



“Our Land, Our Life”

PEOPLE’S LAND COMMISSION REPORT 2019-2020



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- Central Province People's Planning Forum
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We recognise and remember with love, former LST senior researcher, the late Vijay Nagaraj, whose vision, ideology and commitment was an integral part of conceptualising this initiative.

We dedicate this report to all peoples and communities struggling for land and housing rights across the country, and commit to advocating for a people-centred approach to resolving land and housing related concerns and grievances in Sri Lanka.

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People's Land Commission Team

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Executive Summary

The People's Land Commission was initiated with the **objective** of studying the many problems and consequential impacts faced by communities as a result of existing land policies, land laws and land administration procedures and practices. This consultative process focused on the continuing exclusion of peoples' concerns in formulating government policies.

The People's Land Commission consisted of 11 individuals and included activists, academics, researchers and lawyers. The Commission conducted hearings between March and August 2019, visiting vulnerable areas, communities and affected people across 18 districts: Ampara, Anuradhapura, Badulla, Batticaloa, Colombo, Galle, Gampaha, Hambantota, Hatton, Jaffna, Kilinochchi, Mannar, Monaragala, Mullaitivu, Matara, Polonnaruwa, Trincomalee and Vavuniya. The Commissioners spoke to a total of 885 people: 428 women, 452 men and 5 others. PARL network partners coordinated Commission hearings. The locations were selected with the aim of ensuring a wide representation of geographical areas and a cross section of views from different ethnic, religious, social and economic backgrounds. The Commission visited protest sites, displaced and landless communities, those who have been evicted and/or relocated and areas where development and urban regeneration projects are ongoing or are being planned.

Limitations of time, resources, information available to organising partners and other practical considerations prevented the Commission from visiting all affected areas. There was also often not sufficient time to enter into the deep discussions with affected people that their situations required. For example, it was soon apparent that many experiences of injustice spanned generations, and had multiple dimensions including gender and other rights violations.

The **objective** of this report is to serve as a guide to Sri Lanka's land policy, law and administration. It seeks to reform the current system so it can better respond to peoples' suffering caused by land struggles and help develop their lives, as well as promote environmental sustainability and social responsibility to future generations. This report is not intended to provide solutions to specific land struggles and issues; instead its purpose is to recommend good practice procedures, guiding principles and priorities when dealing with people and land.

The Commission and PARL will be presenting this report and its recommendations to various stakeholders in Government ministries and State institutions dealing with land, reparations, transitional justice, reconciliation, women's rights and development to name a few. Recommendations in this report calling for various policy reforms as well as institutional and procedural reform are driven by affected communities themselves and this we hope will lead to a more meaningful and sustained discussion on land and land administration reform overall. Furthermore,

this report will be shared in Sinhala and Tamil with the communities that participated in the hearings as well as others engaged in various land struggles across the country. The shared experiences and collective recommendations will, we hope, strengthen and inspire these communities in their ongoing advocacy and campaigns and help them take forward the contents of this report, using it in their own work.

This report is a combination of a literature review, extensive notes and recordings taken by note-takers at the hearings and observations and analysis by commissioners and researchers. Members of the commission held regular debriefs to share and analyse trends and findings as well as to identify ways to summarize and collate the information being gathered. The information was broadly categorized into four key themes – dispossession, livelihoods, environment and identity.

All recommendations presented in this report are derived from the inputs made by affected communities in consultations.

Land issues: four key themes

Dispossession - Land dispossession is a multi-faceted issue affecting livelihoods, social security and social mobility, environmental justice and identity. A large number of land dispossession issues presented before the Commission were linked to militarisation and institutionally-entrenched ethnic discrimination. Sri Lanka's economic development model, bureaucratic failures and systemic exclusion, especially in the case of the Malaiyaha Makkal people, are key contributors to the dispossession from land in Sri Lanka.

Deprivation of livelihoods and social security - There are many ways in which dispossession of land impacts on a community's livelihood. At a broader level, this section describes the obstacles faced by communities as a result of losing access to and agency of spaces which are important for performing their livelihoods. The four key areas of the issues impacting livelihoods were (1) war, conflict and militarisation, (2) bureaucratic failures, (3) large-scale development, agriculture projects and the establishment of protected areas and (4) the plantation sector, due to the unique nature of the relationship between people's livelihoods and their level of land ownership.

Environmental degradation - During the Commission hearings most of the people who participated were aware that their livelihoods were linked to the surrounding ecosystems and dependent on the surrounding natural resources. The Commission came across many instances where government policies, State funded development projects, activities of non-State actors and land use practices of communities were negatively impacting the surrounding ecosystem. Based on the Commission hearings, the following major types of land use were recognised to be detrimental to the environment - (1) large scale development projects, such

as irrigation and infrastructure projects, (2) tourism, (3) large scale commercial agriculture and (4) militarisation.

Diminished identity - In policy making or in the eyes of the law, connections to land are seen through documents - deeds, permits, authorisation forms, rates and taxes. However, in the hearings throughout the country, people vividly described the different ways in which they connect and relate to land and how this shapes their sense of identity and community. The process of resolving land issues must acknowledge people's stories and their aspirations, which are often shaped by their individual and communal contexts. These connections have been categorized as (1) family identity, (2) religious and communal identity, (3) livelihood as identity and (4) the identity of those who have been dispossessed.

But such connections to the land did not always mean that they wanted to stay in one place. People spoke of pursuing progress in their own lives, securing better lives for their children, protecting the environment for future generations and moving to be safe from natural disasters, which they feared could occur without warning.

Women's struggles for possession of lands, land rights and human security - The People's Land Commission spoke with many women throughout hearings in all the districts. Women have been part of (and have become leaders in) numerous land struggles and in some instances, women had stepped into public politics with the hope of having voice and power to ensure land rights for their communities. It was clear from these discussions with the Commission that land was intimately connected to women's identities and socio-economic security. In several sittings the commissioners spoke to women in separate groups to enable women to speak more freely. Dispossession of land and its effects is clearly a gendered experience, as established both in scholarly literature and evidenced by the histories of such processes in Sri Lanka and elsewhere. The public hearings were not fully conducive to an in-depth discussion, documenting and analysis of this gendered reality, but women's testimonies inevitably made their often invisible personal experiences more visible. Women's struggles and issues were presented through the following frames - (1) dispossession, displacement and identity, (2) marriage and dowry, (3) land and household work, and (4) women's conceptualization of security and dignity.

Recommendations

The recommendations reflect the ideas and demands of Sri Lankans affected by land issues across all districts. The voices captured in this report include those who have never been consulted regarding land policies, even when it is their own land that is directly affected, as well as those whose opinions are often not adequately considered by policy and decision makers. Some recommendations were adapted from those made by previous people-focused consultations and well-established standards, while others are unique to this consultation. **A summary of the recommendations is presented below.**

1. Right to access, possess and use land

These recommendations advocate for legal and administrative recognition of how people access, use and own land and how to better address landlessness and homelessness in Sri Lanka. Recommendations include recognising and valuing peoples' relationships to land based on their right to engage in the livelihoods of their choice, recognising the matrilineal practices of inheritance that exist in some parts of the country and the historic possession of lands across generations, as well as the religious or cultural significance of certain lands. They further focus on developing people-centered definitions for the commons (common public land or space) and community property (possession by communities based on traditional or historic possession and use) and an urgent call to the State to amend gender discriminatory clauses in the Land Development Ordinance.

2. Land governance

Land governance (decision making about land) must be available and enabled at the institutions geographically closest to the people affected. A recommendation for a National Land Commission (NLC) is also included here with clear guidelines on the functions and operations of such a commission.

3. Land administration

This section includes a code of conduct and minimum qualifications for public officials engaged in land administration, as many complaints from affected communities emerged from their engagement with public officials. Other key recommendations in this section include the need for meaningful and effective consultations with communities and procedures to be followed when acquiring land for a public purpose - for example, clearly stating the public purpose at the time of giving notice, which is not being currently practiced. It further includes guidelines for the proactive public dissemination of land information and on addressing issues of bribery and corruption.

4. Dispute resolution and reparations

Recommendations in this section look at strengthening existing litigation mechanisms, access to quality legal aid and mediation and the setting up of an independent mechanism to address the issue of land grabs.

5. Relocation

This section demonstrates that relocation must be used as a last resort and relocation assessments must be conducted prior to the actual commencement of projects. It further argues for the overall need for awareness-raising programs, discussions and consultations with affected people and communities. Recommendations call for ensuring that local laws and internationally-accepted standards for relocation are adhered to, and that at a minimum the National Involuntary Resettlement Policy be followed.

6. Demilitarisation and human security

The State must demilitarise the Northern and Eastern Provinces with immediate effect. The proposed recommendations include returning land acquired by the military back to the communities, a parallel mandate for reparations, restitution and compensation for those who were displaced by military land grabs and a call to end military businesses such as hotels, farms and other commercial ventures.

7. Land and identity

This section includes recommendations for respecting the link between land/livelihood and the attachment and belonging that people have to it. For example this means protecting communities from those attempting to use archaeological evidence or reasons related to the protection of wildlife and forest cover in order to displace communities. Disputed territories and water resources, where people from different ethnic and religious communities make competing ownership claims, must be resolved in an amicable manner through dialogue and discussions to avoid triggering further communal tensions in these areas. Land allocation must further be provided for those who have been denied land due to caste discrimination.

8. Land and livelihood

80% of the agricultural land in Sri Lanka is being used by small scale producers. Land policies must therefore protect and ensure the sustainability of their livelihoods. Policies on agriculture and fisheries must complement land policy and its implementation. Policies should also recognize women as primary producers, thereby identifying their intimate connection to land and water resources through their livelihoods and work to address their needs.

9. People-centered economic development

The people of Sri Lanka, and particularly communities who are residing in proposed development areas, must be prioritised and must benefit from development projects. Economic advantages for private companies, industrial zones and commercial enterprises (including public-private enterprises) must not override this fundamental benefit to the people. This section also deals with assessments and strategies that must support development projects including a human and environment management strategy, human rights impact assessments and independent Environment Impact Assessments.

10. Plantation lands: historic grievances and degrading labour practices

This section includes recommendations specific to Malaiyaha Tamils, including that at least twenty perches of land is granted to workers of plantations and that the workers have the freedom to decide how to utilise the land being given (secured in writing). It also includes recommendations relating to all people living on plantation land including management of plantations and labour rights.

11. Environmental protection

Most of the participants consulted were aware of how their livelihoods were intertwined with the environment and how they interact with and impact on one another. This was particularly highlighted when topics pertaining to the human-wildlife conflict and changes in weather patterns were discussed. Many recommendations refer to failures in State and local government communication which alienate relevant communities from the decision-making process. The recommendations also focus on establishing certain minimum environmental standards when land use policies and laws are enacted and implemented.



1. Introduction

The **Peoples' Alliance for the Right to Land (PARL)**, is a network of civil society actors advocating for housing, land and property rights for poor and marginalised communities in Sri Lanka. PARL recognizes the need for comprehensive consultation processes to better inform and influence advocacy for reforms on land policy. The People's Land Commission was initiated with the objective of studying the many problems and consequential impacts faced by communities as a result of existing land policies, land laws and land administration procedures and practices. This consultative process focused on the continuing exclusion of peoples' concerns in formulating government land policies.

The **People's Land Commission** consisted of 11 activists, academics, researchers and lawyers.¹ The Commission conducted hearings between March and August 2019, visiting vulnerable areas, communities and affected people across 18 districts: Ampara, Anuradhapura, Badulla, Batticaloa, Colombo, Galle, Gampaha, Hambantota, Hatton, Jaffna, Kilinochchi, Mannar, Monaragala, Mullaitivu, Matara, Polonnaruwa, Trincomalee and Vavuniya. The Commissioners spoke to a total of 885 people - 428 women, 452 men and 5 others. PARL network partners coordinated Commission hearings. The locations were selected with the aim of ensuring a wide representation of geographical area and a cross section of views from different ethnic, religious, social and economic backgrounds. The Commission visited protest sites, displaced and landless communities, those who have been evicted and/or relocated and areas where development and urban regeneration projects are ongoing or are being planned. Limitations of time, resources, information available to organising partners and other practical considerations impeded the Commission from visiting all affected areas. There was also often not sufficient time to enter into the deep discussions with affected people that their situations required. For example, it was soon apparent that many experiences of injustice spanned generations, and had multiple dimensions including gender and other rights violations.

The Commission and PARL will be presenting this report and its recommendations to various stakeholders in government ministries and State institutions dealing with land, reparations, transitional justice, reconciliation, women's rights and development. Recommendations in this report include various policy reforms as well as institutional and procedural reforms, which are driven by affected communities themselves. We hope this will lead to more meaningful and sustained discussions on land and land administration reform. Furthermore, this report will be shared in Sinhala and Tamil with the communities that participated in the hearings, as well as others engaged in various land struggles around the country. The shared experiences and collective recommendations will hopefully strengthen and inspire ongoing advocacy and campaigns as communities take forward the contents of this report, as well as use it in their own work.

1. See page 2 for full list of Commissioners

1.1 Objective

The objective of this report is to serve as a guide to Sri Lanka's land policy, law and administration. It aims to reform the system to better respond to peoples' suffering due to land struggles, and to help them develop their lives, secure environmental sustainability and be socially responsible for future generations. This report is not intended to provide solutions to specific land struggles and issues; its purpose is to recommend best practices, guiding principles and urgent priorities when dealing with people and land. It is expected that the report's recommendations, informed by ground level consultations, will serve as a guide for the government as it deals with land-related policy formulation and implementation as well as those advocating for reforms to land policy, laws, procedures and practices.

1.2 Methodology

The People's Commission on Land adopted a qualitative ethnographic approach to data collection on the broad question of peoples' experiences and expectations of ownership or possession of land and land use in Sri Lanka. The Commissioners who conducted this study in terms of data collection and interpretation all had considerable experience in working with people on land issues. The two primary data collection methods were (a) public consultations and (b) focus group discussions conducted with affected communities.

These methods were designed by the Commissioners based on a literature review of findings of previous similar processes conducted by the State, civil society groups and other actors. A research team collated and summarised the contents of existing literature on land including the relevant findings. The literature survey informed the decisions of where consultations would take place, along with expertise from Commissioners and key informants from affected communities. The full list of land issues and sites of land struggles were categorized along the following headline themes: Militarisation, Tourism, Development projects, Commercial Agriculture, Plantations, Land grabs by Forest Department, Archaeology Department and Wildlife Department, displacement due to implementation of Megapolis projects and Natural Disasters.

The modalities, framework and procedures of conducting the consultations were deliberated over a series of meetings and workshops held between April 2018 and February 2019. A questionnaire was designed to guide the consultations and record information in a methodical manner. The format of the consultations was a mix of focus group discussions (FGDs) on specific predetermined areas, issues and themes as well as open public consultations in central locations. The details of the public consultations were shared among the communities through the network of organizations, activists and civil society groups in the district. The focus group discussions were organised directly by organizations working with specific groups including those affected by land grabbing, evictees and those

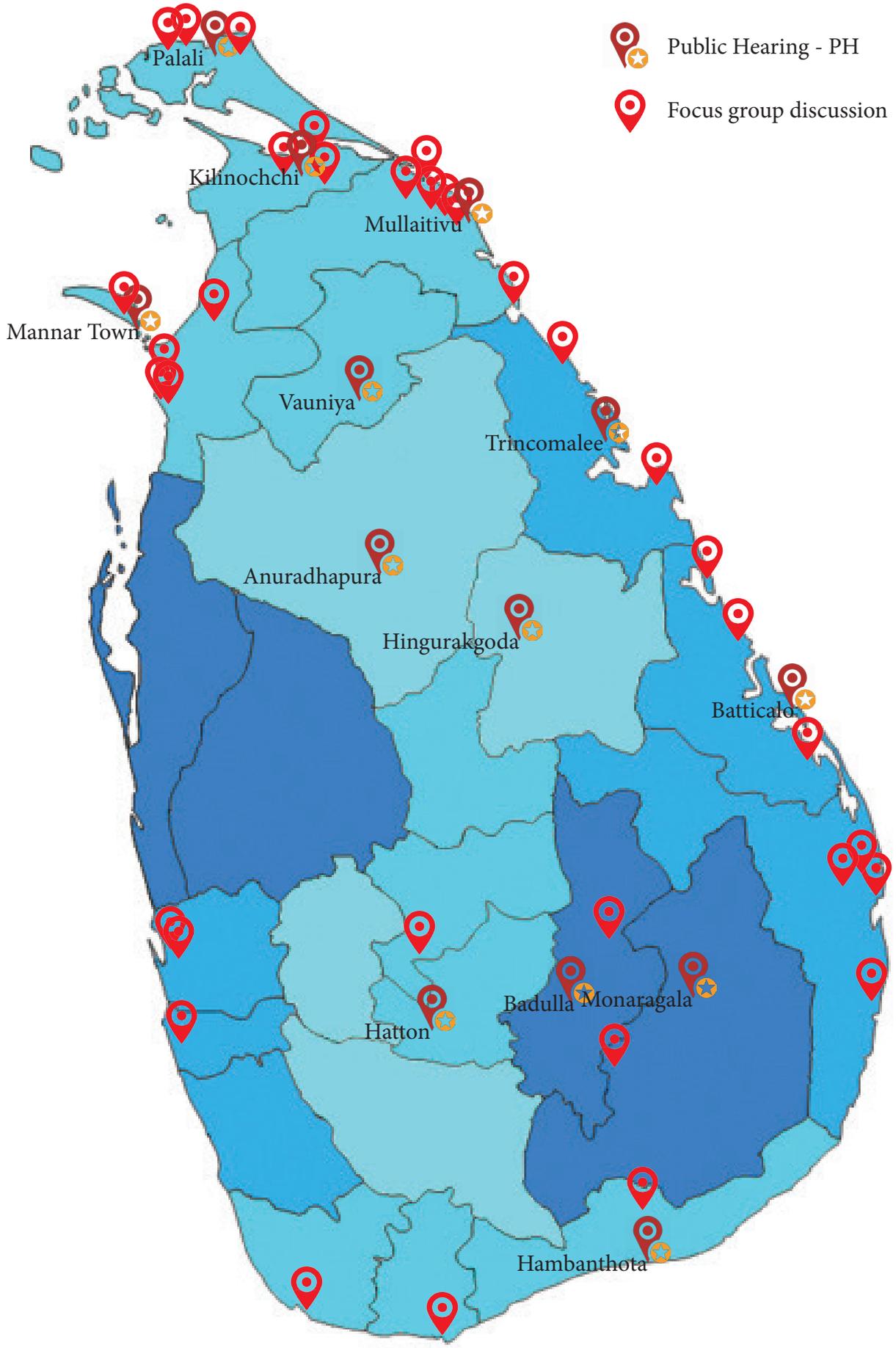
who have been displaced by infrastructure and other development projects, plantation communities and women. Although focus group discussions provided insight into specific groups' concerns, in-depth interviews, which would have enabled a deeper understanding of the specific experiences of women and other marginalised groups, proved to be a challenge, and therefore the issues discussed in this report are not exhaustive.

The People's Land Commission conducted hearings between March and August 2019 visiting vulnerable areas and communities across 18 districts. The areas and districts visited are listed below.



District	Place	Date	District	Place	Date
Mannar	Mullikulam		Hatton	Hatton Town (PH)*	
	Pallimunai			Baharanda Division, Bowhill Estate, Ketabula	
	Kayakuli		Killinochchi	Pannankandy	
	Silavathurai			Sencholai Village	
	Sannar			Kili. Town (PH)	
	Mannar Town (PH)			Paranthan	
Anuradhapura	Anu. Town (PH)		Jaffna	Palaly (PH)	
Polonnaruwa	Hingurakgoda (PH)			Neethava Camp	
Ampara	Ashraf Nagar			Myliddy	
	Sammanthurai			Thayiddy	
	Pottuvil		Colombo	Dematagoda	
	Addalaichenai		Gampaha	Negombo	
Moneragala	Mon. Town (PH)			Katunayaka	
	Pelwatte		Galle	Rathgama	
Mullaitivu	Kokkuthodavai		Matara	Dickwella	
	Kokilai		Hambanthota	Gonnoruwa	
	Neeravippitty			Ham. Town (PH)	
	Keppapilavu		Batticaloa	Bati. Town (PH)	
	Pilaidirippu			Kalkuda	
	Vadduwal			Vaharai - Ilmenite	
	Murippu		Trincomalee	Trinco. Town (PH)	
	Mtv. Town (PH)			Sampur	
Vavuniya	Vavuniya Town (PH)			Kutchchaveli	
Badulla	Badulla Town (PH)				
	Shawlance Estate, Lunugala, Passara				

*PH – Public Hearing



The areas visited were chosen to represent all major land rights issues in Sri Lanka. The selection was made to represent as wide a geographical area as possible and to provide a cross sectional view of different issues considering the ethnic, religious, social and economic aspects of the communities and areas identified. They included lands occupied by the military and other State actors, places of displacement, protest sites, post-war resettlement areas, communities affected by commercial agriculture and other large-scale projects, plantations, environmentally sensitive areas or areas where biodiversity is affected or under threat and communities evicted and/or relocated due to urban regeneration and other development projects. The consultations took place across 18 districts: Ampara, Anuradhapura, Badulla, Batticaloa, Colombo, Galle, Gampaha, Hambantota, Hatton, Jaffna, Kilinochchi, Mannar, Monaragala, Mullaitivu, Matara, Polonnaruwa, Trincomalee and Vavuniya. The Commissioners spoke to a total of 885 people - 428 women, 452 men and 5 others.

Prior to all consultations members of the Commission received briefs on the areas they were visiting so they would be familiar with previously documented facts and issues and could utilise hearing times to add, clarify or fill gaps in information. They were also able to focus on engaging people in discussions on what changes they wanted to see, including their recommendations and expectations in terms of solutions to specific issues and land policy reform in general. People engaged in land struggles were however often overwhelmed by the scale of the problems they faced and sometimes found it hard to suggest recommendations.

This report is a combination of extensive notes and recordings taken by note-takers at the hearings, commissioner and researcher observations and analysis, and literature reviews. Members of the commission held regular debriefs to share and analyse the trends and findings, as well as to identify ways to summarize and collate the information being gathered. The information was broadly categorized into four key themes - dispossession, livelihoods, environment and identity. Gender was identified as a cross-cutting theme as it influenced each of the four categories. All of the notes from the hearings and impressions of members of the Commission were categorized according to these four broad categories, paying special attention to gender-related impact. It was from within these categorizations that the data collected was analysed and the findings determined.

The information and data collected was compiled and analysed over a series of workshops and members of the commission and research assistants were assigned chapters to draft the final report. All recommendations presented in this report are derived from the inputs made by affected communities in consultation with the Commission.

Limitations

It was identified at the planning stage that the data obtained in consultations would consist of individual experience or information received from third parties. The information received would be acceptable as the impressions of those consulted; although some information was verifiable, it wasn't possible to verify all reported experiences with documents or corroboration. For the purposes of the consultation, the key insights were of lasting impressions that people had in relation to land issues. Much of the information received was similar to previously documented experiences which served to corroborate the findings of this process. The details of specific experiences, the practical approach to solutions offered and the concern for the environment and future generations were all details that supplemented the broad experiences of all persons interviewed.

Another limitation was in terms of the time that could be afforded for each consultation. Although members of the Commission were equipped with briefs on the sites visited, it was often the case that affected communities needed to describe their experience fully, including references to historic accounts of how possession was acquired. The consultations, therefore, became a balancing act of ensuring that sufficient time was given for participants to relate their experience and to engage participants in a discussion on their perspectives and ideas about possible solutions. It was observed in several instances that the hopelessness of their respective situations and the fatigue of long struggles had diminished the participant's ability to envision meaningful solutions. There were also instances in which structural inequalities appeared deeply ingrained and accepted as the norm. This particular form of limitation was responded to by the members of Commission, suggesting solutions by reframing negative experiences articulated by participants in the positive form and discussing this with the participants. Participants often times appeared to respond well to this method of crafting recommendations.

A third limitation was the difficulty of conducting solely gender focussed consultations at all sites. It was clear that where gender focussed consultations were conducted, there was some input based on gendered experience of land struggles. However, it was observed that unless specifically probed, the gender specific experiences tended to be de-prioritised by the participants themselves. Special focus was given to ensuring that the gender-based experiences of participants were documented whenever possible and special consideration was also given to ensure that these perspectives informed the report as both a cross-cutting theme as well as a standalone issue.

Ethical considerations

As part of the process, all hearings commenced with participants being informed of the nature of the consultation exercise and the organizations involved in the People's Land Commission. Specific mention was made of the fact that the Commission did not have the authority to provide solutions to the land issues they were facing. This was done with the aim of managing expectations. The participants' consent was obtained to record their testimonies and take photographs during the consultation. Participants were assured that all information would be maintained confidentially and all recordings and notes would only be used towards the preparation of the report, with all quotes anonymised.



1.3 Guiding values and principles

It is recommended that Land Policy, Land Use, Land Ownership, Development affecting people's land or land use in Sri Lanka be developed, administered and adjudicated on the following guiding principles:

Land policy should priorities in ensuring rights of local communities and the wellbeing of natural eco systems.

Treat people with respect and dignity

Value people's relationships to land, particularly the gendered nature of these relationships

Value and collaborate with local communities

Make decisions which are informed by an understanding about potential short term and long term climate and environment impacts on the local and regional scale

Ensure all investments in land enhances the regenerative capacities of the land and eco systems

Ensure the informed participation of affected people in decision making, ensuring active participation of women and other marginalised groups

Enable just and equitable decision making

Enable non-discrimination and equality across all measures

Recognise land as a limited national resource in which all Sri Lankans, present and future, have an interest.

Value human security

Ensure there are accountable, transparent and people centered public institutions and public services

These are the principles people spoke of when they discussed their experience and expectations. It is useful to note that there were so many similarities across the negative experiences people had. There were similarities in the positive expectations people expressed as well. This helps us to understand that when the same problems are tackled in different historic, social, environmental, political and other contexts, then different solutions arise. Solutions are specific to local contexts and local lived realities. This explains why sometimes people's demands or proposed solutions differ or appear contradictory from place to place even if the problem sounds the same.

2. People's land issues

2.1 Dispossession

Land dispossession is a multi-faceted issue affecting livelihoods, social security and social mobility, environmental justice and identity. A large number of land dispossession issues presented before the Commission were linked to militarisation and institutionally entrenched ethnic discrimination. Sri Lanka's economic development model, bureaucratic failures and systemic exclusion, especially in the case of the Malaiyaha Makkal, are also key contributors to dispossession from land in Sri Lanka.

2.1.1 Militarisation

'We are in a forest with a sari that is hung up as a curtain. This place was our traditional land. The navy brought their families and are living there. They built houses in the forest and asked us to buy it, but we demand that our original land be returned.'

– participants from Mullikulam

The lands that were acquired in the North and East during the conflict remain under military and police control. As a result, many of the communities who have previously lived in those areas cannot return to their original lands. In Mullikulam, Keppapilavu, Jaffna and Kilinochchi the military occupies lands owned by Tamil families. Therefore, the denial of the right to land is often linked to discrimination based on ethnicity.

'Government officials fear the military. Instead of asking the military to vacate our lands, they promised 20 perches per family for the 8 families whose 0.5 acre are under occupation. But there has been no progress even on that promise.'

– participants from Pilakudiyiruppu, Mullaitivu

'We need military to protect us from external threats at the borders, not to take over our little village.'

– participants from Keppapilavu

2.1.2 Ethnic discrimination

‘The government declares National Parks encompassing our religious places, schools and agricultural land. When we go to our paddy fields, the police arrest us. But when a Sinhalese goes and cuts timber, they get police protection’

– participants from Palaly, Jaffna

‘We’ve lived here for 40 years but Tamils are coming every now and then asking for land. The problem will be solved if the DS and the GS are Sinhalese.’

– long-term Sinhala settler from Mullaitivu.

The communal nature of Sri Lankan society ensures that in many cases Sinhalese people are privileged if the divisional administration is mostly Sinhalese, Tamils are privileged if the administration is mostly Tamil and Muslims are privileged if the administration is Muslim. Ethnically biased policies for resettlement and relocation constantly lead to land disputes between Sinhalese and Tamils or Sinhalese and Muslims (for example, in the Gal Oya Scheme, the Mahaweli Development Scheme, Deegawapiya and the Norochcholai Tsunami housing scheme in Ampara). Minority communities view these settlements with mistrust due to the lack of transparency in procedures involved in their establishment. They suspect the authorities of ulterior motives; for example, weakening local groups’ electoral powers through manipulating regional demographics.

‘We have LDO* permit for the land and receipts, but when we returned the Forest department has marked that area with the stones. It is almost three years now, and we can’t enter that land.’

– participants from Mathuranweli

Another issue is the sudden and arbitrary demarcation of privately-owned lands as forest land for wildlife conservation or archaeological sites in different parts of the country. The issue becomes ethnically charged when the lands are acquired only from minority communities. Privileging a discourse of environmental protection or archaeological conservation based on ethnicity often results in the dispossession of minority communities. Such cases were brought to the notice of the Commission in areas like Mullaitivu where the minority Muslims were deprived of their land. Similar complaints were brought by communities in Wilpattu and in Trincomalee.

***Land Development Ordinance**

2.1.3 Sri Lanka's economic development model

'Our homes were demolished for the sake of the Sugar Corporation. We were not given compensation or alternative lands. From being farmers who owned their own lands now we have become landless farming labourers.'

– participants from Varnathuwalai,
Ampara

The neoliberal economic strategy of the State is styled on a myth that mass dispossession (in the style of land enclosures) will make the land in rural areas available for industrial activity. In turn a workforce is expected to arise out of the dispossessed masses who can find employment in the newfound industrial and commercial economy. In Monaragala, Hambantota and Anuradhapura, much land has been allocated by the State to facilitate multinational agri-businesses, while poor farmers' share of land has shrunk over the years. Land kachcheris are rarely held to redistribute land to the landless and previously distributed land has to be shared among family members.

Meanwhile, when urban land becomes a highly sought-after market commodity, the urban poor are forced off their lands into the suburbs or to housing complexes located in the outskirts of the city. Increasing land prices and rent hikes create issues of landlessness and homelessness among the urban poor, driving them further away from the city (as seen in the case study of Colombo/Negombo housing). Relocation of the urban poor from their settlements to high-rise apartment complexes also dispossesses them not just of land, but also of livelihoods and care networks as well.

Lands acquired all over the country are used for tourism-related infrastructure and large 'mega-development' projects. Dispossession caused by the tourism industry is seen in places like Malwathu Oya where villages located downstream were relocated to make the land available for the booming hotel industry. The official reason given to the villagers was the threat of flooding. In Bandarawela, Hambantota, Colombo, Negombo, Sampur and Aruwakkalu, dispossession is very much linked to mega-development projects including highways, ports and reservoirs. All of these mega-development projects are decided and implemented by a heavily-centralised development wing of the State and local communities do not have an avenue to take part in the decision-making process.

2.1.4 Bureaucratic failures

‘Different departments of the government are involved in land seizures and related matters. When a person goes to a particular department to seek a solution to his or her land issue, he or she is sent around to other offices, where none of them speak Tamil language. There should be only one office for all the land related issues, by merging the different departments.’

– participants from Kilinochchi

People accuse the administrative authorities of neglecting their grievances through inefficiency and indifference, while expediting the demands of the economically and politically affluent. People further complain that there is fundamental lack of coordination among the different state departments who deal with various aspects of land. As a result, when one of the local authority’s issues land permits, another might simultaneously prohibit entrance to the same land. Tensions among these different State departments thus detrimentally affect the resolution of people’s land issues. Landless people are often misled by the cumbersome and confusing bureaucratic procedures involved in getting permits and in exercising their rights.

‘If the government officials carry out their duty sincerely, we, the public, will not have any problems.’

– participants from Pilakudiyiruppu, Mullaitivu

Administration officials also frequently deny people their rights to land, participants reported, using the excuse of not maintaining proper records or claiming that documents have been lost. Dishonest administrative authorities can also benefit from a lack of awareness or education among local people about the annual renewal of land permits and other procedures, as permits and land grants can then be subject to illegal transfers in spite of the presence of the original owners. In Mullaitivu, for example, the communities interviewed have been unable to convert their temporary permits into permanent deeds due to bureaucratic challenges.

‘If the government implements existing laws properly, 80% of the land issues will be solved.’

– participants from Vavuniya

The Land Development Ordinance (LDO) introduced in 1935 set up a restricted land tenure system responding to landlessness among the peasantry. Under this law, land is given to farmers first under a permit and then under a grant., but the Ordinance directly discriminates against women as permits can only be inherited or passed down to male heirs, which is then underscored by discriminatory implementation practices. Land permits given under the LDO can also be cancelled and cannot be alienated, while land grants may be alienated but are subject to stringent conditions. Land falling under this scheme is distributed through kachcheris; however, the system has run into many administrative problems since its inception. Ethnically biased policy-making concerning settlements and land distribution, bureaucratic red tape, corruption, illegal transfers of LDO land, issues of succession and arbitrary use of the land kachcheri system were among the issues raised at the public hearings of the Commission.



2.1.5 Systemic exclusion of the Malaiyaha makkal or Up-Country people

‘I was given a land deed. When I went to the estate owner to ask for the allocated land as per the deed, he sarcastically said ‘go and find yours if there is one.’ When we demanded houses, the Minister said ‘you have been given tea and toilets so why do you need houses?’

– A participant from Hatton, Baranda Estate

Disenfranchisement and systemic exclusion of plantation communities from decision-making processes have detrimentally affected their living conditions. Bureaucratic failures have also perpetuated landlessness in the plantation sector, despite policy changes introduced to distribute land to plantation communities. Those who had already left plantations in search of alternative employment opportunities are also not able to access these schemes even if their landlessness is connected to the larger issue of bonded labour in the plantations. Moreover, participants at Commission hearings also claimed that the land allocated for plantation workers by these schemes is situated in uninhabitable areas that are prone to landslides and other forms of natural disasters. In Delthotta Loolecondra Estate (the first ever tea plantation in Sri Lanka), the workers are demanding ownership of the tea estate be handed over to the workers and for land to be distributed among workers.

2.1.6 Systemic exclusion based on caste

‘The land was distributed in batches. Land was distributed based on caste. The outer areas were for low caste and then the Muslims.’

– participants from Murripu, Mullaitivu

Neethavan Welfare Center is a camp located in Mallakam, Jaffna for internally displaced people (IDPs). There are 61 families living in the camp at present and nearly 25 of them have been there since 1990 when they were first displaced from different villages in Valikamam North. Many of the displaced belong to oppressed caste communities. The land where the camp is located is affected by floods during the rainy season and there are not enough toilet facilities. Some female participants from the camp commented that inmates are looked down upon and stigmatised by locals due to their caste background and that children in the camp are sometimes subjected to caste-ist slurs from the villagers.

Caste-based discrimination in land ownership has a centuries-old history and precedes the Sri Lankan ethnic conflict and militarisation. Even if the land currently under the custody of the military was released to the people, there is no certainty that many of the displaced living in the Neethavan Welfare Center would be able to return to the areas where they lived before because they do not own land in those areas. Thanges Paramsothy’s article “Caste and Camp People

in Jaffna” describes this situation in detail². Although the article was written in 2015, the plight of the displaced people who are living in the camps has not change significantly.

As Paramsothy observes, Tamil nationalist politicians do not give any prominence to the ways in which the caste background of IDPs has caused their pervasive landlessness. Landlessness renders their social, economic and cultural existence even more precarious for lower caste communities in the North. Caste also plays a central role in Tamil people’s experiences of the civil war, internal displacement and militarisation. Demilitarisation, albeit important to ethnic reconciliation and socio-economic development of the Northern Province, cannot itself be a solution to the landlessness of the oppressed caste communities in the North. Indeed, the families of the IDPs from oppressed caste backgrounds have expanded since they were initially displaced, with greater land needs than in the 1990s.

Some inmates of the camp who do not own land in the villages occupied by the military opined that they should be given alternate land either where they live at present or other areas where they have access to good schools for their children’s education, health care services and transportation. This demand makes it clear that not every displaced family sees returning to where they lived earlier as a solution to the problems they have been facing since their displacement. It also demonstrates that some of the demands for land distribution made by internally displaced Tamils from oppressed caste communities are tied to their social and economic mobility in the future.



2. Thanges, Paramsothy. “Caste and Camp People in Jaffna: Land Ownership and Landlessness.” Colombo Telegraph, 8 Dec. 2015, <https://www.colombotelegraph.com/index.php/caste-camp-people-in-jaffna-landownership-landlessness/>

2.2 Deprivation of livelihoods and social security

This section of the report focuses on how a community being dispossessed of its land impacts on livelihoods. At a broader level the section describes the obstacles communities face in practicing their livelihoods as a result of losing access to and agency of essential spaces.

This section is divided into four sub-sections covering issues impacting people's livelihoods: war, conflict and militarisation; bureaucratic failures; and large-scale development, agribusiness projects and establishment of protected areas. The fourth sub-section focuses specifically on the plantation sector due to the unique nature of the relationship between Malaiyaha Tamil people's livelihoods and their state of land ownership.

2.2.1 War, conflict and militarisation

This section explores how conflict related issues and increased militarisation either directly impact on livelihoods or has acted as a precursor of issues affecting livelihoods.

'Since there is no war at present, we cannot be denied our land'

– participants from Keppapilavu

The military occupies a significant proportion of community-owned lands which people left behind when they fled due to war. Military occupation denies people access to their traditional land and the livelihoods which are linked to these lands. The Tamil community in Vatuval (Mullaitivu) was displaced during the war and in the process lost their permits for the lands they owned. The navy subsequently occupied these lands (which also included the ice factory the community relied on). Following this occupation, the community now needs to gain permission from the navy to engage in their fishing livelihoods.

A fishing community in Silawathurai also share a similar history with the community in Vatuval. Communities in Malayalarkulam/Iyerkulam (Kilinochchi) were displaced during the war from the lands they were using for their livelihood fishing activities. In Mullikulam and the coastal village of Kayakulli, the military occupation of their land forced villagers to move to a forest where they could not engage in their fishing livelihoods. Furthermore, a recently established garment factory which could have provided them with alternative livelihoods is located too far away.

Even when the military is willing to provide access to land to people and to allow them to engage in their livelihoods, the communities are required to abide by the conditions set forth by the military. In Sannar (Mannar), where part of the

occupied lands were returned, a group of fishermen only received permits to engage in fishing activities when they promised to abide by the rules of the navy.

In Pallimunai (Mannar) a community displaced due to land acquisition by the navy and the police in 1990 are refusing to accept the rent that these two institutions are offering (even after they agreed to renegotiate new rates) because the community fears that it would encourage them to stay indefinitely. However, refusing to accept rent prevents them from proving their residency, which in turn makes it harder for them to enrol for welfare programmes and receive social benefits. Because they cannot access their land, the community is forced to live with their relatives, which further affects their freedom to practice their livelihoods. Their original coastal lands provided them with access to their fishing grounds; therefore, accepting compensatory land would increase the distance they would need to travel to practice their livelihoods.

Not only the military, but other armed groups who played various roles during the conflict have also forced communities out of their lands, effectively blocking them from engaging in their traditional livelihoods. In Murippu and Kuttuyakumbam Kiramam the villagers were displaced due to the activities of the Indian Peace Keeping Force (IPKF) and upon returning to their lands, the Muslim community in the latter village were dispossessed again by the LTTE who tried to settle a Tamil community on their lands. This was prevented through interventions by Muslim leaders, but following their resettlement, this community is facing further issues caused by a politician claiming that their lands are actually owned by the Forest Department. In Vavuniya the Tamil Liberation Organisation (TELO) forcefully took lands away from the Muslim community in 1998 and used this land for the establishment of a refugee camp for a Tamil community from Vanni. The displaced Muslim community is still dispossessed and have pointed out the injustice that their lands, which they planted with coconut and mango trees, are currently occupied by another community.

Expansion of acquisitions by the military

While the current military occupation is affecting livelihoods, the situation is worsening as the military has expanded its occupancy areas in the post-war period³. This is observed in Mullaitivu and Trincomalee (and is expected to occur in the area in between) as well as Keppapilavu. In Mullaitivu, certain occupied areas have restricted access to spaces important for fishing communities. A Tamil community from Mullaitivu accused the military of acquiring their lands, which contain the better vadis (fishing huts on the beach) and access to fishing grounds, and then subsequently transferring ownership to a Sinhalese community. The community also believes that these Sinhalese fishermen are engaging in illegal

3. Human Rights Watch, "Why can't we go home?" - Military occupation of land in Sri Lanka - pg. 37 - https://www.hrw.org/sites/default/files/report_pdf/srilanka1018_web2.pdf

fishing practices. Narratives from Jaffna spoke of instances where lands previously owned by the community being designated as being unsafe for settlement and then subsequently acquired by the military to build army camps. Lands acquired by the military in Myliddy (Jaffna) also included an ice factory.

In Panama, the military (Navy & Air Force) forcefully occupied land used by three villages. The community protested, resulting in part of the land being released. The remainder was supposed to be for a navy and air force camp, but the military has instead built a hotel on the contested land.

‘The navy is farming off our lands and selling it to us. These are people who take salaries and are doing business at the same time, while we don’t have either option.’

– a participant from Silawathurai

Communities in Mullaitivu also complain about the military’s participation in the local economy by depriving the community access to resources such as Palmyrah trees. The participants also spoke of cattle being sold by the military. In Jaffna, a hotel run by the army on a coastal strip of land occupies an area which used to have a paddy storage warehouse and was also where the community beached their fishing boats. In Silawathurai and Mullikulam the military is engaging in the local economy by farming and selling their produce to the community and in Mullikulam, they even occupy a permanent space in the local market. Those who participated in the hearings from Kilinochchi mentioned that the military is also taking part in the local economy in Kilinochchi with a new hotel being built on people’s lands.



2.2.2 Bureaucratic failures

Many bureaucratic irregularities deny communities access to land to engage in their livelihoods. Even when communities are provided with land, further bureaucratic procedures lead to uncertainty regarding possession and ownership of such land, perpetuating insecurity.

Exploiting lack of knowledge

Administrative bodies often exploit the lack of knowledge in communities about the technicalities relating to possession of State lands. People are misled through oral promises which they cannot prove later. When communities attempt to receive validation for their traditional claims of land, they face similar difficulties.

In Nachchaduwa, Wellawaya, Monaragala and Trincomalee, people claimed that they have a lack of knowledge pertaining to whether or not they have a legitimate claim to the lands they were working on. In Mannar, a community that was displaced in 2004 was allocated Land Reform Commission (LRC) lands along with seeds of crops to plant and harvest. However, they were not provided with a housing scheme on the basis that they were occupying LRC lands. They were then instructed (by the RDS) to pay the LRC to obtain ownership and now the community is uncertain about how to navigate the bureaucratic processes to resolve land ownership issues.

Favouritism

Officials are accused of displaying favouritism towards their relations and acquaintances in dealing with land issues. They are also accused of catering to the land-related needs of businesses and companies at the expense of people's individual claims. Lands said to be under the protection of the Forest Department, archaeological sites and lands reserved under the Mahaweli Scheme are thus used for economic exploitation without transparency and due process in their transfer. Administration bodies further give priority to businesses engaged in tourism when providing access to coastal land over the fishing communities who rely on these lands for their livelihood. Such communities are thus denied access to their traditional lands and ports. The views of local people, like these fishing communities, are often not considered in procedures of land acquisition, and people are accorded with very little opportunity to participate in such procedures in any meaningful manner or raise their voices when they are left out.

Issues stemming from changes in forms of ownership (by institutions)

In Koralai Pattu, Eravur Pattu, Vavunathivu and Manmunal South (Batticaloa) there are many issues with land allocated by divisional secretariats (for pasture land) or the government agent (GA) being claimed by other institutions such as the Department of Wildlife Conservation or the Mahaweli Authority. In the Pallimunai, Thallaimannar and Sannar hearings it was said that the Forest Department fines

people entering lands which they have used in the past for farming and cattle rearing.

This state of affairs has led to a situation where cattle farmers from the Batticaloa district have been arrested for different offences such as illegal grazing of cattle, preparing huts and cattle sheds and the use of pathways without permission from the “relevant” authorities. The issues with cattle grazing extend to the neighbouring districts including the Manthalai River on the border of the Batticaloa District, causing some cattle farmers to be arrested in the Polonnaruwa and Ampara Districts. There are also issues stemming from cattle from Gampaha being brought to graze in these lands. Moreover, the irrigation department identified the Rugam Kithul project⁴ as having the potential to impact the pasture lands in future. The local people also complained that foreign varieties of cattle seem to have introduced new diseases to their cattle, and this issue is further complicated by the language barrier between the Tamil speaking farmers and the veterinary surgeons (who are Sinhala speaking).

Droughts are among the biggest issues faced by these cattle farmers, therefore there is a need for a mechanism to allocate compensation for such natural disasters. There has also been a need for two reservoirs in the area since 2013 (which the farmers requested from the authorities).

In Kokuthoduwai (Mullaitivu) a Tamil community that was displaced during the war found that upon their return in 2012, their agricultural lands had been designated as a hazardous area due to mines. These lands were subsequently acquired by the Forest Department. When the Forest Department relinquished ownership of 25 acres of this land they were then transferred to a Sinhalese person. This particular Tamil community’s ability to contest this situation has been limited due to the loss of documents of ownership (even at the AGA office) due to the war and the tsunami.

A community in Sampur West were displaced from their lands during the war. Upon returning in 2015, they found that the military had acquired their lands and furthermore, they had lost all their cattle during the war. Due to the lack of livelihood options, the women now travel to nearby towns in search of work as domestic helpers. Although they were promised alternative agricultural lands and a housing scheme (and the AGA office even collected the necessary documents from this community for this purpose), they were later notified that this would not materialise.

4. This multi-million Euro river basin project is designed to increase water storage capacity for irrigation and drinking purposes, to increase and improve irrigation and drainage schemes and, to provide the tools and capacity building to improve practices in water resources’ management and to promote climate smart agriculture in the watershed. - <https://www.hydropower-dams.com/news/design-and-supervision-contract-tendered-for-sri-lankan-river-basin-project/>

Contradictory or competing claims of ownership

Dispossessed communities fleeing violent conflict have also led to conflicting claims of ownership. In Kilinochchi a community claims that they bought lands in Sencholaipuram from the LTTE which another community claims was their land. The LTTE also established an orphanage on lands forcefully acquired from this community. Subsequently, the military acquired these lands where the orphanage stood (until last year), but the original owners have begun to demand these lands back.

In Trincomalee, when people were dispersed due to the war, relatives of those who fled began to make claims to their lands, resulting in lands with no documents having multiple parties making conflicting claims of ownership. Participants complained that when the government failed to give formal ownership of the lands to the original owners, they had to live in refugee camps. In Veveli (Trincomalee), the community has not returned to their lands since 1983, because the documents pertaining to their ownership of land had burnt in the kachcheri. They have been asked to present formal documents which they don't have, but the land has since been allocated for wildlife conservation purposes.

According to the community members the Commission spoke to, the village of Panamkandy (Kilinochchi) was established by the LTTE to provide lands to people who were fleeing the violence brought about by the JVP in 1987. These were people from Kandy, Galle, Ratnapura and other areas. Following the end of the war, the original owners of these lands have begun to ask for their lands back and some people have paid the requested amount after selling and pawning their possessions (because they lack access to loans).

In Kokilai (Mullaitivu) the Sinhalese community does not formally own the land they live on, which they claim to have lived on continuously even during the war. They claim that their fishing licenses were lost during the tsunami, when many land owners lost their documents and the copies which were held at the AGA office.

“No matter what policies and laws are brought in, everything depends on their implementation”

– participants from Mullaitivu

In Murippu (Kilinochchi), government officers cited technicalities which the people believe were previously resolved issues (such as identifying a plot of land that corresponds with the permit prior to changing the state of ownership to a deed). Local Tamil politicians were also accused of supporting the Forest Department by obstructing the resettlement process. Another example of the injustice faced by the Muslim community is the act of providing 25 to 30 wells to farmers in Murippu, of which none went to Muslims, a pattern of discrimination which the

Muslim community in the region have faced since the war when the LTTE also discriminated against this community.

In Batticaloa, people who were displaced due to the war, the IPKF operations and the tsunami complain that lands which belonged to one displaced group have been distributed among another community. In Ampara as well, the people of Samanthurai who had Gal Oya permits to the lands they fled from between 1983 and 1990, found upon their return that their agricultural lands have been distributed among Sinhalese farmers. Similarly in Ponnamveli, Ampara, among the lands which the communities lost during the war, a large acreage of paddy lands belonging to a Tamil community (who fled the war-torn area in 1990) was distributed among Sinhalese farmers who have received deeds and Gal Oya permits.

Issues relating to resettlement

In Anuradhapura some of the resettled communities complain that the land that was provided to them was unproductive. In Thayiddi (Jaffna) there are no livelihoods available to returnees, with many doing day labour work.

Following the tsunami, the fishing community in Batticaloa had been asked to move as far back as 500m from the beach. Regardless of the hardships the fishermen have faced, most continued with their livelihoods with only a few switching occupation to other options such as masonry. This is partly because of the lack of alternative livelihoods available in the area, particularly to the fishermen who operate closer to the coast.

The community in Malayalarkulam/Iyerkulam (Kilinochchi) who were allocated lands to resettle following the war were barred from settling by the Mullaitivu Forest Department which claims the resettled lands are under their jurisdiction. A similar experience is faced by a community that is seeking to resettle in areas allocated to them in Palaly where the Forest Department has refused to acknowledge that the lands were once privately owned and dismisses the claims of ownership.

Flow of natural resources away from the communities with little to no compensation

Participants in several hearings complained about natural resources flowing away from the communities from which they are sourced. In Musali, the community complained about illegal sand mining and transportation to Colombo. The community also complained about fisherman coming in from outside to use their traditional grounds; this was a big problem for their community, which faces a lack of livelihoods apart from fishing or factory work in Vavuniya. In Jaffna, fishermen also complained that illegal trawling was taking place in their waters by fishermen from other parts of the island. The Tamil fishermen in Myliddy expressed their anxieties about competing with Sinhalese fishermen who have access to larger boats and nets and could hence capture larger fish.

‘When I went with the letter to AGA for samurthi, he said, ‘You are from Silavaturai aren’t you, those people are good looking and well off.’ If I dress neatly and wear specs, does that make me well off?’

– participant from Silavaturai

In Inuvil East (Jaffna) there was a lack of awareness that people in IDP camps could apply for benefits such as Samurdhi, preventing some people from receiving the aid that they need. However the Samurdhi programme also requires the beneficiary to have a permanent address: another obstacle for displaced and dispossessed people in accessing public welfare programmes. Public officials also often displayed a lack of interest in investigating the living conditions of those in need of support from the Samurdhi welfare programme, creating another obstacle. Even when the application process is completed, the processing times are very slow, and at times can take over five years. Overall, the implementation of the Samurdhi scheme has been criticised by communities who argue that further efforts need to be taken to ensure benefits flow to the people needing them the most. There were also reports of a reluctance from government officials to vouch for the residence of people living in camps, which is a requirement for them to receive government benefits and apply for loans. Even when livelihood development projects begin in the region, there is evidence of bribery in their implementation and an apparent mismatch between what is provided and the support that is actually needed and useful to beneficiaries, which then results in their rejection of the programme.



2.2.3 Large scale development, agricultural projects and the establishment of protected areas

In Anuradhapura, Polonnaruwa and Batticaloa communities complained that urban sprawl, allocation of agricultural lands to private enterprises and forceful acquisitions by various ministries have shrunk the plots of land owned by local farmers. This also makes it harder for farmers to manage their lands using traditional methods (e.g. alternating between different agricultural plots during consecutive seasons), and affects the livelihood profiles of communities, as some have opted to open shops rather than practice agriculture. However, despite the rise of tourism in Anuradhapura, villagers still prefer farming over turning their lands into commercial plots. In Polonnaruwa, where communities wanted more autonomy over their lands to either mortgage or sell, they still spoke of the need to make farming more lucrative for the youth currently opting to take part in daily labour and operating tuk-tuks.

Several private sector companies have acquired land that is important for local livelihoods, including the Riu Hotel in the Galle District, which acquired a section of the sea shore; the Bar Village hotel in Hambantota, which acquired lands provided to the community by the Department of Wildlife Conservation; banana and mango plantation companies in Hambantota; the Forest Rock Hotel, built on land belonging to the Andarawewa Forest and causing damage to the Kuda Wewa; waste management initiatives in Kosgoda, which are acquiring paddy lands; and several hotels and private businesses in Trincomalee. In Batticaloa, some fishermen view the hotels in the area as an opportunity to sell their catch, feeling that fishermen from Trincomalee pose a greater threat to their livelihoods due to the types of gear that they use and the support they are provided by the navy. Others see these establishments as intruders affecting their access to their livelihood pursuits. In Panama (Ampara), the community complain about commercial establishments and hotels which have acquired beach properties, interfering with the ma-dal (Beach Seine net) fishing (international interventions and investments and World Bank policies⁵ are among the reasons why tourism is booming in the area). In Polonnaruwa, CIC Holdings was allocated a 50-year lease for 2,000 acres which was supposed to be used for seed research; however, according to neighbouring farmers, CIC is cultivating crops on that land. The people also complain that as an organisation, CIC does not consider their impact on the environment, and overuse pesticides.

Illegal acquisitions affecting people's livelihoods have also been conducted by private parties, and the State has failed to protect community interests. For example, the Udaya Rambai Lake in the Maharambai Kulam village in Vavuniya

5. Society for Threatened People, Dark clouds over the Sunshine Paradise - Tourism and Human Rights in Sri Lanka, Pg. 55 - <https://www.gfbv.ch/wp-content/uploads/pdf-e.pdf>

had been taken over by an individual who was identified as the Agrarian Services Officer. This has disrupted agricultural practices taking place on 25 acres of land and also affected the availability of drinking water in the area. Other lakes such as Nelunkulam Kilvilkulam, Pandari kulam, Thrinunavakulam, Tharani kulam, Rambai kulam, Samanam kulam, Kalnatina kulam have also been converted to agricultural lands by individuals or have been destroyed by development.

The Tamil community in Kokilai (Mullaitivu) was displaced and dispossessed of their lands by the Mahaweli L scheme, the war and various wildlife conservation efforts. Like the IDP community in Jaffna, they have also been unable to apply for Samurdhi benefits. People from Kokathoduvai (Mullaitivu) were also affected by the Mahaweli L scheme and have not even heard of the Samurdhi welfare programme. Both Kokuthoduwa and the community in Weli Oya were further affected by the establishment of a bird sanctuary in the area.

In the villages of Periyamadu (Mannar), farmers complained that there is a lack of access to adequate resources for them to increase agricultural production.

The potential development of a harbour in Kalmunai was a point of concern to the local community who feared reduced access to spaces important for their fishing livelihoods.

The Forest Department acquired lands from Kirankomal, Komarimanal, Kanagar Kirmam (Pottuvil DS division) and Palattawatta (Irakkamam DS division in Ampara), which were previously taken by the army from farmers who were permit holders. In Vegamam (Pottuvil) in Ampara, a farming community fled during the war in 1990 and upon their return between 2010 and 2011, discovered that their lands were cordoned off for the Lahugala National Park. The Forest Department also acquired lands from communities in Idayapuram and Karankovai West, Amavettan and Vegamam, Mathuran velli (Ampara), who fled from their lands (for which they have permits) in 1987 due to the war. Upon returning to their land, they found the Forest Department had acquired it. Communities such as Thukvella and Sembavelli in the Pottuvil DS division and Veveri (near Trincomalee) are also finding it harder to practice their farming livelihoods due to acquisitions by the Forest Department. In Thonikkal South Kadam (Thirukkivil DS division), Vattamadu (Thirukkivil DS division) and Komari (Pottuvil DS division) in Ampara, farmers who have been farming for over 80 years (even during the war) found that their lands were taken over by the Forest Department when its officers and the police forcefully removed them and filed cases against them. The establishment of the national park in Chundikulam has also affected the lives of the community by obstructing access to the agricultural lands they work on.

The Uma Oya scheme has also been criticised for its environmental impact and the affect on local livelihoods, with insufficient compensation offered. The people displaced by the Uma Oya project were each promised two acres of paddy land; however, people in Welimada, Uva and Bandarawela areas have also found their

lands to be affected by this project due to the subsidence that occurred in their fields and a significant reduction in the ground water levels leading to wells drying up in the nearby region. There has also been property damage associated with its impact on the geology of the Bandarawela area.

The compensation provided to these communities by the Uma Oya scheme is actually a fraction of what was allocated. Road infrastructure projects acquiring lands from the estates provide compensation to the estate company but not the community that is affected by it. There are also politically well-connected people who aren't part of the community setting up shops and competing with local establishments. Compensation programmes for landslides also privilege land owners and well-connected individuals and are not available to some victims of the disaster do not have formal deeds. Another criticism of the Uma Oya compensation scheme is the lengthy and tedious bureaucratic process to secure compensation; a process which also costs affected individuals a lot of money. In Kuhulpola, where alternative lands were distributed, the more influential people received larger plots of land.

The communities living in Sirisara Uyana, a high-rise housing complex in Dematagoda built by the Urban Development Authority, are urban poor families dispossessed by the Urban Regeneration Project in Colombo. They are not provided spaces within these buildings to carry out their livelihood activities, which mostly fall under the informal sector. Initially the management banned any livelihood activities inside the apartments but the lack of shop space or any adequate space for income generation activities of those who were relocated led to this rule being changed over time. Some of the occupants were also reminiscing about how they had access to many more informal livelihood options prior to being relocated. Accessing those same livelihoods (e.g. cooking food items to sell in shops) would require added costs as they are now living further away from those they used to supply.



2.2.4 Plantations

The Commission heard from communities located in tea estates and sugar plantations. The tea estates were home to Tamils of an oppressed caste from Southern India brought as indentured labourers to work in Sri Lanka's tea plantations by the British, with a long history of pervasive discrimination, exploitation and violence. A majority of the community were rendered stateless and disenfranchised by the 1948 Citizenship Act and it was only as late as 2009 that their citizenship was recognized. The adverse effects have been intergenerational and the community remains amongst the poorest and the most excluded, despite being at the heart of one of the country's most important economic sectors.

The sugar plantations in Hingurana and Pelwatta are State-owned. Communities living on these plantation lands were previously dispossessed by the State and some were permitted by the sugar corporations, which thereafter managed the land, to remain and cultivate it. These communities also spoke of how their lives were governed by the sugar corporations and how this relationship had usurped some aspects of their citizenship claims.

A commonality was that the plantation workers' access to housing is linked to their work on the estates and plantations. Incomes are very low, and they are trapped in cycles of poverty and a system of dependence on the companies, whether State or private, managing the land. Private companies possess the land usually on long-term land leases from the State. Possession of land and housing for these communities is tied to restrictions on self-employment or other income generating work and sometimes even restrictions on cultivating for private consumption. The nature of the land possession also means that they cannot obtain loans by using this possessed land as security because they do not officially own the land.

Some of the issues highlighted by these communities are categorized and described below.

Lack of Access to Social Welfare benefits

The estate residential areas that are part of the estate business enterprises are considered as private entities and therefore there are no clear parameters on how local authorities such as Pradeshiya Sabha can support them. Pradeshiya Sabhas do not have the mandate to impose rates and taxes on estate residents, residential buildings and their properties because those are considered as built-up localities of estate enterprises. However, plantation settlement residents do contribute to Pradeshiya Sabhas through other taxes such as land taxes and court fees. The present Pradeshiya Sabhas (PS) Act was based on previous Village Councils Act Of 1871, which excludes estate residents being served from its funds. Therefore, estate residents are still treated as mere voters without entitlement to many services from local authorities.

Acquisition of land and exploitation without benefits

Many farmers growing sugar cane for the Pelwatte Sugar Corporation in Monaragala complained about how the organisation exploits them without providing any promised benefits, including healthcare facilities, and penalise farmers recovering from setbacks like natural disasters without considering the impact on crops.

In Ampara, people who received Gal Oya permits had their lands acquired by the Hingurana Sugar corporation, which then promised to return the lands if the effort proved to be unsuccessful. Vellakalthottam and Varnathuwatai are two areas where this occurred: in Vellakalthottam, some of the seized lands seem to have been distributed among Sinhalese farmers who are growing paddy on them. In Kanattiyan Munmari (Ampara), land which was owned by the community living there was forcefully acquired after blocking the waterway the community relied on for their agricultural activities. The sugar corporation is currently growing sugar on most of the land, while ownership over the rest of the land has been distributed among a different group of farmers. As in the case of the Pelwatte Sugar Corporation, the reason people agreed to move there and work at this plantation were free services that were promised such as free transport, livelihood allowances, training of sugarcane cultivation and fertilizer at concessionary prices. However, these promises were also not kept.

The administrative structure requires approval from both the Provincial Council and the plantation company, which limits the agency the plantation community has over the land they occupy. Management practices of the plantation companies are described as being dictatorial and discouraging of development activities on the lands which the plantation communities use. LRC officers recommend that a letter be sought from the plantation company prior to even measuring the land. The company retains control and power over decisions relating to land and livelihood and this is demonstrated in the examples of plantation managers being central to securing land related benefits.

Further limitations on the agency of plantation workers

While the availability of land is claimed to be insufficient to distribute among people to grow crops in Badulla, large companies manage to obtain land for their commercial activities. The participants in Commission hearings also describe how resources flow away from the area towards Colombo, such as the trees that are cut down, and as a result increase the risk of landslides in the region.

Court cases over conflicting claims of plantation land ownership also do not consider the views of the plantation workers. For example, a court case involving claims made by the grandchildren of the original owner of the Nawalapitiya Baharanda Estate versus the State took place without the knowledge of the community. Furthermore, after receiving a favourable decision from the court, the plaintiffs attempted to forcefully evict the residents of the estate with a fiscal

order and military involvement. Although the residents have filed a case to counter the eviction, only a fraction of the community work in the estate which makes their tenure uncertain and makes the community reliant on a land kachcheri to provide proper deeds for the land.

There are conflicting claims of ownership of land between the Paththini Amma Kovil, the Shawlance Estate, Lunugala and the Basnayake Nilame in Lunugala. The Kovil approached the plantation workers and claimed that they should actually be working for the Kovil. The people are aware that if the Kovil's claim is legitimised, they would lose the services provided by the plantation company. The situation is further complicated by the exploitative working conditions faced by the workers, with the cadre working in the fields being understaffed and many working on a temporary basis with no EPF or ETF or compensation for any accidents. Here too people complained about the lack of agency over decisions on what they can or can't do on their land. They needed to seek company permission to even apply for a link to the electric grid. This Shawlance Estate community further described how the people of Sumudugama encroach on their lands and described how there are many people who are working under multiple manpower companies. Moreover, the fact that the tea companies can claim a reduction of profits enables them to use part of the tea estate land for tourism or farming, but this makes their livelihoods more precarious.



2.3 Environmental degradation

During the Commission hearings most of the people who participated were aware that their livelihoods were linked to their surrounding ecosystem and were dependent on the surrounding natural resources. The Commission came across many instances where government policies, State funded development projects and activities of non-State actors and land use practices of communities were negatively impacting the surrounding ecosystem. Based on the Commission hearings, the following major types of land use were recognised to be detrimental to the environment.

2.3.1 Large scale projects

At present there are multiple development projects including irrigation projects and infrastructure development projects being carried out in both rural and urban areas. Many of these projects take place without proper consideration or assessment of the impact they will have on the environment. People also severely criticised the current Environment Impact Assessment (EIA) procedures. They claimed that their views are taken into consideration only after planning for specific projects was completed.

Depending on the nature of the development projects happening in different areas, the nature and scale of impact on the environment varies. Projects like the Port City Project and mineral mining projects in Trincomalee have damaged the coastal and marine ecosystems. Similarly, terrestrial ecosystems have been impacted by activities such as a solar power project which seized six hundred acres of forest land of a proposed elephant reserve in Thissapura and Buruthankanda in Hambantota.

Numerous adverse effects of the Uma Oya project were also revealed during the Commission's visit to Badulla and the surrounding areas affected by the project. A number of water sources, vital for agriculture in the area, had dried up due to leaks which occurred as a result of tunnelling operations. A study conducted by the Movement for Land and Agricultural Reform (MONLAR) concluded that in 37 Grama Niladari divisions in Badulla district approximately 3,090 wells and 45 water sources have completely dried out as a consequence of this project.⁶ Such irrigation projects (including the Yan Oya, Moragahakanda and Kalu ganga project) also contribute to the degradation of biodiversity.

6. Uma Oya, yesterday, today and tomorrow by Sajeewa Chamikara available at: <https://monlar.lk/umaoya-disaster-Eng.html>

My house was completely destroyed by the Uma Oya project. The land is cracked and the paddy field has sunk. For 3 years we haven't done paddy cultivation. Tamils, Sinhalese or Muslims, we are all humans and this injustice shouldn't happen to anyone. They asked us to vacate the house and live for rent but after one year also they didn't come to see the house. We can't live there as it leaks when it rains.

– participant from Badulla

Meanwhile, in the coastal areas, farmers in Hambantota face saltwater intrusion caused by the newly constructed harbour. The construction of the Oluvil harbour has also contributed to coastal erosion in the Vannanchenai and Kadatkarai vattai areas in the Mattupallai village in Ninthavur, Ampara .



2.3.2 Tourism

The environment damage is increasing. Land within 300m from the shore cannot be sold but the rule is not adhered to and is sold to build hotels. The environmental authority has given permission for these transactions.

– Participants from Matara.

The rapid growth of tourism in Sri Lanka has resulted in several large-scale construction projects and large areas of land being allocated for future tourism projects. However, large scale tourism has affected the coastal ecosystem of the country especially in areas such as Kalpitiya, Nilaveli and Kuchchaveli, destroying mangroves and other coastal ecosystems such as sand dunes and coral reefs. Furthermore, acquisition of lands adjacent to or within areas designated as being part of the river reservation in Anuradhapura has led to flooding and the destruction of natural habitats of animals.

The environmental impacts of the Forest Rock Garden Resort in Anuradhapura were described by the community during Commission hearings. The hotel failed to conduct a formal EIA prior to its construction even though more than 1 ha of forest land was cleared⁷ during the construction process, making an EIA mandatory. The human-elephant conflict in the surrounding areas was reported to have increased following its construction. This can be attributed to the fact that the hotel is in the path of the common routes travelled by elephants as they move between the Kaluwaragaswewa area and the Wilpattu National Park.

2.3.3 Large scale commercial agriculture

Large scale agricultural companies, such as Dole Lanka (PVT) Ltd, Brown & Company PLC, CIC Holdings PLC, etc. with activities taking place in the dry zone and the regional plantation companies in the wet zone have contributed to the destruction of the respective ecosystems. The extraction of ground water and deforestation by commercial agriculture on a major scale has depleted underground aquifers. Moreover, the animals living in Lunugamwehera and Yala, including elephants, are now facing severe water shortages as these companies use a large quantity of water from the Menik and Kirindi Oya. The high use of chemicals in agriculture and farming is further detrimental to biodiversity, degrading soil and contaminating water resources, as seen in Polonnaruwa and Anuradhapura Districts. In Wellawaaya, the communities criticised Dole Lanka (PVT) Ltd. for attracting elephants into the area, and as crops were fenced off, the elephants are directed towards the village. The company is also accused of overusing agrochemicals.

7. Uma Oya, yesterday, today and tomorrow by Sajeewa Chamikara available at: <https://monlar.lk/umaoya-disaster-Eng.html>

2.3.4 Militarisation

The Commission came across many instances where the occupation of land by the military has negatively affected the environment of the area. The military has frequently monopolised scarce environment resources that could serve communities. For example, in Kayankuli and Mullikulam, post-war returnees from India do not have water because the fresh water spring the community relied on is now under navy control. As a result, they have to resort to purchasing 20 litres of water every two days. In Mullikulam and Panama, the military is illegally occupying land on which it is now building a hotel, causing severe effects on the environment by destroying mangrove forests and the lagoon ecosystem. It is also worth noting that there is an army camp located within the Chundikulam sanctuary.



2.4 Diminished identity

‘Just as my ID is important for my identity, my land is my identity. This is who I am.’

– participant from Vattuval

In policy making or in the eyes of the law, connections to land are seen through documents – deeds, permits, authorisation forms, rates and taxes. However, in Commission hearings across the country, people vividly described the different ways in which they connect and relate to land and how this shapes their identity and community. The process of resolving land issues must acknowledge people’s stories and their aspirations, which are often shaped by these individual and communal contexts.

But such connections to land did not always mean that they wanted to stay where they were. People spoke of needing progress in their lives, to secure better lives for their children, protect the environment for future generations and to be safe from natural disasters.

2.4.1 Family identity

“Those who justify that Sinhalese settlers had used the land for 30 years should think about the use by us for 300 years”

– participants from Kokkuthoduvai, Mullaitivu

‘The government seem to believe that when those who were displaced from their land become old and die, their second generation will not have the determination to fight for their lands’

– participants from Palaly, Jaffna, noted with sarcasm.

People spoke of strong ties based on generations occupying the same plot of land. For example, in Gal Oya people spoke about their forefathers having toiled to clear the forest and build their homes on their land, and spoke of connections with the trees they or their parents had planted.

People also make serious life decisions and investments based on types of recognition that connect them to their land. In Colombo, many urban poor communities spoke of their emotional and financial investment in the land they have occupied for generations, and of how this connection is valid even in the absence of title deeds. The connection to their land has been further strengthened by the various State-level acknowledgements of occupation they have received over time in the form of infrastructure and utility provision, electoral registration and access to schools for their children. This recognition and the legitimacy derived from that meant that over time, people had improved their homes by investing in incremental changes and improvements.

2.4.2 Religious and communal identity

‘The tactic the army uses to pacify the displaced is to let them have access to some religious places within the occupied areas so that the world will think that there is some progress in land releases’

– participants from Palaly, Jaffna

The location of land in relation to sacred places also creates a strong bond between local inhabitants and the particular land they occupy/occupied. Access to sacred places and the practice of worship and ritual bind people to the land; the loss of that access in certain parts of the country has exacerbated tensions around existing land issues.

For example, an old Muslim village Puttambai – Jalaldeenpuram, Pottuvil, was abandoned due to LTTE violence on 15th April 1985.⁸ The inhabitants subsequently sold the land for low prices or lost their land in various ways. Three years ago, they returned to the area and rebuilt the mosque, which was then damaged once again in an anti-Muslim incident. They never received compensation when they were originally displaced and had their properties damaged. Currently, Tamil people are farming on these lands and living nearby. This kind of ethnicity based evictions, discrimination and resulting tensions affecting a group’s identity were also seen in Ampara (Thottachurungikandam), Puttambai (Jalaldeenpuram), Selvathurai, Mullaitivu (Murippu) and Vavuniya. Yan Oya communities further complained of being displaced and then resettled to areas without facilities.

8. Villagers claim that the LTTE had burnt down their village, killing 4 villagers, on 15th April 1985. Following this attack, the entire village was abandoned.

2.4.3 Livelihood as identity

‘When we cultivate our paddy on leased land, trusting the rains, and losing everything at times, imagine what would go through our minds passing by our own land, with a hungry stomach, being cultivated 3 seasons a year.’

– participants from Kokkuthoduvai, Mullaitivu

A Tamil community in Anuradhapura spoke of how dispossession led to their relocation to an area which had extremely limited access to facilities such as schools. As a result, children dropped out of school and later could only take up jobs as domestic helpers. This is an example of dispossession directly determining a class identity connected with a particular form of employment. In Palaly, participants at the hearings mentioned the loss of traditional livelihoods such as the production of Palmyrah products or fishing and farming due to a reluctance among young people to engage in these activities.

2.4.4 The identity of dispossessed people

Being violently forced off one’s land as a result of one’s ethnic identity or kept off one’s land by a group of a different ethnicity has resulted in many identity-based grievances connected to land. It is a grievance that is both inextricably linked to one’s land and is spoken of in terms of loss of land. People spoke of the many terms that had been used to denote or render groups of people vulnerable, alien and without rights. For example, they experienced being referred to as ‘Adhivasi’, ‘Boarding kaarayo’, ‘pitagam karayo’ ‘terrorists’ or ‘block lamai’.

Participants were also hurt and frustrated by attempts to change the physical attributes of land to such an extent that the identity of the land was changed. This affected their relationship to the land and created a feeling of dispossession, ‘not belonging’ or ‘not being wanted’. People described the erection of new temples or religious structures, religious statues and changing the names of places and roads from Tamil to Sinhala or in commemoration of individuals that local people had no connection with.

In the east of the country people spoke of administrative areas being explicitly labelled in Tamil or Sinhala. This practice has also extended into the mindsets of certain communities believing that they can only be permitted to occupy certain geographic areas. It was felt that administratively restricting, for instance, a Muslim community to a particular area regardless of population contributed to ghettoization, e.g. Kattankudy.

Dispossession is also experienced by oppressed caste groups. Discrimination has taken the form of verbal abuse, for example using terms with derogatory meanings like ‘poor’, ‘badly behaved’ and ‘aggressive’ (Silva et al., 2009b: 72). Oppressed castes have also been denied access to temples and been refused the opportunity to purchase land.

The issue of Muslim returnees who were expelled from the North by the LTTE in 1990 is of particular concern. Many Muslim families who were originally from Mannar and Mullaitivu were compelled to rebuild their lives in areas such as Puttalam well over a hundred (sometimes two hundred) kilometres away. These displaced families have faced numerous hardships as a result of the State's failure to address their displacement and facilitate their integration into their new homes. They have also experienced alienation and othering as a result of the discriminatory and alienating behaviour of host communities. The State's failure towards these families is highlighted by the complaint that many even now have not been provided with arrangements to vote in their resettled area. During the war they were forced to participate in special camps for voting and to date are 'bussed' by the administration to their places of origin to cast their vote. Another example of 'othering' experienced within these communities is that evicted Muslims are referred to in humiliating language including 'refugee dogs'. They spoke of the continuing effects of being distanced from their homes, the disruptions to their lives and the fact that they continue to be treated differently and as outsiders, even after decades of living together with their host communities. A new land policy must provide for these Muslim families, giving them the option of return to their own lands, or receive adequate compensation and alternate lands in mutually agreed areas, as well as provide proactive measures to ensure social integration and acceptance.



2.4.5 Land colonization projects and the threat to identity

It is well documented that State-sponsored 'land colonization' motivated by voter-base manipulation has been used as a tool to alter the ethnic demographics of predominantly Tamil and Muslim areas and regions. Weli Oya (originally called Manal Aaru 1) and Gal Oya 2, are two of the older schemes linked to colonization and participants referenced the intergenerational impact of dispossession and loss caused by these schemes. Even today, people spoke of ongoing colonization practices particularly in the north and east of the country, including the most well-known large State-driven colonization project, the Mahaweli scheme. People in Vavuniya spoke of discrimination in allocating water and other resources to benefit specific ethnic groups and identified these practices as emerging from State colonization. Similarly, the destruction of religious sites, burial sites and the erection of new religious or ethnic symbols, monuments and structures have affected the sense of local community identity. These sentiments must be listened to and given due consideration: the connection between identity and one's traditional homeland has been a long-standing contentious issue and one of the root causes of the ethnic conflict in this country. Identity links to one's collective history and experience; it is different from notions of possession and ownership expressed by urban or city dwellers and must be an essential consideration in any State land or development policy.



2.5 Women's struggles for possession of lands, land rights and human security

In the People's Land Commission hearings we spoke with many women across all districts. Women have been participants and leaders in numerous land struggles – from the Keppapilavu community struggles to regain land occupied by the military in Mullaitivu to Norochcholai in Akkaraipattu, where Muslim communities are still struggling to get tsunami resettlement housing. In some instances, women stepped into party politics with the hope of having the voice and power to ensure land rights for their communities. It is also clear that land is intimately connected to women's identities and socio-economic security. In several sittings the commissioners spoke to women in separate groups to encourage them to speak more freely. Dispossession of land and its effects is a gendered experience, as established both in scholarly literature and in the histories of such processes in Sri Lanka and elsewhere⁹. During the Commission's hearings, the testimony of women made these experiences more visible, even though their public nature was not always conducive to an in-depth listening, documenting and analysis of this gendered reality.

2.5.1 Dispossession, displacement and identity

When women shared experiences of being displaced or dispossessed, they often spoke of the stigma associated with being seen as 'the other'. Displaced and dispossessed communities were often called derogatory names such as 'ahadi' which means displaced or refugee. Women seemed often to face these social stigmas while trying to access State services, or moving in host communities, but also experienced the hurt through their children, who faced discrimination in school. In Jaffna a young woman shared her experience of how none of her classmates ever came to her house, not even for a birthday, as their houses were seen as unhygienic and dirty, with sewage and garbage everywhere. Her community had been displaced and living in temporary settlements for close to 30 years. A whole generation had grown up in these settings. Others shared experiences of children from displaced communities being asked to sit separately in classrooms. In Akkaraipattu women spoke of the stigma around marrying 'ahadi' or displaced people, a stigma particularly attached to the women from these communities.

9. A study on Women's Land Rights in the Post-Tsunami Resettlement Process in Batticaloa documents through in depth case studies, women's experience of domestic violence in relation to loss of land and property in the post tsunami resettlement process. Not only did women lose their claims to dowry land in the resettlement process but women spoke of violence in the home as they were trying to negotiate the power relations in the households as the new post-tsunami housing were given in the man's name. Maunaguru, Sitralega & Emmanuel Sarala (2010), in Penkalin Nilam: A study on Women's Land Rights in the Post-Tsunami Resettlement Process in Batticaloa, published by Suriya Women's Development Centre Batticaloa.

Even though it was not strongly or directly stated, it was clear that stigma was also related to caste as well as ethnicity in these experiences of discrimination. Women are often the default carriers of community identity in patriarchal societies and disproportionately bear the burden of the stigma held against the community. This stigma is sometimes expressed through varying forms of violence in private and public realms upon women's bodies.

2.5.2 Marriage and dowry

'The door is broken and shaking, I have to tie it up. As I have no documents, I cannot make any repairs to the house. I have to pay 18,000/- to get my permit and I don't have the money. I have given this house as dowry to my eldest daughter, but I have no documents'

- participant from Kannakikiramam, where houses were given in 1983 under Premadasa Housing Programme.

Men rarely raised the issue of dowry, even though the patriarchal practice of dowry was a burden on all members of the family. Women always mentioned the pressure of dowry and the social stature associated with having a dowry to give their children in marriage. This was particularly relevant as it was common practice for women to inherit land as dowry in the north and east. The inability to provide security and dignity for their female children during marriage negotiations was a cause of great sadness.

Even in contexts where displaced communities were given State land, the new plots were small and only sufficient for one household. This unit could then be passed on to only one child, leaving the negotiations of a good marriage very precarious for any other daughters. Furthermore, State land was often given under the LDO which only recognised male heads of household and provided inheritance to the oldest son. All of these factors became significant as many of families had lost larger tracts of land, sometimes valuable paddy land, when being dispossessed or displaced.

'My father remarried. We are his first born but we are daughters. In his second marriage he had a son and the land will go to the son according to the law'

- participant from Mullikulam

‘After the death of the man the land is automatically transferred to the eldest son. It should be to the mother. Claiming ownership after the death of the key occupant is very complex. The bureaucracy is inefficient.’

– participant from Anuradhapura

In terms of the patriarchal practices of land ownership, in the public hearing in Mullaitivu, it was explained to us that all assets or property entitled to a daughter was given to her at the time of her marriage. Afterwards she could not make a claim for an equal share of the family’s assets and land. Even though there was some discussion around this practice within the group, it was clear that this was the common practice in the area. Therefore, despite the strong movements for community land rights and protest against military occupation, the gendered dynamics of discriminatory land ownership within the household and community continued unabated. This discrimination was not however strongly recognised in the articulation of demands in the broader struggle for land rights.

One woman in Trincomalee shared her experience of being threatened by her future son in law and family to pull out from the marriage unless she left the land and house in his name. She was worried about her own security and that of her daughter if she gave the property to him. This is only one example of many instances of women being threatened with or facing violence because of land-related conflicts in the home.

In the public meeting held in Colombo on ‘10 Years of Peoples’ Land Struggles: Reflections and Ways Forward” organized by the PARL network and LST in October 2019, some of the participants from Northern province shared that, for women from families of the disappeared, a big challenge has been utilising property, even mortgaging or leasing it, as under the Thesavalamai local law, women cannot make decisions on property without a husband’s consent, unless he is dead[S21].

Thus, legally as well as socially, women’s land rights are unfortunately connected to the unjust practices of dowry and marriage. This practice is often perceived by women to be a source of security in their marital home. Such security meant socio-economic security but also a perceived safety from the threat of violence in the home. This complex issue is central to the role of land rights in the lives of women. Given the centrality of marriage within negotiations of land and property, this perspective is invaluable when considering the effects of land rights on society as a whole.

2.5.3. Land and household work

Many women spoke of the importance of basic needs in their vision of reparations for land. It was not only a call for the return of their land, for they were very articulate about having safety, roads, and good quality schools and health care facilities nearby. Women also demanded space for them to engage in their economic activities, which were often connected to their household duties and care work. Some women expressed their desire to be close to urban locations, where tuition classes, markets and other services were easy to access. Even though they were part of the larger community struggles demanding their original lands back, they also quietly and firmly spoke of all aspects of their lives, in which their land was at the centre.

In Colombo, women who had been forcibly relocated to high-rise complexes built by the Urban Development Authority spoke of the loss of home-based informal livelihoods, such as making and selling food or sewing. This meant that their household debt was increasing due to a loss of income and increase in expenses. Their responsibilities and time spent on housework had also increased due to the change in environment and loss of community networks where previously much of the household work was shared – from laundry to childcare. By scattering communities across buildings, women were left to take on the additional challenges of running a household and childcare in an environment where they did not know any of their neighbours. Furthermore it required women to bear the burden of adapting to living in a high-rise – from finding solutions to where and how to dry clothes to ensuring that children were safe and able to attend school as well as oversee where they spent their time after school.

The care work done at home is deeply connected to the State social security measures. Unsurprisingly then, it was women who made the connection between displacement from and dispossession of land resulting in not being registered for social security programmes such as Samurdhi. The material effects of such lack of access to social security, for women, came with the added burden of social stigma that they faced while trying to assert their rights to such services by State officials and by other community members. Women are also primarily responsible for the care of the elderly, children and the sick. Women's precarity with regards to social security has profoundly adverse effects on the most vulnerable dependants in the household. Thus, the key persons in society who did most, if not all, of the care work for children, the elderly and all other members of the family, were themselves in vulnerable positions because of displacement from one's land.

Women affected by the Uma Oya project said that the lack of water had caused economic hardship leading women to seek employment outside of their communities and areas of residence. This undermined their personal security a great deal. A woman in Badulla commented that “women's safety issues are always

looked at as secondary, and not at the time of the problem”. They spoke of the difficulty women had in raising issues that were particular to their security, safety, health and wellbeing. In plantations, the precarious nature of claims to land and the role played by intermediaries meant that women workers find it extremely difficult, if not impossible, to complain against harassment and other forms of violence they face. The fact that such issues are seen as secondary within their own community and even within the struggles for land, further exacerbates their sense of un-safety. Just as with the connection between land related issues and violence within the home, the connection between land, displacement and sexual harassment and violence in the workspace is very real for women.

Thus all issues to do with land and displacement were not merely about the physical land alone but about an entire way of living that is based on that land. We also specifically asked about women’s work, particularly care work which is usually invisible in discussions around livelihoods. Apart from the challenges and struggles with childcare, children’s education, care of the elderly and differently abled, cooking, collecting water etc. women were often the caregivers during the protests themselves, providing food and other care to sustain long term sit-ins. Women, given the central role they play in the maintenance and surviving of this way of life and the struggle to return to it, both in the home space and in public, were very clear about this broader articulation of land rights.

Apart from all of this, many of the people we met had been fighting for their land rights for many years. Many women and men were tired and ill. Women spoke of their worry about getting old and being dependent on their children. Their desire to get their original lands back was to also to die with dignity and not be dependent on anyone. In Anuradhapura, elderly women had to move into elders’ homes as they were losing the right to live on their land, given as State land, once it was transferred to their sons. Given that dignity, security and respect is not assured to women within patriarchal social structures, they see the right to their land as the only way to assure dignity for themselves in old age and death after what has been a life of arduous struggle.

2.5.4. Women's conceptualization of security and dignity

'We want our relatives close by. We want help during any illness. The environment around us should be safe and support our livelihoods. We want to be able to maintain our social relationships.'

- participant from Akkaraipattu.

Women had clear suggestions of what was important to them in terms of safety in both going back to their original lands or being resettled. In Mullaitivu, women spoke up strongly against the surrounding military presence and occupation of people's lands.

'We don't need the military to feel safe. National security is not about the military. It is about us having free education, us having our lands, where women can live and move freely at any time of day. That is what national security means.'

Women articulated in no uncertain terms that safety must come with the freedom to live with dignity rather than through military presence, surveillance and control of their everyday lives. As an illustration of precisely this kind of articulation of freedom and dignity, one of the most inspiring meetings for the Commission was with women from the former LTTE girls' home in Senchola, Kilinochchi. As the women had no family and had grown up in the girls' home, they had moved back to the land where the home stood and were now collectively working to claim their right to the land and houses within the home. This was inspiring, not just because of the conviction of these young women, but because it was a land claim that was being made by the women who knew no other home but this. It was not based on ancestry, kinship, caste or community but from the deep connection built by growing up and living on the land.

It is clear that the question of land for women is not merely about the physical object that serves as an asset or property. Neither is it about abstract concepts of cultural rootedness or ancestry. Both these elements are essential to women as well, although it is not central to their language of land rights, the way it is with men. Women invariably speak of land rights in an inherently holistic perspective that includes all aspects and realms of life. Women experience loss of land not just due to conflict and discrimination on the basis of ethnicity or community. Added to these elements they also face the brunt of it due to injustice within the law, within traditional social practices etc. The perspective of women on land rights then, invariably, provides a much more holistic, multipronged perspective on the issue as a whole.

Provision of social security

- Application process for social security and other welfare programmes such as the Samurdhi scheme should be made more inclusive. Information regarding such programmes must be readily accessible to the public.
- Where there is a structural issue such as the loss of a permanent address, the state should find alternative mechanisms to facilitate vulnerable communities to join social security and welfare programmes. Displacement and dispossession cannot be used as reasons for taking people off social security programmes which are tied to a permanent address.
- Social security is about sustaining women and households in the long term - sustaining them in their land struggles and rebuilding lives. Also social security and welfare programmes must recognise the long-term impacts of war and loss, particularly loss of land and livelihood, on the human body.
- Social security schemes must also recognise women's care work in holding together families affected by the war and those who have experienced dispossession from their lands.

Peoples' Recommendations

These recommendations reflect the ideas and demands of Sri Lankans affected by land issues across all districts. The voices captured in this report include those who have never been consulted regarding land policies, even when it is their own land that is directly affected, as well as those whose opinions are often not adequately considered by policy and decision makers. Some recommendations were adapted from those made by previous people-focused consultations and well-established standards, while others are unique to this consultation.¹⁰

1. Right to access, possess, use and own land

The people's right to own and access land and secure livable and safe housing has been threatened by many factors including militarisation, development and systems that only protect the interests of the rich and powerful. People described many ways in which they were made landless and homeless. They described fears and frustrations about their own financial and physical security and that of their families. They could not aspire to better futures. Discrimination against women to inherit land development permits was a common complaint. Some spoke of pervasive poverty and deep sense of alienation. It was clear to the Commission that the systems in place failed to recognize the different ways in which people inhabited or interacted with land. The broad policy recommendations below advocate for legal and administrative recognition of how people access, use and own land and how to better address landlessness and homelessness in Sri Lanka.

- 1.1 Recognise and value peoples' relationships to land based on their right to engage in the livelihoods of their choice, the matrilineal practices of inheritance in some parts of the country, the historic possession of lands for generations and the religious or cultural significance of certain lands.
- 1.2 Recognise that a right to possess and use land can be established in a variety of ways. Recognise that legal documentation is only one form of claiming a right to land and land use, and that people derive legitimacy to land in other ways. Whilst it is recognised in some ordinances, in practice, people's traditional possession and use of land has not been accommodated or recognized; in some instances, for example land claims by indigenous groups, this has been deliberately denied.
- 1.3 Recognise and prioritise those communities who are landless and marginalised due to socially discriminatory practices relating to, for example, caste and gender.

10. Report of the Final Report of The Consultation Task Force on Reconciliation Mechanisms of November 2016, the Public Representations Committee considering Constitutional reform of May 2016, the Report of the Commission of Inquiry on Lessons Learnt And Reconciliation of November 2011.

- 1.4 Develop people-centered definitions for the commons (common public land or space) and community property (possession by communities based on traditional or historic possession and use).
- 1.5 The State must proactively ensure and prioritise equitable distribution of state lands to landless communities.
- 1.6 The State must introduce sex disaggregated data on state land ownership and state land distribution processes.
- 1.7 1.7 The State must proactively ensure that existing gender discriminatory practices in state land distribution are eradicated fully.
- 1.8 The State must urgently amend the Land Development Ordinance to remove gender discriminatory clauses.
- 1.9 State officials and government bodies must not misuse land distribution policies by introducing settlements resulting in the controlling or oppressing of local populations and indigenous peoples. More recognition is needed about how past governments pursued settlements with political and racist agendas.
- 1.10 The government must proactively protect people from homelessness caused by unfit policies, laws and development projects.

‘My father remarried, we are his first born but we are daughters. In his second marriage he had a son and the land will go to the son according to the law’

- Participant from Mullikulam

‘We want our relatives close by. We want help during any illness. The environment around us should be safe and support our livelihoods. We want to be able to maintain our social relationships.’

- Participant from Akkarai pattu.

‘Be it Swarnabhoomi or Jayabhoomi lands, these deeds have no power at all. It might as well be a deed to a Sohonbhoomi (cemetery). Also why cannot women get land? Only during Premadasa’s time, women got land. Women suffer immensely due to not having lands to their names.’

- Participant from Polonnaruwa

‘To be entitled to own land we need to fulfill specific criteria - live on it, develop it, be married, etc. But land is given freely to corporates What criteria do they fulfill? Families expand but, not land. Priority has to be given to us before it is sold to corporates!’

- Participant from Wellawaya, Moneragala

‘What is land ownership? If we have a permit to our name it is enough. Our plants should be evidence of us having lived here. When we protested for our land they (military) said we never lived here. We argued with them by telling them all the trees we had planted.’

- Participant from Pilakudiyuruppu, Mullaitivu



2. Land Governance

- 2.1 Land governance (decision making about land) must be effectively available and enabled at the institutions geographically closest to the people affected.
- 2.2 A National Land Commission (NLC) vested with the power to formulate national policy on land including State land, land alienation, land use, human settlement and other related matters must be established. Policies on land use, settlement, and alienation should prioritise local peoples' needs and experiences. The NLC should adhere to principles 2.4 and 2.5 in Appendix II of the present Constitution. The NLC should be vested with the power to decide on land alienation and land use by Provincial Councils and government institutions. Any dispute between the Central Government and the Provincial Councils should be decided by the NLC. Any party dissatisfied with the decisions of the NLC shall have the right to appeal to the Constitutional Court/Constitutional bench of the Supreme Court. With regard to State land, local authorities subject to other levels of government shall be in a position to obtain land for any of their activities.¹¹

3. Land Administration

- 3.1 Public officials engaged in land administration must
- closely adhere to the guiding principles.
 - be suitably qualified for their responsibilities.
 - be adequately trained to interact with people with respect
 - be adequately trained on laws, regulations and policies relating to land
 - be competent in both Sinhala and Tamil languages
 - discharge their responsibilities with the sense that sovereignty lies with the people, and that they are serving the people of Sri Lanka to ensure smooth, accountable and satisfactory procedures.
 - not act, fail to act or take decisions for the benefit of politicians, political parties or any other third party as a result of corruption. If such an action or omission is committed, the law should provide for criminal and disciplinary consequences.
- 3.2 Public officials must have job security, adequate salaries and access all other employment benefits without discrimination. They must not be subject to harassment, transfer or punishment for conduct that is lawful and fair. Harassment, arbitrary transfer (as a form of punishment/sign of displeasure) or any other ill treatment caused to a public official dealing with land matters in a lawful and fair manner must be treated as a criminal offence.

11. Adopted from the Recommendation on page 66 of the Report on Public Representations on Constitutional Reform, by the Public Representations Committee on Constitutional Reform dated May 2016.

- 3.3 Public institutions/officials must provide information prior to public consultations regarding the proposed development (or state acquisition, etc.) of land to give adequate time for people and communities to meaningfully engage in consultations. Projects and activities must not be rushed through without evaluating the impact they may have on the environment or the lives of local people directly or indirectly affected.
- 3.4 Land must only be acquired when a reasonable and justified public purpose is identified. When such land is acquired by the State, the Gazette must state the exact purpose. The public institutions/officials must be provided with all necessary information and justifications regarding the public purpose. They must clearly communicate the exact purpose with all those affected. There should be a designated official who is tasked with answering questions from the public regarding the acquisition and plans for resettlement, compensation etc. People who may be affected by State land acquisitions must not experience uncertainty; they must be supported at every step in the process.
- 3.5 Other land acquisitions by the State should provide adequate notice and time for objections.
- 3.6 Proactive public dissemination of land information must be ensured along the following guidelines:
- Programs and activities must be designed and implemented to provide simple, accurate information to people and communities about land rights, administrative procedures, institutions, land policies and its impacts and any decisions or plans relating to land.
 - Information on dispute resolution mechanisms must be provided.
 - Information on land must be reviewed to improve transparency and to evaluate its level of public accessibility. Assistance on how best to achieve this could be sought from the Right to Information Commission to ensure consistency across government bodies.
- 3.7 Public officials responsible for land administration must function strictly in adherence with timelines provided in the law to ensure that people receive timely updates on these processes. They should also proactively inform people of renewals of permits, licenses etc. to ensure that people are provided with adequate notice and opportunity to renew their documents.
- 3.8 Land administration institutions must be equipped with suitable technology to maintain secure, accurate and adequate records relating to land, including sex disaggregated data.

- 3.9 All public officials dealing with land related matters must have access to official information relating to lands. There must be effective co-ordination between various public officials and public institutions involved in land matters. The burden must not be on the people to supply public records (including original documents), to submit certification of public records/information or to clarify public or official information. It must be the responsibility of the public official interacting with the person to provide all public records/information, clarify issues and assist the person with their request or query.
- 3.10 Affected individuals and groups must have access to an independent mechanism to complain of bribery (including sexual bribery), corruption, favouritism and negligence by public officials in relation to their land issues. The independent institution must have the power to hold hearings, call for information and provide remedies. This mechanism must have competent personnel and must be easily accessible to people and communities, in terms of time, language, geography and cost. The mechanism should also have provisions for lodging complaints anonymously and securely, as some may fear repercussions.
- 3.11 Public officials engaged in corruption must be subject to severe penalties (criminal and disciplinary) by law.



4. Dispute Resolution and Reparations

- 4.1 Private land cases filed in courts must be resolved within a reasonable period of time. The government should consider establishing ‘Land Courts’, especially in areas with a high number of private land disputes, to expedite land related issues. The aim should be to resolve all cases within one year, with sufficient notice provided to all affected persons.
- 4.2 The government should consider providing access to mediation for small scale private land disputes prior to litigation.
- 4.3 The government should provide quality legal aid for land disputes, free of charge.
- 4.4 An institutional mandate to handle land grabs must be established as an independent, appropriate mechanism. Addressing land grabs is necessary to address grievances and foster a culture of fairness. It is a necessary part of engaging in reconciliation and working towards peace in affected areas.
- 4.5 The mechanism must be empowered to assess grievances for levels of injustice and social and economic impact. It must have the capacity, expertise and representation to address complex inter-ethnic land disputes and be empowered to recommend solutions.
- 4.6 Reparations must be provided for all those subjected to land grabs. Reparation must not be limited to the distribution of compensatory land and/or money, including loss of income over the duration of displacement. Other support to restart lives and secure livelihoods, education, social welfare, infrastructure and other facilities must also be provided.
- 4.7 The design of such a mechanism should be done in consultation with the communities themselves and sector specific experts and then reviewed once again by the communities prior to the final decision.
- 4.8 Reparations must acknowledge loss and provide for collective and symbolic reparations as well.

‘When we cultivate our paddy on leased land, trusting the rains, and losing everything at times, imagine what would go through our minds passing by our own land, with a hungry stomach, being cultivated 3 seasons a year.’

– participants from Kokkuthoduvai, Mullaitivu

5. Relocation

- 5.1 Relocation must be used as a last resort. It is an option that must respect people's complex relationships to land (including their livelihoods, access to schools, access to services, family and community ties and cultural and religious ties).
- 5.2 Relocation assessments must be prioritised with relevant planning undertaken prior to the initiation of any projects. These must be monitored post relocation as well to ensure that the transition has been well accommodated.
- 5.3 Relocation and compensations must be governed by a law developed in consultation with affected communities on internationally accepted standards including the UN Basic Principles and Guidelines on Development Based Evictions and Displacement¹², and procedures for involuntary relocation. The National Involuntary Resettlement Policy (NIRP) must be used as the minimum standards on which the law is modelled. It is important to reiterate that there must be strict adherence to the principles of non-discrimination and equality. Special consideration must be given to:
 - 5.4 Those who are resettled must be fully and promptly compensated to cover the loss of land, housing and other structures, other assets and livelihoods. Use the guidelines provided in NIRP as minimum standards in compensation process.
 - 5.5 Livelihoods (both formal and informal) - livelihood profiles of the communities must be understood through consultation, and spaces and opportunities created to facilitate and develop livelihoods.
 - Access to education, childcare opportunities and the activities of homemakers.
 - Space and opportunity for occupational and leisure activities as well as necessary facilities for the elderly and persons living with disabilities.
 - Affordable transportation services in the relocated area.
 - 5.6 Relocation to high-rise apartments: Consultation based instructions should be given to planners and administrators of high-rise complexes for low-income communities regarding incorporating specific design/layout needs, formal and informal livelihoods, common space and conveniences and social and welfare development needs into the design of the complex¹³.

12. https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

13. For instance, the communities in Sirisara Uyana in Dematagoda pointed out how restrictions in conducting businesses within the apartment has at times led to criminalisation of their livelihood related activities (e.g. running shops in living spaces).

- 5.7 Relocation must be implemented with adequate awareness programs, discussions and consultations with affected people and communities.
- 5.8 Those who are resettled must have access to clean and sanitary environments.
- 5.9 Those who are resettled must be provided with adequate time to relocate.
- 5.10 Ensure that the right to salvage material from their home prior to relocation/ demolition and compensation for resources that people have to leave behind are included in the relocation plan. Furthermore, all efforts should be made to re-use any public resources (For example electricity posts and wires) that are available on the acquired land.
- 5.11 Mechanisms for monitoring post-relocation issues to facilitate collaborative decision making processes and problem solving must be designed and implemented for a reasonable period following the relocation



6. Demilitarisation and human security

Militarisation has been one of the key drivers of dispossession. Apart from occupying areas which belonged to individuals, the report also discusses how military occupation prevents access to resources such as fishing grounds and palmyrah trees and has affected land use and livelihoods while disrupting local economies. People and communities spoke of being rendered vulnerable; some were driven to live in forest areas with little protection, others were compelled to share accommodation with relatives. Arbitrary action against Tamil speaking persons in particular has instilled some with a fear of engaging in day to day activities including commercial activities. Military presence and surveillance has further resulted in restricted movement and limits on collective activity and engagement with civil society. The discrimination, aggression and imposition of arbitrary rules experienced at the hands of military officials is oppressive. Active and retired military personnel appointed to civilian office such as the urban development authority have also resulted in oppressive measures against people.

The State must demilitarise the Northern and Eastern Provinces with immediate effect. The numerous adverse impacts of militarisation are responded to by the proposed recommendations are highlighted below.

- 6.1 The State must immediately implement a programme to return land taken by the military to people and communities. There are many ways in which militarisation has affected land rights: the displacement of people; the land-grabbing of private, community and commons lands; restrictions on land use, such as cultivation; and the restricted resources related to land use, such as water. It may be necessary to establish a separate mechanism to review the impact of military occupation and resolve people's grievances and claims and if so, the State should establish such a mechanism.
- 6.2 There should be a parallel mandate for reparations, restitution and compensation. People's grievances related to the violence and injustice experienced at the time of displacement must also be addressed.
- 6.3 If people cannot return to their original lands due to security threats (or any other legitimate reason expressed by them) and are willing to accept alternative lands, such alternative lands should take into consideration people's livelihood needs, access to education, public transport and basic services¹⁴.
- 6.4 Military businesses such as hotels, farms and other commercial ventures must be ceased.

14. See also the National Policy on Durable solutions for Conflict-Affected Displacement - <http://nirmin.gov.lk/web/images/pdf/national-policy-on-durable-solutions.pdf>

- 6.5 In any military interaction with civilians, interactions must be sensitive to the social and cultural norms of the local communities.
- 6.6 Military personnel, retired and in active duty, should not be appointed to State institutions and other bodies that are civilian institutions. Steps must be taken to demilitarise State institutions such as the Urban Development Authority.

‘We don’t need the military to feel safe. National security is not about the military. It is about us having free education, us having our lands, where women can live and move freely at any time of day. That is what national security means’

– Women participants from Mullaitivu



7. Land and Identity

- 7.1 Minority communities must not be alienated from land they have historically used. Citing spurious archaeological evidence or reasons related to the protection of wildlife and forest cover to displace these communities must be stopped.
- 7.2 Governments must take immediate measures to cease the abuse of archaeology and history to strengthen exclusivist claims over land, which destabilises ethnic and religious pluralism. The manipulation of archaeology and history in ways that pose a threat to the social, cultural and political existence of minority communities living in a given area should be discouraged.
- 7.3 Erecting and imposing Buddhist symbols including Buddha statues in areas where Buddhism is not practised at present should be stopped.
- 7.4 Land taken away in the past from minority communities should be returned to the original owners with appropriate compensation for the period during which they could not access their land.
- 7.5 Alternative lands of the same value should be allocated to original owners who lost their lands to colonization by the State, especially in situations where the settled populations cannot be evicted from the lands which were given to them by the State.
- 7.6 Changing demographics of areas where minority communities live in significant numbers, especially the Northern and Eastern parts of the island, by settling Sinhalese and Buddhists from the South should be ceased.
- 7.7 Territories and water resources over which people from different ethnic and religious communities make competing ownership claims should be resolved in an amicable manner through dialogue and discussions to avoid triggering further communal tensions in that area.
- 7.8 Land should be allocated to communities that have been denied land due to caste discrimination in areas where educational, healthcare and transport facilities are available for them to pursue their economic livelihoods and social progress.

‘Just as my ID is important for my identity, my land is my identity. This is who I am.’

– a participant from Vattuval, Mullaitivu

8. Land and Livelihood

80% of the agricultural land in Sri Lanka is being used by small scale producers. Land policies must therefore protect and ensure the sustainability of their livelihoods. As such, policies on agriculture and fisheries must complement land policy and its implementation. Policies should also recognize women as primary producers, thereby identifying their intimate connection to land and water resources through their livelihoods and addressing their needs.

- 8.1 Recognise people's right to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and develop national agriculture and fisheries policies which provide:
- A decrease in the usage of chemical agriculture and other environmentally harmful food production systems
 - Adequate infrastructural support (e.g. access to storage, cold storage facilities, better roads and utilities such as water and electricity) to farmers and fisher people.
 - Access to equitable and just markets for farmers and fishermen
 - Support for relevant and necessary technology, skills and knowledge on innovative and environmentally friendly practices for farming and fishing
 - Facilitate the conservation and sharing of native/traditional varieties of seeds and food production systems
 - Ensure that engagement in farming and agriculture provides living wages and benefits so that it is a viable income earning option for youth
 - Ensure a minimum 30% resource allocation for women's livelihoods and access to infrastructure and decision-making bodies and 30% minimum representation in all levels of decision-making bodies.
- 8.2 People must be provided with information regarding services relating to agriculture and fisheries that are provided by governmental and private institutions.¹⁵
- 8.3 Small scale producers must be ensured the right to their lands, water and commons, and should be given priority over large-scale land transfers to multi-national companies.
- 8.4 Decision making processes related to local water regulation and irrigation regimes and decisions about which varieties of crops should be planted must come from community participation. The water needs of companies, industrial zones and commercial enterprises cannot be prioritised over farmers' needs (as seen through examples of Uma Oya and Mahaweli projects).

15. For example, Polonnaruwa highlighted the lack of awareness about the support and extension services which State and private institutions currently provide to farmers.

- 8.5 Farmers should also be given the necessary skills to better adapt to climate change and receive the necessary support to incentivise the practice of sustainable agriculture rather than intensive monoculture farming.
- 8.6 The State must design a policy that recognises women’s care work and ensure new social security programmes that support care work, including (but not limited to) maternity support, and support for the care of elders and family members with disabilities and/or illness.
- 8.7 The State must enact laws that ensure labour rights of workers in the informal economy, including a decent living wage, maternity benefits, health insurance, childcare support and pensions.
- 8.8 The State must take necessary steps to implement the UN Declaration on the rights of peasants and other people working in rural areas in Sri Lanka.
- 8.9 Farmers in the dry zone who engage in farming for only half the year require access to social welfare and/or alternative livelihoods to support themselves for the other half of the year. Special attention must also be given to the livelihood profiles of women. Women are at greater risk of losing ownership of their lands due to archaic patriarchal laws or discriminatory socio-cultural norms and practices.

For example, in Silavathurai women expressed the need for livelihoods that can be pursued in their own homes. The livelihoods upon which women headed households and war widows rely can be more vulnerable than others, which further incentivizes women to travel abroad as domestic workers. It is also important that workplaces chosen by women provide adequate safety and health protection for them.

‘We were always self sufficient and not reliant on anyone else for our survival. Now these state driven large scale development projects like Uma Oya have destroyed our water and soil. We have been displaced and stripped off our livelihoods.’

– Participant from Badulla

‘The development we need here is not cricket stadiums and conference halls. We are farmers. Our children also engage in agriculture. What we need is for a water project to enable us to cultivate both seasons.’

– Participant from Hambantota

‘In Vattuwalahal ancestral and permit land of many acres are under the navy and access to the Nandikadal lagoon where the villagers use to go fishing has been blocked by them. Now they have to get permission from the navy to enter the lagoon.’

– Participant from Mullaitivu

9. People-centered economic development

Land is a central issue in economic development. This means people's right to use, possess and own lands is directly affected by development projects. There are also indirect ways in which development activities affect people's land use, possession and ownership, including the impact on the water table, on individual living conditions and lifestyles, on livelihoods and agricultural activity, and environmental impacts leading to human-wildlife conflicts and the corresponding impact on human security.

The consultation revealed that many people's experience of development is extremely alienating. A lack of awareness, lack of consultation, lack of compensation, failure to understand people's relationship and investment in lands, lack of consideration of impact on the lives of local communities, and a lack of consideration of opportunities for local communities to benefit from these developments were all key issues that were discussed by affected individuals and groups.

- 9.1 The people of Sri Lanka, and particularly communities who are residing in the geographic areas for proposed development, must be prioritised and must benefit from development projects. Economic advantages for private companies, industrial zones and commercial enterprises (including public-private enterprises) must not override this fundamental benefit to the people. Broad notions of benefits to the country and trickle-down benefits to the people must be replaced with information on actual, tangible projected benefits to local people and communities.
- 9.2 Prior to initiating development projects, the government must ensure there is public awareness and local engagement with development plans. It must establish collaborative mechanisms with local affected communities to conduct consultations, analyse concerns and develop redressive recommendations and responses. It must further establish feedback mechanisms that engage local communities and involve multi-sector experts to meaningfully respond to communities and then recommend changes to development plans where needed.
- 9.3 Land acquisition for development projects must strictly be supported by:
 - a. an economic development strategy
 - b. a human and environment management strategy
 - c. a human rights impact assessment, including a strong gender component¹⁶

16. See https://www.ohchr.org/Documents/Issues/Development/DFI/MappingStudyontheHRRiskImplications_MegaInfrastructureInvestment.pdf

- d. a physical development plan addressing the above-mentioned strategies
 - e. a State sponsored independent feasibility study and report
 - f. a State sponsored independent Environment Impact Assessment (EIA)
 - g. adequate lead time for objections, consideration of alternative reports, strategies and consultations.
- 9.4 If relocation is absolutely necessary and meaningful consultation processes have been completed, relocation plans and processes must commence prior to the development project activities that will displace and affect individuals and communities.
- 9.5 The State must ensure timely registration of all relocated people into meaningful social security programmes and ensure quality health and education facilities are accessible in these areas.
- 9.6 Projects and activities causing redirection or extraction of natural resources must be evaluated for their impact on people living in those lands, as well as environmental impact and the impact on availability of local natural resources to those living in the area¹⁷.
- 9.7 Activities conducted by large-scale agricultural companies, such as extracting local water resources and erecting elephant fences, must be reviewed and addressed¹⁸. For example, there has been an increase in human-elephant conflict in the Dole Company and Sugar Corporation plantation lands in Buttala and Pelwatte.
- 9.8 Tourism must be promoted in a manner that protects and benefits local communities, local resources and the environment.

'My house was completely destroyed by the Uma Oya project. The land is cracked and the paddy field has sunk. For 3 years we haven't done paddy cultivation. Tamils, Sinhalese or Muslims, we are all humans and this injustice shouldn't happen to anyone.'

– Man from Badulla

17. In numerous tourism related projects in coastal areas, those who profit from them reside far away from the communities where these projects are taking place. For example, sand from Musali and timber from Badulla are extracted and transported to Colombo.

18. For example, the reduction of the underground water table and the land subsidence resulting from ground water extracted by the Uma Oya project. The land leased to CIC to conduct research is used to conduct commercial farming, overusing pesticides.

“This is all considered development when these big companies come and build factories but the victims of this so called development is people like us living in the area.’

– Woman from Kuchchaveli

‘We’re not against development We understand it’s important but, it needs to ensure minimal damage to the environment & be undertaken in consultation with those directly affected. Govts. are not in the habit of consulting people prior to implementing development projects’

– Participant from Polonnaruwa



10. Plantation Lands: historic grievances and exploitative labour practices

The hearings revealed many hardships in the lived experiences of people working in various plantations in Sri Lanka.

The historic experience of injustice caused to the Malaiyaha Tamils and the impact it has had on their lives and futures is undeniable. The generations of exploitative extraction of their labour, together with disenfranchisement and systematic exclusion from decision-making processes, lack of support from or access to public services and a general lack of care or support for their well-being requires special immediate attention.

People working in plantations in Pelwatte and Hingurana are also enmeshed in exploitative labour tied to land use and possession of land and spoke of the economic, social and generational consequences.

10.1 Recommendations specific to Malaiyaha Tamils

- 10.1.1 At least 20 perches of land, with a house each should be granted to whole resident families of plantations as a consequence of working for the plantation. Full ownership of this land should be provided by way of a proper deed, so they have the freedom to decide how to utilize this land for housing and household food productivity. Ensure women get equal ownership for land.
- 10.1.2 Ensure the people living in plantation areas have access to services provided by local government authorities similar to other villages in Sri Lanka.
- 10.1.3 Historic grievances should be taken into account when restoring benefits that are due to the plantation workers.
- 10.1.4 Plantation managers and other relevant authorities should be required to provide adequate information to affected individuals regarding disasters and any other threats to land use and occupation. Disaster management policies should include contingencies for those affected in their planning of permanent and temporary relief measures. For instance, warnings about natural disasters must elaborate on where the threats exist and routes to safer grounds.

10.2 Recommendations relating to people engaged on all plantation land

- 10.2.1 Develop a standardised policy on plantations of mono-crops. This should especially address labour rights including occupational safety and health standards. For example, a worker-owned cooperative model or company of diversified sustainable agro-ecological systems on watershed based development.

- 10.2.2 Provide access to agriculture land for plantation workers (atleast ½ acre), and assist them to develop ecological home-gardens to ensure their food security.
- 10.2.3 Support plantation workers to develop mono-cultural plantation land as diversified agro forestry, thereby promoting the plantation community to get involved as plantation small holders.
- 10.2.4 The policies pertaining to the management of plantations must be reconsidered in order to ensure that the labour rights of plantation workers are protected and other social and environmental externalities are taken into consideration.
- 10.2.5 Remove livelihood controls and limitations placed over lands provided to plantation workers for living and accommodation, such as requiring permission to grow food for consumption or use resources upon such lands.
- 10.2.6 Remove controls placed by plantation companies on the citizenship rights of plantation workers, such as limiting their access to water and electricity and other facilities.
- 10.2.7 Adopt the similar process as in other places of the country (conducting land kachcheries) in allocating State land to plantation communities to provide them with proper deeds.

“Why did our ancestors come here? These millionaires can live like this because of us. We even work in their homes. But we are not worth anything to them. The tea we pluck is more valuable to them than us. We are worth nothing.”

‘We wouldn’t send our children to work in the sugarcane plantation unless we had no other choice.’

- Participant plantation worker from Pelwatte Sugar Corporation, Moneragala, reflecting on the hardship and social discrimination faced.

11. Environment and climate change

Most of the participants consulted were aware of how their livelihoods were intertwined with the environment and how they interact with and impact on one another. This was particularly highlighted when topics pertaining to the human-wildlife conflict and changes in weather patterns were discussed. It was also broadly understood that the state of the environment underpinned the livelihoods of participants. When discussing the impact of mega-scale projects, the adverse effects on the environment were described in detail.

During these discussions, the institutions mandated to protect the environment (mainly the Forest Department) were criticised for the heavy-handed approach they took when demarcating protected areas. There is a fundamental lack of inter-institutional communication, with intentions not communicated between administrative institutions and impacted communities, and where corruption and individual gains overrode environmental concerns with a corresponding lack of institutional motivation to consider the interests of affected people.

Many recommendations below refer to these failures in communication which alienate relevant communities from the decision-making process. The recommendations also focus on establishing certain minimum environmental standards when land use policies and laws are enacted and implemented.

- 11.1 Strict regulations should be imposed to control harmful land use practices such as excessive soil and sand mining, natural resource extraction, high usage of agro chemicals and the destruction of sensitive ecosystems for development projects. The National Land Use Policy should be revised to address these needs and to promote environmental friendly land use practices.
- 11.2 Develop a comprehensive national mechanism to address the impacts of climate change, especially to protect the livelihoods of farmers and other food producers from negative impacts of climate change.
- 11.3 The following procedures should be followed before declaring a wildlife reserve, forest reserve, archeological reserve, Mahaweli development area or tourism development area:
 - a. A feasibility study should be conducted to identify whether there is a real need to acquire the relevant land.
 - b. A survey should be conducted on the land to be acquired.
 - c. A notice should be published in public places clearly stating the land to be acquired along with a governmental gazette notice.

- d. A one-month timeframe should be given to the people to appeal against this gazette.
 - e. An appeal board should inquire into projects where the land to be acquired has competing claims of ownerships or usage. (This committee must include members of all departments working on the project, civil society workers, representatives from the affected communities, etc. in order to decrease political influence in the decision-making process)
 - f. The gazette once published must be publicised.
- 11.4 The planning for forest conservation must be based on real, justifiable standards of maintaining a forest cover percentage. For example, the percentage of forest cover should be determined at different scales: at the national scale, the regional scale and the scale of specific ecological zones, etc. Furthermore, plans to conserve forests also need to take into account the contiguous nature of forested areas to avoid piecemeal conservation efforts.
 - 11.5 Reservations must not be assigned under the protection of the Forest Department for commercial use without due process.
 - 11.6 There must be a sanctuary or village forest protection area declared for buffer zones surrounding natural habitats which exist adjacent to areas of human habitation.
 - 11.7 There must be sufficient planning to ensure that the environment is able to regenerate in areas affected by development projects. This plan must be part of the development project design.
 - 11.8 Small scale and community-based tourism must be encouraged, especially in the fragile ecosystems in Kuchchaveli, Nilaveli and Kalpitiya, as large-scale tourism projects have been shown to have a detrimental impact on the environment.
 - 11.9 A forest garden concept and mixed crop cultivation (especially for plantations) should be promoted, as this contributes to the maintenance of forest cover, facilitates improved biodiversity and improves water catchment.
 - 11.10 The government should take active steps to reforest water catchment areas, forest reserves and village forests that have been deforested.
 - 11.11 Steps must be taken to limit the expansion of commercial crops such as the oil palm in the central hills and water catchment areas, as oil palm plantations are known to negatively impact the ground cover which in turn leads to reduced ground-water levels, soil erosion and landslides.
 - 11.12 Water catchment areas and areas prone to soil erosion and landslides in

the central highlands should be managed systematically according to conservation principles.

- 11.13 Regulations should be introduced to control the use of natural water resources for commercial usage, such as bottled water projects and commercial cultivation.
- 11.14 A solid waste management policy must be operationalized by providing supporting mechanisms and appropriate legal frameworks.
- 11.15 The sustainable coexistence between humans and wildlife must be facilitated by interconnecting fragmented ecosystems and facilitating the processes by which forest plantations transition to natural forests.
- 11.16 A subsidised insurance programme must be implemented to ensure that compensation schemes can effectively address the fallout of human-wildlife conflict. Retroactively, compensation mechanisms should be based on assessments conducted in consultation with affected individuals and groups (including farmer societies).



Annex 1

Context by literature review

The pervasiveness of Sri Lanka's challenges when it comes to land use and ownership are historic and complex, steeped in the control of successive state-centrist governments, contentious politics of ethnic marginalisation and practices of corruption. Land issues connect with identity, gender, livelihood, capital, labour, water, climate and environment. As such control of land use and ownership is a vast subject entangled in multiple laws, policies and administrative practices.

This context analysis is developed on a literature review. The literature review addresses some of the relevant overarching trends in land issues. It is undertaken with a deep appreciation that land issues are extremely complex, and each specific issue must be understood in its local historic and current context, and that different socio-economic and political factors may result in differences in demands and tensions in each locality. In attempting to piece together an overall context much of this nuance will not be captured. The value then in attempting an overall contextual understanding through a literature review is to understand the interests at play.

This literature review examined commentaries on State sponsored land commission reports, policies and laws, and non-governmental reports on land issues produced in the past 10 years. It is noted that almost all reports based on broad based consultations with people regarding land issues are in relation to the war. The one exception is the report of the Public Representations Committee on Constitutional Reform.

Introduction

Sri Lanka has a total land area of 65,610 sq. km. and a population close to 21.5 million and an average population density of 342 person per sq. km. (Central Bank of Sri Lanka, 2018). Use of land for agriculture was estimated at 65%, urban land use at 0.6% and forest lands at 28.8% (Land Use Policy Planning Department, 2007).

Land is a strategic socio-economic asset, particularly in agriculturally dependant economies where wealth and survival are measured by control of (and access to) land (Korf and Silva, 2003). As a result, conflicts over land often combine both strong economic and emotional values (Pons-Vignon, N. and H. Solignac Lecomte, 2004). When symbolically or emotionally important land or property is at issue, the chances of conflict increase – competition over land is often, at its core, about power, both socio-economic and political.

There is a long way to go, however, to address issues of landlessness, patriarchal land practices and capitalist cronyism in private development interests, not to mention historic inequalities rooted in ethnic nationalism, heightened during decades of war, which still persist today.

Land is a key issue in post-war recovery and reconstruction, and any measures which fail to address complex land related grievances often lead to the continuation of historic grievances. “The fact that land is a scarce and immovable resource has contributed to making it a source of conflict and power in societies throughout history. Population growth, urban sprawl, increased global demand for land and environmental problems like soil erosion have added fuel to many such conflicts” (Lindberg and Herath, 2014: 890). It has also been posited that restricting rights to land by control of land tenure creates complexities in people’s relationships to land and that it is important to understand that people’s perceptions and interpretations of land rights does not fit neatly into existing limited legal categories (Paranage, 2018). Paranage in another paper on legalities of encroachment, also shows how laws can create ‘illegality’ by studying impact of the ‘minimum rule on subdivision’ on local discourses on encroachment (Paranage, 2018).

Attempts to specifically address land restitution in post-war Sri Lanka have come in many forms, including the Lessons Learnt and Reconciliation Commission (LLRC), the Consultation Task Force for Reconciliation Mechanisms report (CTF), Zonal Task Force (ZTF) interviews in specific locales that fed into the CTF report, the Public Representations Committee on Constitutional Reform (PRC) and numerous contributions by academics, civil society actors and international bodies, including the United Nations (UN).

There is a long way to go, however, to address issues of landlessness, patriarchal land practices and capitalist cronyism in private development interests, not to mention historic inequalities rooted in ethnic nationalism, heightened during decades of war, which still persist today.

Land Policies

Successive colonial powers deployed varying land policy objectives. The rule of the British introduced a two fold land policy - state land management and establishing a legal mechanism for private land transactions which continues to shape Sri Lanka’s land registration and cadastral survey system to date (Divithure and Tang, 2013).

State Commissions

The findings of the three state Land Commission reports of 1927, 1957 and 1987 provide important insights. The Commission of 1927 placed focus on preserving the agricultural labourer which resulted in conditions on use and fragmentation seen in permits and grants under the Land Development Ordinance (De Silva, 2016). This was in accordance with colonial British policies such as the Crown Land Encroachment Ordinance of 1840, by which all waste lands, forest lands, unoccupied and uncultivated lands are presumed to belong to the state. This effectively established that 82% of land in the country was state land. The policy was geared towards a supposed ‘caretaker’ state managing (and controlling) large swathes of land for labourers and using land to reward cooperative middle- and

upper-class subjects (Eager, 2008). The Commission of 1957, recognized problems in the administration of the Land Development Ordinance and among other things recommended fewer restrictions on allotments in the settlement schemes (De Silva, 2016). The report also noted that a high proportion of land alienated under the Ordinance had not been satisfactorily developed and attributed features of tenure and other reasons such as unsuitability of land for cultivation, lack of roads and marketing facilities. The Land Commission of 1987 is said to recognize widespread problems of landlessness, large scale encroachment' of state lands and the restrictive nature of the land market. The Land Commission of 1987 proposed that 'land policy must necessarily form an integral and organic component of wide national development strategy. It should neither be treated in isolation nor confined to State land alone, but must rather be a comprehensive review at national level'. A Land Commission has not been conducted since the 1987 report.

Policy of colonization schemes

Sri Lanka implemented land redistribution programmes through colonization schemes since the 1950s, Gal Oya and Mahaweli are two of the biggest such schemes¹⁹. Colonization was seen as slow between 1931 and 1947²⁰ and as gaining momentum after independence (Bastian, 2009). The literature describes clear evidence of changes in demography that resulted²¹, notes that the land distributed per household reduced over the years²² and that due to conditions of tenure including restrictions on succession and advantaging eldest sons, the second generation settlers were adversely affected and dispossessed (Maddumabandara, 2000).

19. The Gal Oya scheme was implemented between 1948 and 1952 and was the first post independent multipurpose development project in Sri Lanka. It is estimated that approximately 80,000 were resettled (Kulasinghe, 2015). The Mahaweli programme commenced in 1970, spans 13 administrative districts and 14 irrigation systems and the Mahaweli Master Plan earmarked 365,000 hectares of land for development (Law and Society Trust, 2015). It is estimated that 100,000 (Jayaweera, 2002) to 134,000 families (Abeywickrama, 2015) were resettled.

20. 13 colonies involving 3,145 were settled between 1931 and 1947 and between 1948 and 1953, 10,426 colonists were settled in 16 colonization schemes. (Bastian, 2009)

21. For example, in Trincomalee, the Sinhala population increased from 21 per cent in 1946 to 33 per cent in 1981. The Muslim population in the same periods remained fairly stable at approximately 30 per cent. Meanwhile, the Tamil population in Trincomalee decreased from 58 per cent in 1911, to 45 per cent in 1946, to 36 per cent in 1981. In Ampara, an administrative district carved out of the Tamil majority district of Batticaloa in 1963, Tamils became a minority of 24 per cent, with Muslims constituting 46 per cent and Sinhalese 29 per cent. By 1981, Sinhalese had increased to 38 per cent of the district, with Muslims at 42 per cent and Tamils at 20 per cent.”;(International Crisis Group, 2008).

22. Until 1953 the norm was 5 acres of wetland and 3 acres of highland. In 1953 this was reduced to 3 acres of wetland and 2 acres of highland, and in 1956 it was further reduced to 2 acres of wetland and 1 acre of highland. In the newer settlements the uniform allotment is 2.5 acres of paddy and 0.5 acres of homestead

The political claims responding to the colonization policies are also well documented. The Soulbury Commission of 1944 saw Tamil politicians raise complaints of Sinhalese settlements in the North and East of Sri Lanka. The Tamil Federalist Party tabled colonization as a political issue and the Tamil United Liberation Front (TULF), which contested on a secessionist platform, listed the colonization of historically Tamil territory by Sinhalese as one of the nine justifications for the separate state of Eelam (Vaddukkodai Resolution, 14 May 1976). The Accelerated Mahaweli Programme claimed in 1982 that Dry Zone settlements would reduce ethnic tension through the reduction of unemployment. However, the programme appealed to the image evoked by the United National Party (UNP) during previous settlements in the Dry Zone which was of an “idyllic Buddhist past... in which Tamil Hindu invaders were hated enemies” (Peebles, 1990). This was countered by Tamil national groups with the image of the Tamil Homeland in the Northern and Eastern provinces. Land and in particular the Dry Zone region which both Sinhalese and Tamils viewed as a traditional homeland, was framed as an issue of irreconcilable ethnic nationalism. The colonization schemes of the Dry Zone reflect some of the damaging results of government policy on land use and inequality, and links to the rise of violent conflict in Sri Lanka. Peebles (1990) notes how records from the 19th century suggest internal migration to the Dry Zone was mixed, with Sinhalese cultivators in the southwest (between Kurunegala and Puttalam) and Hindu and Muslim rice farmers in the east between Batticaloa and Trincomalee. Resettlement in the Dry Zone escalated in the 20th century and became a matter of urgency for Sinhalese politicians keen to compete for votes.

Land redistribution policy of the 70's

Sri Lanka's land reform in the 1970s focused on nationalizing large tracts of land which were privately owned. Socialist policies between 1956 and 1977 was said to focus on central planning, nationalization, state intervention and monopolies (Jayaweera, 2002). The Land Reform Law of 1972 created a ceiling of 25 acres of paddy land and 50 acres of other land for private ownership. Under this policy it is said that a little less than one million acres was acquired, half of which was coconut lands, and that there was no significant land redistribution that resulted (Bastian, 2009). In 1975 state ownership extended to export oriented plantation crop land covering thousands of acres. This too did not result in large scale redistribution. Bastian states “*The politics of land reforms of the seventies was peculiar. The net effect was to increase the state ownership of land rather than distribution of land to the landless.*”

Policy and practice rendering landless minority populations

The policy against **Malaiyaha Tamils** owning land can be traced as far back as 1920 to agitations by nationalists (Samaraweera, 1981). The policy was also implemented by enactment of laws which excluded this ethnic group from land ownership and in 1948 by ensuring they were not given the right to vote. Samaraweera also states that “*With the enactment of the Land Development Ordinance, the Indian Tamils*

for all practical purposes ceased to exist in terms of land policy.” Even though recognition of citizenship made some progress and was fully acknowledged only by 2009, land rights continue to be an issue of contention and has been the main means of control resulting in sustained poverty and exploitative labour practices involving this minority ethnic community.

There are also numerous examples of how ‘policies’ which are not articulated in official policy papers but are demonstrable actions or inactions of government or government institutions that have related to land and landlessness.

The resettlement of Muslims evicted from North by the LTTE has been described as follows *“A change of government policies in 1995 included a shift in policies towards IDPs nationwide, and enabled an opportunity for some people to move out of the camps and into more permanent settlements. What was new in the case of Puttalam was the active role people played in organising themselves to buy land and build settlements. Whereas under other housing programmes the government provided land, in this case people had to buy land themselves, as the government would not support the permanent shift of Muslims from the north. Most people bought very small plots, often only 10 perches (c.250 m²). The size of these plots prevented them from carrying out any farming activities, and they did not have any land to pass onto their children, which reduced the sustainability of the programme.”* (Brun and Lund, *“Unpacking’ the Narrative of a National Housing Policy in Sri Lanka.”*)

Similarly, an assessment of the issue of tsunami housing which was also sometimes tied to land allocation particularly for those needing to be relocated from the buffer zone demonstrated the government’s failure to ensure equal treatment and protection of minority interests. *“After the tsunami, many of the housing practices ... exemplified how weak or uninterested the Government was in the reconstruction of conflict-ridden and marginalised areas. The GoSL concentrated its efforts and its professional capacity on rebuilding the south together with the INGOs, leaving the harder hit and more isolated regions in the east and north to a plethora of donor organisations or to the Tamil- and Muslim-dominated local authorities. This situation created professional, ethnic and cultural biases in housing policies and guidelines, and their implementation of the policy.”* (Brun and Lund, *“Unpacking’ the Narrative of a National Housing Policy in Sri Lanka.”*)

Military occupation and destruction of private property and places of worship

Occupation of lands by the military is an issue that continues post war. It is an issue primarily for the Tamil community in the Northern Province. Reports also demonstrate that the practice has affected all major ethnic communities in the Eastern province (HRW, 2018). In 2017, it is reported the government claimed that the military was occupying approximately 119,000 acres of land in the north and east, which includes 89,000 acres of state land and 30,000 acres of private land but that it was unclear as to whether this included land legally acquired during the war. (Human Right Watch, 2018) Similarly the HRW report documented several

reports of destruction of private property and places of worship that affected mainly Tamils and Muslims in the North and East.

Development policies

Government policies for development have accelerated post war and land has become a key concern in this agenda. The National Physical Plan 2011-2030 saw recent revival with focus on developing metro cities in the Western, Northern, North Eastern, Eastern and Southern regions. Development projects underway in Colombo have led to displacement of urban poor with a host of unfair and unjust practices. Similar plans for the other metro regions raise concerns of lack of consultation, unfair practices, displacement and increased inequality and poverty. Urban development in Colombo highlights lack of policies to address problems faced by affected displaced people, the lack of legal protections and the (mis)use of eminent domain to serve true public purpose (Perera, Uyangoda and Tegal, 2017).

No national policy

As far as a national land policy for Sri Lanka is concerned there were several failed attempts to formulate one. In 1979 a Land Use Policy Planning Division of the Ministry of Land and Land Development was established however no noteworthy progress was made (CPA, 2005). In 1990, a Presidential Task Force on Land Distribution and Utilisation was appointed, and in 1995 a Committee of Experts was appointed to formulate a policy framework on land and agriculture. Although drafts of National Land Use Policy and the National Land Policy were drawn up there are no national policies in place to date. There is, however, a National Involuntary Resettlement Policy which the Cabinet approved in 2000 which provides a framework to plan and implement the resettlement of those who are affected by the acquisition of land for public and private sector development projects. The responsibility of policy formulation on land is with the National Land Commission which provides for provincial council representation. However, a National Land Commission as provided for by the Constitution has not been convened and this vacuum has seen the central government decide and implement policies and programs often motivated by its own majoritarian interests .

Land Laws

The enactment of land laws must be read together with the land policies set out above. Over the years, laws relating to land have accumulated and the administration and management of land in Sri Lanka is governed by more than 39 operational laws (Mapa et al., 2002).

It is noted of colonial laws that ‘...*legislation as the Partition Ordinance of 1863, Land Surveys Ordinance 1863, Services Tenure Ordinance 1870 and some other which served to formalize and smoothen the process of land transactions but conceived essentially as a means of fostering the growth and development of the plantation*

sector' which was of colonial interest at the time (Herath, Janaranjana. 2006).

The Land Development Ordinance of 1935 was designed to implement the recommendations of the 1927 Land Commission and, along with the Crown Lands Ordinance of 1947, it remains one of the key legal instruments of state land alienation and settlement schemes and defines the terms under which state land may be redistributed for individual use (Lindberg & Herath, 2014). The 1935 Ordinance also created mechanisms for colonization schemes, to attempt to establish more prosperous settlements in the Dry Zone and relieve poverty and unemployment in the Wet Zone (Peebles, 1990). The twin ordinances of 1935 and 1947 together dictated how land permits are issued, often as temporary permits with an assumption that permanent ownership would come later on – although farmers were forbidden from altering any buildings on the property or selling on these permits, making their use highly restricted in practice. Restrictions on land use have also led to a number of problems, including the growth of black markets in land purchases (Lindberg & Herath, 2014).

The Land Acquisition Act No. 9 (1950) dictated how state land could be taken over by the government for stated public purposes. Fonseka and Raheem write that “Land that is needed for public purposes should be acquired in accordance with established legal processes such as that found in the Land Acquisition Act. In practice though, ad hoc processes have been followed where IDPs are unaware whether their land has been acquired and for what purposes. In most cases, compensation for acquisition of land has been non-existent or very low” (Fonseka and Raheem, 2011). They further note that there is a gap in understanding between what individuals are promised (for instance, by politicians) with regards to land use and ownership, and actual land use laws, permits and policies, all of which can lead to further conflicts.

Land Reform Law of 1972, is seen as a response to a growing land shortage for new settlement in the wet zone and the massive development cost of land for colonization in the dry zone. It fixed a ceiling on private ownership of agricultural land at 25 acres for paddy land and 50 acres for other land.

The Thirteenth Amendment to the Constitution introduced in 1987 was a response to the decades of violent conflict and the result of Indian involvement and pressure to resolve the conflict. The amendment introduced devolution to the unit of provincial councils including powers over land and recognition of Sinhala and Tamil as national languages. The subject of land meaning ‘rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement’ was devolved to the Provincial Councils. These land powers have two limitations: 1) President retains the power to alienate all state land on the advice of the relevant Provincial Council and 2) Second, the Government may utilize land within a Province in respect of irrigation schemes relating to rivers running through more than one Province or inter provincial irrigation and land

development schemes. The limitation on Provincial Council land powers over state land is a significant limitation as the State owns 82% of land.

The power to acquire and requisition land is found in the Concurrent List of the Constitution and therefore both the Central and Provincial governments can exercise these powers. There are number of laws that enable this power for the central government - Land Acquisition Act, State Lands (Recovery of Possession) Act, Requisitioning of Land Act, and the Land Resumption Ordinance. However, the Provincial Councils have not been known to exercise this power in practice.

The legal framework sets the stage for land administration. The central government has been shown to have direct and indirect control over Provincial Council land powers. Land development schemes are a subject of the Central government and are administered by the Land Commissioner. In 1992 Divisional Secretaries were empowered to exercise powers relating to State land . As a consequence, the subject of State Land comes within the purview of the Land Commissioner General and Divisional Secretaries (both controlled by the Central government), and the Provincial Land Commissioner (appointed by the Governor of a province who in turn is appointed by the President).

Commenting on the political implications of the constitutional legal framework (Bastian, 1997 and 2013) draws a connection between ethnic tensions leading to conflict, colonization schemes which changed ethnic composition especially in the Eastern province and land powers.

The more recent laws and proposed laws demonstrate a move towards opening land to free market economy. The Land (Restrictions on Alienation) (Amendment) Act, no. 3 of 2017 essentially removed restrictions on land lease taxes on lands leased out to foreigners and foreign companies. In November 14, 2017, the Cabinet of Ministers agreed to amend the Land Development Ordinance 1935 (No. 19 of 1935) to facilitate release the land for development projects. In 2018 the government budget revealed plans to amend the Paddy Lands Act, No. 1 of 1958 and the Agricultural Lands Act (No. 42 of 1973) to allow the use of paddy lands for non-agricultural purposes (Chamikara, S). In 2019 another amendment to the Land (Restrictions on Alienation) Act was proposed in an attempt to allow for the sale of lands to foreigners and foreign companies. In 2016 the Cabinet Committee on Economic Management proposed that legislation be drafted to establish a Land Bank with the authority to disburse of State lands with the justification that this would address the complexities involved with dealing with multiple state institutions in alienating state land.

Land and gender

It has been noted that in Sri Lanka women customarily had significant rights in landed property among the major communities of all religions (Agarwal, 1994). The Land Development Ordinance has been identified as an explicit legal discrimination resulting in surviving spouses and daughters being deprived of inheriting land (Jayawardene and Guneratne, 2010 and Herath, 2010). Land issues can substantially affect gender relations, particularly where patriarchal customs alienate or displace vulnerable women in post-war areas leading to financial security, family breakdown, and even suicide. At its heart, many of the issues of land and gender relate back to power: the lack of decision-making power that women have in questions of governance and legal reform, and the lack of power to participate in peacebuilding processes and therefore influence reconstruction and rehabilitation efforts.

The concentration of power as it relates to land issues has long been a pernicious issue in Sri Lankan politics. Fonseka and Raheem, in looking specifically at challenges to land use in the Northern Province, note that “Power is concentrated in the hands of few key individuals who control much of the important government functions and most of the funds that impact on land rights of citizens” (Fonseka & Raheem, 2011: 38).

The centralized state and international actors, therefore, have the ability to contribute to and shape land policy reform and address grievances of those dispossessed, but vulnerable women (along with other dispossessed groups, such as the Muslim minority ousted from Northern Sri Lanka by the LTTE) have very little control of the debates and therefore, their future livelihoods. Patriarchal norms and laws make it very hard to reclaim land that is rightfully theirs and add an economic dimension to their family’s cases of disappeared husbands, fathers or brothers (International Crisis Group, 2011).

Kamanthi Wickramasinghe, writing in the Daily Mirror in 2016, identifies numerous challenges to instituting gender equality with regards to Sri Lanka’s land laws, noting that its progress does not match constitutional commitments or obligations under international law, for instance, to secure land rights. Fonseka and Raheem underscore that “Gender can play a significant role in the challenges that an individual can face in owning, controlling and accessing land,” as women are not perceived to be heads-of-household in a traditional sense and can struggle against government administrators and military personnel who regularly exhibit patriarchal attitudes and practices (2011: 108).

Post-war Sri Lanka

As Unruh and Williams (2013) note, the end of an armed conflict often precedes another kind of conflict: affected populations will quickly seek out land or land-based resources. There are myriad examples of this happening in the immediate aftermath of fighting around the world as parallel examples of how uncertain terms in peace accords or continuing insecurity surrounding land tenure claims can contribute to renewing a civil conflict, or the launch of new ones.

Post-war reconstruction during the Rajapakse regime came with “a number of strings attached” (Goodhand, 2012). It allowed an unabashedly centrist government to consolidate its control over pre-dominantly Tamil areas and thus quash (it argued) any potential resurgence of Tamil rebel militancy.

Fonseka and Raheem note that the use of reparations, including the restitution of land, could positively contribute to long-term peacebuilding efforts, as well as preventing the further marginalisation of war-affected communities. Unfortunately, this has not been the case in Sri Lanka. Throughout the three-decade war and its aftermath, land has played a prominent role on national and local political agendas, and numerous commissions and civil society groups have highlighted the need to facilitate peaceful coexistence, reconciliation and durable solutions to historical grievances through land restitution. Yet displacement was a particular theme of the conflict, with fighting in numerous hotspots in the northeast, as well as High Security Zones (HSZs) and other free trade or tourist development zones, displacing tens of thousands from their homes or the land they are dependent upon for their livelihood. The prospect of return and restitution has not been a straightforward one.

Sarah Pantuliano writes on return and resettlement of IDPs in varying socio-political and cultural contexts, and was quoted in the LLRC report: “Land issues often come to the fore in the post-conflict periods as populations seek to claim and reclaim land... Even in supposedly “post conflict” environment, it is not a simple process for refugees to return home. This is a complex issue and every situation is different, conflict is a highly transformative process and pre-war status quo can never be established completely, even if that were desirable” (Pantuliano, 2009).

The United Nations resolution co-sponsored by the Government of Sri Lanka (GOSL) and UNHRC in October 2015 aimed to specifically address the need for durable solutions for IDPs, with an expressed aim of promoting reconciliation, accountability and human rights. Apart from military occupation in the Northern and Eastern Provinces, displacement is an issue with a long history for some groups, with long-term effects on community identity, support systems and family structure, as well as gender roles, particularly in communities with a higher frequency of women-headed households.

Land and the right to reparation

The Constitution of Sri Lanka (Article 14h) states that every citizen is “entitled to the freedom of movement and of choosing his residence within Sri Lanka and the freedom to return to Sri Lanka.” Land ownership is generally considered as a means to escape poverty by providing displaced persons with the opportunity to establish their lost livelihoods and consequently, lives. It can also give people a renewed sense of confidence in the state, if they feel recognised as equal citizens before the law, with the same rights and entitlements as everyone else. However, land has held even greater value than these practical and political concerns: it plays an important role in one’s sense of identity and belonging, with many ties to land being interchangeable with ties to one’s community; ties which cannot necessarily be quantified (Brun, 2003). Displacement results in the breakdown of these social relationships and support networks, issues that must be addressed at every stage in reconciliation measures and institutional reform.

The restitution of land, in particular, is an important part of reparation. It is enshrined in articulations of the right to reparation, which defines restitution as “restoration of liberty, legal rights, social status, family life and citizenship; a return to one’s place of residence and the restoration of employment and return of property” (CPA report, Land in the Northern Province, 2016). It is equally important, however, is that land use and rights play a long-term peacebuilding and reconciliation efforts. The establishment of durable solutions for displaced persons should be addressed as part of any credible reconciliation policy.

Restitution is also critical post-war because it acknowledges experience of violations and restores rights to the individuals or groups of individuals who have been wronged. These rights include the right to freedom of movement, right to self-determination (individual and collective), right to property, right to adequate standard of living and a right to work.

Where cases of displacement and dispossession affect large groups of women in post-conflict zones, issues of land access or ‘tenure insecurity’ are a tangible element which can illustrate the wider prospects for a stable peace. Unruh and Williams note how access to land can have serious consequences in peacebuilding: *In the worst case, failure to address tensions over land can create or perpetuate potentially destabilizing grievances. Successful approaches to land issues, however, can both consolidate progress toward sustainable peace and help to sustain peace over the longer term* (2013:1).

Summary of recommendations by post-war commissions

Many of the most detailed recommendations on land restitution and resettlement in post-war Sri Lanka emerge from chapter six of the LLRC report, entitled *Observations and Recommendations on Land Issues: Return and Resettlement*. These can be summarised into a few key themes, as follows:

- 1) The role of ethnic reconciliation as a concrete aim and objective of resolving land-based disputes. *“The Commission recognizes the fact that although it is not an easy task to restore the pre-conflict status quo in a country immediately after a prolonged conflict, it is important to ensure that illegal land transfers and alienation triggered by violence, intimidation and ethnic cleansing are not allowed to be perpetuated or institutionalized. This is critical for nurturing ethnic harmony and national reconciliation, for if left unsolved this would transform into trigger points for future conflict”* (9.121).
2. The administrative and logistical challenges of addressing land claims are also linked to government land policy and its resettlement programme and recommends alternative (e.g. non-judicial) methods of resolution. *“The Commission appreciates the Government’s land policy concerning return and resettlement of displaced persons and the associated Programme proposed in July 2011... designed to resolve problems relating to land documentation and disputes in ownership and user-rights of the displaced persons. The Commission notes that the Programme is innovative, and seeks to utilize where appropriate, mechanisms that are less bureaucratic mainly informal and designed to release the vast majority of the displaced persons from having to use the formal court system which would be complex, time-consuming and expensive for litigants”* (9.125).
3. The alienation of state land, and/or continued control of private land by the military, is also addressed. For example, it suggests that *“strict controls be applied to prevent any alienation of State land other than for IDPs, except where State land is required for other approved purposes, until the proposed Programme is implemented... The Commission also recommends that all families who have lost lands and or houses due to formal HSZs or to other informal or ad hoc security related needs be given alternate lands and or compensation be paid according to applicable laws. The Commission further recommends that provision of alternate lands and or payment of compensation be completed within a specific time-frame.”* (9.140-9.142)

This acknowledgement of a slow and arduous process for war-affected people in the north and east is designed to expedite return and restitution mechanisms to help affected individuals move on. Some specific groups also receive a mention, including the Muslims evicted from the North by the LTTE in 1990, but also those from the Sinhalese majority, who are a minority in Northern province, to ensure there is genuine return for all groups without ethnic ghettoization in resettled

lands. The LLRC thus “recommends that the Sinhalese families who were evicted from Jaffna and the rest of the Northern Province, and who volunteer to go back, be returned to own land or resettled in alternate land as expeditiously as possible, as the progress in this regard has been unsatisfactory.” (9.145)

Finally, the Commission recommends the establishment of a National Land Commission to include guidelines on equitable distribution of state land and devolution to provinces of land policy (9.150). It further suggests that there should be a land use plan for each district in the North and East to guide district administration (9.151) and that all political parties undertake a bipartisan approach to ensure restitution of land to all displaced persons, or alternative settlement and compensation wherever possible (9.152) to focus on national reconciliation.

The report of the **Public Representations Committee on Constitutional Reform (PRC)** of May 2016 based on an all island people’s consultation on constitutional reform too acknowledged the complexity of land problems faced by people. The recommendations of the Committee were as follows:

1. *There should be Constitutional guidelines for the use of natural resources, flora and fauna.*
2. *Land, environment and development should be included in the Fundamental Rights Chapter. The section on Fundamental Rights relating to the environment should also consider animal rights and animal welfare as animals and wildlife should be considered part of the environment and eco-system. 3. Separate chapters on Land, Environment and Development detailing how these rights will be operationalized should be added to the Constitution. We suggest the examples of the Kenyan and Ecuadorian Constitutions be considered in the drafting process. For example, these chapters should include provisions to:*
 - *Ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;*
 - *Work to determine, achieve and maintain a minimum tree cover in consultation with environmental experts.*
3. *Protect and enhance legal protection for, and indigenous knowledge of, biodiversity and the genetic resources of the communities;*
 - *Encourage public participation in the management, protection and conservation of the environment;*
 - *Protect genetic resources and biological diversity;*
 - *Establish systems of environmental impact assessment.*
4. *Environmental audit and monitoring of the environment*

5. *Eliminate processes and activities that are likely to endanger the environment; and utilise the environment and natural resources for the benefit of the people of Sri Lanka*
6. *Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources*
7. *The establishment of a Commission to Address Economic Development Grievances to ensure that there are adequate mechanisms to prevent development related exploitation and displacement.*
8. *System of redress and compensation for victims of violations of fundamental rights relating to land, environment and development.*
9. *To make provisions to hold State and public officers responsible for upholding powers to take action on any individual or institution that harms the environment or exploits people in the name of development.*
10. *Identify a system to maintain a minimum tree cover at an acceptable percentage of the total land area of the country.*
11. *Commitments in the Constitution to seek sustainable, equitable and socially just socio-economic development solutions for the country*

In the **Consultation Task Force for Reconciliation Mechanisms (CTF)** report by comparison there were “varied and recurring concerns over land” raised in submissions from across the country (143).

As noted in Section 3.6 (107): “Land was a recurrent problem raised in every zone. The nature of the problems ranged from ongoing military occupation or secondary occupation of land by civilians and lost documents to non-conflict related land issues of lack of documentation or inadequate rights to ownership and development over land.”

Restitution was the most common demand, arising from claims for lands lost due to displacement by the military or other parties – as well as for the setting up of sacred areas, as highlighted in a focus group discussion (FGD) regarding the Dambulla sacred area. Some particular groups were highlighted, including the Northern Muslims evicted by the LTTE as previously mentioned, as well as some groups with specific needs (for instance, a group of women’s organisations highlighted the importance of agriculturally viable land being returned to those whose livelihood has depended on it, along with compensation). Contrary to popular opinion that Tamil and Muslim complaints dominated the report, Sinhalese groups also raised complaints and concerns, such as regarding the Sinhalese community displaced from Eastern province to North-Central Province, who demanded reparations for lost lands (145).

Civil society organisations were quick to point out that these resettlement and restitution procedures needed nonetheless also consider the needs and particular vulnerabilities of landless persons across the country. Submissions outlined the many fault-lines at the state, institutional and societal level continuing to plague Sri Lanka and requiring intervention. A submission by an international organisation also suggested the need for a standardised approach to land-distribution due to the dangers of discrimination between communities if a case-by-case approach is adopted.

The devolution of powers, including the implementation of the 13th Amendment to the Constitution, for example, was discussed, as this would have far-reaching effects on land administration in the provinces. Demilitarisation across the country but especially in the north and east would also address land problems, as much land is occupied by the military, despite frequent promises that this land would be returned to its rightful owners once the area was no longer needed for security reasons.

Section 3.2.2 focused on the problems of militarisation and raised concrete examples of how the military's presence "thwarts the restoration of rights and normalcy, most evident in the case of land occupation" (33) and quotes groups from specific areas, including Keppapilavu, Mullathivu, and Kokillai demonstrated how military involvement in inter-ethnic land disputes and colonisation, not to mention the military's own use of private land for its own commercial purposes, was destructive to local livelihoods and reconciliation efforts (297-300). Justice would only come through the transformation of structures – long term, fundamental changes, through transformative justice, where a process of economic, social and cultural transformation would be initiated (316).

Section 3.6 focused on land issues not covered elsewhere (e.g. 3.2.2), including displaced persons trying to rebuild their lives in their new homes, without official ownership rights to their resettled domiciles (109); land disputes with non-military agencies (including the Forestry Department or sacred areas) (111); and Southern communities made landless by state policies, for example the Urban Development Authority (UDA) seizing land without providing fair compensation (112).

In the context of these larger struggles mapped out in communities across the country, some of these overarching issues are nonetheless best explained through examples of specific communities who have bravely raised their concerns and fought back against state inertia and levels of corrupt bureaucracy to try to retrieve their livelihoods and some level of normalcy. The Zonal Task Force (ZTF) report contains many examples of these grievances.

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The People's Alliance for Right to Land (PARL) is a voluntary coalition of civil society organisations and individuals, that has been working together against land-grab, and for housing, land and property rights of marginalised communities in Sri Lanka, since 2011. PARL brings together environmental, social justice, human rights, and community-based organisations of women, small-scale farmers, fishing communities, plantation workers, and civil society activists fighting against the dispossession of the vulnerable from their lands, fishing waters, and homes; and in solidarity with the struggles of displaced communities.



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