected by the war including the loss of documents, forged land documents, loss or destruction of land records in government land registry offices at central, provincial, district and divisional levels, secondary occupation, encroachment of reservations, land alienation by unauthorized sources and the transfer of land through false deeds. In the section on the rights of internally displaced persons, the Human Rights Action Plan highlights the government commitment to addressing land related grievances in return and resettlement of people displaced by the war. In addition, the section on the rights of women, the Human Rights Action Plan recognizes the gaps in policy on war widows, and one aspect of this is land and housing rights. Perusal of literature on macro level representations of post war land issues highlights a range of issues including ownership issues, boundary and boundary related issues, issues arising from actions of the State and non-state parties, and grievances associated with the lack of land.<sup>43</sup> (See Annex 1)

### Lack of community level information

At community level, where people are affected the most by land disputes, there is no systematically documented information available to understand specific land related grievances of people. However, sources such as community mediation boards, government officials and non government organizations providing diverse services at divisional and village level have extensive anecdotal information on the types and characteristics of land related disputes that people face at community level in the war affected areas. Some of these disputes appear to be solved at community level by mediation boards, or village and divisional level government officers while others appear to reach formal courts of law or remain unsolved due to numerous reasons.

### Efforts at resolving land related disputes in the North and East of Sri Lanka

In order to assist people who have lost either State or private land in the war affected areas of the country, the government is working on a number of systems to help people reclaim land, affirm title, receive compensation or obtain equivalent land in other locations in the country.

In terms of addressing disputes over State land, a comprehensive scheme has been initiated by the Land Circular no 2013/01 on "Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces". The Circular sets out a process to be implemented over two years in order to identify and address problems relating to State land in the Northern and Eastern provinces and these provisions are already under way.

Moore and Thirunavukarasu suggest a comprehensive system for addressing land disputes through an integrated conflict management system that links resolution of land issues in both sectors<sup>44</sup>. The authors say that "an integrated conflict management system is an entity created to address and

<sup>43</sup> A list of Land Disputes in the war affected areas of Sri Lanka. Internal Asia Foundation document by Manela Karunadasa, Program Intern. (2013).

<sup>44</sup> Concept for an Accelerated and Integrated Housing, Land and Property Dispute Resolution Programme/System in Sri Lanka for Settlement of Disputes over State and Private Property in Conflict Affected Areas by Christopher W, Moore, Ph.D. Partner, CDR Associates and M. Thirunavukarasu, Attorney at Law (February 2013).

efficiently resolve a specific category of issues or problems. It has multiple components that are linked, interact with each other and are coordinated to achieve a desirable outcome". Here the authors propose a system that involves collaboration among the Ministry of Land and Land Development, the Ministry of Justice the Mediation Boards Commission and the Legal Aid Commission. (See Annex 2).

### **Setting up of Special Mediation Boards to resolve community level land disputes**

With a view to addressing both State and private land related disputes at community level, the government envisages setting up Special Mediation Boards mandated to address land related disputes. In setting up Special Mediation Boards under the Mediation (Special Categories of Disputes) Act no 21 of 2003, the Ministry of Justice is required to describe the scope and mandate of such Special Mediation Boards. In order to do this, it is important to have a good understanding of land related disputes at community level.

## **2. Proposed Rapid Assessment of Land Disputes at community level in the Northern and Eastern Provinces of Sri Lanka**

In order to set up Special Mediation Boards to address land disputes faced by people in the post war environment in the Northern and Eastern Provinces of Sri Lanka, the Ministry of Justice has requested The Asia Foundation's support to understand the nature and characteristics of State and private land related grievances faced by women and men living in the regions affected by the war. In response to this, The Asia Foundation will undertake a rapid assessment of land disputes (as well as the possibilities for the resolution of such disputes) from the perspective of people at village level.

## **3. Rapid Assessment Methodology**

### **Objectives**

- To understand the nature and characteristics of post war land related disputes [and difficulties] faced by people at village level.
- To seek views of the people directly affected by the above disputes [and difficulties] as to how these disputes can be best resolved according to their best interests.
- To explore the use of mediation as a mechanism for resolving these disputes at community level.

### **Research areas and Sample sites**

The primary research areas will be the Northern and Eastern Provinces of Sri Lanka. A sample of 27 Divisional Secretariat Divisions will be covered in the provinces (the specific DS Divisions will be identified at the first stage of the assessment based on the presence of internally displaced persons, magnitude of land related disputes and issues and the direct impact of the war).

Sample Selection for Survey <sup>45</sup>

Province	Districts	Number of DS Divisions in the District	Number of DS Divisions selected for Survey	Names of DS Divisions
Northern	Jaffna	15	4	Maruthankeni Jaffna Valikamam North – Thellippalai Velanai
	Vavuniya	4	2	Vavuniya North Vengadachettikulam
	Mannar	5	2	Mannar Town Manthai West
	Mullaitivu	5	5	Maritime Pattu Manthai East Oddusuddan Puthukkudiyiruppu Thunukkai
	Kilinochchi	4	4	Karachchi Kandawalai Poonakary Pachchilaippalli
01	05	33	17	
Eastern	Batticaloa	14	4	Vaharai Chenkalady Batticaloa Town/Kattankudy Kaluwanchikkudy
	Ampara	19	3	Thirukkovil Lahugala Ninthavur/Pottuvil
	Trincomalee	11	3	Kuchchaveli Padavisiripura Muttur
01	03	44	10	
02	08	77	27	

<sup>45</sup> Identified in September 2013

## Tools and sources of information

The Rapid Assessment will be carried out using the following tools of information gathering:

- Desk review of available literature on community level disputes over land
- Key Informant interviews based on a pre designed questionnaire
- Focus Group discussions with guide questions

In each location the following Key Informant Interviews (KIIs) and Focus Group Discussions (FGDs) will be conducted. The KIIs will be conducted by Ministry of Justice Mediation Programme Assistants at Divisional Level while FGD will be conducted by independent researchers. Selected KIIs will also be conducted at central, provincial and district level. FGDs will be at village level with groups of men and women members of the community.

## Research Plan

Central Government Level				Provincial Council Level			
Respondents	No. of Interviews	No. of Days Required	Assigned Researcher	Respondents	No. of Interviews	No. of Days Required	Assigned Researcher
MLLD	02	½	Lead Research Team	PLCD – Northern	02	01	Lead Research Team
LCGD	02	½		PLCD – Eastern	02	01	
Other	01	1		Other	01	01	
<b>Sub Total</b>	<b>05</b>	<b>02</b>			<b>05</b>	<b>03</b>	
District Secretariat Level				Divisional Secretariat Level			
Respondents	No. of Interviews	No. of Days Required	Assigned Researcher	Respondents	No. of Interviews	No. of Days Required	Assigned Researcher
Jaffna	3	1	Research Assistant led by Lead Research Team	<b>Focus Group Discussions (FGDs)</b>	<b>27</b>	<b>15</b>	Research Assistant led by Lead Research Team
Kilinochchi	3	1					
Mullaitivu	3	1					
Vavuniya	3	1					
Mannar	3	1					
Ampara	3	1					
Batticaloa	3	1					
Trincomalee	3	1					
<b>Sub Total</b>	<b>24</b>	<b>08</b>			<b>27</b>	<b>15</b>	

## Interviews to be handled by Ministry of Justice Programme Assistants

District Secretariat Level			Divisional Secretariat Level				
Respondents	No. of Inter-views	No. of Days Required	Assigned Researcher	Respondents	No. of Inter-views	No. of Days Required	Assigned Researcher
<b>Jaffna</b>	05	03	Mr. Sanathana Sharma Programme Assistant MOJ	Maruthankeni	10	03	Mr. Sanathana Sharma Programme Assistant MOJ
				Jaffna	10	03	
				Valikaman North	10	03	
<b>Kilinochchi</b>	05	03		Velanai	10	03	Mr. Sanathana Sharma Programme Assistant MOJ
				Karachchi	10	03	
				Kandawalai	10	03	
<b>Mullaitivu</b>	05	03	Mr. Savarinayagam Programme Assistant MOJ	Poonakary	10	03	Mr. Savarinayagam Programme Assistant MOJ
				Pachchilaippalli	10	03	
				Thunukkai	10	03	
<b>Vavuniya</b>	05	03		Manthai East	10	03	Mr. Savarinayagam Programme Assistant MOJ
				Oddusuddan	10	03	
				Puthukkudiyiruppu	10	03	
<b>Mannar</b>	05	03		Maritime Pattu	10	03	Mr. Savarinayagam Programme Assistant MOJ
				Vavuniya North	10	03	
				Vengadachettikulam	10	03	
<b>Ampara</b>	05	03	Mr. Basanayake Mr. Mohamed Programme Assistants	Mannar Town	10	03	Mr. Basanayake Mr. Mohamed Programme Assistants
				Manthai West	10	03	
				Thirukkovil	10	03	
<b>Batticaloa</b>	05	03	Mr. Mohamed Programme Assistant	Lahugala	10	03	Mr. Mohamed Programme Assistant
				Ninthavur/Pottuvil	10	03	
				Vaharai	10	03	
<b>Trincomalee</b>	05	03	Mr. Basanayake Mr. Savarinayagam Programme Assistants	Chenkalady	10	03	Mr. Basanayake Mr. Savarinayagam Programme Assistants
				Batticaloa Town	10	03	
				Kaluwanchikkudy	10	03	
<b>TOTAL</b>	<b>40</b>	<b>24</b>		<b>27 DSDs</b>	<b>270</b>	<b>81</b>	

## Report

The report of the Rapid Assessment will include (but not be limited to) information on the following:

- The types and characteristics of land and property related disputes at community level categorized by State and private land
- Parties to disputes (with ethnic, religious, state/non state and gender disaggregated information)
- Types of interventions needed to resolve disputes and the types on relief sought by aggrieved parties
- Information on possible links and referrals to other dispute resolution systems
- Based on the above, recommendations on the use of mediation and Special Mediation Boards to resolve post war land related disputes

## Dissemination of Report

- A presentation of findings and recommendations to the Ministry of Justice and Ministry of Land and Land Development. This presentation will be convened by the Ministry of Justice. It will be followed by a discussion on the establishment of Special Mediation Boards.
- A presentation of findings convened by the Ministry of Justice to a broader government audience.
- A presentation by The Asia Foundation to bilateral and multi lateral donor agencies, UN, international and national non governmental organizations, and academics.

## Time frame

September 1 – December 31, 2013

## Research Team

The research team will be led by N. Selvakkumaran (former Dean of the Faculty of Law, University of Colombo currently serving at the University of Jaffna on sabbatical leave). The other members will be M. Thirunavukarasu (Attorney at Law) and Ramani Jayasundere (Senior Technical Advisor – Law and Justice, The Asia Foundation).

The field research will be carried out by Programme Assistants (Mediation) at the Ministry of Justice. Focus Group Discussions will be conducted by independent researchers who will be trained by the Lead Researcher. Statistical support will be provided by an external consultant to The Asia Foundation. The Ministry of Justice (Anusha Moonesinghe, Senior Assistant Secretary) will provide periodic input to the assessment.

## Tools

- Questionnaire – Public Officers
- Questionnaire – Non State Sector
- Guideline – Focus Group Discussions

**Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka**  
**Guiding Questionnaire - Public Officers**  
**The Asia Foundation – Ministry of Justice**

*The information provided by the respondent will be considered strictly confidential and will be used by Ministry of Justice to decide whether to establish Special Mediation Boards for Land and Property Disputes in the Northern and Eastern Provinces*

*To be filled by the interviewer. Please tick ✓ the appropriate boxes and provide answers clearly on the spaces given*

**PART 1 – GENERAL**

Interview Information:

Province: Northern  Eastern

District: ..... ..

DS Division: ..... ..

Name of Interviewer: .....

Designation of Interviewer: .....

Date and Time of Interview: .....

Place of Interview: .....

Name of the Respondent: .....

Designation: .....

Category: Government Sector  .....  
Non Government Sector  .....

Age:  Gender: 

Male	
Female	



**PART 2 – TYPES OF DISPUTES**

2.1 Types of land related disputes – State Land

	Quantity			Quantity	
a. Permits	<input type="text"/>	<input type="text"/>	i. Encroachment	<input type="text"/>	<input type="text"/>
b. Grants	<input type="text"/>	<input type="text"/>	ii. Boundary Dispute	<input type="text"/>	<input type="text"/>
c. Leasehold	<input type="text"/>	<input type="text"/>	iii. Inheritance Issues	<input type="text"/>	<input type="text"/>
d. Other.....	<input type="text"/>	<input type="text"/>	iv. Subdivision Issues	<input type="text"/>	<input type="text"/>
			v. Lack/Loss of Document	<input type="text"/>	<input type="text"/>
			vi. Illegal Secondary Occupation	<input type="text"/>	<input type="text"/>
			vii. Other.....	<input type="text"/>	<input type="text"/>

Please explain:

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2.2 Types of land related disputes – Private Land

	Quantity	
i. Encroachment	<input type="text"/>	<input type="text"/>
ii. Boundary Dispute	<input type="text"/>	<input type="text"/>
iii. Inheritance Issues	<input type="text"/>	<input type="text"/>
iv. Fraudulent Transaction	<input type="text"/>	<input type="text"/>
v. Lack/Loss of Document	<input type="text"/>	<input type="text"/>
vi. Illegal Secondary Occupation	<input type="text"/>	<input type="text"/>
vii. Other.....	<input type="text"/>	<input type="text"/>

Please explain:

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**PART 3 – PRESENT STATUS OF THE DISPUTES**

3.1 Parties to the Disputes:

		Quantity		Quantity
a. State Vs. Private	<input type="checkbox"/>	<input type="text"/>	b. Private Vs. Private:	<input type="checkbox"/> <input type="text"/>

3.2 Types of Relief Sought:

From whom:			Quantity
i.	DS/LO/CO/GN	<input type="checkbox"/>	<input type="text"/>
ii.	Mediation Boards	<input type="checkbox"/>	<input type="text"/>
iii.	Court	<input type="checkbox"/>	<input type="text"/>
iv.	Police	<input type="checkbox"/>	<input type="text"/>
v.	Other	<input type="checkbox"/>	<input type="text"/>

Please explain:

.....

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**PART 4 – LINKS/REFERRALS NEEDED TO RESOLVE THE DISPUTES**

4.1	Central Government Level	<input type="checkbox"/>	.....
4.2	Provincial Level	<input type="checkbox"/>	.....
4.3	District Level	<input type="checkbox"/>	.....
4.4	Divisional Level	<input type="checkbox"/>	.....

**PART 5 – DISPUTE RESOLUTION PREFERENCE**

Do you wish to have your disputes/issues resolved by traditional court system (Ex: District Court) or Alternative Dispute Resolution Mechanism (Ex: Mediation Boards):

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**Rapid Assessment of Community Level Land Disputes in the  
Northern and Eastern Provinces of Sri Lanka**

**Guiding Questionnaire – Non State Sector**

**The Asia Foundation – Ministry of Justice**

- The information provided by the respondent will be considered strictly confidential and will be used by Ministry of Justice to decide whether to establish Special Mediation Boards for Land and Property Disputes in the Northern and Eastern Provinces*
- To be filled by the interviewer. Please tick ✓ the appropriate boxes and provide answers clearly on the spaces given*

**PART 1 – GENERAL**

Interview Information:

Province:

District: ..... ..

DS Division: ..... ..

Name of Interviewer: .....

Designation of Interviewer: .....

Date and Time of Interview: .....

Place of Interview: .....

Name of the Respondent: .....

Designation: .....

Category:   .....  
  .....

Age:  Gender: 

Male	<input type="checkbox"/>
Female	<input type="checkbox"/>

**PART 2 – TYPES OF DISPUTES**

2.3 Types of land related disputes – State Land

- |               |                          |                                  |                          |
|---------------|--------------------------|----------------------------------|--------------------------|
| e. Permits    | <input type="checkbox"/> | i. Encroachment                  | <input type="checkbox"/> |
| f. Grants     | <input type="checkbox"/> | ii. Boundary Dispute             | <input type="checkbox"/> |
| g. Leasehold  | <input type="checkbox"/> | iii. Inheritance Issues          | <input type="checkbox"/> |
| h. Other..... | <input type="checkbox"/> | iv. Subdivision Issues           | <input type="checkbox"/> |
|               |                          | v. Lock/Loss of Document         | <input type="checkbox"/> |
|               |                          | vi. Illegal Secondary Occupation | <input type="checkbox"/> |
|               |                          | vii. Other.....                  | <input type="checkbox"/> |

Please explain:

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2.4 Types of land related disputes – Private Land

- |                                  |                          |
|----------------------------------|--------------------------|
| i. Encroachment                  | <input type="checkbox"/> |
| ii. Boundary Dispute             | <input type="checkbox"/> |
| iii. Inheritance Issues          | <input type="checkbox"/> |
| iv. Fraudulent Transaction       | <input type="checkbox"/> |
| v. Lock/Loss of Document         | <input type="checkbox"/> |
| vi. Illegal Secondary Occupation | <input type="checkbox"/> |
| vii. Other.....                  | <input type="checkbox"/> |

Please explain:

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.....

**PART 3 – PRESENT STATUS OF THE DISPUTES**

3.1 Parties to the Disputes:  
a. State Vs. Private  b. Private Vs. Private

3.2 Types of Relief Sought:  
From whom:  
ii. DS/LO/CO/GN   
ii. Mediation Boards   
iii. Court   
iv. Police   
v. Other

Please explain:

.....  
.....  
.....  
.....  
.....

**PART 4 – LINKS/REFERRALS NEEDED TO RESOLVE THE DISPUTES**

4.1 Central Government Level  .....

4.2 Provincial Level  .....

4.3 District Level  .....

4.4 Divisional Level  .....

**PART 5 – DISPUTE RESOLUTION PREFERENCE**

Do you wish to have your disputes/issues resolved by traditional court system (Ex: District Court) or Alternative Dispute Resolution Mechanism (Ex: Mediation Boards):

.....  
.....  
.....  
.....



**Rapid Assessment of Community Level Land Disputes in the  
Northern and Eastern Provinces of Sri Lanka**

**Focus Group Discussion Guidance Notes**

***N.Selvakumaran, Lead Consultant***

October 2013

**The Asia Foundation – Ministry of Justice**

**An introduction to the Focus Group Discussion**

**What is focus group discussion?**

1. This will take the form of an activity where discussion and interviews of a group of persons between eight and twelve in number to find out their views and opinions and their likes and dislikes, and other proposals on a topical issue. Sometimes depending on the amount of data to be gathered, the number in the group can be 15. Generally to obtain the optimum results it is ideal to have 10 or 12.
2. Those who come to participate as a group can be from the same area, but with differing experiences. They can be from different areas but with similar experiences. Though they may have a commonality, they might be unknown to one another. The duty of selecting them, on what basis they are selected, and what kind of data we expect to gather from them will depend on the decision of the organizers.
3. The focus group discussion is not an interview of individuals who have been gathered as a group. On the contrary, the dialogue and exchange of views among the people who are gathered are very important in this activity. We have to encourage this. If there is a strong and friendly dialogue among them, then we have to welcome that. Though there will be an interview procedure adopted where different types of questions are posed, the style of questioning will be so as to bring out the ideas in their minds and to encourage dialogue among them. They will not be questions that elicit only one word responses.
4. The focus group method will be very useful and conducive to learning the problems faced by people, what sort of problems and disputes are there, and their views and proposals regarding their solutions. There must be clarity among us that the focus group discussions that we have planned are organized with this objective in mind.
5. We can see that this methodology is well known among researchers, especially those researchers that work in the fields of Social Sciences. The reason for this is that it is considered as being capable of articulating the attitudes and opinions among the people. Furthermore, it is considered as one that brings out the value systems among the people.



6. It is not easy to bring out these aspects through normal studies. This will empower people so that they can participate in decision making processes. The affected people will feel that they are being consulted and it will be a catalyst for them to accept the notion that their views are called for and they are given due consideration. Furthermore, this will lead to an ideal situation where the victims and affected people's ideas are incorporated into the decision making process.

### **Getting Ready for a Focus Group Discussion**

1. There should be clarity regarding the objectives of the focus group discussion, regarding the topic and what information is expected to be gathered. Furthermore proper participants must be decided and identified.
2. We have to identify the venue, date and time for the focus group discussions. We have to pay attention to other matters of logistics. It is always ideal to prepare a brief document on every single matter that has been mentioned here. If it takes the form of a check-list, we have to welcome that.
3. After identifying the people, we have to contact them, explain the matter to them and find out if they are willing to participate. We have to inform those who express their consent, in writing about the venue, time and the theme of discussion. We have to contact them in person or on the phone on the previous day, give them a reminder and ensure their attendance.
4. We have to ensure the procurement of the venue, visit that place one day earlier and make all the necessary arrangements in order to conduct the discussions successfully.
5. Similarly, we have to prepare the name cards of all the participants and place them in front of their respective seats.
6. Papers and pens must be provided to them to facilitate their writing activities. We have to buy the necessary Bristol boards and the felt pens beforehand. At times we shall have the need to use them.
7. Recording equipment must be kept ready to record the discussions. A technician must be available to help in the recording process.
8. Furthermore, arrangements must be made to provide tea and snacks to the participants. There should be clearly defined time arrangements regarding tea - breaks.
9. When the discussion is in progress the facilitator must have the papers ready to write notes. Ready - reckoners must be available to streamline the proceedings by providing the facilitator timely reminders regarding order of events.

10. As the participants are to receive an allowance for participation, the exact amounts in cash must be put in envelopes and kept ready. We should have receipts ready so that they can place their signatures when the allowance is paid to them. It is helpful if unfilled additional receipts are carried.
11. Prepare the notes and questions that are essential to be used during the discussions. Please re-check as to how they are going to be used.
12. We should have discussed the order and the manner in which discussions are to proceed with the facilitator beforehand. An additional copy of the above document must be carried and offered to him.

### **On the day of the event**

1. We should be ready to go to the venue one hour before the event, check all the arrangements and be ready to welcome the participants and usher them to their seats which are preferably arranged in a circular fashion.
2. Specifically it is very important to ensure the availability of drinking water and other facilities. Further, it is very important to ensure proper lighting and ventilation at the meeting place.
3. You can decide in advance the respective seats that you are going to offer to the participants or you can allow them the freedom to choose where they want to sit. In any event, their names must be prominently displayed just in front of their respective seats.
4. Receive those who have come to participate in the focus group discussion with a smile and thank them for the trouble they have taken to be in attendance.
5. Ask them to take their reserved seats or you can ask them to sit anywhere they prefer. Usher them to their seats, seat them comfortably and leave them.
6. When all participants have arrived, or if those who have arrived at the appointed time are considerable in number, start the discussion with them.
7. First introduce yourself to the participants. Tell them your designation or responsibility in this project. If you like, you can tell them about your permanent occupation.
8. Ask the participants to introduce themselves one by one. Tell them to give their names and residential areas. If they wish, they can tell the others about their occupation as well.
9. Tell them in some detail about the background and the objectives of the project. If you gather by the body language of the participants that they haven't understood them properly, or still you have some doubt about this matter, or if someone asks you for further explanation, repeat what you have already stated more clearly. If further explanation is needed, give it to them without feeling or showing any annoyance.

10. Give them precisely and clearly the aims and objectives of the discussion, what you expect to achieve and how it is going to be conducted.

Explain to them very clearly that there will be strict confidentiality and the views and opinions expressed during the discussion and the manner in which they were expressed and the name and the identity of the person who expressed them will be treated in the strictest confidence.

11. Furthermore, tell them that though these discussions will be recorded, they will not be used for any other purpose. Their names or statements will not be revealed, only their views and opinions will be used as an input for our report.

12. Ensure that they have no objection to participating in this discussion.

13. Now tell them that we shall think about the order of events and proceedings. As many people would like to air their views and opinions and as they have to do so precisely, tell them that the discussion will have to proceed smoothly, effectively and in a manner that is acceptable and comfortable to all.

14. Tell them that we shall accept the following ground rules:

1. Only one person speaks his mind at a time.
2. As there are many people tell them that the facilitator will make a decision as to who will hold the floor. Ask them if there is any objection for anyone for you to exercise this prerogative.
3. You can't say definitely that there is only one approach or a single solution. There is room for many people to consider that there are many and varied answers. The view of each and every person should be respected; still there is no compulsion that the others should accept it.  
They need not expect others to accept them. They need not have grudges or concerns that the others have not accepted their views. Everyone has the right to have his or her own opinion. The others have a duty to consider them. They have to accept that the others have a right to have their own opinions. This has to be respected. This doesn't mean that we accept them completely and adopt them. Therefore, let's accept here that we need not engage in objections to others' views in an obstinate and perverse manner and get involved in arguments for the sake of having an argument.  
This doesn't mean that one need not come out with dissenting views. Everyone has the right to disagree. However, the language used to express such dissenting views in this discussion should not offend the others' feelings or humiliate them.
4. As the discussion is going to be recorded, it is very essential that only one person speaks at a time. One can express his or her views without any hesitation or fear. Tell them that if many people try to speak at the same time, as the facilitator, it is you who will decide as to who should hold the floor.
5. We shall accept that interruptions should be avoided when someone is speaking.
6. Explain to them if anybody has to make a comment on the speech of another person, they can do so when they have an opportunity to speak. If they have

already utilised their opportunity, they can inform you, the facilitator, and you will give them a chance to speak at the proper time.

7. Explain to them that you hope that the facilities for the discussion are sufficient and ask them humbly to forgive you if there are any shortcomings.
  8. Ask them if they are all ready and start the discussion by explaining the matter for the discussion.
15. Your initial statement must help them to bring out their views and opinions freely without any hesitation or fear. It shouldn't be threatening or imposing any conditions that would act as an impediment. You will have to speak to them in simple Tamil that is easy to understand. It is essential that you avoid terms that are difficult to understand. The spoken dialect is the best. Give your message slowly and coherently. Your voice should be audible to all. Ensure this matter beforehand. Your voice should be clearly audible to all and your tone should not be threatening.

16. Your initial statement should articulate our concerns and should pave the way to assisting them to bring out their views. It must be open-ended and non-partisan or shouldn't lead to any such perception. You have to be very careful in this matter.

17. For example, your initial statement can take the following form:

On account of the war the people of the Northern and Eastern provinces had to cope up with indescribable mental agony and grief and faced serious trials and tribulations. Though that situation has now changed a little, still the people that lived and those that continue to live in these areas have many problems, disputes, worries and grievances. Problems that were there earlier and were not apparent have begun to emerge prominently. All of us are aware of this.

The disputes regarding land and housing that we have to discuss here is one among the past and emerging innumerable problems. Through this discussion we wish to know the real nature and number if these problems and your views and opinions regarding those issues.

What do you think as the solutions - adversarial litigation or conciliatory methods - that are effective and suitable? We wish to know your views and opinions as to why you have opted for such a solution.

As we have stated earlier, the objective of this exercise is to gather and give inputs to those who are responsible to formulate solutions and enable them to know the nature and number of issues and what the solutions are from the victims' point of view. If they don't have a clear perspective, then the solutions they formulate may be ineffective, or else they might bring about and impose additional burdens on the affected people who long for solutions.

Therefore, the views, opinions and information that we gather from your discussions are very significant and useful. They will be incorporated very carefully and judiciously into decisions concerning the mechanisms to be put in place regarding solutions.

18. After making the above initial statement, watch their facial expressions and their body language. If they require any further explanations, provide them before launching into the discussion.
19. Once you are reasonably sure that you can start the discussions, you can use the following questions by way of starting the discussions. They should not be used one after the other in the question - answer format. On the contrary, they should be used to inspire them to come out with their views. In other words they should be speech inspiring questions.

- a) What do you think about the land and house related disputes the people in your neighbourhood or in your area are facing? Can you tell us your opinion about them?
- b) Your ideas are very valuable. Can you elaborate on them a little? Can you explain what sort of problems they face?
- c) Can you tell us a little more in detail as to how they have impacted or influenced their life and relationships? It will be very helpful to realise the real depth and implications of those problems.
- d) Can you say how many families in your neighbourhood or in your area have been affected by such disputes and issues?

And to another person :

- a) Please tell us your view, opinion or experience about this matter. Please explain how they differ from the views of the other persons. Even your views and opinions are very important to us.

And, yet to another person:

- a) What do you want to say about these matters? How was your experience? Were they similar to those of these people or different? Please explain them. We wish to listen to them as well.

When the participants' views have been obtained regarding the above matters, we have to focus on the other objective of the discussion. We should try to find out what kind of solution they favour; what would be acceptable to them and whether they would oppose the Special Mediation Boards. For this purpose, we can use the following questions:

It is plain that the issues and other matters you raised are very complex. However, it is essential that we should arrive at solutions which are agreeable and acceptable to those concerned. Furthermore, such a solution must be agreeable and accelerated as far as possible. Let's agree that they should not aggravate existing disputes and create new disputes.

- b) Therefore, what kind of problem solving mechanism would you like to be in place? Tell us what kind of mechanism would address your concerns as well as the concerns of other parties. All of us agree that such a mechanism must be just and expeditious. We welcome your opinions regarding this matter as we think that they are very important.
- c) The fact that we have to respect the views of the affected people emphasizes the importance of the problem solving mechanism offered to them. Therefore, you need not entertain any doubts that they will be scrutinized very minutely.
- d) Specifically we are very anxious to know your views regarding the establishment of the Special Mediation Boards in order to arrive at solutions to these disputes. You can air your views without any hesitation. It will be very helpful. We have come here not only to find out what your disputes and views are; we are also concerned about your proposals regarding solutions.
- e) Have you any objections to a process of finding solutions through such Special Mediation Boards? If so, can you explain the reasons for such objections? If we can remedy the defects that you perceive, and address those shortcomings and introduce such a process, will it satisfy you?

Further to another person:

- a) What do you want to say about these matters? What was your experience? Were they similar? Or did you have to face a different experience? Please explain them. We wish to listen to them as well.
20. Compile and deliver a detailed summary of the notes you have taken after all the views and opinions have been listened to. After doing that, ensure that they actually reflect and incorporate their views.
  21. Thank them again for their co-operation and bid farewell.
  22. Immediately after the event, have a discussion with your assistant as quickly as possible and write all the notes necessary to be incorporated in your report. Do not postpone it. The report must be prepared as early as possible and sent to the Chief Researcher.

**Essential points to be observed and characteristics to be exhibited by the facilitator and his assistant**

1. The discussion that is conducted by us is organized by us and not on the request of the participants. We should keep it in our minds. They have come on our invitation. They didn't call us.
2. There is no requirement that the participants should be educated and refined as you are. Some of them may not be like that. We have to accept all these facts.
3. Why I say this is that they may not be schooled in respectful and polite ways of speaking. Their everyday speech habits may at times prove "intolerable", However, you will have to be very patient. Our objective is not to get involved in an argument with them.
4. Particularly, they might be in the midst of deep misery. This might lead to anxiety, anger and annoyance. Their helplessness, frustration and edgy nature may not help them to be agreeable in speech. We have got to be extremely patient. The space between us will increase if we are also edgy, argumentative and use harsh words. This matter has to be there constantly in our thoughts.
5. Our objective is gathering data. It is not to compete with them and establish our superiority. We are involved in this project to offer our possible contribution in providing relief to their grievances. We shouldn't get involved in arguments which might result in making them feel more miserable. Patience is a great quality and it can be easily lost, though maintaining it is achievable to only a few. This is a great challenge to the truly educated.
6. Respecting others is a quality that further enriches the educated. Losing your lofty nature by provocations can only lead to demeaning and belittling yourself. Have you got to act like that?

**The List of Speakers**

NAME	TIME	REMARKS

**Discussion Notes**

Name	View-1	View-2	View-3	View-4	Remarks

**Specimen form for the report of the focus-group discussion**

1. Statement about discussion arrangements.
  - a) Method of identification and selection of discussants:
  - b) Date of dispatch of invitation letters:
  - c) Their names and addresses :
  - d) Date of procurement of venue :
  - e) Date of reminder to discussants  
Name and contact number:
  - f) Resource person's / facilitator's Name and contact number :
2. On the day of the discussion :
  - a) Name of discussants:
  - b) Time discussions commenced :
  - c) Time taken for Initial Statement and introductions:
  - d) Issues raised before the actual commencement of the discussion, if any:
  - e) Statement regarding information gathered during the discussions : see below
  - f) Time discussions were concluded:
  - g) Any other special remarks:

Name of discussant	
Nature of land disputes and other problems raised	
Issues directly related to the discussant	
Which of them were raised by an informed discussant	
What were the considered views regarding the disputes and the issues	
What is the total number of disputes and issues?	
What are the impacts or consequences of the disputes or issues on the discussant or his family?	
Does the discussant know about the existence of Special Mediation Boards?	
What is the resolution mechanism sought by the discussant? Is it the Court system or the Special Mediation Board System?	
If he doesn't want the Special Mediation Board System, what is the reason for that?	a) It is not binding <input type="checkbox"/> b) Defects in the S.M.B Practices <input type="checkbox"/> c) S.M.B. Members are not neutral <input type="checkbox"/> d) The Court System is far superior <input type="checkbox"/> e) Other reasons <input type="checkbox"/>
Will the participant accept the S.M.B's if such defects are remedied?	



4. Some of the statements and answers of the discussant that articulate his views and opinions.

a)
b)
c)
d)
e)
f)

5. Valuable summary of the views and answers of the discussant.

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6. Your opinion of the views and answers of the discussant.

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7. Any special remarks

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Facilitator's name :

Signature:

Date of the Report :