



Ministry of Justice



RESOLVING LAND DISPUTES

Effective Procedures & Strategies



The Asia Foundation





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Contributors

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Message from the Secretary to the Ministry of Justice

The committed course of action adopted by the Ministry of Justice to implement 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 Lands.

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 obtaining 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 Lands has provided the details of land issues in other areas which suggest a need to provide speedy and less cumbersome procedure for resolving 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, Mr. M. Thirunavukarasu and Dr. Ramani Jayasundere 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 improvement of the mediation program which goes back to 20 years.

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

Padmasiri Jayamanne

Secretary

Ministry of Justice

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.

This Manual is to be used by Mediator Trainers of the Ministry of Justice to train mediators who will be appointed to Special Mediation Boards (Land). The Manual will enable Mediator Trainers to provide mediation skills to mediate land related disputes. In addition to the mediation skills training provided by this Manual, mediators will receive a special training in laws applicable to land and property in Sri Lanka. Two additional days of training will follow the training envisaged by this manual; one on laws and procedures in addressing State land disputes and one on laws and processes that apply to disputes over private land in Sri Lanka. A further additional day of training will be done on the management of Special Mediation Boards (Land).

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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

¹Principle 29 in Progress Report of the Special Rapporteur, Pablo Sergio Pinheiro, 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.

unauthorized 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

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.

Mediators will be provided with additional days of training on Legal and Administrative aspects relating to State and Private Lands in Sri Lanka. Handbooks setting out information will be provided to mediators for reference as will be a list of experts whose advice can be sought at mediation sessions.

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 8,400 trained mediators in the Community Mediation Board Programme who handle, on average, over 200,000 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, and 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 Second Schedule (as amended) 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 2003.³ The Act authorizes the Ministry of Justice and 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.

Responses to addressing 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,

³ Parliament of the Democratic Socialist Republic of Sri Lanka, Mediation (Special Categories of Disputes) Act, No. 21 of 2003.

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.⁴

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.⁵

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 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

⁴N. 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.

⁵Sri Lankan Land Commissioner General’s Department, Circular Number 2013/1.

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.
- 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

This Ministry, with a specific focus on land, was established in 1931. The main objectives of the Ministry of Land (MOL) 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 MOL 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 MOL 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 MOL also plays a key role in confirming and finalizing agreements related to land disputes reached by parties participating in SMB (L) procedures. Previously, the MOL 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 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 MOL 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 MOL, 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 MOL 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 MOL 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 MOJ and the MOL 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**
 - Land Commissioner General's Department
 - Surveyor Department
 - Land Title Settlement Department
 - Land Use Policy Planning Department

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

- **Ministry of Resettlement**

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

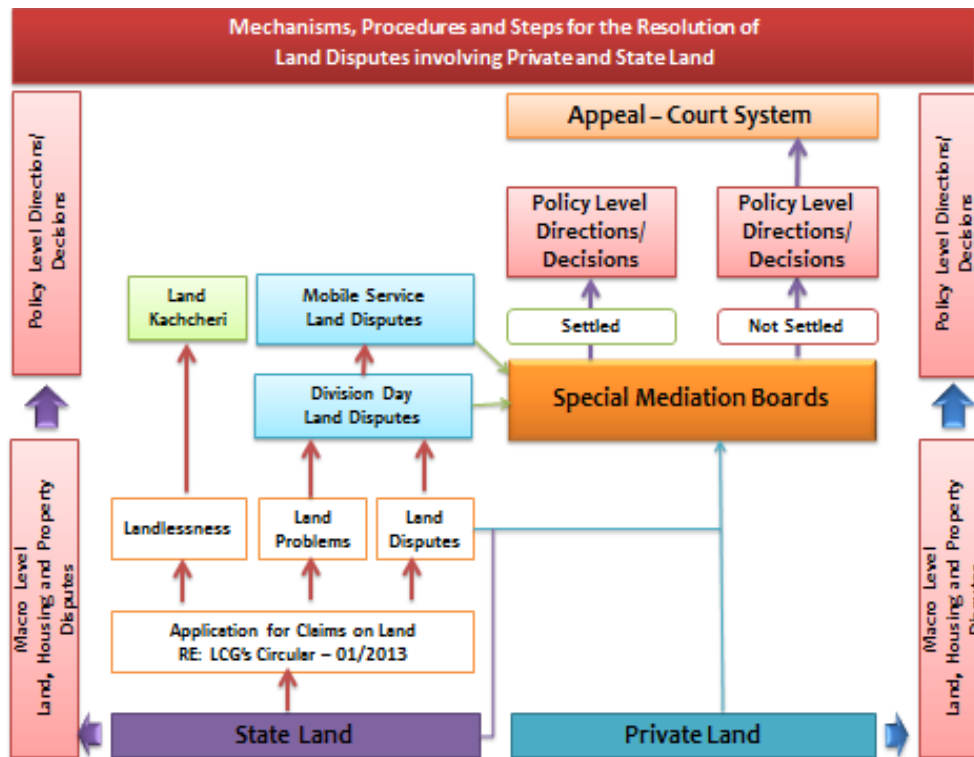
- **Department of National Planning**

- **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 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 Niladhris, 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

The Complaints can be submitted in writing according to the format provided (to be developed) either in person or by post to Chairperson of the SMB or the referrals could be made by the Divisional Secretary, District Secretary, Provincial Land Administration Department, Police, Courts/Tribunals and/or Officers dealing with Land.

Complaints Acceptance and Notification

- Procedure(s) to inform parties of complaint acceptance
- Once a complaint is submitted to the SMB (L), the Chairperson will inform the parties within two weeks of submission that the case has been received.
- The SMB (L) 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) Chairperson 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 GramaNiladahri 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 Forcible 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 Populations⁶

Examples of Types of Disputes or Factors:

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

⁶ 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

- 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.

Cadastral - 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 (sometimes 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.

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*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

Appendix I

Tentative Agenda – Special Mediation Training Programme (Land)

Day 1

Time	Topic
8:30 – 9:00	Registration of Participants
9:00 – 9:30	Welcome and Inauguration
9:30 – 10:30	Introduction of Seminar Participants Agenda Review and Timeframes for the Training Programme Ground Rules
10:30 – 10:45	Tea
10:45 – 12:30	Foundations of Conflict Resolution and Mediation <ul style="list-style-type: none"> • Historical Background of Conflict Resolution in Sri Lanka • Ways to Resolve Land Disputes/Conflicts – A range of approaches • Judicial Decision Making and Mediation (Exercise)
12:30 – 1:30	Lunch
1:30 – 3:30	Conflict and Conflict Circle <ul style="list-style-type: none"> • Introduction and Definition of Conflict • The Circle of Conflict – <i>A tool for understanding land conflicts and developing resolution strategies (Relationship, Data, Values, Interests and Structure)</i> • Application Exercise
3:30 – 4:00	Discussion Preparation for Day 2 Tea and End of Day 1

Day 2

Time	Topic
9:00 – 9:30	Review – Day 1 (Presentation/Exercise/Discussion) Program Preview – Day 2
9:30 – 10:30	Social Work Principles <i>A set of principles to be a Good Mediator in light of Land Dispute Resolution</i>
10:30 – 10:45	Tea
10:45 – 12:30	Communication Skills for Negotiation/Mediation <ul style="list-style-type: none"> • Introduction to Communication • Principles of Communication • Barriers to Effective Communication • Application Exercise – Land Dispute Scenario
12:30 – 1:30	Lunch
1:30 – 3:30	Communications Skills for Negotiation/Mediation <ul style="list-style-type: none"> • Active Listening • Issue, Interest and problem identification and Framing • Asking questions to identify interests • Encouraging the use of “I” statements • Application Exercise
3:30 – 4:00	Discussion Preparation for Day 3 Tea and End of Day 2

Day 3

Time	Topic
9:00 – 9:30	Review – Day 2 (Presentation/Exercise/Discussion) Program Preview – Day 3
9:30 – 10:30	Negotiation: A Primary Process for Land Dispute Resolution <ul style="list-style-type: none"> • Definition (Presentation) • Simulation and Debrief (Human Knot) • Fundamentals of Negotiation
10:30 – 10:45	Tea
10:45 – 12:30	Negotiation: A Primary Process for Land Dispute Resolution <ul style="list-style-type: none"> • Positional Negotiation • Interest Based Negotiation • Application Exercise – School Land
12:30 – 1:30	Lunch
1:30 – 2:00	Mediation in Sri Lanka <ul style="list-style-type: none"> • History of Mediation in Sri Lanka • Introduction to Community Mediation Program and a brief Overview on the Legal and Administrative Framework (Mediation Boards Act – No. 72 of 1988)
2:00 – 3:30	Land Dispute Resolution – Special Mediation Boards (Land) <ul style="list-style-type: none"> • Land Dispute Resolution – Special Mediation Boards (Land): History, Purpose and Process • Legal and Administrative Framework of Special Mediation Boards (Land) - Mediation (Special Categories of Disputes) Act No. 21 of 2003 <ul style="list-style-type: none"> ○ Establishment ○ Jurisdiction ○ Process for Land Dispute Resolution ○ Flowchart for Special Mediation Board (Land) Issues ○ Additional assistance and advice ○ Working with Surveyors, Valuers and Legal Experts ○ Documenting ‘macro’ related issues to MOJ and MOL
3:30 – 4:00	Discussion Preparation for Day 4 Tea and End of Day 3

Day 4

Time	Topic
9:00 – 9:30	Review – Day 3 (Presentation/Exercise/Discussion) Program Preview – Day 4
9:30 – 10:00	Mediation <ul style="list-style-type: none"> • Introduction to Mediation – Getting To Know
10:00 – 10:30	Mediation Process <ul style="list-style-type: none"> • Step 1 – Introduce the Process • Presentation and Demonstration of Opening Statement
10:30 – 10:45	Tea
10:45 – 11:30	Mediation Process <ul style="list-style-type: none"> • Practice Opening Statements (Step 1) with Feedback (exercise in groups of 3)
11:30 – 12:30	Mediation Process <ul style="list-style-type: none"> • Step 2 – Define Issues and Set the Agenda Topics • Step 3 – Explore Interests and Issues • Step 4 - Generating Options and Evaluating Options • Step 5 - Reaching and implementing agreements
12:30 – 1:30	Lunch
1:30 – 2:30	Mediation Process <ul style="list-style-type: none"> • Mediation Simulation I (Exercise in Groups of 3)
2:30 – 3:30	Model Mediation and Debriefing
3:30 – 4:00	Discussion Preparation for Day 5 Tea and End of Day 4

Day 5

Time	Topic
9:00 – 9:30	Review – Day 4 (Exercise and Discussion) Program Preview – Day 5
9:30 – 10:30	Types of Land Issues and Strategies to Address them (Presentation and Strategy Clinic) <ul style="list-style-type: none"> • Strategies for addressing diverse types of land conflicts • Breaking deadlocks • Using private meetings
10:30 – 10:45	Tea
10:45 – 12:30	Types of Land Issues and Strategies to Address them (Presentation and Strategy Clinic) – Cont. <ul style="list-style-type: none"> • Strategies for addressing diverse types of land conflicts • Breaking deadlocks • Using private meetings
12:30 – 1:30	Lunch
1:30 – 2:30	Mediation Simulation II Feedback by the Groups
2:30 – 3:30	Mediators - (Presentation and small group exercise) <ul style="list-style-type: none"> • Principles of Mediation • Code of Conduct/Values/Ethics • Qualities of Mediators
3:30 – 4:00	Discussion Preparation for Day 6 Tea and End of Day 5

Day 6

Time	Topic
9:00 – 9:30	Review – Day 5 (Exercise and Discussion) Program Preview – Day 6
9:30 – 10:30	Working with Diversity in Land <ul style="list-style-type: none"> • Gender, Caste, Class and Educational differences (Presentation and discussion)
10:30 – 10:45	Tea
10:45 – 11:45	Working with Diversity in Land – Cont. <ul style="list-style-type: none"> • Gender, Caste, Class and Educational differences (Presentation and discussion)
11:45 – 12:45	Mediation Simulation III – Multi Party Dispute Feedback by the Groups
12:45 – 2:00	Lunch
2:00 – 3:00	Written Evaluation
3:00 – 4:00	Closing Program <ul style="list-style-type: none"> • Program Evaluation • Highlights of Program and Closing • Next Steps • Concluding Remarks
04.00	Tea and End of Training Program

Appendix II
Mediation (Special Categories of Disputes) Act – No. 21 of 2003



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

MEDIATION (SPECIAL CATEGORIES OF
DISPUTES) ACT, No. 21 OF 2003

[Certified on 30th July, 2003]

Printed on the Order of Government

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*Mediation (Special Categories of Disputes)
Act, No. 21 of 2003*

[Certified on 30th July, 2003]

L.D.—O. 30/2002.

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF MEDIATION
BOARDS FOR SETTLEMENT THROUGH MEDIATION OF SPECIAL
CATEGORIES OF DISPUTES; AND FOR MATTERS CONNECTED
THEREWITH AND INCIDENTAL THERETO.

Be it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows :—

1. This Act may be cited as the Mediation (Special
Categories of Disputes) Act, No. 21 of 2003.

Short title.

2. (1) The provisions of this Act shall apply in regard
to the settlement through mediation of such categories of
disputes as shall be determined by the Minister by Order
published in the Gazette.

Subject and
matters in respect
of which the Act
shall apply.

(2) In specifying such categories the Minister shall
take into consideration the need to provide for the meaningful
resolution of disputes relating to social and economic issues.

3. The Minister shall, from time to time by Order
published in the *Gazette*, specify the area (hereinafter referred
to as the “Special Mediation Board Area”) within which the
settlement of disputes shall be carried out under the provisions
of this Act, in respect of any one or more of the categories of
disputes determined under section 2.

Special
Mediation Board
Areas.

4. (1) Upon the publication of an Order under section
3, the Mediation Boards Commission shall, subject to the
provisions of subsection (2), take all necessary steps to appoint
a Panel of Mediators (hereinafter referred to as the “Panel”) in
respect of each Special Mediation Board Area. The
provisions contained in the Schedule to this Act shall apply
in respect of the selection and appointment of members of
the Panel.

Appointment of
Panel of
Mediators.

2—H 017660–8,650 (02/2003)

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Act, No. 21 of 2003*

(2) A person to be eligible to be appointed under subsection (1) as a member of a Panel shall be required to have such qualifications as shall be prescribed for that purpose by the Minister, who shall in prescribing such qualifications have regard to the expertise required of members to be appointed to such Panel, taking into consideration the nature of the categories of disputes determined by the Minister under section 2. Different qualifications may be prescribed in respect of the different categories of disputes determined under that section.

(3) The Mediation Boards Commission shall appoint one of the members of the Panel appointed in respect of each Special Mediation Board Area, to be the Chairman of such Panel.

Term of office
and remuneration
payable to
members of a
Panel.

5. (1) A member of a Panel shall hold office for a period of three years from the date of appointment and shall thereafter be eligible for a re-appointment.

(2) A member of a Panel shall be paid such remuneration as shall be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

Filling of
vacancies in a
Panel.

6. The Mediation Boards Commission may make appointments to fill any vacancies occurring in the membership of a Panel, and every person so appointed shall hold office for the unexpired period of the term of office of the member whom he succeeds.

Jurisdiction of the
Special Mediation
Boards.

7. (1) Subject to the provisions of subsection (2), a person may make an application to the Chairman of the Panel appointed for any Special Mediation Board Area, for the settlement by mediation of any dispute arising in respect of any one or more of the categories of disputes determined under section 2 of this Act, and arising wholly or partly within such Special Mediation Board Area :

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Provided that where any dispute referred to such Chairman—

- (a) involves any movable or immovable property, the application shall be made to the Chairman of the Panel appointed for the Special Mediation Board Area within which such movable property is kept or immovable property is situated ;
- (b) involves a contract, the application shall be made to the Chairman of the Panel appointed for the Special Mediation Board Area within which such contract was made ; and
- (c) involves a matter which constitutes a cause of action in a court of law, the application shall be made to the Chairman of the Panel appointed for the Special Mediation Board Area within the territorial limits of the court having jurisdiction in respect of such action.

(2) Every application shall be accompanied by a document evidencing the fact that the prescribed fee has been paid in the prescribed manner.

8. (1) Where a Panel has been appointed under this Act in respect of a Special Mediation Board Area, no proceedings in regard to a dispute arising wholly or partly within such area in respect of any one or more of the categories of disputes determined under section 2, where the monetary value of the subject matter of such dispute is less than such sum as shall be specified by the Minister by Order published in the Gazette, shall be instituted in or entertained by a court of first instance, unless it is accompanied by a certificate of non-settlement issued under paragraph (a) of section 14 or subsection (2) of section 17.

No action to be instituted without a certificate of non-settlement.

(2) Notwithstanding the provisions of subsection (1), where a party to a dispute referred to in that subsection prays for relief in the form of any provisional remedy under Part V

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Act, No. 21 of 2003*

of the Civil Procedure Code, or where a party to any dispute in respect of which an application has been made under section 7 subsequently institutes an action in any court in respect of that dispute including a prayer for a provisional remedy under Part V of the Civil Procedure Code, the court may entertain and determine such action in so far as it relates only to the grant of such provisional remedy, and shall after such determination—

- (a) where no application has been made under section 7 in respect of the dispute constituting the cause of action before it, refer such dispute to the Chairman of the appropriate Panel for mediation ; or
- (b) where an application has been made under section 7 in respect of the dispute, direct the Chairman, of the appropriate Panel where a Board has not yet been constituted, or the appropriate Board, as the case may be, to continue mediation in respect of that dispute.

(3) Nothing contained in subsection (1) shall preclude any party to the dispute from making an application to a Mediation Board established under the Mediation Boards Act, No. 72 of 1988, unless the monetary value of the subject matter of such dispute in relation to which the application was made, exceeds twenty-five thousand rupees in value.

Reference by
court or labour
tribunal.

9. Where an action is filed in any civil court having jurisdiction over a Special Mediation Board Area or an application is made to any labour tribunal having jurisdiction over a Special Mediation Board Area, in regard to any dispute arising in respect of any one or more of the categories of disputes determined under section 2 of this Act, such court or tribunal as the case may be, may with the written consent of the parties to that dispute, refer the dispute to the Chairman of the Panel appointed for that Special Mediation Board Area, for the purpose of settlement of such dispute by mediation.

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10. (1) Upon receipt of an application under section 7 or upon a reference made to him under section 9, the Chairman shall ascertain from the parties to the dispute, their preferences as to the manner of constituting a Mediation Board and shall in accordance with the preferences expressed, either —

Constitution of
Mediation Board.

- (a) constitute a Mediation Board under subsection (2) ;
or
- (b) allow the parties to the dispute to select a pre-constituted Mediation Board under subsection (3).

(2) Where all the parties to the dispute express a preference for the constitution of a Mediation Board under subsection (1), the Chairman of the Panel shall, constitute a Mediation Board (hereinafter referred to as the “Board”) of three members, consisting of—

- (a) one member selected by each party to the dispute ;
and
- (b) one member selected by the members selected under paragraph (a),

from the Panel appointed for that Special Mediation Board area :

Provided however, that where the parties to the dispute referred to in paragraph (a) or the members referred to in paragraph (b) are unable to agree as to their respective selections, the Chairman of the Panel shall make the necessary selection :

Provided further, that where any party to a dispute referred to in paragraph (a), expresses in writing, his unwillingness to make a selection under that paragraph, such selection shall be made by lot drawn by the Chairman of the Panel. Where such party for any reason, objects to the member first selected by the drawing of lots, the Chairman shall make a further selection by drawing lots.

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(3) Where all the parties to the dispute express a preference for the reference of the dispute in respect of which the application or reference is made, to a pre-constituted Board, the Chairman of the Panel shall allow the parties to select any Board from among the Boards, each consisting of three members, (including a Chief Mediator appointed by the Chairman), previously constituted by the Chairman, from the Panel appointed for that Special Mediation Board Area.

(4) Where all the parties to the dispute express a preference for reference of the dispute to a Mediation Board constituted under subsection (2), the member selected under paragraph (b) of that subsection shall act as the Chief Mediator of the Board (hereinafter referred to as the “Chief Mediator”) :

Provided that where the Chairman of the Panel is selected as a member of the Board, the Chairman shall act as its Chief Mediator.

(5) Upon the constitution or selection as the case may be, of the Board, the Chairman of the Panel shall refer the dispute in respect of which the application or reference has been made to such Board for settlement by mediation.

Duties of a Board.

11. Where any dispute is referred to any Board under subsection (5) of section 10, it shall be the duty of such Board by lawful means to endeavour to bring the parties to the dispute to an amicable settlement and to remove with their consent wherever practicable, the real cause of the grievance between them so as to prevent a recurrence of the dispute, and for this purpose shall—

- (a) notify the parties concerned and such other persons as the Board may consider necessary, to be present at a mediation conference either together or individually at a specified time and place, and shall state in such notification that if any one of the parties fails to be present at such conference, the absence of such party concerned shall be stated in the certificate of non-settlement issued or in the report submitted to court, under section 14 ;

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- (b) require any person notified to be present to bring to any such conference any witnesses or documents which may be of assistance in arriving at a settlement ;
- (c) convene as many mediation conferences as may be necessary to arrive at a settlement ;
- (d) comply with the procedure as prescribed which is required to be observed in the conduct of mediation sessions ;
- (e) maintain confidentiality in respect of all evidence given, documents submitted and of any other matters that are revealed or discussed during the conduct of mediation sessions ;
- (f) obtain where necessary advice of any person who has special knowledge or expertise pertaining to the subject matter of the dispute in instances where the Board considers it necessary and helpful in arriving at a settlement ;
- (g) endeavour to reach a settlement which is acceptable to both parties to the dispute ; and
- (h) complete its proceedings within the time limit specified in section 15 and in the event of failure to do so, issue a certificate of non-settlement or submit a report to court, as the case may be, under section 14.

12. It shall be the duty of every party to a dispute brought before a Board for settlement by mediation to —

Duties of parties to a dispute.

- (a) disclose fully and honestly all matters which are relevant and necessary for reaching a settlement ;
- (b) refrain from revealing any information of a confidential nature disclosed or discussed at a mediation session.

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Where settlement
is reached.

13. (1) Where the parties to a dispute agree to a settlement, the terms of the settlement shall be reduced to writing and be signed by the Chief Mediator and such parties, and the Board shall—

- (a) where the settlement is in respect of any dispute brought before the Board by an application made under section 7, issue immediately, a copy thereof to each of the parties to the dispute ; and
- (b) where the settlement is in respect of any dispute referred by a court or a labour tribunal under section 9, forward to such court or labour tribunal as the case may be, a copy thereof and also issue a copy to each of the parties to the dispute.

(2) Where a copy of the settlement is forwarded to any court or labour tribunal under paragraph (b) of subsection (1), such court or labour tribunal as the case may be, shall, after issuing notice to the parties to the dispute –

- (a) in the case of a reference by a court, enter a decree ;
or
- (b) in the case of a reference by a labour tribunal make an Order,

in accordance with such settlement.

Where no
settlement is
possible.

14. Where the parties to a dispute do not agree to a settlement, the Board shall—

- (a) in the case of a dispute referred to the Board upon an application made under section 7, issue a certificate of non-settlement in the prescribed form signed by the Chief Mediator, stating that such dispute has been referred to such Board and that it has not been possible to settle the dispute by mediation and stating therein the reasons for non-settlement ;

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- (b) in the case of a dispute referred by any court or labour tribunal for settlement under section 9, report to such court or labour tribunal as the case may be, in the prescribed form signed by the Chief Mediator, that it has not been possible to settle the dispute by mediation and stating therein the reasons for non-settlement.

15. (1) The Board shall, in respect of every dispute brought before it for settlement by mediation, endeavour to complete its deliberation and bring about a settlement or issue a certificate of non-settlement as the case may be, within sixty days of the constitution of such Board in accordance with the provisions of section 10.

Time limit within which Board must act.

(2) The procedure to be observed in the conduct of a mediation session by a Board shall be as prescribed.

16. The members of a Board shall in the conduct of a mediation session, be bound by a Code of Conduct as shall be prescribed.

Members to be bound by a Code of conduct.

17. (1) Where in any dispute referred to a Board in pursuance of any application made under section 7 is settled, and one of the parties to the settlement thereafter fails to comply with, or violates the terms of such settlement at any time, the other party shall forthwith report such failure or violation as the case may be, to the Board.

Failure to comply with or violation of settlement.

(2) The Board shall upon receipt of a report under subsection (1), notify the parties to the settlement and such other persons as it may consider necessary, to be present at a specified time and place and shall endeavour to resolve any differences that may have arisen between them and shall assist them to enter into a fresh settlement. Where the resolution of such differences is not possible, the Board shall issue a certificate of non-settlement in the prescribed form, signed by the Chief Mediator, stating that it has not been possible to settle such dispute and also stating the reasons for such non-settlement.

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Certificates of non-settlement receivable in evidence.

18. (1) A certificate of non-settlement purporting to be issued under paragraph (a) of section 14 or subsection (2) of section 17, and signed by the Chief Mediator, may be produced in evidence in any action or proceeding instituted in any court, although such person is not called as a witness.

(2) The court may presume that the signature on any certificate of non-settlement is genuine and that the person signing it held the office he professed to hold at the time he signed it :

Provided that, if in any case the court is of opinion on the application of any party or otherwise, and for reasons to be recorded, that it is necessary that the Chief Mediator should be present to give evidence at any proceedings before such court, such Chief Mediator shall be summoned as a witness for the purpose only of giving evidence relating to the signing of such certificate .

Representation.

19. No attorney-at-law, agent or any other person shall be entitled or permitted to appear on behalf of any party to a dispute in any matter before a Board :

Provided however that representation before a Board—

- (a) of one spouse by another spouse ; or
- (b) of a minor or other person under any disability, by his parent, guardian or curator,

shall be permitted.

Privilege of witnesses.

20. (1) Every person who makes a statement before a Board shall, in respect of such statement, be entitled to all the privileges which a witness giving evidence before a court of law is entitled to in respect of such evidence.

(2) No statement made by any person before a Board shall be admissible in evidence in any civil or criminal proceedings.

Mediation (Special Categories of Disputes) Act, No. 21 of 2003 11

21. In computing the period of prescription in regard to any cause of action, the period commencing on the date on which an application is made to the Chairman of a Panel in respect of the dispute constituting such cause of action, and ending on the date of the certificate issued under paragraph (a) of section 14 or subsection (2) of section 17 in respect of that dispute, shall be disregarded, notwithstanding anything to the contrary in any other written law. Prescription.
22. A Board may, in carrying out its duties under paragraph (a) of section 11 and subsection (2) of section 17 require the assistance of any Grama Seva Niladhari appointed for a Grama Seva Niladhari's division within the Special Mediation Board Area, to communicate any notification to any party to a dispute or other person, and such Grama Seva Niladhari shall when so required, render all such assistance as may be necessary in that regard to such Board. Grama Seva Niladhari to assist the Board.
23. The members of every Board constituted under this Act shall, so long as they are acting as such members, be deemed to be public servants within the meaning of the Penal Code, and every proceeding before such Board shall be deemed to be a judicial proceeding within the meaning of that Code. Members of Board deemed to be public servants.
24. Every Board constituted under this Act shall be deemed to be a Scheduled Institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly. Board deemed to be a Scheduled Institution,
25. No act or proceeding of a Board shall be deemed to be invalid by reason only of a defect in the constitution of the Board. Defect in the constitution of the Board not to invalidate acts and proceedings of the Board.
26. (1) Where parties have agreed under a mediation agreement to refer any dispute for mediation and such dispute is a dispute coming within any one or more of the categories of disputes determined under section 2 of this Act, Where there is a mediation agreement, no action to be instituted without sufficient proof of non-settlement.

12 *Mediation (Special Categories of Disputes)
Act, No. 21 of 2003*

notwithstanding anything in any other written law to the contrary, no proceedings in regard to such dispute shall be instituted or be entertained by a court, unless sufficient documentary proof is submitted to the effect that such dispute has been referred to mediation and a settlement has not been possible.

(2) The provision of, subsection (1) shall not apply in respect of any action, where a party to a dispute referred to in that subsection prays for relief in the form of any provisional remedy under Part V of the Civil Procedure Code, and a court may entertain and determine such action, only in so far as it relates to the grant of such provisional remedy.

(3) For the purpose of this section, a mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement, by which the parties agree to refer for settlement by mediation all or any dispute which may arise between them, in respect of a defined legal relationship whether contractual or otherwise.

Regulations.

27. (1) The Minister may make regulations in respect of any matter in respect of which regulations are authorized by this Act to be made or required by this Act to be prescribed.

(2) Every regulation made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall, as soon as convenient after its publication in the Gazette be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation shall be deemed to be so rescinded shall be published in the Gazette.

Sinhala text to prevail in case of inconsistency.

28. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Appendix III

Land Commissioner General's Circular – No. 1/2013



ඉඩම් කොමසාරිස් ජනරාල් දෙපාර්තමේන්තුව

காணி ஆணையாளர் நாயகத்தின் திணைக்களம்
LAND COMMISSIONER GENERAL'S DEPARTMENT

ඉඩම් මහලේකම් කාර්යාලය,

නො: 1200/6, රජමල්වත්ත පාර, බත්තරමුල්ල.

இல: 1200/6, ரஜமல்வத்த வீதி, பத்தரமுல்ல.

No: 1200/6. Rajamalwatta Road, Battaramulla.

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Fax } 011-2864051

ඊමේල්
අ.බෙය්ල්
E-mail } landcom@landcommdept.gov.lk

මගේ අංකය }
எனது இல } 3/4/1/LLRC
MY NO }

මගේ අංකය }
உமது இல }
YOUR NO }

දිනය }
திகதி } 2013 . 01.
DATE }

Circular Number: 2013 / 01

All Divisional Secretaries in the Northern and Eastern Provinces,

Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces

1. Introduction

After end of the conflict in the Northern and Eastern provinces, land issues have been identified as an issue to be solved urgently in order to uplift the lives of the people in those areas. Accordingly, the special official's committee appointed to implement the recommendations of the Lessons Learnt and Reconciliation Commission report has recommend the need to develop and implement a special programme by this department (under the supervision of the Ministry of Land and Land Development) in order to solve the state land issues urgently. Considering the need to implement the policy decision taken by the Cabinet on 04.05.2011 according to the Cabinet Memorandum No: 11/0737/533/015 and dated 07.03.2011 on 'Regularising land management activities in the Northern and Eastern Provinces' submitted by the Hon. Minister of Land and Land Development and the above recommendations, this circular has introduced the guidelines that has to be urgently implemented in the years 2013 and 2014 with regard to solving state land issues relevant to those areas.

This programme should be implemented with high priority and maintaining a good coordination with this department by using the Provincial Land Commissioners, Divisional Secretaries of the relevant provinces, staff and the resources in a productive manner and the guidelines of this circular should be followed according to the existing laws and regulations when implementing this programme. In order to review the progress of the programme and to supervise the activities the assistance of the District Secretaries of those provinces will be required.

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பொது } 0112797400
General }

ආයතන }
நிர்வாகம் } 0112878982
Establishment }

ගිණුම් }
கணக்கு } 0112863176
Accounts }

ඉඩම් }
காணி } 0112888197
Land }

සංවර්ධන }
அபிவிருத்தி } 0112878966
Development }

2. Programme to be implemented

The programme implemented will be implemented in two main programmes.

1. Identifying problems
2. Solving problems

2.1 Identifying Problems

2.1.1 An opportunity should be given to the people who are residing in the Northern and Eastern provinces, people who have abandoned the area who have resettled after being displaced and for those people who are expecting to settle again and who have problems related to state lands, to present their problems. Wider publicity should be given in order to raise public awareness on this matter. This department will give publicity at the national level and the divisional secretaries should give publicity at the divisional level.

2.1.2 The format on Annex I should be used to present problems. This format has two parts.

- i. Presenting information about the landless people or people who have lost lands.
- ii. Presenting other problems people experience with reference to state lands.

2.1.3 Divisional Secretaries should take action to raise public awareness about presenting the problems of the people to the relevant Divisional Secretary through this format. The Divisional Secretaries should have already come across similar problems like this in various ways. The Divisional Secretaries have no barrier to use this information for this problem solving programme.

2.1.4 Documentation of information on problems and directing for solutions :-

Records of the problems that have already been presented and will be presented should be documented in two CR books separately according to the categorization of problems mentioned in 2.1.2 . Use annex II & III formats for this purpose.

Note down the relevant problems in the reports and prepare a receipt with the sequential registration number to acknowledge the problem according to format Annexure IV and issue it through an authorised officer in the divisional secretariat. Use the registration number as the reference number for the problem until the problem solving activities are over.

The problem registered under relevant categories should be directed towards the two sub programmes on solving problems in order.

2.2 Problem Solving Programme

Problem solving should be conducted under the below mentioned two sub programmes.

- i. Distribution of lands to landless people or to the people who have lost lands.
- ii. Solving various problems people experience with regard to state lands.

2.2.1 Distribution of lands to landless people or to the people who have lost lands :-

Land distribution can be separated into two parts as,

- i. Distribution of lands to landless people.
- ii. Distribution of lands to people who have lost lands.

2.2.1.1 Distribution of lands to landless people :-

The cabinet has taken a policy decision not to alienate new lands to landless people until the land problems of the affected people in the conflict affected Divisional Secretariats are solved.

But there is no barrier to alienate lands for government approved development projects.

Information provided by the landless people in the conflict affected divisional secretaries divisions should be collected and distribution of lands to those people should be postponed.

2.2.1.2 Distribution of lands to people who have lost lands :-

Situations where people have lost lands after the conflict, due to being vacated or chased away from their lands during the conflict period have been identified. Lands belong to such people are lost due to reasons like, using for development activities under government institutions and armed forces or because other people have permanently settled on those lands. At instances, where those lands cannot be practically claimed again, action should be taken to identify suitable lands from those areas itself and to provide alternative lands upon their consent. If alternative lands are given for private lands or for lands distributed under state grants, these alternative lands should be given according to the compensation assessment carried during the acquisition process of those lands. If people have lost their encroached state lands after residing in encroached state lands in the relevant areas and they are qualified to get lands, they should also be considered when alternative lands are given.

These lands must be alienated only by holding land kachcheris. Instructions given by my circular no: 2008/4 dated 20.08.2008 should be followed for this purpose. But information gathered under this circular can also be used instead of the process of identifying landless people and registering them, as per the instructions of that circular.

Divisional Secretaries should be satisfied on the fact that the selected lands to be distributed are not lands under any person's legal ownership.

Before alienation of lands the Divisional Secretaries should take actions to forward the land kachcheri proposal to the authorised officer for approval.

With reference to the unit of land distribution and other information, circular 2008/4, instructions of other circulars relevant to land distribution, instructions of Provincial Land Commissioners and relevant land orders should be referred.

2.2.2 Solving various problems people experience with regard to state lands :-

2.2.2.1 Divisional Secretaries should take action to implement a programme to solve problems identified at the Grama Niladhari Divisions according to the record of information gathered from the problem identification format.

2.2.2.2 Holding Division Day Programmes

Division Day Programmes should be organised to solve identified, categorised problems at the Grama Niladhari Divisional level or as one programme for several divisions or as appropriately The Divisional Secretary should participate at that Division Day and in addition to that the Assistant Divisional Secretary, Land Officer, Colonization Officer, Field Officer, Public Management Assistant(Land), Grama Niladhari Officer can also participate in this. Trainee Graduates/Programme Officers attached to the Divisional Secretariats to give assistance for these activities also can participate in this. Furthermore, the assistance of the officers at the Provincial Land Administration Department and at the Land Commissioner General's Department can also be sought when needed. Divisional level officers of relevant departments such as, Department of Surveys, Department of Archaeology, and Department of Forest Conservation can take part in this according to the needs.

Office information relevant for pre identified problems should be collected and relevant other parties should be called upon for Division Days while expedite measures should be taken in solving those problems.

Divisional Secretaries should conduct field investigations relevant to these problems and should give solutions after conducting the investigation when necessary. Whenever an approval is needed from the Provincial Land Commissioner or myself, it should be immediately forwarded for approval.

As the next step, problems which the Divisional Secretaries are unable to provide solutions should be forwarded to the Mobile Services Programme to be solved.

2.2.2.3 Holding Mobile Service Programmes

After trying to solve the problems identified by the Divisional Secretaries through Division Day programmes, complicated problems which cannot be solved should be forwarded to the Mobile Service programmes conducted at the Divisional Secretariat level.

All relevant officers and all parties should participate with the relevant information needed to solve the problems at these Mobile Service programmes. Officers of the Provincial Land Commissioner's Department and other government officers related to land matters should participate at these Mobile Service programmes.

2.2.2.4 Destroyed or misplaced land grants

At times when original permits relevant to pre distributed lands and/or relevant ledgers/permit copies in Divisional Secretariats are destroyed or misplaced, such problems should be forwarded to Provincial Land Commissioner for instructions. In order to update such documents actions should be taken to reselect it through the land Kachcheri method and issue permits. The Divisional Secretary can issue a copy of the permit upon the request of the permit holder or the heir when a copy of the permit, ledger etc... is available at the Divisional Secretariat and if the permit holder or the legal heirs are residing in that land without any dispute.

2.2.2.5 Annual permit issue lands

Annual permits should not be renewed further, if only there is an uninterrupted residence in the lands, annual permit has been issued and if it has been continuously renewed annually up to date. Such lands should be forwarded to be selected by land kachcheris if the original permit holders of those annual permits issued lands claim ownership and are enjoying the undisturbed possession. Accordingly, steps should be taken to issue long term lease bonds or permits under Land Development Ordinance after selection.

3. General Information

3.1 Training of Implementation Officers

Training programmes will be organised to raise awareness about the programme for all the officers who are directly involved with this programme.

3.2 It is expected to implement and complete this programme within a period of 2 years. Coordination of the programme will be done by the Land Commissioner General's Department and the Northern and Eastern Provincial Land Administration Departments. An operation unit will be established at the Head Office of the Land Commissioner General's Department.

- 3.3 Vehicle facilities, fuel, financial provisions for officers' travel expenses etc. needed to conduct Division Day, Mobile Service and training programmes is expected to be provided additionally. Essential office equipments and stationary items needed for this purpose is also expected to be provided.
- 3.4 The Land Commissioner General's Department will conduct follow up programmes in order to inquire the progress of this programme. The assistance of the Provincial Land Commissioners will also be sought for this purpose.
- 3.5 It is expected that the Registrar General's Department will implement a suitable programme to provide solutions for problems relating to misplacement/destruction of grants.
- 3.6 I will issue instructions from time to time with regard to special problems emerging in the implementation of the programme, after considering the views of the Provincial Land Commissioners.

Signed By: R.P.R.Rajapakshe,

Land Commissioner General.

Copies:

- | | | |
|---|---|--------------------------------|
| <ol style="list-style-type: none"> 1. Secretary to H.E President 2. Secretary to the Hon. Prime Minister 3. Secretary – Ministry of Defence and Urban Development 4. Secretary – Ministry of Public Administration and Home Affairs 5. Secretary – Ministry of Land and Land Development | } | For information
please |
| <ol style="list-style-type: none"> 6. Register General 7. Surveyor General 8. Commissioner General of Land Title Settlement 9. Government Agents / District Secretary
 Jaffna / Kilinochchi / Mannar / Mulativu / Vavuniya /
 Trincomalee / Baticaloa / Ampara 10. Provincial Land Commissioner
 Northern Province / Eastern Province 11. Deputy Land Commissioner/ Assistant Land Commissioner
 Ampara / Trincomalee / Kantale | } | For necessary action
please |

Annexure I

Submission of Problems Related to State Lands

Divisional Secretariat:

Serial No.

Grama Niladhari Division:

1. Full name of the applicant:

2. Current Address :

3. Telephone Number:

4. Names of other members in the family

i.

ii.

iii.

iv.

v.

5. Location of the land related to the problem

(Please give all information known):

i. Village:

ii. Boundaries:

• On the North by -

• On the South by -

• On the West by -

• On the East by -

iii. Plan number -

iv. Block number -

6. Land Problem (Describe briefly):

.....

.....

.....

Date

Signature

Appendix IV
Gazette Notifications relating to the establishment of
Special Mediation Boards (Land)



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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 1901/8 - 2015 පෙබරවාරි මස 10 වැනි අඟහරුවාදා - 2015.02.10
 No. 1901/8 - TUESDAY, FEBRUARY 10, 2015

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

L. D. B 5/2005.

MEDIATION (SPECIAL CATEGORIES OF DISPUTES) ACT, No. 21 OF 2003

Order under Section 2

BY virtue of the powers vested in me under Section 2 of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003, I, Wijeyadasa Rajapakse, Minister of Justice and Labour Relations, do by this Order determine that the category of disputes of which the provisions of aforesaid Act shall apply in regard to the settlement through mediation, shall be disputes relating to the possession or ownership of land.

DR. WIJEYADASA RAJAPAKSHE, P. C.,
 Minister of Justice and Labour Relations.

Colombo 01,
 9th February, 2015.

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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 1904/41 - 2015 මාර්තු මස 04 වැනි බදාදා - 2015.03.04
No. 1904/41 — WEDNESDAY, MARCH 04, 2015

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

MEDIATION (SPECIAL CATEGORIES OF DISPUTES) ACT, No. 21 OF 2003

Order under Section 3

By Virtue of powers vested in me by Section 3 of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003, I, Wijeyadasa Rajapaksha, Minister of Justice and Labour Relations, do by this Order, specify that the area set out in the Schedule hereto, is an area within which the settlement of dispute relating to the possession or ownership of land as determined by Order published in the *Gazette Extraordinary* No. 1901/ 8 of 10th February 2015 shall be carried out, under the provisions of such Act.

SCHEDULE

Each Administrative District of Jaffna, Kilinochchi, Trincomalee, Batticaloa, Anuradhapura

DR. WIJEDASA RAJAPAKSHA PC,
Minister of Justice and Labour Relations.

Colombo,
3rd March, 2015.

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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 1907/10 - 2015 මාර්තු මස 23 වැනි සඳුදා - 2015.03.23
No. 1907/10 — MONDAY, MARCH 23, 2015

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

MEDIATION (SPECIAL CATEGORIES OF DISPUTES) ACT, No. 21 OF 2003

Order under Section 8(1)

By Virtue of powers vested in me by Section 3 of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003, I, Wijeyadasa Rajapakse, Minister of Justice and Labour Relations, do by this Order, specify that the monetary value of the subject matter within the Special Mediation Boards Area specified by order published in Gazette Extraordinary No. 1904/41 dated 04.03.2015 shall be less than Rs. 2,000,000 in respect of a dispute of the category of disputes determined by order published in the Gazette Extraordinary No. 1901/8 dated 10.02.2015 arising wholly or partly within such area.

DR. WIJEYADASA RAJAPAKSHE PC,
Minister of Justice and Labour Relations.

Colombo,
19th March, 2015.

04 - 233/1

MEDIATION (SPECIAL CATEGORIES OF DISPUTES) ACT, No. 21 OF 2003

REGULATIONS made by the Minister of Justice and Labour Relations under Section 27 read with Section 4(2) of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003.

DR. WIJEYADASA RAJAPAKSHE PC,
Minister of Justice and Labour Relations.

Colombo,
19th March, 2015.



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Gazette Notifications relating to the establishment of Special Mediation Boards (Land)

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PART I : SEC. (I) - GAZETTE EXTRAORDINARY OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA - 23.03.2015

Regulation

1. This Regulation may be cited as the Mediation (Qualifications of Mediators) Regulations No..... of 2015.
2. A person eligible to be appointed as a Member of the Panel of Mediators in respect of the Special Mediation Boards specified in the Order published in Gazette No. 1904/41 of 04.03.2015 shall be between 35 to 70 years of age and ;
 - (a) has any professional qualification obtained from a recognized professional body established by or under any written law ; or
 - (b) has been or is public officer.

04-233/2

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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1918/24 - 2015 ජූනි මස 12 වැනි සිකුරාදා - 2015.06.12
No.1918/24-FRIDAY, JUNE 12, 2015

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

MEDIATION BOARDS COMMISSION

Notice on Calling for nominations for the appointment of Mediators

NOTICE is hereby given that the closing date of calling for nominations for the appointment of Mediators published in Paragraph I, Part I (General) of the *Gazette Extraordinary* No. 1914/39 dated 15.05.2015 of the Democratic Socialist Republic of Sri Lanka inadvertently appears as **20.09.2015**. However, it should be corrected to appear as **30.06.2015**.

WASANA P. GUNARATHNA,
Secretary (Actg.)
Mediation Boards Commission.

Office of the Mediation Boards Commission,
No. 80, Adhikarana Mawatha,
Colombo 12.
10th June, 2015.

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Appendix V

Key Findings: 'Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka'

authored by

N. Selvakkumaran, M. Thirunavukarasu and Dr. Ramani Jayasundere

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.

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 report⁵ 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.