



Ministry of Justice

RESOLVING LAND DISPUTES Effective Procedures & Strategies

Ministry of Justice

**Jonathan D. Bartsch
and**

**Christopher W. Moore
CDR Associates**

CDR
ASSOCIATES
COLLABORATIVE DECISION RESOURCES

 **The Asia Foundation**

ADDRESSING
THE CRITICAL ISSUES
FACING ASIA  **60**
YEARS

Authors

Jonathan D. Bartsch, MA – is a Principal of CDR Associates – an international stakeholder engagement, collaborative decision making and conflict management firm. He provides professional facilitation, mediation and capacity building training for diverse government agencies, the private sector and civil society organization and specializes in resolving complex multiparty public, natural resource and land disputes. Jonathan has lived and worked in the Middle East and Central Asia.

Christopher W. Moore, Ph.D. – a Partner of CDR Associates, is an internationally recognized facilitator, trainer and dispute resolution systems designer. During the last 35 years, he has worked in over 50 countries. One of Moore’s areas of specialization is in design, capacity building and implementation of governmental and non-governmental dispute resolution systems to resolve housing, land and property disputes. He has provided these services in Afghanistan, the Democratic Republic of Congo, East Timor, Jordan, Lebanon, Liberia and South Sudan. Moore has consulted with the Sri Lankan Ministry of Justice Mediation Boards Programme and The Asia Foundation since 1989.

Contributors

M. Thirunavukarasu, LL.B. – A lawyer with extensive experience in mediation, he served as a mediation trainer for the Center for Mediation and Mediation Training (CMMT). Mr. Thirunavukarasu and CMMT colleagues have assisted the Sri Lankan Ministry of Justice to establish Mediation Boards in the North and East of the country. He and Ramani Jayasundere (see below) are co-authors with Mr. N. Selvakkumaran of *A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka*. Colombo, Sri Lanka: Sri Lankan Ministry of Justice and The Asia Foundation, 2014.

Ramani Jayasundere, Ph.D. – is currently the Senior Technical Advisor for The Asia Foundation (TAF). She specializes in law and justice programming, gender sensitization and mainstreaming, and increasing women's participation in mediation. For many years, she has been TAF’s liaison with the Ministry of Justice’s Mediation Boards Programme where she has assisted in capacity building and developing a mediation documentation system and has supported mediation observation visits from Nepal, China and Mongolia and assisted TAF to set up mediation boards in Mongolia.

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Foreword

Introductory Letter from the Secretary of the Ministry of Justice

The commitment and course of action adopted by the Ministry of Justice to take forward the recommendations contained in the 'National Action Plan for the Protection and Promotion of Human Rights' and the 'Report of the Commission of Inquiry on Lessons Learnt and Reconciliation' (LLRC) includes setting in place a mechanism to address land related disputes and issues faced by the people in the aftermath of the armed conflict in the Northern and Eastern Provinces of Sri Lanka.

The Ministry of Justice is in the process of establishing Special Mediation Boards with the aim of bringing about amicable settlements, where possible, to land disputes and issues relating to land. Special Mediation Boards will be set up according to the provisions of the Mediation (Special Categories of Disputes) Act No 21 of 2003. In this endeavour the Ministry of Justice is working in close collaboration with the Ministry of Land and Land Development.

As a preliminary step in identifying land disputes and issues, the Ministry of Justice with support from The Asia Foundation conducted a '*Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka*'. The Rapid Assessment provided an understanding of the nature and characteristics of post armed conflict land related disputes and issues faced by people at village level by exploring and obtained the views of people directly involved and affected by the above disputes. The Rapid Assessment further provided insight into how these disputes can be best resolved according to the best interests of those affected and explored views on the use of mediation as a mechanism for resolving these disputes at community level. In addition to the findings of the Assessment the Ministry of Land and Land Developments has provided the details of land issues in other areas which suggest a need to provide speedy and less cumbersome procedure for resolving of land issues. Against this background this Ministry has recognized the importance of pursuing alternative methods of resolving land disputes throughout the country so as to provide a more meaningful and expeditious mechanism to resolve problems related to land.

The Ministry of Justice appreciates the work of Dr. Christopher Moore, Mr. Jonathan Bartsch and Mr. M. Thirunavukarasu for designing this module for Training of Mediator Trainers. This module for training of Mediator Trainers will be invaluable in training mediators to be appointed to the Special Mediation Boards. The Ministry is grateful for the

support provided by The Asia Foundation for this undertaking as well as their contribution to improvements of the mediation program which goes back to 20 years.

The Ministry of Justice is confident that this Manual “RESOLVING LAND DISPUTES - Effective Procedures & Strategies” will provide the necessary knowledge, tools and strategies for the Special Mediation Boards to address and resolve land disputes effectively.

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PURPOSE OF THIS MANUAL

This manual outlines dispute resolution mechanisms, procedures and strategies that are or will be put in place by the Sri Lanka Ministry of Justice's Special Mediation Boards (Land) to promote the resolution of a variety of housing, land and property disputes in the country. Sri Lanka has a long history and experience utilizing collaborative resolution methods to address a wide variety of disputes, and many recent positive experiences with mediation. Building on the successful experiences and expertise in mediation of the Sri Lankan Ministry of Justice's Community Mediation Boards Program and the Special Mediation Boards established to address disputes arising out of the 2004 Tsunami, and the Ministry of Land and Land Development's dispute resolution mechanism, this manual provides additional information on how dispute resolvers can provide effective assistance to parties to amicably settle land disputes and build positive working relationships, which are critical for stability, economic development and a sustainable peace.

Chapter 1 – Introduction to Housing, Land and Property (HLP) Disputes and Mechanisms and Procedures for Their Resolution

Across the globe, peoples' connection to housing, land and/or property (HLP) are diverse. Housing, land and/or property issues frequently have a variety of meanings and degrees of importance attached to them. Housing may include a residence, an ancestral home, a rental property or, in the broadest sense of the term, a place of worship. Land may include parcels that are privately owned, land obtained from the state or held cooperatively, or areas deemed to be ecologically significant or sacred. Property often includes personal, family or household goods; vocational tools or farm machinery; animals or livestock; and crops or trees.

When people think about their housing, land or property, they often see them in a variety of ways. They may be:

- A source of individual or community identity
- A connection to a specific important and significant place in the world
- A connection to parents or ancestors who currently live there or who have in the past
- Of spiritual or religious significance
- A source of personal identity such as being a land or property owner or a farmer
- A personal or social indicator of wellbeing, wealth or success
- A source of desired and desirable material or natural goods such as crops, trees, minerals or water
- A means to earn a living and secure a livelihood for an individual, family or community
- A legacy to leave to children or future generations
- A source of community wellbeing and sustainability
- A personal and social “safety net”, to see them through during hard times, and an assurance and guarantee of physical survival

Because people view housing, land and property in a variety of ways, differences or disputes involving them often are more complicated, emotion-laden and hard fought than conflicts over many other issues.

Disputes or conflicts over HLP issues are common in almost all societies. They occur at a variety of levels—local, community, national, regional and international—and may differ significantly regarding their scope, intensity, means of resolution and impacts.

Some of these include:

- Minor disagreements between neighbors, former neighbors or other concerned parties, with impacts only on those directly involved
- Serious disputes where significant differences exist that have impacts on multiple individuals or communities, but which are resolved by non-violent means
- Major conflicts that involve multiple parties, have impacts on wider communities or groups and are commonly resolved through the exercise of psychological or physical coercion or violence. These latter conflicts often result in significant harm or loss of life or property

Issues involving housing, land or property are often lightning rods for potential tensions and disputes over other issues. Differences, disagreements, disputes or conflicts over them are not inherently negative or bad. They are often important for positive social change and to achieve justice. However, the resolution of differences is generally best achieved when the destructive elements of conflict are regulated and managed, and serious harm to people and property are minimized.

Across the globe, effectively addressing housing, land and property disputes is an essential component of creating harmony and peace. The need to establish effective dispute resolution systems and procedures is common for any society and is of particular importance in post-conflict situations where land and property issues can exacerbate underlying tensions between and within communities. Unaddressed housing, land and property issues are a source of conflict that can destabilize communities and countries and create conditions challenging for sustainable peace and harmony.

International Framework for Addressing Housing Land and Property

The international framework for addressing housing land and property rights, and especially those related to restitution, include the following:

- Right to adequate housing
- Right to freedom of movement and residence
- Right to an adequate standard of living
- Right to property
- Right to privacy and the inviolability of a person's home
- Right to return
- Right to a remedy of human rights violations

The international guidance regarding internal displacement is outlined below.

“Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and

possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”¹

In implementing the above guidance, competent authorities should follow the principles of human rights and refugee law, which include:

- Nondiscrimination
- Gender equality
- The right of voluntary return to places of origin or homes in dignity
- Safety
- The right to remedy and reparation
- Consultative processes
- Creation of effective land registration process
- Restitution or just and fair compensation when restitution is not possible. Compensation may also be used if an internally displaced person (IDP) or refugee does not want to return to his or her original home or land. Compensation, however, should generally be seen as the option of last resort.
- Easily accessible and usable claims procedures – awareness, accessibility, present in areas where displaced are located, ease of use, understandable, equitable, no-charges, and timely resolution
- Access to legal counseling, technical assistance and aid

Sri Lanka Lessons Learned and Reconciliation Commission – Land

At the conclusion of the conflict in the Northern and Eastern Provinces of the country, the Government of Sri Lanka established the Lessons Learnt and Reconciliation Commission (LLRC) to identify post-conflict issues to be addressed to promote a sustainable peace. The LLRC recommended the development of a programme, under the supervision of the Ministry of Land and Land Development (MLLD), to address issues in dispute involving state lands and for the Ministry of Justice (MoJ) to address disagreements regarding private lands, particularly acute problems in the Northern and Eastern Provinces of the country.

The LLRC identified numerous land issues including: 1) loss of or forged documents 2) loss or destruction of land records in government Land Registry Offices 3) secondary occupation 4) encroachment on state reservation land 5) land distribution by unauthorized

¹Principle 29 in Progress Report of the Special Rapporteur, Pablo Sergio Pinhero, Addendum. Commentary on the Draft Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Document E/CN.4/Sib.2/2004/22 Add.1, June 8, 2004.

groups 6) transfer of land through spurious deeds and 7) shortage of competent and experienced staff for land management.

“Problems concerning land were a key issue that was brought up 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 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 reconciliation (LLRC Report, Paragraph 6.2).”

In response to the above findings, the Government created the National Plan of Action for Implementation of the LLRC recommendations and is taking steps to address the need for return of displaced persons to their housing, land and property. The National Plan of Action (NPOA) lists a variety of actions to be taken and additional tasks needed to implement the LLRC recommendations as part of the Land Return and Resettlement plan.

To this affect, the Government has recognized that *“Any citizen of Sri Lanka has the right to acquire land in any part of the country, in accordance with its laws and regulations, and reside in any of his/her choice without any restrictions or limitations.”*²

There is a broad need for a comprehensive approach to resolve land issues, and effective mechanisms and procedures to settle disputes related to both private and state land in Sri Lanka. This comprehensive approach will involve the following:

- Legal reform
- Land policy changes in both substantive issues and procedures
- Information campaigns regarding rights and procedures for citizens to secure land
- Dispute resolution institutions, mechanisms and procedures

The Sri Lankan National Plan of Action for the Implementation of the LLRC Recommendations – Responsibilities by Agency (January, 2013) and the National Human Rights Action Plan (2011-2016) provide the framework for addressing many of these issues.

²National Plan of Action for Implementation of LLRC Recommendations, Sri Lankan Ministry of Lands & Land Development, p13

Chapter 2 – Sri Lankan Land Laws and Ordinances

The Legal Framework for Resolution of Disputes

Disputes over land should be resolved within frameworks and parameters established by law. Frameworks are generally codified in the form of laws, ordinances, rules or regulations, and define the rights and responsibilities of involved parties – citizens, cooperatives, corporations, the State and its agencies – in a society or country.

Within legal parameters, however, parties to a dispute often have significant flexibility to negotiate or mediate and reach mutually acceptable customized settlements that meet their interests and settle their differences. As long as voluntary settlements do not violate laws or ordinances, and follow legal and administrative procedures, they may be recognized as legally binding agreements.

In negotiations or mediation, laws, and ordinances may be used to establish frameworks, standards and criteria for the resolution of disputes. Understanding what is allowed or not allowed under law can help parties reach agreements that will be both legal and durable.

Mediators serving on SMB (L), whether or not they are lawyers, should not serve as legal advisors, interpret laws or provide legal advice or recommendations to disputing parties. It is, however, valuable for mediators to have a basic understanding of relevant housing, land and property laws and ordinances applicable to the cases they are handling in order to facilitate and ensure not to enter into unlawful settlements/agreements. Having this information enables them to:

- help parties recognize and understand legal parameters that apply to issues they are discussing and seeking to reach agreement on,
- recognize when parties' rights may be in question, and
- determine when one or more parties may need additional legal information to make informed and wise decisions.

If a significant legal question arises during the course of Special Mediation Board (Land) mediation, mediators should ensure that the settlement is lawful through consultation with legal experts. However, the mediator's focus should be on identifying creative options and approaches to resolving the dispute versus a strict settlement of the issues based on legal rights.

Listed below, are Sri Lankan laws and ordinances related to housing land and property issues. Some relate to HLP issues whether or not land or property is held privately, through permits and grants from the government or by the State. Others are applicable only to State administered land, and do not apply when resolving disputes involving private property.³

³For a summary of land rights in Sri Lanka see, "A Brief Guide to Land Laws in Sri Lanka" Colombo, Sri Lanka: The Center or Policy Alternatives, 2014.

Laws, Acts and Ordinances related to Housing, Land and Property⁴

Roman Dutch Law (RDL) – Sri Lanka treats Roman Dutch Law (RDL) as the common or the general law for the Country. Though the RDL has several uses in various branches in Sri Lanka, land is one of the important areas where it is applied and is used in decision making by the judicial system and courts.

Land Grants (Special Provisions) Act No. 43 of 1979–This law provides principles to grant agricultural and estate lands to landless persons.

State Lands Ordinance, No. 8 of 1947 – This ordinance mainly deals with Grants and Disposition of State Lands and describes how they will be managed and controlled. The ordinance provides provisions to issue Annual Permits, Long Term Leases, Grants, Vesting Orders and Releasing Certificates.

Land Resumption Ordinance No.4 of 1887 – This law deals with lands granted by the Crown (State) and abandoned by the owners.

Land Acquisition Act No.9 of 1950 – This Act allows private land of individuals to be acquired by the State for public purposes.

State Lands (Recovery of Possession) Act 7 of 1979 – This law addresses procedures for the recovery and possession of State Lands. It defines procedures for the recovery of unauthorized possession/occupation of State Lands.

State Lands Encroachments Ordinance No. 12 of 1840 – This law defines procedures that prevent encroachment on State Lands. It defines and provides information on encroachment and penalties for disobedience of orders made under this law.

Prescription Ordinance No. 22 of 1871 – This ordinance defines rights of possession and ownership of possessors of land.

Land Development Ordinance No. 19 of 1935 – This ordinance is the key legislation that addresses systematic land development and distribution of State Lands. Permits, Grants and Free Grants are provided under this ordinance to specific categories of people (low income, high income and educated youth).

⁴Adapted from: N. Selvakkumaran, M. Thirunavukarasu, and R. Jayasundre, *A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka*. Colombo, Sri Lanka: Sri Lanka Ministry of Justice and The Asia Foundation, 2014.

Land Settlement Ordinance No. 20 of 1931 – The Ordinance defines procedures for Land Settlement in Sri Lanka, and identifies, distinguishes and defines state lands and private lands.

Land Reform Law No.1 of 1972 – This law restricts the extent of agricultural land that can be owned by any one individual.

State Land (Claims) Ordinance No. 21 of 1931 – This ordinance provides criteria and procedures for decisions made in applications by people requesting land under the Land Settlement Ordinance.

Definition of Boundaries Ordinance No. 1 of 1844 – This ordinance provides powers to the State to more easily determine boundaries of parcels of land in Sri Lanka.

State Land Marks Ordinance No.9 of 1909 – This ordinance provides procedures for the erection and maintenance of permanent landmarks to define boundaries of land distributed by the State.

Requisitioning of Land Act No. 33 of 1950 – This act authorizes taking possession and use of land required for essential purposes such as maintenance of supplies or services to the life of a community; implementing systems for importation, storage or distribution of essential commodities by government departments, local authorities, a corporation or co-operative society; and/or use or occupation by the armed forces or any visiting force. It also deals with procedures for determination, acquisition and compensation for such lands.

Forest Ordinance No. 10 of 1907 – This legislation amends and consolidates ordinances related to conservation, protection and management of forest and forest resources. It also regulates the felling and transport of timber.

Registration of Documents Ordinance No. 23 of 1927 – This ordinance regulates 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 a title to a parcel of land. It also regulates transactions relating to parcels of land registered under this act so that landholders 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 fraud and perjury. It provides conditions for transactions – such as the sale, purchase, transfer, assignment or mortgage of land or other immovable properties – under contracts or agreements.

Notaries Ordinance No. 1 of 1907 – This ordinance provides for the appointment of Notaries Public. It defines their rights, duties and responsibilities; and provides rules and regulations for the performance of their services.

Ceiling on Housing Property Law No.1 of 1973 – This law restricts the number of houses and extent of property that can be owned by an individual.

Chapter 3 – Mediation and Special Mediation Boards

Mediation

Mediation is a voluntary process in which an individual or group helps people in conflict to negotiate tangible and mutually acceptable agreements that resolve their differences. It commonly assists parties in a dispute or conflict to restore, redefine or transform their attitudes and interactions with one another, move toward more peaceful relationships and achieve reconciliation.

A mediator is a neutral and impartial person or group that assists people in a dispute or conflict to effectively participate in a collaborative problem-solving process to resolve their differences. The mediator facilitates discussions and the decision making process, but does not make decisions for the parties on the substantive issues in dispute. While mediators limit their involvement in substantive issues in dispute, they provide valuable assistance to parties to develop effective ways to talk with each other, gather relevant information, improve their working relationships, engage in joint problem-solving and reach mutually acceptable and durable agreements.

Community Mediation Boards Background

Mediation Boards, a nation-wide system of local panels of mediators, were established in Sri Lanka in by the Act No. 72 of 1988 (as amended). The Boards are governed by an independent Mediation Board Commission, composed of five members appointed by the President. The Mediation Boards Commission is mandated with selection, appointment and dismissal of Mediators.

The Ministry of Justice (MoJ) is charged with administering the Boards. The Mediation Boards programme is supervised by a dedicated senior official, a Senior Assistant Secretary (Legal), Mediator Trainers, and Programme Assistants (Mediation).

The first Community Mediation Boards (CMBs) in Sri Lanka were established in 1990. The CMBs and their panels of mediators are mandated to facilitate voluntary settlements of certain civil disputes and criminal offenses using interest-based mediation process.

Community Mediation Boards are composed of a panel of twelve or more mediators, depending on the need in the respective Mediation Boards areas, and are appointed by the Mediation Board Commission. The Board locations coincide with administrative units demarcated as Divisional Secretary Divisions established in all parts of the country. CMB mediators are respected members of their communities and possess the qualities and training required to assist disputing parties to voluntarily resolve their differences. There are currently over 7,500 trained mediators in the Community Mediation Board Program who handle, on average, over 100,000 disputes a year.

Boards have addressed and successfully resolved a range of community disputes over movable and immovable property such as commercial issues and financial transactions, non-payment of loans, contracts, inheritance, boundary disputes between properties, rights of way and other land issues and family disputes. Minor criminal offenses such as assault, grievous harm, damage to property etc., have also been successfully settled by Boards. While a decision on the resolution of contested issues is voluntary and left to the parties to decide, under a provision of the Mediation Boards Act, certain categories of disputes require mandatory participation in mediation. For disputes relating to movable or immovable property or a debt, damage or demand, whose monetary value is under Rs. 250,000, and a list of criminal offences set out in the Schedule of the Mediation Boards Act, disputants must try mediation before they are able to take their case to court for a hearing by a judge.

If a voluntary agreement is reached, which is commonly the case, the settlement is recorded in writing by the mediators in a Settlement Certificate, which is signed by both disputing parties and the mediators as witnesses to the settlement. The settlement holds as long as the parties adhere to its terms. If, however, a breach occurs, either party can again return to a Mediation Board again to seek its assistance to address and resolve non-compliance. If a voluntary settlement cannot be reached through mediation, a Non-settlement Certificate is issued by the Chairperson, Panel or Chief Mediator of the Board that has assisted with the dispute, and one or more parties (or the police in a criminal offence) can take the case to court for a judicial decision.

Special Mediation Boards

The Sri Lankan Parliament passed the Mediation (Special Categories of Disputes) Act in 2003.⁵ The Act authorizes the Mediation Boards Commission to establish Special Mediation Boards (SMBs) to handle specific categories of disputes related to social or economic issues. These Boards can be established for a specific period of time or in specific geographic locations and mandated to handle disputes that exceed the monetary amount allowed for CMBs to handle. SMBs can also be mandated to mediate disputes between private parties as well as disputes where one party is the State or its representative. The specific eligibility criteria for mediators who serve on SMBs are prescribed by the Ministry of Justice.

The first SMBs were created in 2005 in Tsunami-affected districts of the country, to address numerous issues and disputes related the loss of life and destruction of property by the 2004 Tsunami. The Post-Tsunami SMBs were mandated to attempt to resolve any disputes regarding land and compensation below Rs. 500,000 in value before a claim could be considered by a court.

⁵ Parliament of the Democratic Socialist Republic of Sri Lanka, Mediation (Special Categories of Disputes) Act, No. 21 of 2003.

Government of Sri Lanka Responses Land Disputes in the Northern and Eastern Provinces

The Lessons Learnt and Reconciliation Commission (LLRC) and the National Human Rights Action Plan (NHRAP) explicitly reference the issue of land and the need to address land rights. Individuals, families and communities in the Northern and Eastern Provinces have been affected in numerous ways by the conflict. Some of the issues include displacement, problematic conditions for return, access to land, competing claims of property, multiple land sales, undefined or lost boundary markers and encroachment, and demands by “illegal” occupants for compensation for improvements made to land and property they occupied. Additional complexities in these parts of the country include, among other issues, difficulties proving ownership due to loss of documents and land records; and returnees’ psychological, physical and financial capacities to reoccupy land, plant it, rebuild houses and recover their former lives.

In January 2013 a circular titled “Special Accelerated Programme on Solving Post-Conflict State Lands Issues in the Northern and Eastern Provinces” was issued by the Land Commissioner General’s Department, a national government department under the Sri Lankan Ministry of Land and Land Development. The circular mandated a process to begin to address land problems related to State land in the Northern and Eastern Provinces.

An assessment of the land issues and disputes in the Northern and Eastern Provinces has also been initiated by the Ministry of Justice. *A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka* was implemented by the Ministry and conducted by The Asia Foundation.⁶

As a result of identified concerns regarding land issues in the Northern and Eastern Provinces, the MoJ, working with the Ministry of Land and Land Development, will establish Special Mediation Boards (Land) to address land related issues and disputes concerning both private and state land.⁷

Recognizing that complex land related disputes exist in others parts of the country as well, and that many of these disputes (especially those relating to State land) cannot be referred to CMBs, Special Mediation Boards to handle land-related disputes will be established in other parts of the country as well.

The Structure and Jurisdiction of Special Mediation Boards (Land)

Special Mediation Boards (Land) will mediate community level land disputes across the country with a special focus on issues in the Northern and Eastern Provinces. Eight SMBs (L) will be established at the District level in the Northern and Eastern Provinces, and four

⁶N. Selvakkumaran, M. Thirunavukarasu, and R. Jayasundere, *A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka*. Colombo, Sri Lanka: Sri Lanka Ministry of Justice and The Asia Foundation, 2014.

⁷ Sri Lankan Land Commissioner General’s Department, Circular Number 2013/1.

SMBs (L) in the other Provinces. All SMBs (L) will include mediators who are representative of the communities in which they are serving, and will be balanced geographically by gender, ethnicity, religion and other distinctions.

Macro issues such as landlessness and land issues involving High Security Zones require governmental policy level decisions and ***will not be handled*** by Special Mediation Boards (Land). It is expected, however, that during the intake process, SMB (L) Board Chairpersons will provide a report on disputes received that are beyond the mandate of the SMBs (L) and submit it to the Mediation Board Commission. Based on a policy-level decision by the Mediation Boards Commission, the MoJ and the Ministry of Land and Land Development, mediator Chairpersons will be provided with information to make referrals of these macro cases to government institutions that can assist in their settlement.

How Special Mediation Boards (Land) are Different than Community Mediation Boards

Special Mediation Boards (Land), consistent with procedures used by Community Mediation Boards, will use an interest-based problem solving method to facilitate the voluntary resolution of land disputes.

SMBs (L), however, will address different types of cases than those currently handled by CMBs. These include disputes where:

- The monetary value of the private land or property in question is up to Rs. 2,000,000 (as recommended by MoJ), and
- The State or representatives of the State can be parties in mediation

Other considerations currently being discussed are:

- Provisions will be made for the SMBs (L) to access technical resources from the government including surveyors, valuers, legal experts and other land experts.
- In the Northern and Eastern Provinces, it is estimated that the SMBs (L) will need to meet at least 5-days a week. In other parts of the country, the frequency of sittings can be decided according to the magnitude of disputes in each location.
- Multiple mediation sessions may be necessary, based on the difficulty or magnitude of cases.
- Efforts will be made to resolve land disputes within 60 days.
- Places where SMBs (L) will sit will be selected based on the number of disputes to be handled, and will be located at the Divisional Secretariat level (not at District centres) to enable easy access to disputants.
- The use of schools, temples or other public places will not be adequate locations for SMBs to hear cases. Designated places such as Divisional Secretariat Offices or Community Centers will be better suited.
- The Boards may use 'field visits' or inspections with or without the involvement or presence of disputing parties.

Standards and Criteria for Special Mediation Boards (Land) Mediators

The Mediation Boards Commission will independently determine the composition of Special Mediation Boards (Land). Due to the specialized nature and complexities of mediating land and property in Sri Lanka, SMB (L) mediators should meet the following standards in addition to the general criteria expected of other CMB mediators:

- Attained higher education (academic or professional) qualifications
- Be knowledgeable regarding land issues and potential resources to settle them that are available to parties in a dispute
- Possess abilities to understand technical information, general land law and land related issues (surveys, deeds, titles etc...)
- Be able to facilitate voluntary settlement by the parties, i.e. not serve as judges or make decisions for involved parties
- Be willing and able to commit significant time to address land disputes

Chapter 4 – Government Entities and the Resolution of Disputes Concerning State and Private Land

The Ministry of Land and Land Development

This Ministry, with a specific focus on land, was established in 1931. The main objectives of the Ministry of Land and Land Development (MLLD) are to formulate and implement State land policies, conserve State lands, provide land settlement mechanisms and procedures and to acquire land for public purposes. The Ministry provides land counseling, surveying, alienation and disposition mechanisms, policy planning, development planning, and title registration. In addition, the MLLD oversees, coordinates and facilitates the overall dispute resolution and settlement process for State lands through its Commissioner General's Department, which is described in the section below.

The MLLD provides technical assistance – including surveyors, valuers and other experts – to support the work the Land Commissioner General's Department's dispute resolution mechanism and procedures. The MLLD also plays a key role in confirming and finalizing agreements related to land disputes reached by parties participating in SMB (L) procedures. Previously, the MLLD took a leadership role in resolving a significant number of housing and land ownership issues through the North East Housing Reconstruction Project.

The Land Commissioner General's Land Dispute Process and Special Mediation Boards (Land)

The Land Commissioner General's Department's mandate is to maintain proper management of State lands, support titling of undisputed land so that it is used competently and assure the coordination and sustainability of development consistent with national policy.

As outlined in the Land Commissioner General's Land Circular (2013/1) there is an established process for addressing state land issues and disputes in the Northern and Eastern Provinces including the use of Division Days and Mobile Services procedures. In addition, the Special Mediation Boards' (Land) process is available by referral for all applicable land cases.

Division Days

After identifying a land dispute at the Grama Niladhari Division level, generally when one or more parties identify and raise it to a government entity or official, Division Day Programmes are organized by the Divisional Secretary to solve land disputes. The Divisional Secretary, the Assistant Divisional Secretary, a Land Officer, Colonization Officer, Field Officer, and a Public Management Assistant (Land), participate in the proceedings as necessary. Grama Niladhari officers may also participate in these proceedings along with

others, as appropriate or needed, to provide technical assistance or other relevant information.

Relevant background information on the issues in question will be collected prior to Division Day, and all parties to the dispute are expected to attend and participate in the process. Field investigations relevant to the problems are conducted, when necessary, to gain further information regarding land in question.

The First Committee of Inquiry, including the Divisional Secretary, makes a determination regarding issues in dispute. If a party or parties do not accept the decision of the Divisional Secretary, or if there are issues that cannot be settled at the Division Day level, the dispute and relevant issues are forwarded to the Mobile Services Programme to be addressed and resolved.

Mobile Services Programme

The Mobile Service Programme is an appeal process conducted at the Divisional Secretariat level for the resolution of land disputes that have not been resolved at the Division Day level. Officers of the Provincial Land Commissioner's Department and other government officers related to land matters participate in Mobile Service Programmes.

Relevant information (grants, permits, leases etc...) to resolve issues in question are gathered and available for the proceedings. In the Mobile Services Programme process, parties again have an opportunity to present their cases and all relevant documents that are reviewed by participating government entities.

At the conclusion of the hearing the Second Committee of Inquiry (government officials) will make a decision regarding the land issue in dispute. If the parties do not accept the decision, they can appeal it to relevant authorities and/or file a case in the appropriate court.

Special Mediation Boards (Land) and the Resolution of Disputes over Private and State Land

As noted earlier, the Ministry of Justice is creating Special Mediation Boards (Land) to assist citizens and the government to resolve issues concerning both State and private land. The Ministry of Land and Land Development supports SMBs (L) and their role in helping to resolve land disputes. As many 'land' cases involve issues beyond those involving land, the MLLD believes that mediation is often a more effective process for determining the root causes of disputes and addressing them in a manner that is mutually acceptable to all parties.

The MLLD, at its discretion, may refer disputing parties to mediation, or disputants may choose to participate in the SMBs (L) on their own accord to seek a voluntary resolution of their differences. The MLLD will provide similar services and personnel to those provided to the Commissioner General's dispute resolution mechanism and procedures – land

surveyors, valuers, legal expertise and other technical assistance - for the Ministry of Justice's Special Mediation Boards (Land) through a roster of experts established by the Mediation Board Commission in consultation with the MLLD and MoJ.

Agreements

Settlements/Non-settlements concerning State Land

When parties, as a result of participation in a SMB (L) mediation of issues concerning State land, *reach a mutually acceptable agreement*, the SMB (L) chairperson will forward copies of the settlement to the Mediation Board Commission and to the relevant appropriate authorities and advise parties to seek the assistance of the appropriate authority. These entities will provide necessary support to regularize the settlement. While agreements that either cancel a permit or modify a grant may take time to implement due to mandated public processes, the government understands the importance of finalizing voluntary agreements as expeditiously as possible.

When parties as a result of participation in a SMB (L) mediation concerning State land *do not reach a settlement*, the SMB will inform but not advise parties on other procedural choices available to them to settle contested and unresolved issues, including use of administrative and legal procedures (courts). SMB will also forward a report on the outcome of the dispute and lack of settlement to the Mediation Board Commission, which in turn will refer it to the Divisional Secretariat and any relevant authority regarding further action.

If issues in question before a SMB (L) about State land involve government policies, they will be forwarded to the Ministry of Justice and the Ministry of Land and Land Development for further action.

Settlements/Non-Settlements concerning Private Land

When parties, as a result of participation in a SMB (L) mediation of issues concerning private land, *reach a mutually acceptable agreement*, the SMB (L) will forward a report on the settlement to the Mediation Board Commission. They will also inform parties about appropriate legal and administrative procedures to regularize their settlement. The parties will be instructed to regularize the settlement in a legal manner as applicable.

When parties as a result of participation in a SMB (L) mediation of concerning private land *do not reach an agreement*, the SMB will inform but not advise parties on other procedural choices available to them to settle contested and unresolved issues. SMBs (L) will also forward a report on the outcome of the dispute and lack of settlement to the Mediation Board Commission.

Ministries and Government Entities involved in Land Issues include, but are not limited to:

- **Ministry of Justice**
 - Mediation Boards Commission
 - Legal Aid Commission

- **Ministry of Land and Land Development**
 - Land Commissioner General's Department
 - Surveyor General's Department
 - Land Title Settlement Department

- **Ministry of Public Administration and Home Affairs**
 - Registrar General's Department
 - District Secretariats
 - Divisional Secretariats

- **Ministry of Resettlement**

- **Presidential Secretariat**
 - Land Division – Land Grants
 - Attorney General's Department

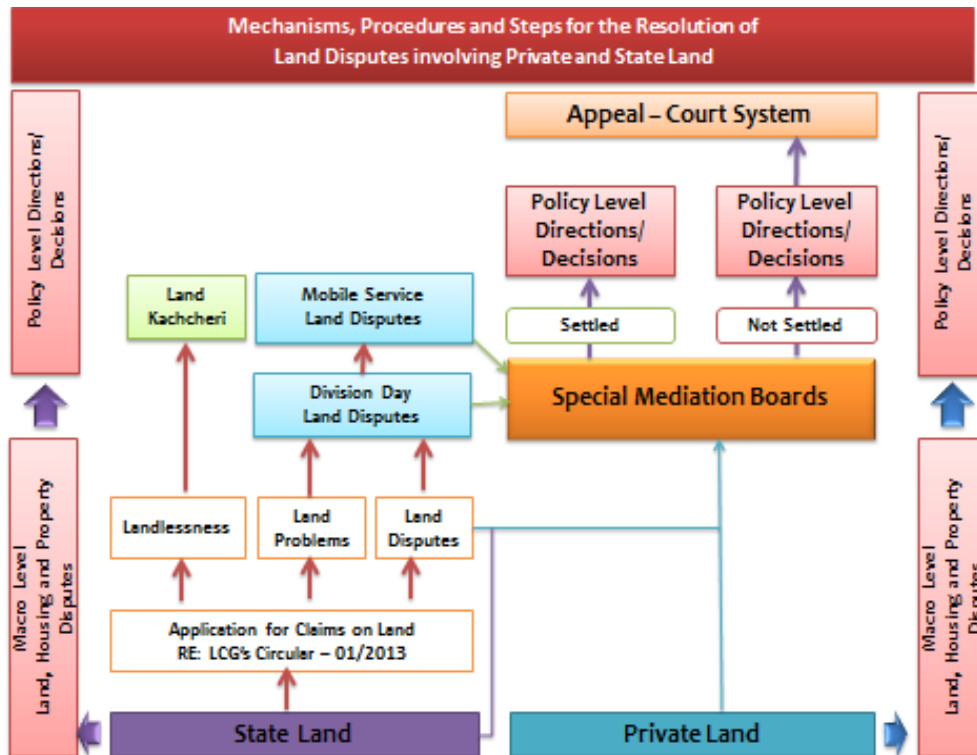
- **Department of National Planning**

- **Ministry of Defense**

- **Ministry of Irrigation and Water Management**

- **Provincial Councils**
 - Provincial Land Ministries
 - Departments of Provincial Land Administration - Provincial Land Commissioners

Figure I: Mechanisms, Procedures and Steps for the Resolution of Land Disputes involving Private and State Land



Chapter 5 - The Special Mediation Board's Land Process for Handling Land Disputes

It is important for that the procedures and approaches for making governmental officials and members of the public aware of the Special Mediation Boards (Land) and the procedures to access them. Outlined below is the process for the SMB (L).

Awareness

Wide awareness by governmental officials and the public is necessary for the SMB (L) when they are established so that people will know where and how to bring their disputes. A Gazette notification will be published and distributed directly to District Secretaries at the MOJ and MLLD and a broad outreach strategy will be implemented.

District Level

At the District level, information will be presented regarding the SMB(L) to the Land Commissioner General at their monthly meeting with a request to distribute information to others. A SMB (L) overview will also be presented to the District Secretary and Assistants (2 people), Divisional Secretariat, and land commissioners department (senior officers). In addition, the land officers, colonization officers will be coordinated with regarding the SMB (L).

Divisional Level

Local officials including Grama Niladhari's, Women Development Officers and others will be contacted and encouraged to conduct individual and group outreach to promote awareness of the program and access to the SMB (L).

Broad Public Awareness

Broad public awareness of the SMB (L) will be created through outreach by Divisional Secretary's office representatives and through a publicity campaign (poster, advertisements etc...). The goal of the awareness campaign is to inform as many as possible about the role of the SMB (L), how it can be accessed and when and where cases can be taken.

Intake of Disputes

Claims applications can be submitted in writing according to the format provided (to be developed) either in person or by post to:

- The Divisional Secretariat
- The District Secretariat
- Directly to the SMB (L) Chair

Any type of claim, State and private land, may come to the Divisional and District Secretariat or directly to the SMB (L) Chair. The parties should describe in writing the nature and type of claim and the other parties that may be involved.

Claims Acceptance and Notification

- Procedure(s) to inform parties of claims acceptance
- Once a claim is submitted to the SMB (L), the Board Chairperson will inform the parties within two weeks of submission that the case has been received.
- The SMB (L) Board Chairperson will respond to parties, if accepted, in writing and request that parties to bring relevant documents (if available) to the mediation session. The date, time and location of the mediation will be announced.
- The mediation process should be complete (settlement by the parties) within 60 days of the start of the mediation or the SMB (L) chairman will submit a non-settlement certificate.
- Multiple mediation sessions may be required

Mediation Assignment

The SMB (L) chairperson will assign a three member board to mediate the dispute based on the nature of the claim presented, once the case is accepted.

Gathering Relevant Data and Documents

Parties are encouraged to bring relevant documents to the mediation. The outreach effort will indicate the relevant documents necessary including:

- For State Land – Grant and Permit documents and surveys
- For private land – Deeds, titles and surveys
- Other – tax documents, utility/phone bills and other documents that demonstrate prior or current occupancy or ownership

Chapter 6 - Types of Land Disputes and Intermediary Strategies

There are a wide variety of land disputes in Sri Lanka, which involve both State and private property. Concerned parties engaged in resolving them are diverse, and may include individuals, men and women, family members, neighbors, local authorities, representatives of government agencies, and members of different ethnic and religious groups.

Some land disputes are the result of the country's civil war and the significant levels of displacement that has occurred. Others arise from normal interpersonal, family or community relations and interactions. Dispute resolution systems, procedures and strategies are needed to resolve both war-related conflicts, and more common land disputes characteristic of all societies and countries.

Listed below are some of the most common categories and types of land disputes, examples of each and potential strategies that may be used by parties or intermediaries – mediators or third party decision makers – to resolve them.

1. Documentation and Land Registration Issues

Examples of Types of Disputes or Factors:

- Loss of documents - Permits, grants, leasehold agreements, titles, deeds, bills of sale, utility bills, etc... that help prove ownership or use rights
- Loss or destruction of land records or other documents in government land registry offices at central, provincial, district and divisional levels
- Unclear documents where the intent of the parties is vague or imprecise
- Potentially or actually forged documents
- Competing deeds (for private land) or permits and grants (for public land) both of which may, or appear to be, valid
- Lack of credible witnesses of verbal agreements or who can testify regarding past land arrangements
- Difficulties in conducting document searches for grants, permits, leases issued by the government; and titles deeds, or other relevant private property documents; and tax, utility, phone bills, etc.
- Lack of clarity on the part of land claimants on who to go to obtain documents or do document searches (Divisional Secretary, Provincial Land Commissioner or Deputy Land Commissioner)
- Delays in government registration of land or processing requests for copies of documents due to administrative rules and practices or inadequate staff
- Difficulties of long-term occupants and “owners” of land for more than a generation to obtain necessary ownership documents from government officials
- Legal implications of land abandonment

Intermediary Strategies

Listed below are possible strategies to address some of the disputes listed above or to address other factors that influence their resolution.

Issues related to Documents

- **Loss of Documents**
 - Ask parties to consider documents other than grants, permits, titles or deeds, such as receipts or acknowledgement of sale, utility records, etc., as proof of ownership or a use right
 - Ask parties to identify multiple credible individuals or groups who can provide information on past land ownership arrangements

- **Loss or Destruction of Land Records or other Documents in Government Land Registry Offices**
 - Ask one or more parties – or one or more parties with the assistance of the mediator, relevant land management agency, Legal Aid, an NGO or a lawyer – to conduct a document search at multiple levels to determine if duplicate records are available
 - If documents cannot be identified after a search, see section above

- **Unclear Documents**
 - Discuss with parties the range of interpretations of the documents
 - Help develop a logic and rationale for an interpretation that may facilitate agreement
 - Ask a mutually acceptable respected person in the community to provide an independent and impartial interpretation of the document

- **Potentially or actually Forged Documents**
 - Carefully examine documents to determine their validity – names, dates, land in question, signatures, etc.
 - If the mediator or one of the parties has a question about the validity of a document, the mediator should privately discuss his or her concern with the party who is using it to support his/her case. The mediator should explore the risks of parties reaching an agreement based on questionable documentation
 - If one or more parties continue to contest the validity of a document, the mediator should discuss with them procedures to determine the authenticity of the document. This may involve taking it to a Land Registry or other government entity (Divisional or District Secretariats) with knowledge about documents and documentation
 - The mediator should avoid facilitating decisions based on questionable documents, as this risks one or more parties' rights being violated

- **Competing Deeds, both of which Appear to be Valid**
 - Utilize procedures similar to those described above for potentially or actually forged documents
 - Assess when documents were issued, authorized or signed to determine if one has precedence over another
 - After pursuing procedures outline above, confirm that the competing deeds both appear valid and explore parties interests and alternatives to negotiation

- **Delays in Government Registration of Land or Processing Requests for Copies of Documents**
 - The mediator should consider accompanying a party – or referring accompaniment to a respected community member, Legal Aid, NGO or lawyer – to see if documentation can be obtained

- **Difficulties of long-term occupants and “owners” of State land for more than a generation to obtain necessary ownership documents from government officials**
 - The mediator should utilize procedures similar to those in the above bullet, i.e. accompany or refer

2. Boundary Issues

Examples of Types of Disputes or Factors:

- Disagreement between or among parties over the location of a boundary or size of parcel of land
- Lack of clear boundary demarcation
- Lack of boundary markers due to loss or destruction
- Boundary markers that have been moved (intentionally or unintentionally)
- Contests over boundaries between parties who have been relocated to land that they claim or “own” and their neighbors
- Lack of clarity of land boundaries in land/legal documents
- Lack of a land surveys
- Lack of surveyors
- Costs for surveys

Intermediary Strategies:

- **Disagreement over the location of a boundary or size of parcel of land, lack of clear boundary demarcation, lack of boundary markers due to loss or destruction or boundary markers that have been moved (intentionally or unintentionally)**

- Ask parties to jointly visit contested land or property, “walk the land” and look for boundary markers – boundary stones, trees or natural immovable objects that have in the past or could currently help to define boundaries
 - Ask parties to visit contested land or property, “walk the land” and explain their views regarding where boundaries should be and why this is the case
 - Consult with former or existing neighbors with land adjacent to that which is contested, and seek their input or views or input on past, current or former boundaries
 - Consult with village or community notables including Grama Niladabri who are knowledgeable about land, boundary and property issues, and especially related to the land in question, and seek their input or views on current or former boundaries
 - Consult relevant land documents to determine if they provide details useful for determining boundaries
 - Consult land surveys to determine how boundaries have been identified and demarcated in the past
 - Request that a land survey be conducted to identify actual or potential boundaries
 - Discuss and reach agreements either on where newly identified boundaries should be or a compromise in which contested land is shared in a mutually acceptable way.
 - Consider parties alternating use-rights on contested land so that each can use it, but at a different time
- **Contests over boundaries between parties who have been relocated to land that they claim or “own” and their neighbors**
 - Utilize procedures such as those provided in the section above
- **Lack of clarity of land boundaries in land or other legal documents**
 - Review legal documents and seek and reach agreement on the fact that they are unclear regarding land boundaries
 - Submit legal documents to a respected authority, government or community leader, and request their input and/or opinion on terms in legal documents
 - Utilize some of the procedures in the section above for identifying, defining and reaching agreement on boundaries
- **Land Survey Issues**
 - Review any previous land surveys to determine if they provide information to identify boundaries

- Have land surveys conducted to determine exact amounts of land claimed or “owned” by parties and potential boundaries
- Have land surveys conducted to formally document agreed upon boundaries
- Explore with parties how surveyors conducting land surveys will be selected and how costs will be allocated, including use of potential MoJ roster of technical experts

3. Encroachment and/or Secondary Occupation of Either State or Private Land

Examples of Types of Disputes or Factors:

- Encroachment on State land (permit/grant) or private land due to displacement or lack of available land
- Occupation of State or private land by parties who are not valid holders of legal government permits/grants, deeds or titles
- Multiple valid permits issued for a single piece of State land
- A forced eviction has occurred on a privately held land
- Forcible illegal occupation of land
- Partial encroachment by one IDP party on land owned or for which there is a use right by another IDP party; claimed partial encroachment by one party on land claimed by another
- Legal owner of land and property demands that an illegal occupant leave, and threatens eviction
- Demands for compensation for occupation or use of illegally occupied land or property, such as back rent by the valid landowner
- Demands for compensation for physical improvements made to illegally occupied property
- Demands for use rights or compensation for planted trees or crops

Intermediary Strategies:

- **Encroachment on State Land Due to Displacement**
 - Determine if State land has been assigned by permit/grant to others
 - If not, explore whether grant/permit can be assigned to current occupant. If the right has been lost, determine if it should be reassigned to the original party or current occupant
 - If the right has not been lost, follow procedures below

- **Encroachment on Private Land Due to Displacement, Lack of Available Land or Forceable Illegal Land Occupation**
 - Review the documents possessed by parties related to land ownership; if the documents demonstrate that the claimant is the valid owner of land follow procedures described below.
 - Discuss with valid land owner if he/she is willing to sell or donate (all or part) the land in question to parties occupying the land and determine whether current occupant is interested in purchasing
 - If land owner is willing to sell and occupant is willing to buy the land, identify objective standards and criteria to determine price and reach agreement on the sale
 - If the valid owner is not willing to donate or sell and/or occupant is not willing to or able to purchase the land or leave, discuss consequence with the occupant of the result of the valid landowner following through on eviction
 - Discuss with the valid land owner, the timing, cost and procedures for following through with eviction

- **If multiple valid grants, permits, deed and titles have been issued for a single piece of State land**
 - Check that documents are valid and confirm them with the parties
 - Discuss possible arrangements to meet the need of the parties
 - If agreement is reached on how to proceed with the property, take settlement to the Divisional Secretariat for regularization

- **Legal owner of land and property demands that an illegal occupant leave contested land or property, and threatens eviction**
 - Discuss with the occupying party whether they are willing to leave, and if so, the conditions and timing for them to vacate the land or property
 - If they are not willing to leave, discuss the consequences and the result of the claimant following through on eviction (Help them to assess their Best Alternative to a Negotiated Agreement - BATNA)
 - Discuss with the party claiming the property the conditions and timing they would find acceptable for the current occupant to leave the land or property
 - If they are stuck on a position that prevents agreement, discuss their Best Alternative to a Negotiated Agreement (BATNA), the consequences of maintaining it and costs or risks of pursuing various options, such as eviction
 - For State land, determine if the permit/grant holder has fulfilled the historic responsibilities of the permit/grant; if not, use non-compliance as a tool for evaluating parties' BATNA

▪ **Demands for compensation**

- Develop with the parties relevant baseline information on the condition of the land and/or property at the time it was left, abandoned or occupied by the party without the legal right to do so
- Develop an inventory of changes or improvements to land or property made by the party without the legal right to be on the land or reside on the property
- Develop procedures to calculate the value of changes or improvements made by the party who does not have the legal right to be on the land or reside in property; use an acceptable ‘valuer’ to determine the value of the improvements made
- Determine if the legal owner of the land or property is in principle willing to pay some compensation for improvements made for the use of land or property (Compensation may be framed as money paid to take care of or protect the property in the legal owners absence)
- Determine the terms of the compensation including timing and other conditions
- Have parties discuss what a fair amount of compensation might be
- Explore whether and how crops in fields, trees or fruits resulting from the labor of the “illegal” occupant can be harvested and/or shared with the legal owner of the land or property

4. Problematic Land Transfers or Sales

Examples of Types of Disputes or Factors:

- Fraudulent land sales and deeds
- Sequential “illegal” land sales to multiple parties
- Sale of State land held by permit/grant, which is illegal
- Reclaim of State land by original permit/grant holders of land that was illegally sold
- Land possessed by permit/grant had been transferred as part of a dowry, without following legal transfer requirements or securing documentation. Result is that transfer and second ownership is invalid
- Land sales made during the conflict with low sale price either due to duress or other factors

Intermediary Strategies:

- Review and document the multiple land sales over time and other documentation with all parties
- Review all available land documents and determine which is/are valid and legal
- Identify the earliest valid and legal land documents (tax bills, utility etc...)

- If the validity of documents cannot be agreed on by the parties, take them to a government agency or an independent lawyer to have them reviewed and validated
- Determine amounts of money paid by parties who have purchased illegally offered housing or land
- Discuss with all parties, either together or in caucus, what procedural or substantive options the legal possessor of documents and owner of housing or property has to either secure his/her land or obtain compensation for his/her loss
- Discuss with all parties, either together or in private, what procedural or substantive options the purchaser of illegally sold housing or property has to either secure a right to his/her land or obtain compensation for his/her past payments
- Discuss with all parties, either together or in private, the judicial or administrative options they have to satisfy their interests, and the risks, time and costs of pursuing them
- Explore compromise agreements (price and terms) involving some compensation by the legal housing or land holder for the illegal occupant if the latter purchased housing or land in good faith
- Explore a compromise agreement (price and terms) in which the legal owner of the housing or land compensates the illegal purchaser for any improvements that have been made

5. Divided Land Issues

Examples of Types of Disputes or Factors:

- Claims that land was unfairly divided
- Division of land as a result of misinformation or coercion
- Children wanting parents land to be divided and apportioned between them
- Land has been divided but not in accordance to the law which regulates sizes of parcels
- Difficulty of parties getting housing scheme assistance because land is undivided

Intermediary Strategies:

- If land has been divided, determine information, standards and criteria that were used for division
- Discuss whether the information, standards and criteria for division were accurate and fair and whether alternative standards should have in the past or could currently be applied
- If land was divided due to coercion, discuss how it has affected the outcome and whether a new division should be considered

- If children want parents to divide land, discuss with children and parents the reasons for or against division. Identify interests of each party and explore whether interest based solutions can be developed with the parties
- If land has been divided but not in accordance to the law, which regulates sizes of parcels, determine the legal size of the parcel. Discuss whether land can be re-divided to conform to the law or if not, explore compensation of a party losing land using another resource (money, jewelry, livestock etc...)
- If a party is having difficulty getting housing assistance because the land in question is undivided, explore with relevant government agency how assistance can be secured.

6. Family Disputes Relating to Land

Examples of Types of Disputes or Factors:

- Inheritance issues of children and other relatives
- Inheritance rights of second or subsequent spouses and their children
- Use rights of land and property – such as rights to build a house, plant and harvest crops, sell parcels, etc. – that are contested by parents, children or other relatives

Intermediary Strategies:

- Understand and explore the legal principles to be used in addressing inheritance issues; establish legal principles
- If not agreed upon the legal principles, consult with acceptable legal expert on the approach to be used
- Identify interests of the children and relatives regarding land and inheritance issues
- For use land rights contested by children and other relatives, explore interests of the parties and develop mutually acceptable solutions based on identified needs
- For inheritance issues regarding second and subsequent spouses and their children, follow established legal principles regarding inheritance
 - If legal principles are not agreed upon, see procedures above

7. Land Rights of Women and Other Vulnerable Populations⁸

Examples of Types of Disputes or Factors:

- Ownership rights of women where the husband is missing
- Ownership/use right for women on State land

⁸ See report by the Rural Development Institute “Women’s Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka”, pg 64 -71, December 2009

- Rights of women to be successors of State land and to designate a successor
- Inheritance rights of women on private land
- Inheritance rights of women
- Forcible illegal occupation of lands owned, occupied or used for a considerable period of time by women heads of households
- Reclamation of land given as part of a dowry when parties separate
- Inheritance rights of children

Intermediary Strategies:

- For private lands, the mediator should familiarize themselves regarding the rights of women in Sri Lanka under Roman-Dutch, Kandyan, Thesawalami and Muslim Law
- Talk to the parties to discuss which set of laws might be most appropriate to apply when making decisions on housing land and property ownership and inheritance for women
- For State lands with women as successors and/or designating a successor, bring the issue to the Divisional Secretariat for regularization based on informal procedures, despite the Land Development Ordinance establishing inheritance on male lineage
- If parties disagree about the applicable law, identify standards and criteria that would be fair and equitable, and/or the default option, Roman Dutch law
- Bring in independent experts to outline how applicable laws might be applied and the principles they entail
- Ensure parties have access to information on the law and legal rights of women
- If necessary, encourage the woman or other party/parties to seek advice from a legal council
- For forcible land occupation of land owned by a women headed household, talk to illegal occupier about relevant laws and whether they will or might consider the return of the land; if they do not agree to return land, explore potential negative legal, reputational or community consequences
- For reclamation of land as part of a dowry, explore with parties any pre-nuptial agreements or understandings and community and/or religious norms for return of a dowry when parties separate. Discuss whether the dowry should be returned and/or how, detailing terms and conditions for doing so
- For making agreements on inheritance rights of male and female children in marriages or liaisons with subsequent wives/husbands/partner, pursue strategies listed above (clarify legal basis) and determine principles for the inheritance of land

8. Tenant Rights Issues

Examples of Types of Disputes or Factors:

- Threats of or actual illegal eviction
- Refusal of tenants to vacate property
- Rent and damage deposit issues
- Damage by tenants of leased/rented property

Intermediary Strategies:

- Explore in private each party's Best Alternative(s) to a Negotiated Agreement (BATNA) for staying or leaving contested land or property
- Explore in private with the party who does not have legal right of occupancy, the process that "might" be used for eviction; the time, costs and hassles it might take to execute it; and whether it might be preferable to negotiate an agreement on the timing and procedure for a voluntary departure
- Explore in private with the party who wants the other party to vacate his or her property the process that "might" be used for eviction; the time, costs and inconveniences it might take to execute it; and whether it might be preferable to negotiate an agreement on the timing and procedure for a voluntary departure
- For payment of back rent that is due, strive to reach an agreement in principle on whether or not the rent is due. If it is, explore a process and timing for paying it. Payment could be in money over time, labor or services or exchange of something that the person to whom rent is due values.
- For issues involving actual or potential damage to a property, explore actual damages, determine if they were due to intentional or unintentional action, develop standards and criteria to value damages, discuss how the damage could be paid for – in money, labor or exchange of other resources
- Ask both parties "what will it take" to meet both their interests and those of the other party

9. Abuse of Caretaker Roles and Responsibilities and/or Power of Attorney

Examples of Types of Disputes or Factors:

- Party who owns or has use right to land/property delegates it or gives power of attorney to another party to be the custodian, take care of or use during the first party's absence; and abuse by second party of the agreement or understanding (such as selling land or not be willing to return it to the first party)
- Lack of clarity or differences between two or more parties regarding the terms of a "caretaker" arrangement/agreement

- Claim by one party that land/property was given to them and that they now own it, with other claiming that it was loaned or given to be taken care, and ownership or use right was not transferred

Intermediary Strategies:

- Discuss the views of all parties regarding understandings or agreements of the caretaker /power of attorney role and responsibilities, and what actions were or were not to be performed
- If there was lack of specificity regarding relationships and responsibilities, so that both parties can take some responsibility for what has occurred, recognize it
- Clarify claimed harm, and if necessary or possible determine a value for it
- Explore whether the caretaker or party granted the power of attorney accepts that harm has occurred or been done to the property owner
- Explore in private, or if appropriate together, what the party who has incurred harm wants to “make it right” – acknowledgement of wrongdoing by the other party, an apology, some exchange (money, labor, etc.)
- If the caretaker/party with the power of attorney takes responsibility for the harm that has been done, explore what might be done to make the party who has suffered harm whole
- If the caretaker/party with the power of attorney does not take responsibility for the harm that has been done, discuss any possible advantages and benefits for doing so. If they still do not take responsibility, discuss any potential negative consequences that might occur – damage to their reputation, disapproval or shunning by other family or community members, legal action etc.
- Discuss with the party who has suffered harm, what is the least they would accept in an agreement. If the demand seems unreasonable, discuss any potential negative consequences for holding out for more
- If parties still do not agree, discuss their Best Alternative(s) to a negotiated agreement and how they might address and satisfy their substantive, procedural and relationship/psychological interests

10. Access and Rights of Way

Examples of Types of Disputes or Factors that make resolving them more difficult:

- Land bounded by other landholders does not have access by its Grant or Permit holder or legal owner
- One land occupant, Grant or Permit holder or land owner, blocks another person or party with a legal right to have access to land

Intermediary Strategies:

- Determine the type and timing of access desired/needed and the interests related to them. Explore why access is being blocked, and what interests are being satisfied by denial of access
- Explore the conditions under which access might be allowed, and any potential exchanges that might be made to implement it.
- Explore their BATNA of the party whose access is being blocked, and any alternative ways to achieve access with “the blocker” or other party with adjoining land
- Explore the consequences of inaction and continuing denial of access with the party denying it, and discuss both their BATNAs and the potential BATNAs of the other party
- Discuss the benefits that could be achieved by granting/obtaining access, risks or harm and how negative impacts of risks or harm could be addressed and overcome

MACRO HOUSING, LAND AND PROPERTY ISSUES

The *Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka* (2014) identified a range of macro-level housing, land and property issues that are currently excluded from the mandate and scope of work for the Ministry of Justice’s Special Mediation Boards (Land). While these cases may be brought to the Special Mediation Boards, they are expected to be addressed and resolved by other government initiatives and mechanisms. Some of these issues are described below.

‘Macro- level’ land issues are complaints, claims or issues that have broad political overtones or that may arise due to political and/or partisan influences. Macro issues include the following categories of issues: 1) land alienation for macro development projects 2) land related issues between and within religious groups 3) issues relating to land allocations and housing projects 4) disputes associated with large scale resettlement and new settlement 5) encroachment and possession of land 6) forest land occupation 7) high security zones and 8) land acquisition for development activities by security forces.

Due to the complexity and political sensitivity of macro-level land disputes, they are not currently appropriate for the SMB (L) process, although further study is needed to evaluate whether they could at some time in the future be handled by this mechanism.

When these ‘macro’ level issues are brought to the SMB (L) Chairperson, they will be documented. Records will be kept including type of dispute, the involved parties, issues/claims involved and their size and magnitude. Reports on these cases will be filed by the Special Mediation Boards (Land) and the Mediation Boards Commission will refer these to the Ministry of Justice, the Ministry of Land and Land Development or other relevant authority.

Other Issues

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, default of bank mortgages; extensive damage and destruction of property; loss of essential servitudes such as use of wells or watercourses; disputes over religious property such as temple lands; and landlessness.

GLOSSARY OF LAND TERMS*

Access -The ability to use land and other natural resources (e.g., use rights for grazing, growing subsistence crops, gathering minor forestry products, etc.), to control the resources (e.g., control rights for making decisions on how the resources should be used, and for benefiting financially from the sale of crops, etc.), and to transfer rights to the land to take advantage of other opportunities (e.g., transfer rights for selling the land or using it as collateral for loans, conveying the land through intra-communal reallocations, transmitting the land to heirs through inheritance, etc.)

Adjudication - The process of authoritatively determining the existing rights and claims of people to land. Adjudication should not alter existing rights or create new ones but instead should establish what rights exist, by whom they are exercised, and to what limitation.

Adverse possession - Gaining access to land by acquiring legal rights through possession for a prescribed period of time.

Agrarian structure - The structure of farming units in a society, including the pattern of land distribution among rural landholders. Reforms are often promoted in countries which have an agrarian structure of very large farming units operating with a labour force of landless or land poor peasants and very small family-operated farms. Examples of these are the “latifundia” and “minifundia” of Latin America.

Alienate - To alienate land is to transfer rights to that land to another person. Alienation can be full (e.g., the sale of ownership of that land) or partial (e.g., the transfer of use rights through a lease).

Allocation - The process of assigning rights to land to a person (individual or corporate) within the rules defined by the land tenure system. Rights can be assigned by the sovereign power (nation state or indigenous) through original grants or through reallocations following expropriation, purchase, or reversion. Rights can also be allocated by private persons to others through sales, leases, inheritance, etc.

Bundle of rights - The analogy that the collection of rights associated with a land parcel can be likened to a bundle of sticks: very often separate “sticks” of the bundle are held by different people; “sticks” can be acquired in different ways and held for different periods.

Cadastre - A parcel-based land information system that includes a geometric description of land parcels, usually represented on a cadastral map. In some jurisdictions it is considered separate from, but linked to, the register of land rights and holders of those rights (land register), while in other jurisdictions the cadastre and land register are fully integrated.

Common property - Rights held by members of a community to land and other natural resources (e.g., pastures) that members can use independently of one another. The

community controls the use of the common pool resources and can exclude non-members from using it.

Control rights - A right to control the management of the property. It may include rights to make decisions about how the land should be used including what crops should be planted, and to benefit financially from the sale of crops, etc.

De facto rights - Rights that exist in reality or “on the ground”. They may be different from de jure rights.

De jure rights - Rights that exist because of formal law, which may be different from de facto rights.

Eminent domain - The expression identifying the state’s position as having ultimate, sovereign power over the land. The term is used in some jurisdictions to describe the power held by the state to acquire land by expropriation or compulsory acquisition.

Encroachment - The illegal occupation or use of portion of the land holdings of another.

Formal property - Rights that are explicitly acknowledged by the state and which may be protected using legal means.

Freehold - The everyday expression for what is usually regarded as “ownership” providing the holder with use rights, control rights, and transfer rights and otherwise enjoyment of the land parcel to the extent permitted by law. The term derives from a particular type of tenure found under English common law, i.e. the land holder was free from the obligation of providing feudal services.

Informal property - Rights that lack formal, official recognition and protection. In some cases, informal property rights are illegal, i.e., held in direct violation of the law. In other cases, informal property may be “extra-legal”, i.e., not against the law, but not recognized by the law.

Inheritance - The right to transfer property to one’s heirs. In many societies, property descends to males, and females have no or little right to inherit. In some societies, tenure rules may provide for females to inherit but, in practice, daughters are expected to give up this right on the basis that they will, upon marriage, gain access to the lands of their husbands. In matrilineal societies, upon the death of the wife, property descends through the line of the matrilineal uncle, and the surviving husband may lose rights previously enjoyed. In patrilineal societies, the widow may lose rights and be evicted.

Land administration - The set of systems and processes for making land tenure rules operational. It includes the administration of land rights, land use regulations, and land valuation and taxation. Land administration may be carried out by agencies of the formal state, or informally through customary leaders.

Land dispute - A disagreement over land rights, boundaries or uses. A land dispute occurs where specific individual or collective interests relating to land are in conflict.

Land information system (LIS) - A system for acquiring, managing, processing, storing and distributing information about land. It is usually parcel-based.

Land reform - The redistribution of land to the rural poor for equity and agricultural efficiency purposes.

Land registration - The recording of rights to land in some form of public register. It includes information on the rights, their location, and their holders. Registration can be parcel-oriented (sometimes referred to as title registration) or based on the holders or transfer documents (sometime referred to as deed registration). In title registration, ownership is transferred upon registration rather than on execution of the contract; the state may also provide a guarantee on the validity of the title.

Land rights - Rights held to land and other natural resources. More than one person may hold rights to a parcel of land which gives rise to the concept of a “bundle of rights”.

Land tenure - The relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and associated natural resources (water, trees, minerals, wildlife, etc.). Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions.

Land tenure reform - Changes to the rules of tenure. It can include the legal recognition of customary tenure rights, strengthening the rights of tenants, etc.

Lease - The contractual agreement (which may be formal or informal) for the temporary use of land.

Open access - Tenure where there is no control on access to resources: specific rights are not assigned to anyone and no-one can be excluded. It may include rangelands, forests, etc, where there is free access to the resources for all.

Ownership - The rights to land that are, in everyday language, associated with the ability to use, control, transfer, or otherwise enjoy a land parcel as long as those activities are allowed by law. In statutory tenure it is often associated with freehold. However, land law does not tend to define explicitly what is meant by “ownership”.

Parcel - A portion of land for which distinct rights exist.

Possession/possessory rights - The rights that accrue, in everyday language, from physically occupying a land parcel. A legal owner does not have to possess the land to be the owner; the person possessing it may have a legal claim or none at all. Legal recognition

of possessory rights vary around the world; in some cases, possession can give rise to ownership claims through adverse possession.

Private property - Rights held a private party who may be an individual person, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization.

Regularisation - The process of bringing informal property rights into a formal, legal system of land administration. It usually includes the steps of adjudication, titling and land registration.

Reversion - The process used by some states to recover property from a holder for reasons such as the failure to pay property taxes or to use rural land for agricultural purposes within a stipulated time. Such property may be allocated to new parties by the state. It is also used to describe a lessor's interest in the land after the term of a lease has expired.

Sharecropping - A tenure where a land owner allows a person ("share cropper") to use the land in return for a share of the crop produced on the land.

State property -Rights held by the state, often by assignment to a public agency.

Tenure security - The certainty that a person's rights to land will be protected. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. The attributes of security of tenure may change from context to context: investments that require a long time before benefits are realized require secure tenure for a commensurately long time.

Title - The evidence of a person's right to land, or "entitlement".

Use right, usufruct - The right to use the land. A holder of a use right may not have the right to sell the property, etc.

*Terms adopted from the FAO Corporate Document Depository produced by the Economic and Social Development Department (<http://www.fao.org/docrep/005/y4307e/y4307e09.htm#TopOfPage>), with the addition of terms specific to Sri Lanka

APPENDICES

Appendix I

Special Mediation Board Act

Circular on Resolution of Land Disputes 2013

Gazette Notification (Insert When Completed)

Appendix II
Resources for Parties and Mediators
for the
Settlement of Land Disputes

- **Services within the Ministry of Land and Land Development**

- Land Counseling

- Land Surveying

- Land Alienation and Disposition

- Land Used Policy Planning

- Land Settlement

- Land Acquisition

- Land Policy and Development

- Land Title Registration

- Survey Department

- Land Commissioner's General Department

- Land Settlement Department

- Land Use Policy Planning Department

- Land Survey Council

- Registrar General's Department

- **Surveyors Association**

- **Legal Aid Commission**

- **Non-Governmental Legal Aid Providers**

- **Ministry of Women's Affairs and Child Development**

- **National Committee on Women**

- **Bar Association of Sri Lanka**

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