

RESTORATION OF LAND RIGHTS OF PEOPLE AFFECTED BY LAND APPROPRIATIONS AND TENURE INSECURITY

A case study based on five selected locations in Sri Lanka where the land rights of people have been violated due to land grabbing or tenure insecurity

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Institute for Constitutional Studies

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APPROPRIATIONS AND TENURE INSECURITY**

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Introduction

This study is prepared using the data analysis of a field study conducted in January 2017 in the Districts of Monaragala, Ampara, Trincomalee, Mullaitivu and Jaffna in Sri Lanka focusing on the land rights violations that took place in the recent past due to the appropriation of land from the ordinary citizens by the security forces and individuals backed by powerful people and, the tenure security problems faced by the landless rural communities in Monaragala and Ampara districts and the sugar cane farmers living in the settlements of Pelwatta Sugar Company, which is now owned by the government.

The study was a part of the project titled “Ensuring land rights for evicted families for sustainable and resilient livelihoods” undertaken jointly by the Institute for Constitutional Studies (ICS) and National Fisheries Solidarity Movement (NAFSO) in collaboration with OXFAM supported by the Federal Ministry of Economic Cooperation and Development (BMZ), Federal Republic of Germany.

The study was conducted to support the victims of these areas in regaining their land rights through legal and administrative means and, to initiate a dialogue with policy makers, legislators and administrators to develop new policy frameworks to make necessary changes in the existing legal system and initiate protective measures to safeguard the land rights of people, especially during time of trouble.

Institute for Constitutional Studies (ICS)
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Executive Summary

As stated in the Introduction, the report is based on a field study conducted in several locations in the Districts of Jaffna, Trincomalee, Mullaitivu, Ampara and Monaragala in Sri Lanka. From these studies, 30 locations where instances of violation of land rights of the ordinary citizens have been taking place since the 1980s were selected. The majority of places selected for the study are land appropriations that took place during the civil war that ended in 2009, when ordinary citizens faced an uncertain and insecure period, involving the security forces and other government agencies.

In addition to the above areas affected by the civil war, the study covers places where landless rural farmers are waiting for a grant or a permit from the government to regularize the state lands they have been using for their livelihood for more than 10 years. These places have been selected to have a comparative assessment of the land rights violations in the above places as the landless rural farmers in these areas are also struggling with “Tenure Insecurity” problems similar to the problems faced by the displaced and resettled, war affected communities in other areas.

The main focuses of the study include understanding the situation that led to the violation of the land rights of the above mentioned categories of people, the current status of use and ownership of the lands subjected to evaluation by the study, the socio-economic backgrounds of victims of these land rights violations, the impact of land appropriations on people’s livelihood, their family and social life, and the availability of documentary and other evidence for victims to proceed with the administrative process.

As a prelude to the report, the human rights discourse on land rights, a brief survey of literature on global land grabbing, the ancient system of

land tenure and colonial legacy of land appropriations in Sri Lanka and, a brief survey of land laws and land reforms in pre and post independent Sri Lanka are also presented in this report. The examination of these aspects is essential to the study as it sheds light on the local situation in relation to the factors that are exogenous to the political system in Sri Lanka. As such, a desk study has been conducted simultaneously to the field survey and analysis of data collected.

The duty holder on the land rights violations that have taken place in these areas is no other than the State whose agents or representatives – the ministries, executive departments, public corporations, public authorities and security forces – directly or indirectly participated in the appropriation of land owned or cultivated by ordinary citizens (mostly poor farmers or victims of war) who were unable to protect their rights as they were trapped in a situation of uncertainty and insecurity.

These actions can be identified as “Land Grabs” due to the effects on the land rights of individual citizens and communities, particularly their rights to have a secure livelihood to maintain the “adequate standard of living” guaranteed under international human rights law, especially during the period of uncertainty (see Box -1 for the definition of land grab followed by this report).

The majority of land appropriations that took place in the Northern and Eastern Provinces occurred during the civil war that ended in 2009. In these areas, people have been displaced due to the military conflict between the security forces and the LTTE since 1983. Among the returnees, we met people who had lived in India during the troubled period and later arrived in the country and have been living as displaced people for more than thirty years. The majority of locations in the Northern and Eastern Provinces have been subjected to land grabbing by the security forces which entered these areas during the civil war to establish security camps or High Security Zones. Later the lands abandoned by ordinary citizens were used to establish farms and business ventures by the military and some were earmarked for development or infrastructure projects by the government. The continuation of these actions has once again displaced these people in their localities.

These developments have been taking place despite the decisions of Courts, National Human Rights Commission and even the Cabinet to hand over the lands in some areas back to the people or reduce the extent of land cordoned by the military. It is worth noting here that the resettlement of displaced people in their original land has been identified as an integral aspect of confidence building measures related to national reconciliation by UN bodies¹.

The affected people consist of the three major communities in Sri Lanka - the Sinhalese, Tamils and Muslims while the most affected group is the Sri Lanka Tamils. Many victims are still living in welfare camps or temporary places as displaced persons due to the denial of access to their land. The study also found the people complaining that they have not been given their original lands and the new land does not match the extent as well as the conditions of the lands they utilized earlier.

The conditions and issues in the Monaragala district are different from other areas. In the Monaragala District the field survey was conducted with two different groups, namely, sugar cane farmers in the Pelwatta sugar plantation and the rural farmers cultivating state lands in villages near the Wellawaya town. Sections of the people who live in the Pelwatta Sugar Plantation Settlements were removed in the 1980s from the state lands which had been cultivated by them. They were offered a pot of land from the blocks of settlement earmarked for the sugar cane farmers who have signed lease agreements to grow and supply sugar cane to the Company. In five villages in Wellawaya DS Division and Deegawapiya, Researchers met landless persons who occupy and cultivate state lands expecting regularization of their occupation by the authorities.

The study has found that the victim populations in all these areas consist of a significant number of vulnerable groups such as internally displaced persons who live in camps or temporary places, widows, elderly, children, disabled persons and a large number of female members working as Chiefs of House Hold, or Heads of single Parent Families.

1 Report of the office of the United Nations High Commissioner for Human Rights on Sri Lanka, Human Rights Council Thirty-fourth Session 27 February-24 March 2017, Agenda item 2, Annual report of the United Nations High Commissioner for Human Rights and Reports of the office of the High Commissioner and the Secretary-General, p.12

The study aimed to help the victims to resolve issues such as the loss of land, tenure insecurity and landlessness through legal and administrative means. Therefore, the study is an attempt to provide information on the gravity of legal and administrative issues in these land deprivation situations enabling policy makers, administrators, lawyers and other interested parties to make an intervention to help the victims. Further, the study has the objective of innovatively focusing on the gaps in the existing legal system of land laws to propose necessary changes in policy and law to protect the land right of people, especially during times of conflict and disaster.

Although the above land grabbing situations are ostensibly related to factors endogenous to the local situations such as the creation of security zones, military installations, and development and infrastructure projects, it can be argued that the growing interests of global market forces have motivated these land appropriations. In the era of globalization, development policy initiatives of governments in developing nations are eventually linked to the processes of economic globalization. Thus globalized business interests play an important role in motivating the power actors to engage in land grabbing. It is worth noting here that the government of Sri Lanka has already given vast tracts of land to multinational and local companies. For example, according to a study, “Dole International” has received 405 Hectares of land from the District of Monaragala for banana cultivation and more than 1300 Hectares of land have been given to local companies for various private ventures by the previous government². Under the investment proposal which is being currently considered by the present government regarding the Hambantota Harbor, the Chinese partner has been offered 15,000 acres to establish industrial parks in the Southern Province³.

The land issues which are specific to each project location vary. Therefore, a study was carried out to identify the types of land issues faced by the target groups in each project location and the legality of their land claims. The study will also serve as a baseline study on the

2 Sri Lanka Nature Group, *Uprooting People from the Land: Land Grabbing, Current Status and Trends in Sri Lanka*, 2012, pp.20-22

3 Forbs.com, *Violent Protests Against Chinese Colony in Sri Lanka Rage On*, Forbs.com/ Foreign Affairs, 15 April, 2017.

current situation of land documentation, use, and ownership in the project locations.

The field survey reveals that the core issue to be addressed is the violation of the land rights of the people that occurred consequent to the appropriation of their land by the agents of State (including the security forces), denial of access to their land by these state actors or outsiders to their communities, and the tenure insecurity problem faced by the people who settled or occupied State Lands as farmer communities.

The main causes for land deprivation or tenure insecurity as identified by the study include large scale land assigned to the cooperate sector by the government (Pelwatta); long term displacement during civil war and natural disasters (Valikamam, Kokkilai, Sampur and Keppapulavu and Mullivaikal), the establishment of military camps, high command offices and High Security Zones by the security forces (Panama, Keppapulavu, Ashraf Nagar and Valikamam); lands acquired by government agencies/ security forces from poor farmers to establish tourist/hotel/electricity/ industrial based business (Sampur and Panama); eviction of people from the land with the involvement of the military, politicians and powerful persons (Sampur, Keppapulavu & Panama) and lack of a proper policy approach to address the landlessness of rural farmers (Deegawapiya and Wellawaya).

The study also noted that while poor farmers who engaged in encroachment of state lands for living and farming are waiting for regularization, some persons have occupied state land using their connections to the politicians or security forces (the cases noted in Monaragala, Panama and Deegawapiya).

The respondents can be categorized into several groups on the basis of the availability of documents to prove their claims. They include persons who have legally valid documents to prove their private ownership such as deeds to claim registered ownership for the land; persons who had the above documents for their private land but whose documents have been misplaced, lost or destroyed during displacement; persons who have lost their legally valid documents to prove their private ownership to the land but have other documents and sources

to prove their ownership; persons who can prove with documentary evidence that they have been settled on or cultivating a particular state land for more than 10 years with a permit/lease/certificate issued by the government; persons who occupied and developed a state land for more than 10 years without any permit and expect legal and administrative support to receive a permit or a grant to the land; persons having the “Tenure Insecurity” problem and the young families within displaced communities seeking new land to settle down in a new environment.

The study noted that lands which were taken from the people have been used by the military for both security purposes and for non-security purposes such as running tourist hotels and agricultural farms, and constructing war memorials, monuments and religious shrines. The people who are demanding the state lands they have occupied for generations have received eviction orders from government agencies thus enabling the continued retention of these lands without providing them alternative arrangements or compensation. Many of these people have occupied state lands with the legally valid permits received by their parents and have evidence to prove them. Some have lost their documents during displacement or eviction, or have not taken an interest in updating them as they lived there with their parents. The farmers who are now settled and cultivating on state lands are waiting to prove that they have developed these lands with valid permits if the government authorities conduct a survey to regularize their possessions. The study also noted that in some places the lands which were cultivated by the displaced people are occupied or cultivated by another person with new permits or support from security forces or powerful local politicians.

The study identified several obstacles related to returning lands to the previous users. These include the land occupied by security forces for HSZs or military camps regarding which there is no official decision to abandon or shift the land occupied by the military. Also there are several administrative bottlenecks obstructing the implementation of official decisions taken by the Cabinet and the orders or compromises reached at the Courts regarding the deduction of extent of land or giving back the lands occupied by the security forces. There are lands which have been earmarked for development or infrastructure projects

under the land acquisition law without providing the people sufficient compensation or proper alternative lands.

Another problem we noticed is the identification of the boundaries of land as the destruction or military maneuvers taken during war destroyed the demarcation lines. There are also lands acquired by the military with family disputes over the ownership, or mortgaged by the owner (father) who is now deceased without the knowledge of the family members. In Jaffna, some Respondents said that they as parents are waiting to get the land back as they want to divide the property among their daughters for their marriage dowries.

Further there are people who were sent to new lands which do not match the conditions and qualities of previously occupied land. Therefore they are demanding their original land. The reasons include “unfertile land, no proper avenues to establish livelihood, the extent of land does not match with the earlier one, want to live in the ancestral land with their own communities”. Further, the study noted that there are a significant number of people who have returned to the original land after displacement but are facing tenure insecurity as they do not have a permit or grant authorized by the government. We also noted that the people who are now in welfare camps or temporary places are unable to return to their land due to the obstructions created by security forces or politically powerful groups. These people complained that their lands are being used by strangers with the help of the security forces or the government politician and who intimidate them when they try to engage in their livelihood work such as farming and fishing even with legal permits.

Prelude

The report briefly presents the current discourse on land rights, trends in global land grabs, background necessary to understand land laws and the land policy issues in Sri Lanka in order to provide a better perspective in analyzing the data collected from the field survey.

The report consists of three parts, namely,

Part One – Land Rights and Land Grabs – The Global Perspective,

Part Two – The Background to Land Grabbing and Land Laws in Sri Lanka

Part Three - Recent Land Grabbing in Sri Lanka – the findings of the field survey

Local land grabbing is not an isolated phenomenon. It entered the countries in the global south with the flow of capital that entered with the western colonialism. This is an unending process. It is now continuing with

the development policy packages prepared by the policymakers in these countries.

Part one makes an attempt to view the local land grabs through the lens of the global as this would provide a better perspective in understanding the local events.

Part two would be an examination of land laws in Sri Lanka focusing on the traditional system, the colonial legacy, the attempts at land reforms and the land policies of government.

Part three consists of a macro and micro level analysis of situations using the data collected from all five locations with brief descriptions of field locations where we met the different types of communities and their members.

– PART ONE –
LAND RIGHTS AND LAND GRABS –
THE GLOBAL PERSPECTIVE

Land and Human Rights

As a geographical place, land is one of the most indispensable and immovable natural resources required for human living, spanning from economic to social-cultural and political spaces. It is an essential condition for housing, food and water, and thus the most valuable component inherent to “the right to adequate standard of living” as guaranteed under international human rights law.¹

Land is at the core of peoples’ right to self-determination as it provides the material base for human conceptions such as homeland or motherland in relation to which “people” identify them on ethno-political terms to

1 United Nations High Commissioner for Human Rights, Report, submitted pursuant to General Assembly resolution 48/141, offering a human rights analysis of land-related issues, in particular on land management, United Nations E/2014/86 Economic and Social Council Distr.: General 11 July 2014, Substantive session of 2014 New York, 23 June-18 July 2014 Item 17 (g) of the provisional agenda Social and human rights questions: human rights, pp. 03 & 05 & Robin Ramsahye, The Human Right to Land, The Case of Too Many Rights Spoiling the Broth or a Recipe for Justice? Land Governance Symposium, 2 November, 2016. P.01

exercise their right to self-determination. In that sense, land has a cultural weight too. Historically, the development of collective cultural identities of ethno-national communities has taken place in a certain land area as they lived in that territory for a considerable period as a closely knitted community. It provided them with a geographical context for producing a distinct language and culture that distinguished them from others.²

The ownership of a particular territory recognized in the claim for “an ethnic homeland” often reflects the attempt by an ethnic group to protect their identity within a given politico-geographical space as they feel threatened by an outside party either through military intervention or by a political or economic design. As noted by Engerman and Metzger (2004:02) “ethno-national problems of land rights can arise in several different manners, and with rather different power relations among the parties. Perhaps most frequent is the arrival of new peoples (typically as colonial settlers or as non-settling colonial rulers) into already settled areas, with the ability to enforce controls, either by military actions or by economic design, upon those already resident”.³

As such, land is a cross cutting issue as it is an essential source for several human rights recognized by the international human rights instruments. It is related to the right to food, shelter, water, environment, culture and community services and, above all the right to national self-determination.

Therefore the right to land has received general acceptance in the discourse of human rights though it has not been explicitly declared by any international human rights law instruments.⁴ Some have argued that land should be given special attention as it is “the poor people’s main productive asset”,⁵ which helps them to maintain at least the basic

2 Stanley J. Engerman and Jacobd Metzger (Eds.), *Land Right, Ethno Nationality and Sovereignty in History*, Routledge, London & New York, 2004, p.01 (Introduction by the Editors)

3 *Ibid.*, p.02

4 Jeremie Gilbert, *Land Rights As Human Rights*, *International Journal on Human Rights*, 18 SUR 2013 (115-135), p.115

5 Michael Lipton, *Land Reform in Developing Countries; Property Rights and Property Wrongs*, Routledge, London & New York, 2009, p.01

livelihood for survival. The necessary corollary of this debate is the recognition of “access to land” as key to the realization of several basic rights guaranteed under international human rights instruments.

Global Status of Land Rights

However the measures taken by the community of states in effecting the obligation of states towards the access to land by their citizens, especially the rural poor who depend on land for their livelihood, is far from satisfactory as "...up to one quarter of the world's population (today) is estimated to be landless, including 200 million people living in rural areas, and approximately 75% of the world's population living in extreme poverty (less than \$1/day) live in rural areas".¹

According to the Food and Agriculture Agency of the United Nations (FAO), "rural landlessness is often the best predictor of poverty and hunger".² It is a widely accepted fact that access to land will help rural people escape from the poverty trap as it helps them to generate higher incomes through the sale of crops and the money saved when the family feeds itself from

1 Elisabeth Wickeri & Anil Kalhan, *Land Rights Issues in International Human Rights Law*, Institute of Human Rights and Business, 2010, p.01

2 *Ibid.*

the land. It is the rural poor who suffer most from the problem of landlessness since they toil on the land as their only avenue for livelihood.³ Therefore, the land reform programs aimed at distributing land among the rural landless people have been identified as an essential policy requirement in addressing poverty in rural areas. As Michael Lipton points out “the land reform comprises laws with the main goal of reducing poverty by substantially increasing the proportion of farmland controlled by the poor, and thereby their income, power or status”.⁴

In the developing world the absence of clearly focused state policies or land reform programs to address landlessness in rural areas has been identified as a reason for rural poor engaging in encroaching on forest land as they do not have an alternative to secure a livelihood.⁵ Therefore these encroachments should be dealt not with punitive actions, but by providing them tenure security for the land they already occupy, or offering them alternative land to secure their livelihood through farming agricultural land.

3 Ibid.

4 Michael Lipton, *op. cit.*, p.01

5 Land Ownership and the Journey to Self-Determination, SRI LANKA Country Paper, Land Watch Asia, Asian NGO Coalition for Agrarian Reform and Rural Development, 2011, p.223

Land Grabbing – A Global Issue

The debate on land rights has taken a new turn in recent years as the eviction of people by various means from enjoying their right to land in favor of local power elites and globalized businesses has become a growing phenomenon. Most of the evictions in recent years have been identified as resulting from armed conflicts, ethnic violence, urban redevelopment, infrastructure development projects, city beautification and the expansion of globalized business.

Globalized businesses and industries such as the production of sugar, food, bio-oil, palm oil and tourism have been identified as key businesses which have influenced land grabs in recent years. It is reported that large-scale land acquisitions involve commodities that are heavily used to produce both food and biofuels: sugar, soy, and palm oil. Collectively they use 150m hectares of land and have been linked to more than 380 large-scale land acquisitions since 2000.¹ From these items, Sugar is produced on 31m hectares of land

1 SUGAR RUSH Land rights and the supply chains of the biggest food and beverage companies, OXFAM BRIEFING NOTE 2 OCTOBER 2013, p.03

globally – an area the size of Italy – with at least 4m ha linked to 100 large-scale land deals.²

The desire of governments in developing regions to invite global capital to engage in industrial ventures, infrastructure development projects, agro-based businesses ventures and tourist industry eventually produce large scale land grabs as these projects needs large land areas for such development ventures. The political and other power elites try to make use of these projects to evict the poor from the land they occupy to gain from these projects.

General Comment 7 of the Committee on Economic, Social and Cultural Rights declaring that “forced evictions are prima facie incompatible with the requirements of the International Covenant on Economic Social and Cultural Rights (ICESCR)” has to be understood in this context. Under article 2(1) of the ICESCR, states are obligated to use “all appropriate means” to realize the right to housing, which includes “refraining from forced evictions” and ensuring that the law is enforced against its agents or third parties who carry out forced evictions.³

The Oxfam report cited above further noted that “since 2000, nearly 800 large-scale land deals by foreign investors, covering 33m ha globally, have been recorded, as well as 255 deals by domestic investors”.⁴

It is further reported that, “in developing countries, as many as 227 million hectares of land – an area the size of Western Europe – has been sold or leased since 2001, mostly to international investors.⁵ The bulk of these land acquisitions has taken place over the past two decades, according to on-going research by the Land Matrix Partnership”.⁶ In 2010 the World Bank counted 389 deals involving 47 million hectares in 2009.⁷

2 Ibid.

3 Elisabeth Wickeri & Anil Kalhan, “Land Rights Issues in International Human Rights Law”, Institute of Human Rights and Business, 2010, p.05

4 SUGAR RUSH Land rights and the supply chains of the biggest food and beverage companies, OXFAM BRIEFING NOTE 2 OCTOBER 2013, p.o1

5 Ibid.p.03

6 Land and Power: The growing scandal surrounding the new wave of investments in land, Oxfam Briefing Summary Paper, September, 2011

7 Sri Lanka Nature Group, Uprooting People from the Land: Land Grabbing, Current Status and Trends in Sri Lanka, 2012, (pp.20-22), p.02

In these discussions new players such as financial companies, pension funds and Sovereign wealth funds have also been identified as the buyers of huge tracts of land. Compared to previous instances of land grabbing by colonial powers, these new land grabs are based on the agreements between the governments and the investment companies connected to the development projects approved by the national legislature.

BOX 4.1

Defining “Land Grab”

A land acquisition will become a “Land Grab” if they do one or more of the following:

- Violate human rights, particularly those of women;
- Flout the principle of free, prior, and informed consent (FPIC);
- Take place without or disregard a thorough assessment of social, economic, and environmental impacts;
- Avoid transparent contracts with clear and binding commitments on employment and benefit sharing;
- Eschew democratic planning, independent oversight, and meaningful participation

Source: Oxfam, Sugar Rush, Land rights and the supply chains of the biggest food and beverage companies, Oxfam Briefing Note, 2 October 2013

As Taniya Kerssen argues, these “...land grabs erode local control, often re-orienting production from meeting local needs to meeting global market demands for food, feed and fuel. The impact on land-based livelihood – those of peasants and indigenous peoples whose survival hinge directly on access to land and nature – has been deeply devastating”.⁸

When large scale land grabs take place, it is the rural poor who suffered the most as they live and work on land that they do not legally own

8 Tanya M. Kerssen, *Grabbing Power: The New Struggles for Land, Food and Democracy in Northern Honduras*, Food First Books, Oakland CA, 2003, p.02

in accordance with the enforceable state law. The “lack of land tenure security” will weaken their ability to protect their land rights when land grabbing takes place against their will during times of trouble.

- PART TWO -
THE BACKGROUND TO LAND
LAWS IN SRI LANKA

Land Grabbing In Colonial Sri Lanka

Land grabbing is a phenomenon introduced to Sri Lanka by western colonialism, particularly by the British colonial government which controlled the entire landmass of the Island from 1815 to 1948.

After annihilating the last Sinhala kingdom in 1815, the British colonial government took measures to transform the country into an investment field for European investors. Influenced by the interests of emerging industrial capitalism in Europe, it decided to open up the entire island for foreign investors interested in investing in the country, especially in the coffee plantation industry.

As the first step of facilitating the arrival of foreign investors, the Colonial government abolished the traditional land and service tenure system called “Rajakariya” and introduced new laws to grab vast tracts of forest land to create what they called “Crown Land”. This was created by severing the free rights exercised by the native people for forest lands under “Rajakariya”.

The next step was selling the “Crown Land” to the investors who arrived in the island. The resulting outcome was the establishment of the plantation industry, which commenced with the coffee plantation industry and, later the tea plantation industry. The plantation industry transformed the country’s economy into an export oriented economy linked to the international capitalist system.

This made landlessness an acute problem in rural areas where the peasantry wanted to remain in subsistence agriculture and practice traditional farming methods such as shifting cultivation. This created tension between the colonial bureaucracy and the rural people who wanted to continue the traditional right to use forest land for farming and settlements. When these practices were made illegal by the new law, inhabitants of rural areas became landless, and their traditional subsistence agriculture did not match the emerging colonial capitalism. The spillover effects of colonial land grabbing and the arrival of capitalist investors into the provinces which earlier belonged to the Kingdom of Kandy contributed to the second Kandyan Rebellion in 1848.

Given the continuing practice by the rural landless people of using so called Crown Lands (now State Land) ignoring the legal pronouncement that they belong to the state, one could argue that the conflict that emerged between the colonial state and the rural people on the utilization of forest land is continuing even today as people think that they have free rights to use these forest lands.

In order to understand the colonial inheritance in the system of land administration, it is worth examining the traditional land tenure and service tenure system called “Rajakariya” and the legal pronouncements that came with the new land acts.

Traditional System Of Land Tenure In Sri Lanka

According to the Traditional land and service tenure system, the King was identified as the “overlord of land”. He was given honorific titles such as “Bhupathi” and “Bhumipala” signifying the trusteeship entrusted to the King over the land.¹ Accordingly, the King was treated as the custodian of land and not as the sole proprietor of land (the way the British interpreted it later for their benefit). Inscriptions describing how the King purchased the land from the people, or exchanged land as compensation when he had to take land utilized by private persons for public purposes or donation to a temple provide evidence for the role of the King in the Rajakariya system.²

Under the traditional system people were allowed to clear jungles (excluding prohibited jungle areas for

1 W.I. Siriweera, The Theory of King's Ownership of Land, Ceylon Journal of Historical and Social Studies, Vol.1, No.1, 1971, (pp.48-61), p. 51.

2 W.I. Siriweera, Land Tenure and Revenue in Medieval Ceylon, Ceylon Journal of Historical and Social Studies, Vol. II, No.1, 1972, (pp07-49), p.12.

security reason) for paddy farming and residency by agreeing to provide specific services to public ventures or palace services. This practice included in the Rajakariya avoided the issues such as unemployment and landlessness. This system provided the labor for building large Tanks and irrigation canals which were the infrastructure of the hydraulic civilization that existed in ancient Sri Lanka. Later this labor was used to build Stupas, after the arrival of Buddhism. On the other hand, the building and maintenance of irrigation infrastructure was essential for agriculture. As the King depended highly on the grain tax for state income, the organization of communal labor to build tanks and irrigation canals became one of the main functions of Kingship. Both the tank and the Stupa became salient features of their cultural, social and economic life. Rajakariya was identified as an essential feature of the social and economic life of the society by the people. The Rajakariya system transformed into a taxation system when the Kingdoms moved to the western seacoast and the central hill land as commercial relations with the outside world became more important. Rajakariya became a system of utilizing the labor of peasants for cultivating the royal land and the land controlled by the chieftains or collecting a share from the yield for the royal coffers.³

The western powers which controlled the Maritime Provinces before the British, namely, the Portuguese and the Dutch, represented the interests of commercial capitalism. As such they did not make any attempt to abolish or reform the Rajakariya system as they were interested only in collecting the surplus of commercial crops produced by the people. It was the British, who captured the entire island in 1815, who wanted to abolish the traditional system completely as they were under the influence of emerging industrial capitalism in Europe which influenced the government to organize their colonies as fields of investment.⁴

3 See RALH Gunawardana, *Total Power or Shared Power, A Study on the Hydraulic State and Its Transformation in Sri Lanka from the Third to the Nineteenth Century A.D.*, South Asian Studies Seminar Series No.04, 1982, p.02

4 See T. Hettiarachchi, *The Sunhala Peasant, Lake House Investment Ltd.*, Colombo, pp.07-08, p.43

The Colonial Legacy

The British civil servants interpreted the 'Bhupathi' concept to mean that the "Sinhala King was the sole owner of the land in the Island hence the King of England who replaced the Sinhala King was the sole proprietor of lands of the Island" blatantly displaying the "right of conquest". They brought new land laws announcing that "...all forest, waste, unoccupied and unsettled land belonged to the (British) Crown" and asked the native people to submit documentary evidence for providing "Rajakariya" service for a period of ten years if they make a claim for such lands identified as "Crown Land".¹

This became an urgent requirement in 1840, "the year of coffee mania", when investors arriving from Europe created a huge demand for land in the island for coffee plantation which became an attractive investment in the colonies during this time. Following the extensive analysis presented by the Colebrook-Cameron Commission in 1828, the colonial government decided

1 Crown Land Act No.12 of 1840

to abolish Rajakariya – the traditional land tenure and service tenure system. The objective of abolition of Rajakariya was to remove the communal ownership right enjoyed by the indigenous population in the utilization of forest land. This was identified as an obstacle to create a free market by the Colebrook-Cameron Commission of 1928 which recommended the abolition of Rajakariya, all trade monopolies, and state regulations imposed on commercial activities in order to attract foreign investors to the plantation industry. The independence of the judiciary was also recommended to provide equal protection to the inhabitants and the foreigners creating the space for the emergence of civil rights as the precondition for the establishment of free market.²

In 1840 when they drafted the first Ordinance, namely, Act No.05 of 1840, Crown Lands Encroachment Ordinance, it was stated that, all forest, waste, unoccupied and unsettled land belonged to the Crown unless the contrary thereof was proved by producing the documentary evidence, especially in the Kandyan areas where the Thombos were not written³ (Thombos were the registry of Households which accounted the land belonging to each household and the crops growing on that land). The special reference given to the Kandyan areas clearly showed that the government was interested in the vast tract of forest land in the central part of the country which was identified as fertile ground for coffee plantation.

However, the government in London intervened and advised the colonial bureaucracy to introduce a period for submitting evidence for the use and development of land. The final draft which became the Crown Land Encroachment Ordinance (CELO) No.12 of 1840 was approved by the legislative council asking the native people to submit evidence for 30 year period.⁴ Under this law even people who owned land through inheritance but without documentary evidence were disenfranchised. The worst affected were the chena (shifting cultivation) farmers in the Kandyan areas. The free right people enjoyed using forest land for

2 See A.M. Navaratna Bandara, “History and Context of Public Administration in Sri Lanka”, in Meghna Sabrawal and Evan M. Berman (eds.), *Public Administration in South Asia*, CRC Press, London and New York, 2013, (pp.471-486), p.473.

3 Act No.5 of 1840, *A Collection of Legislative Acts*, Vol. II, pp.99-101

4 Act No.12 of 1840, *A Collection of Legislative Acts*, Vo. II, pp.106-108

cultivation, grazing cattle and collecting firewood was outlawed. Anyone who attempted to occupy property violating the CLEO No.12 of 1840 was fined and summarily ejected. In 1841 the government introduced Act No.9 of 1841 to reduce this period to 20 years for the Kandyan areas and 5 years for other areas. This Act restricted the utilization of forest land by farming communities for “shifting cultivation”.⁵ Another act passed in 1844 gave powers to Government Agents to request any person to submit the documents issued to him/her to utilize the land he or she occupied. The final action of land grabbing was the Waste Lands Ordinance of 1897⁶ which declared that all unoccupied, uncultivated and waste lands in the island belonged to the Crown.

The establishment of the Land Settlement and Survey Departments took place after the Waste Land Ordinance and they became the mechanisms of forcing poor villagers out of their ancestral land, and preparing the title certificate for using such land for road development in response to the demand for better roads by the plantation industry.

As such, the first land law passed in 1840 was an action which blatantly violated the land rights enjoyed by the native people individually and communally. It was the commencement of grabbing land from the people and handing them over to the investors who arrived from Europe. Interestingly, this law is still being used to evict landless people who occupy unutilized forest lands for settlement and cultivation and also to provide the criteria for identifying the land that belongs to the state. This law has also provided the basis for the so called “encroachment regularization” informally followed by administrators (see below p.41).

The objective of early land laws prepared by the colonial rulers not only aimed to grab land that belonged to the people, but also to introduce a capitalist mode of relationship to land ownership. These ordinances created a land market making land a marketable commodity for the first time in the history of Sri Lanka.

5 Act. No.9 of 1841, A Collection of Legislative Acts, Vo. II, p.127

6 I.H. Vendendriesan, *The Economic History of Ceylon in the 19th Century*, Saman Publishers, Maharagama, pp.128-132 (This book is published only in Sinhala medium) & A.A. Wickramasinghe, *Land Tenure in the Kandyan Provinces*, Mahajana Press, Colombo, 1924, p.15

In the year 1840, in which the Crown Land Ordinance No.12 of 1840 was passed, the colonial government sold 75,685 acres to investors. During the period immediately following the enactment of Crown Land Encroachment Ordinance, the colonial government sold 230,000 acres. By 1929 a total of 450,000 acres were devoted to the Tea plantation, the successor of the coffee plantation which ended as an investment field in the 1860s.⁷ Most of land in the plantation industry was crown land sold by the government.

Landlessness in the rural areas that formerly belonged to the Kandyan Kingdom has been identified as a result of the creation of so called “Crown Land” which was nonexistence in traditional society. Even today landlessness continues to be a factor affecting productivity in farming agriculture. The Agricultural Census 1982 showed that 11 % of farm operators were landless and another 38.5 % owned only home gardens and were controlling around 14% of the total agricultural land area.⁸ This means nearly half of the smallholder agricultural population in the country was not in control of enough land to enable them to produce a marketable surplus.⁹ Thus the rural poor became encroachers on state land as the state has failed to implement a sound policy and strategy to solve the landlessness prevailing among rural farmer societies since independence.

7 V.K. Nanayakkara, *Agrarian Reform & Rural Development: Issues, Concerns & Future Challenges*, Twenty-second Meeting of CIRDAP, Technical Committee (TC-22), 12-14 September 2006 Bandung, Indonesia, p.25

8 *Ibid*, p.18

9 *Ibid*.

Brief Survey Of Land Laws In Sri Lanka

The Land Commission appointed in 1985 reported that there were at least 39 major pieces of legislation governing land management. This number has further increased during the last three decades.¹

The 13th amendment to the constitution, which established the Provincial Councils as the second tier government, has created a new landscape for the administering of state land in addition to the acts, ordinances, and laws passed by Parliament. A brief survey of these important legal instruments has been presented next.

1 The sources used for this section are: V.K. Nanayakkara, *Agrarian Reform & Rural Development: Issues, Concerns & Future Challenges*, Twenty-second Meeting of CIRDAP, Technical Committee (TC-22), 12-14 September 2006 Bandung, Indonesia; Land Watch Asia, *Land Ownership and the Journey to Self-Determination*, SRI LANKA Country Paper, Asian NGO Coalition for Agrarian Reform and Rural Development; Sri Lanka Nature Group, *Uprooting People from the Land: Land Grabbing, Current Status and Trends in Sri Lanka*, 2012

8.1. Thirteenth Amendment to the Constitution

The 13th Amendment under provisions of the 8th and 9th Schedules of the Amendment made land, irrigation and agriculture subjects that have to be shared by both the Central Government and the Provincial Councils. The Provincial Councils were given powers to initiate irrigation and land development schemes utilizing water from rivers within their provinces.

However the provisions related to land, irrigation and agrarian services in the 13th Amendment were not fully implemented, and the Provincial Councils have not become full partners in handling these subjects. The delineation of responsibilities between the provinces and the center in matters of agrarian development and administering state land is not clearly spelled out. The National Land Commission as provided in the 13th amendment has not been established. The expectation was that the Land Commission would prepare a National Land Policy providing a clear framework enabling the second tier government to utilize state land within their provinces for the benefit of the rural poor.

8.2. Land Development Ordinance (LDO) of 1935

This was a direct result of the recommendation made by the first Land Commission appointed in 1927 which recommended the creation of a self-reliant small land owning peasantry class by alienating state land. The ordinance had declared its purposes as “preserve the peasantry” and the encouragement of economic development.

In a way it was an attempt to address the historical injustices of the Crown Land Encroachment Ordinance of 1840 and the Wasteland Ordinance of 1897 that disenfranchised local populations. This law envisaged the addressing of rural landlessness by alienating the state land among the landless peasants subject to certain conditions on sale, leasing and mortgaging and the steps to be taken if the land is abandoned or not cultivated.

This could be identified as the first attempt to introduce a land reform to guarantee the right to land to the rural poor. For the last 82 years this is the major legal instrument that enabled successive governments

to distribute land among landless people, undertake village expansion programs and major land settlement schemes.

8.3. Crown Land Ordinance (CLO) No. 8 of 1947

This ordinance set the conditions for the grant of Crown lands and the management and control of such lands. Further, the regulation and use of water bodies and vesting land in naval, military and local authorities are also facilitated by this ordinance. This ordinance was used when allocating land for non-farm activities in Mahaweli development areas. One of the field locations of our study - lands of settlements of farmers belonging to the Pelwatta Sugar Company were given to the company which commenced the business in 1986 for a long-term lease under the provisions of this ordinance.

8.4. Land Reform Laws of 1972 and 1975

These laws have been identified as the most far-reaching pieces of legislation that have been passed by the country's legislature in the 1970s. They transformed land ownership of the country by introducing the ceiling of 50 acres (20 ha) for highland and 25 acres (10 ha) of paddy land for private ownership. The land acquired by the government from persons who owned more than the limit were to be redistributed among the landless people according to the land reform laws of 1972 and 1975. It was reported that the government received land exceeding one million hectares under this reform program.

8.5. Agrarian Development Act No. 46 of 2000

As successor to the Paddy Lands Act of 1957 and the Agrarian Services Act of 1979, this act sought the establishment of agricultural tribunals, farmer organizations, and agrarian development councils that promote the interests of the farming community.

The Customary Law Of Land

In addition to the legal instrument referred above there are three prominent customary laws in Sri Lanka:¹

1. Kandyan law, a residuum of ancient Sinhalese land tenure originating from the Aryans
2. Thesavalamai, applicable to the Malabar (Tamil) residents of Jaffna peninsula
3. Muslim law of intestate succession

1 The source of information in this section are from: V.K. Nanayakkara, Agrarian Reform & Rural Development: Issues, Concerns & Future Challenges, Twenty-second Meeting of CIRDAP, Technical Committee (TC-22), 12-14 September 2006 Bandung, Indonesia; Land Watch Asia , Land Ownership and the Journey to Self-Determination, SRI LANKA Country Paper, Asian NGO Coalition for Agrarian Reform and Rural Development; Sri Lanka Nature Group, Uprooting People from the Land: Land Grabbing, Current Status and Trends in Sri Lanka, 2012

9.1. The Kandyan Customary Law

The Kandyan customary law associated land with marriage through deega (the wife lives with the husband's family) and binna (the husband lives with the wife's family). In binna, the wife enjoys absolute rights over her land and property. She can send back a husband whenever she so desires. In deega, brothers can share the same wife, to avoid partitioning limited land. Land inheritance under the Kandyan custom gave a strong preference for the eldest male child in intestate succession. The LDO of 1935 also used this to avoid the fragmentation of land.

Other customary practices still existing are thattumaru (rotation of cultivation of among several family members) and kattimaru (rotation of several plots among family members). These practices were adopted by the rural inhabitants to guarantee access to scarce land. The system of rotation of cultivation attempts to guarantee that all heirs to a specific plot gain access to it by rotation in cultivation. One may get one's turn, in extreme situations, every few years. Under the rotation of plots system, several co-owners cultivate a number of land parcels, rotating them amongst themselves so that each has equal access to all the plots. Both systems are useful for preventing further fragmentation of land due to population pressure.

9.2. Thesavalamai - customary land law in Jaffna

Thesavalamai or the customary land tenure practices prevailing in the Jaffna Peninsula were collected and codified during the Dutch Period (1706). The Thesavalamai Law was enacted to give force to the customs of the Tamils living in the Jaffna peninsula and was meant to preserve the dominant caste hierarchy among Jaffna Tamils. The law obliges a landowner to concur with family members and adjoining landowners (who are given preemptive rights) before executing a land sale or transfer.

9.3. Muslim intestate law

Muslim marriage and family customs are directly related to property inheritance. The Muslim Intestate Law of Inheritance is one of the operational pieces of legislation that provide how land should be passed on to the next generation, with the belief that the “law of the god should take precedence over the law of the land”, particularly where private freehold property is concerned. However, land alienated by the government under the LDO and kindred legal instruments is subject to the laws of the land.

Access To Land And Security Of Tenure

Although the colonial government sold more than 500,000 acres of land to the investors the State continued as the largest land owner of the country during the colonial period and after independence. Government custody and control of a large extent of land is a significant feature in land ownership in the country.

The land resources under Government ownership includes forests and forest reserves, land reserved for infrastructure development, and lands that have been granted on long leases to private persons and firms for cultivation. The Land Reform laws of the 1970s enabled the state to take over agricultural properties belonging to private persons above the ceiling of 50 acres for private holdings.

The land reforms of 1972 and 1975 nationalized large estates above the established land ceiling of 50 acres for private landholdings, and brought these back under state ownership. After the implementation of the land reforms of the 1970s, 82% of the country's total land

area was in the hands of the state, leaving the balance 18% in private ownership.¹ The main recipients of land acquired from private owners were public sector agencies with 234,156 ha (56%), and cooperatives with 106,435 ha (25%). Only a small fraction covering 35,815 ha (9.5%) was passed on as peasant smallholdings.² Almost all lands distributed for peasant smallholdings came from land belonging to indigenous owners, particularly from coconut plantations, rather than from plantations (mainly tea and rubber) owned by foreign companies.

The Land Development Ordinance (LDO) of 1935 facilitated the alienation of land to the peasants introducing the issuance of permits and grants to people to develop state land. It is reported that as a result of these land alienations one in three families in Sri Lanka lives on land alienated by the government under long term leases (often 99 years) or other forms of tenure since the 1930s.

Although the imbalance between state and private land ownership was eased to some extent by these land alienation processes, successive governments after independence have been unable to solve the rural landlessness problem in a substantive way. The practice was the transferring of land to farmers under long-term leases not through freehold. One consequence of continued state monopoly of lands has been the high incidence of “encroachment” (illicit occupancy) on state lands, as landless people often have no other option.

A survey conducted in 1999 revealed that 5.8% of the country’s total land area came under some form of encroachment. A practice adopted by the government authorities to deal with this issue is “encroachment regularization” (giving the legal recognition to occupants). Table 1 show that over 500,000 acres were given to occupants under the regularization process. A recent report noted that the largest proportion of government-alienated land in the country is due to encroachment regularization.³

1 V.K. Nanayakkara, *Agrarian Reform & Rural Development: Issues, Concerns & Future Challenges*, op. cit. p.18

2 Ibid.

3 Ibid.

It seems that “encroachment regularization” created one of the easiest avenues for the poor farmers to obtain a parcel of state land with the regularization process to be followed under the LDO of 1935. It has been noted that although “encroachment regularization” is administratively expedient, it is also prone to corruption as the encroachers have to deal with certain administrative bottle necks in the process encroachment regularization.⁴

The Presidential Task Force on Land Alienation was another attempt made in 1993 to address the issue of landlessness, with some 264,702 ha identified for both agriculture and housing.

However, after implementing a series of land reform ordinances and distributing land to private persons belonging to rural peasant communities, we still notice the prevalence of several issues relating to the land tenure. The original intention of the LDO of 1935 was to transfer full land ownership to persons receiving land from the state. The implementation was not in line with the provisions of the ordinance as the state deferred handing over full ownership due to fears of land fragmentation and multiplicity of ownership. Although the land was allocated under leasehold arrangements, the conditions laid following the LDO also made the land unacceptable to banks as security for loans. If the state is not ready to issue free hold to the grantee even after they have developed the land and established residential buildings, the insecurity of tenure will create unrest hampering productivity.

4 Land Watch Asia, *Land Ownership and the Journey to Self-Determination*, SRI LANKA Country Paper, Asian NGO Coalition for Agrarian Reform and Rural Development, 2011, p.223

Table – 10.1
Extent of Land distributed by Government between 1935 and 1985

Type of Scheme	Hectares	Acres
Dry zone colonization schemes	175,941.31	434,751
Village expansion schemes	357,238.76	882,737
Highland settlement schemes	13,564.95	33,519
Youth settlement schemes	7,963.98	19,679
Regularization of encroachments	205,762.03	508,438
Middle class allotments	55,018.62	135,951
Land Grants (special provisions)	9,979.77	24,660
Rain-fed farming settlement schemes	5,363	13,252
Total	830,832.43	2,052,987

Source: V.K. Nanayakkara, *Agrarian Reform & Rural Development: Issues, Concerns & Future Challenges*, op. cit. p.17

**PART THREE – RECENT LAND
GRABBING IN SRI LANKA**

The Analysis of Survey Data

11.1. The Social And Economic Background of Respondents

The survey conducted in thirty one different locations in the five districts have provided cases or instances of land grabbing, eviction of people, and tenure insecurity problems faced by rural farmers and resettled communities.

In the Trincomalee District the survey was conducted in five locations, namely, Sampur, Santhosapuram, Seethanaweli, Navatsolai and Upparu. The people in these areas, who were displaced during the internal conflict, now have the problem of taking their land back from the security forces and government authorities due to a development project and the establishment of military camps. Among the people interviewed there are people who have been dealing with tenure insecurity due to the inadequacy of settlement arrangements provided after the civil war.

In the Mullaitivu District the locations were Keppapulavu, Hijrapuram, Silawaththai, Kokkilai

and Mullivaikal. Residents in these localities have problems in taking their land back from the military and tenure insecurity of the land they settled on after the civil war. Some localities have the problem of new settlers using their land and obstructing them from engaging in their livelihood.

In the Jaffna District the main location selected for the study was the Valikamam area where large tracts of land were taken over by the military and declared a High Security Zone (HSZ) during the civil war. The HSZ has not yet been reduced or removed by the authorities forcing people to live in welfare camps. The people who lost their land to the High Security Zone were interviewed by dividing them according to the welfare camps where they currently live. They are namely, Sapabathy welfare camp, Newhaven welfare camp, Konalpulam welfare camp, Urumpirai welfare camp and the Point Petro welfare camp.

In the Ampara district the survey was conducted in five villages in the Panama area, namely, Shasthrawela, Ragamwela, Ulpassa, Egodayaya and Horekanda and two villages outside Panama, namely, Deegawapiya and Ashraf Nagar. The people in these localities except Deegawapiya lost their land during civil war as the security forces moved in to establish military camps and the installations required for the maintenance of such camps. After the end of civil war the people found that the camps which were built as temporary measures have become permanent places. New business ventures such as Hotels, Restaurants and Agricultural farms are established by the military in their localities restricting their movement and use of land. In Deegawapiya, people have utilized state land since the 1960s for farming and settlements, and are now facing tenure insecurity which is expected to be resolved by regularization.

In the Monaragala district the localities were the four settlements belonging to Pelwatta Sugar Plantation Limited and five Villages near Wellawaya town, namely, Dahasayagama, Randeniya Watta, Maduruwa, Ranawarawa and Inguruyaya. People in all these localities face tenure insecurity. The Pelwatta Sugar Plantation farmers are lease holders through a contract signed with the company (only the farmers who joined the company farming in the 1980s received documents to sign as lease holders and others say that they refused to sign such agreements)

and the Respondents from other villagers have been using plots of state land for cultivation and residence for some time and are waiting regularization.

The Respondents were invited to the interview places by Field Coordinators of National Fisheries Solidarity Movement (NAFSO), which helped the field researchers through their field Coordinators by making public announcements. The team of researchers from the Institute for Constitutional Studies did not get involved in the selection, or inviting people to the interview. The Enumerators who participated in the collection of data with the Senior Researchers were selected from the Sinhala and Tamil speaking final year undergraduates of the Law Department of the University of Jaffna.

The survey was designed to interview 100 Respondents per district envisaging a total of 500 Respondents for the survey. However the field survey ended up with 531 Respondents. This happened as the survey team was unable to send back the people who had gathered at the locations. The survey was conducted using the semi-structured questionnaire giving the Enumerators freedom to use the qualitative method.

The final figures presented in table 11.1 demonstrate that the survey had an equal representation of both sexes. Among the Respondents there were 266 males and 265 females. The gender representation in the total number of Respondents was 50.1 for male and 49.9 for females. Table 11.1 also presents the district wise gender representation among the Respondents. The table shows that the districts of Mullaitivu and Jaffna which were the Tamil areas affected the most by the civil war had the highest percentage of female participation in the survey. The female participation in the districts of Mullaitivu and Jaffna are 60 percent and 65 percent respectively while the sample percentage is 49.9.

Tabale11.1 Respondents by Gender

	Male	%	Female	%	Total
Total	266	50.1	265	49.9	531
Area Breakdown					
Monaragala	69	62.7	41	37.2	110
Ampara	50	50.0	50	50.0	100
Trincomalee	54	52.4	49	47.5	103
Mullaitivu	44	42.3	60	57.7	104
Jaffna	49	43	65	57	114

It was the Monaragala District which had the highest participation of Males in the survey. The areas covered in the Monaragala district were mainly Sinhala, rural farming areas which were not directly affected by the civil war except through youth joining the Sri Lanka armed forces (During the interview one of the female Respondents of Pelwatta, Monaragala informed that her Son-in-Law is a soldier who was paralyzed after a road accident and received a promise from the District Secretary Office that her land in the settlement area could be transferred to his name as the DS office decided to arrange a housing loan for the disabled soldier).

The over representation of females in the Mullaitivu and Jaffna districts signifies the role that fell on the females whose families were affected by the war and conflict. This is equally applicable to all areas affected by the civil war. The security forces have played a key role in appropriating lands in all the war affected areas. In all these areas, namely, Panama and Ashraf Nagar in Ampara, Kappapulavu, Silawaththai and Kokkilai in Mullaitivu, Sampur in Trincomalee and Valikamam in Jaffna, the participants have identified the Security Forces establishing army camps as the reason for the denial of access to their land. From these areas there was a significant participation of females in the survey. Many female Respondents complained that they lost their husbands and sons or that they disappeared along the way. This demonstrates the situation that prevailed during the period of trouble, and also that in the process of restitution women have to play active roles as the male members are

unable, unavailable or physically unfit to defend the rights of the family. The over representation of males in the Monaragala district provide a contrasting picture to understand the role of males and females during peace and trouble.

Tables 11.2 and 11.3 present information on the Heads of Household and Non-Heads of Household among the Respondents. Accordingly, 375 Respondents claimed that they are the Heads of Household while 156 Respondents are Non-Heads of Household. The persons identifying as the Non-Heads of Household claimed that they were representing the family interests as their Heads of Household was unable to attend the survey meeting due to some other commitment or a physical or mental incapability.

The data presented in these two tables also signify the role of females during peace and trouble. According to these tables among the Heads of Household female representation is 33 percent. It is 90.3 percent among the category of Non-Heads of Household. The presence of a large number of females attending the survey [265 Respondents (49.9%)] seeking restitution and support to restore the land rights of their families demonstrate that in the areas devastated by war and conflict the female members have to play an active role to protect the interests of their families.

The district wise breakdown shows that the percentages of female Heads of Household for Panama, Mullaitivu and Jaffna are higher than the percentage in the national sample. The District of Monaragala and Trincomalee have the highest percentage of male participation among the Chief of House Hold category. In the Non-Heads of House Hold Category the percentage is 100 percent in Ampara and Trincomalee districts for women, while Monaragala, Mullaitivu and Jaffna have 93, 96 and 74.5 percent of women participation among the Non-Heads of House Hold category respectively. These figures show that the administrators have to address the land related issues as well as restitution with extra care as a considerable number of families are represented by females who have become the defenders of their families and land rights.

Table 11.2 - Respondents by Heads of Household

	Heads of households				Total
	Male	%	Female	%	
Total	251	66.9	124	33.0	375
From the total 531 respondents 71% are Heads of Households					
Area Breakdown					
Monaragala	67	82.7	14	17.3	81
Ampara	50	65.8	26	34.2	76
Trincomalee	54	75.0	18	25.0	72
Mullaitivu	43	54.4	36	45.5	79
Jaffna	37	55.2	30	44.7	67

Table 11.3 – Respondents by Non-Heads of House Hold

	Non-Heads of Household				Total
	Male	%	Female	%	
Total	15	9.6	141	90.3	156
From the total 531 respondents 29% are Non-Heads of Household					
Area Breakdown					
Monaragala	02	07	27	93	29
Ampara	00	00	24	100	24
Trincomalee	00	00	31	100	31
Mullaitivu	01	04	24	96	25
Jaffna	12	25.5	35	74.5	47

Table 11.4 presents the age range of Respondents. According to the information provided in the table, the majority of the Respondents are above the age of 30. The percentage of Respondents above the age of 30 is 90.3. The percentage for the youngest group (below the age of 30) is 8.6. In the area break down 80 percent of the Respondents in the Ampara district came from the 40-60 age group and the next highest percentage is in the Jaffna District which had 70 percent from the 40

to 60 group. This illustrates that the information gathered by the field survey are from the people who have spent a greater part of their lives on the land which was taken away and in the area where the eviction of land took place. The information provided by the young Respondents who belong to the age group 30-40 has to be trusted as they have experienced these uncertain situations that developed during the last thirty years.

Table 11.4 - Respondents by age

	Age Range										Total
	>30	%	31-40	%	41-50	%	51-60	%	60>	%	
Total	46	8.66	114	21.46	123	23.16	123	23.16	125	23.54	531
Area breakdown											
Monaragala	10	09.0	28	25.0	30	27.0	26	24.0	16	15.0	110
Ampara	02	02.0	17	17.0	23	23.0	22	22.0	36	36.0	100
Trincomalee	17	16.5	22	21.3	20	19.4	25	24.2	19	18.4	103
Mullaitivu	08	07.6	24	23.0	25	24.0	16	15.3	31	29.8	104
Jaffna	09	07.8	23	20.1	25	21.9	34	29.8	23	20.1	114

Table 11.5 is about the current occupation of the Respondents. Accordingly at present the Respondents are engaged in different vocations. Major occupational groups are Farming, Fishing, Daily Paid Work and Self Employment. According to the information given in the table, 20 percent identify themselves as Farmers. The appearance of a large number of farmers in the table is due to the inclusion of farmers in the Monaragala and Ampara districts. The figures for Framers in other districts, where the majority of residents belong to the minority communities worst affected by the civil war and are still struggling to return to normalcy, are between 3.8 and 5.7 in Trincomalee and Mullaitivu Districts respectively. For Jaffna district no one claimed to belong to the “farmer” category. In the sample, 34 percent work as daily paid casual laborers (including women working as domestic workers). The percentage for the self-employed is 15 percent and for fishing 09 percent. The group also consists of public servants (3.2) and retired persons (1.5). The Monaragala and Ampara Districts have the largest

number for farmers (63% and 25%) while the Trincomalee and Jaffna Districts have the largest number for daily paid workers (55% of both Districts). A considerable number of Respondents are engaged in fishing in the Ampara, Trincomalee, Mullaitivu and Jaffna Districts (9.0%, 9.7%, 18.0% and 11.0% respectively). The Respondents engaged in Self-Employment is also significantly high in the Trincomalee, Mullaitivu and Jaffna Districts (17%, 30% and 22% respectively). The occupational pattern shows how the land appropriations have affected the livelihood of people. A large number of the people living in war affected areas have become daily paid laborers and are engaged in self-employment as their traditional occupations such as farming and fishing have been obstructed by land grabbing, displacement and presence of security forces.

Table 11.5 - Respondents by livelihood

	Farmer	%	Fisherman	%	Public Services	%	Retired	%	Daily Paid laborer	%	No Income	%	Self Employed	%	Other	%	Total
Total	105	20	50	9.0	17	3.2	08	1.5	179	34	12	2.3	80	15	80	15	531
Area Breakdown																	
Monaragala	69	63	00	00	02	02	03	03	17	15	01	1.0	04	04	14	12.0	110
Ampara	26	25	09	09	13	13	05	05	18	18	01	1.0	03	03	25	25.0	100
Trincomalee	04	3.8	10	9.7	00	00	00	00	57	55	03	2.9	17	17	12	11.6	103
Mullaitivu	06	5.7	19	18.0	01	0.9	00	00	24	23	06	6.0	31	30	17	16.4	104
Jaffna	00	00	12	11.0	01	1.0	00	00	63	55	01	1.0	25	22	12	10.0	114

Tables 11.6 and 11.7 present the economic background of the Respondents. Accordingly, 45.1 percent of the Respondents receive an income less than Rs10,000.00 (\$2.19 per day, could be identified as the low income group on the basis of the definition of the national poverty level). The percentage of Respondents receiving between Rs.11,000.00 to 20,000 is 25 percent. As such 70 percent of the Respondents receive less than Rs.20,000.00 (\$131 per month/\$4.3 per day). From the districts of Monaragala and Ampara we found 14 Respondents who

have an income above Rs.30,000.00 (\$6.5 per day). In the other three Districts no one claimed that they receive above Rs.30,000.00 as the family income. The comparative analysis of these figures reveals that Trincomalee, Mullaitivu and Jaffna Districts have large number of people falling into the low income category. The percentages for these three districts are 58, 59 and 52 respectively. On the other hand, the percentages for Monaragala and Ampara are 23 and 35 percent respectively.

Table 11.6 - Respondents by Income

Monthly Income													
	>10,000	%	11,000-20,000	%	21,000-30,000	%	31,000-40,000	%	40,000>	%	DNP*	%	Total
Total	240	45.1	131	25	33	6.2	11	02	03	0.5	113	21.2	531
Area breakdown													
Monaragala	25	23	57	52	17	15	10	09	01	01	00	00	110
Ampara	35	35	21	21	12	12	01	01	02	02	29	29	100
Trincomalee	60	58	16	15	02	02	00	00	00	00	25	24	103
Mullaitivu	61	59	16	15	01	01	00	00	00	00	26	25	104
Jaffna	59	52	21	18	01	01	00	00	00	00	33	29	114

According to Table 11.7, the Respondents receiving Samurdhi Assistance (the official poverty alleviation program of the government) is 31.6%. Reading tables 11.6 and 11.7 together we can determine that the percentage for Respondents who belong to the low income groups is between 25 and 31 percent. However the percentage of Samurdhi recipients is below the national sample for Mullaitivu and Jaffna districts. According to Table 11.7, only one person among the Respondents in Jaffna District receives Samurdhi assistance (although all the Respondents live in welfare camps). Meanwhile 85 percent of Respondents from Jaffna district claim that they did not receive any financial assistance.

Table 11.7 - Respondents receiving financial assistance

	Samurdhi	%	Compensation	%	Other	%	Several assistance	%	None	%	Total
Total	168	31.63	05	0.9	49	9.22	14	2.63	295	55.62	531
Area Breakdown											
Monaragala	46	41.8	05	4.5	03	2.7	00	00	56	51.00	110
Ampara	38	38.0	00	00	04	04.0	14	14.0	44	44.00	100
Trincomalee	58	56.3	00	00	07	6.7	00	00	38	36.8	103
Mullaitivu	25	24.1	00	00	20	19.2	00	00	59	56.7	104
Jaffna	01	01.0	00	00	15	13.1	00	00	98	85.9	114

11.2. The Population Represented In The Sample

Tables 11.8 and 11.9 present information about the population represented by these 531 Respondents. The total population represented by them is 1992 and the percentages for male and female are 48 percent and 52 percent. This shows that the majority of the victim population affected by the deprivation of land in the areas covered by the survey comprises females (52 percent). This percentage is similar in the districts of Ampara, Trincomalee and Jaffna. The percentage for the District of Mullaitivu is 53 percent while the District of Monaragala has 49 percent of females in the total population.

Table 11.8 - Total Population by Gender

	Male	%	Female	%	Total
Total	960	48	1032	52	1992
Area Breakdown					
Monaragala	230	51	221	49	451
Ampara	192	48	212	52	404
Trincomalee	193	48	213	52	406
Mullaitivu	156	47	179	53	335
Jaffna	189	48	207	52	396

The Table 11.9 presents the size of the families represented by the Respondents. Accordingly, the majority of Respondents have 03 to 05 members in their families. The percentage for these families in the sample is 85.1. However, 14.5 percent of Respondents have large families. The average size for large families is 6 to 8 members. The Respondents representing large families told the researchers that they are the most affected category as they had to face greater difficulties when they lost their residence and livelihood. For example 25.7 percent of Respondents in Jaffna who live in welfare camps due to the denial of access to their ancestral land have 6 to 8 members in their families. All the Respondents in Jaffna who live in welfare camps said that the spaces provided for the families to live and the toilet and water facilities are not sufficient for them to have a decent life. They face various social problems due to length of their stay in the camps. For them one of the most difficult issues is the upbringing of Children; particularly, the organization of the young children’s social life. Since they have been living in the welfare camps for a considerable period they feel that they have been deprived of a decent life. Another problem faced by the residence of welfare camps is the difficulty in finding employment in the villages around the camps. They have to walk a considerable distance to find daily wage work. Some were fishermen in their original areas and now cannot engage in fishing as they live in camps established away from the sea.

Table 11.9 – Size of the Families of Respondents.

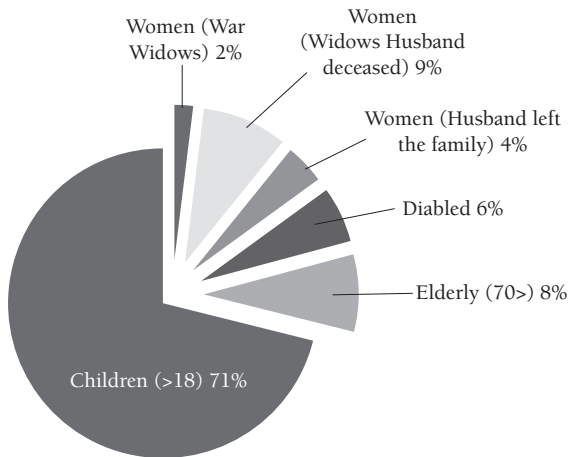
	Population by family size								Total
	>3	%	04-05	%	06-08	%	09>	%	
Total	230	43.3	222	41.8	77	14.5	02	0.4	531
Area Breakdown									
Monaragala	33	15.57	64	32.82	12	17.14	01	50.00	110
Ampara	43	20.28	35	17.95	21	30.00	01	50.00	100
Trincomalee	45	43.6	42	40.7	16	15.7	00	00	103
Mullaitivu	46	44.2	48	46.2	10	09.6	00	00	104
Jaffna	63	29.72	33	16.92	18	25.72	00	00	114

The table 11.10 presents the number of persons belonging to vulnerable groups in the total population. Accordingly, the entire population has a significant number of vulnerable groups such as widows, including the women whose husbands died or disappeared during war, old people, children and disabled persons. Among the Respondents 96 women claimed that they are leading single parent families. The total number of persons belonging to these vulnerable groups is 705. This is 35.5 percent of the total population. Among the vulnerable groups 14.8 are women without their husbands. Among them 8.6 percent are widows whose husbands are deceased under normal circumstances and another 2.4 percent are “war” widows whose husbands were killed during civil war. The women who became widows due to death of husband are 8.6 percent and the percentage of women whose husband left the family is 3.8 percent. The highest numbers of women without their husbands are from Trincomalee, Mullaitivu and Jaffna districts where the Tamil minority community is suffering from land appropriations. The total number of women without husbands in these three districts is 75. In the other two districts this number is 30 women. This shows that the war affected, Tamil majority areas have a large number of women without husbands. The percentage of war widows in these three provinces are above the percentage in the sample population. There are 6.4 percent disabled persons in the population and 8.4 percent are elderly people (above the age of 70 years). The children (below 18 years) comprise 70.4 of the total vulnerable groups. This is 24.9 percent of the total population.

Table 11.10 - Vulnerable groups in the total population

	Women (War Widows)	%	Women (Widows Husband deceased)	%	Women (Husband left the family)	%	Disabled	%	Elderly (<70)	%	Children >18	%	Total
Total	17	2.4	61	8.6	27	3.8	45	6.4	58	8.4	497	70.4	705
Area Breakdown													
Monaragala	00	00	14	8.2	00	00	12	7.0	12	7.1	131	77.0	169
Ampara	01	0.1	12	9.0	03	2.0	14	10.0	16	12.0	89	66.0	135
Trincomalee 18.2	05	4.3	09	7.8	07	6.1	00	00	07	6.1	86	75.7	114
Mullaitivu 23.0	04	3.0	13	9.9	14	11.0	01	0.7	11	8.3	88	67.1	131
Jaffna 10.9	07	4.4	13	8.5	03	2.0	18	11.5	12	7.6	103	66.0	156

Chart 11.1 – Vulnerable Groups in the Total Population



The information presented in the table 11.10 indicates that the people who have become victims of land appropriations consists of a large number of women, widows, children, elderly and disabled persons. The presence of a large number of these groups implies that the restoration

of land rights has become an urgent task as ensuring the basic human rights of these categories have been identified as a duty of the State. The government cannot ignore or remain inactive when faced with the violation of the human rights of these people who need special attention. As such, the restoration of the land rights of people affected by the actions of state agents should be given high priority by policy makers and administrators.

11.3 Information On The District Locations And Communities

11.3.1 Trincomalee District

In the District of Trincomalee the field survey was conducted with the participation of 103 Respondents. Among the Respondents there were 54 males and 49 females. The number of Heads of Households among the group was 72 and the number for non-house Heads of Households was 31. According to the information provided by the respondents in Trincomalee district, 32.0 percent of the family units are led by female Heads of House Holds. This shows the effects of war on the social fabric of society.

The field survey was conducted in three different locations in the Trincomalee district, namely, Sampur, Navatsolai and Upparu. Sampur was the central focus of the field study in Trincomalee due to the complexity of land issues in the location. The area was captured from the LTTE by the security forces as it was a strategically important place to protect the Trincomalee Harbor and the adjoining naval base. The government declared Sampur as a High Security Zone in 2006. Many returnees became displaced persons even after the war as a result of the government decision to establish an electricity power plant in Sampur. During the interview 39 people informed us that they are affected by the power plant project. Consequently, a large number of returnees have to stay away from their original land and houses. The other two areas, namely, Navatsolai and Upparu have been occupied respectively by a Sinhala and a Muslim community who were resettled in these areas by the government. These people face the tenure insecurity due to the inadequacies of the new arrangement. Detailed information of the areas is given below.

11.3.1.1 Sampur

Sampur is a coastal town in the Trincomalee District. Due to its location about 30km on the South-Eastern side of the Trincomalee harbor, it became a strategically important place for the Sri Lankan security forces when the LTTE launched several attacks targeting the Trincomalee naval base from this area during the civil war.

It is reported that in April 2006, 815 Tamil families were displaced from Sampur due to the conflict, and took up residence in IDP camps. The Sri Lanka military forces captured Sampur in September 2006 and established a military base. In 2007 the area was taken under the control of the Navy. Later the President issued a Gazette naming the area as a High Security Zone under Emergency Regulations.

In the same year the Government of Sri Lanka, Ceylon Electricity Board and the National Thermal Power Corporation, India signed an MOU to build a coal power electricity plant. Further, in 2012, the Government declared 818 acres in and around Sampur as a Special Zone for heavy industry for the purpose of constructing a coal power plant. Preparatory work for this project was carried forward in 2013 through the signing of a series of agreements by the above parties, such as Power Purchase Agreement, Implementation Agreement, BOI Agreement, Land Lease Agreement and Coal Supply Agreement.

It is reported that during the preparatory work done for this project more than 500 houses were removed and their Muslim and Tamil owners prevented from accessing their former agricultural lands and fishing areas. The government arranged a resettlement scheme to settle the people removed from this area in Santhasapuram. However the people are not happy with the new arrangement and are demanding their original land.

Meanwhile, the construction of the coal power plant has been delayed due to the agitation of people, as well as the new round of discussions held between the government and the Indian Company to use gas power instead of coal. In 2016, the government informed the Supreme Court that it had taken a decision not to establish the coal power plant. The new government that came to power in 2015 has decided give 40 acres to the Navy from another area and asked them to leave the residential

and farming areas. Although the Navy has left the land they originally occupied, they have acquired large tracts of land (approximately 400 acres it is said) despite the government decision to use only 40 acres. The new acquisition covers the land used by people for agriculture and settlement.

During the field survey people who were affected by the war and the power plant project complained that, even though the Supreme Court has given an order in their favor, the government officers at the Divisional Secretariat are pressurizing them to leave the land.

Most of the people affected by the evictions do not possess any land other than what was taken by the Navy. As these people's main source of income is agriculture, this has severely hampered their livelihood. The government offered alternative land for the people from another area. However, the people are not ready to accept them because of their attachment to the ancestral place, poor soil conditions, and lack of community facilities and occupational opportunities. They are keen to get back to their agriculture lands which were taken over by the Sri Lanka Navy in Sampur; especially the lands which have not been used for actual military purposes.

11.3.1.2 Navatsolai (Kumburuppitiya)

This is a Sinhala community which had occupied state lands for their livelihood (fishing) in the past, near Vaalaichenai in the Batticaloa district (the district adjoining the district of Trincomalee) for a long period without any ownership of land. They were displaced in 1985 due to the civil war. After the war they went to the original land in Vaalaichenai, but found that it was being used for a school playground. Then, the government brought and settled them in Navatsolai, which had earlier been forest land, after the war. The area is called Navatsolai in Tamil, while the Sinhalese settlers call it Kumburuppitiya.

We were told that the government has offered a housing scheme to a section of the community. Some people did not receive a house in the housing scheme thus living in small huts made of old aluminum sheets.

The land related issue common to both groups (those who live inside the housing scheme and those who live outside) is that they did not receive any permit or grant except the license certificate from the government to occupy the land. The people also complain that they do not have facilities to establish a farm land in the area or engage in any type of economic activity. Consequently life is hard as they have to find work outside their settlements to earn money. They are very poor and struggle to find food for their families. Other community facilities such as schools, transport and healthcare have also not been provided.

11.3.1.3 Upparu

This is a Muslim community which lived in the locality occupying state lands before the displacements that took place in 2006 due to civil war. They were in the refugee settlements in Mannar and Kalpitiya areas on the Northwest coast. Now they have been resettled on a plot of land of 20 perches given by the government. Some have received houses from the housing scheme established by the government, while many complained that they did not receive a house in the scheme. Those who received a new land claimed that the land is not sufficient for their living and asked for an extension of land area to have a residence as well as livelihood. They pointed out that the relocation of the military camp from the area would facilitate establishing their livelihood free from interference.

11.4 MULLAITIVU DISTRICT

In the Mullaitivu district the field survey was attended by 104 persons. The total population represented by these Respondents is 335 persons. The highest numbers of Respondents were selected from Keppapulavu (40). The other four areas namely, Hijrapuram (14), Silawaththai (25), Kokkilai (16) and Mullivaikal (9) are represented by the numbers given in the parentheses.

Among the Respondents there were 42.3 percent male and 57.7 percent female members. The Respondents by Heads and Non-Heads of Household illustrate that there are 79 Heads of Households and 25 Non-Heads of Household among the Respondents who participated in

the survey. The gender representations among the category of Heads of Households are 43 males and 36 females. These figures for Non-Heads of House Holds are 04 males and 24 females. As such the total female representation in the district is 60 (58.2%).

In Mullaitivu the main obstacle to exercising the land rights of people is the security force keeping large tracts of land for military camps, training facilities and undertaking agricultural farms. This is the main issue in the Keppapulavu area. The other three areas, namely, Hijrapuram, Silawaththai and Killali have issues related to tenure insecurity as they were not given, or allowed to use a similar extent of land due to the continued presence of security forces in these areas. The returnees in Killali face the problem of outsiders having settled on their land and obstructing their livelihood (fishing in the Lagoon).

11.4.1 Keppapulavu

The area is inhabited by Sri Lanka Tamils and they have been living in this areas for generations. More than 350 families in Keppapulavu in the Mullaitivu District were displaced because of the civil war. They were in camps till 2010. After the end of the war, they were informed that they can go back to their land. However, instead of sending them to the original land, a military base was established there.

It is reported that more than 600 acres of private land are still occupied by the military. The people were given alternative land for their housing. These families who used to own from 1 ½ to 10 acres of land are now forced to live on 20 perch land plots. Their access to agriculture land was denied by the military and, large scale farms operated by the military have been established there. Access to the coastal areas and lagoons is still being blocked by the military and people have to walk for around 4 km daily to the coast and lagoon. All the boat harbors in Mullivaikal are occupied by the Navy. This has a greater negative impact on women and disabled people with limited mobility.

Alternative lands given to the people are too small for cultivation or any other livelihood. The soil is not fertile compared with the original land, which they claimed are very fertile for the cultivation of food and

commercial crops and had a green environment which suited the quiet life they enjoyed as villagers. As such, the people want to go back to their original land which most of them owned. They feel a bond with that land due to all the trees they have planted and other investments made. A number of campaigns were organized by the local CBOs and communities and, local political authorities have promised to resolve the issue.

When they were in the internal displacement camps, they were informed that they would be resettled in their own places. However, instead of being sent to their original places, they were forcefully resettled in another area called Seeniyamottai, where a Model Village was built, named “Keppapulavu Model Village”. The settlers were given a small plot of land and a house in the model village. The final batch of settlers comprised 1185 persons (405 families) out of which 346 persons (110 families) were from the village of Keppapulavu.

In 2013 the government issued a notice under the Land Acquisition Act informing the people that the government needs 526 acres from this village area for a public purpose and asked the people who have land in the area to submit claims for compensation. The community has contested this notice arguing that the establishment of military related premises cannot be introduced as public purposes as per the Land Acquisition Act. They requested the new government which came to power in 2015 to return their original land. In the survey all 40 persons interviewed claimed that their access to land is denied due to the military activities.

Because of the deprivation of their original land and the military occupation of paths leading to the sea they have lost their permanent occupation (farming and fishing). They do not like to stay on the alternative land or receive compensation. They demand their own lands back. It seems that the poor socio-economic situation at the model village, the lack of proper facilities to continue their livelihoods such as farming and fishing, their emotional attachment to the original land due to its fertile soil and the village life they enjoyed influence them to demand resettlement in the original Keppapulavu village.

11.4.2 Hijrapuram

The people in this area left their own land in 1990 due to the eruption of civil war. They lived in welfare camps (situated in Mannar and Kalpitiya at the Northwest Coast), or relative's homes or another land owned by them. Recently they were allowed to resettle in their own land. Some of the displaced person had permits for land in other areas. The government has provided them a plot of land. They say that the extent of land they received is around 60 perches. However earlier they had 80 perches thus the extent of land is reduced by 20 perches. The grievance is getting 80 perches of land.

11.4.3 Silawatthai

This is a Tamil Community. The people in Silawatthai had permits for their lands and occupied them for more than 30 years. They lost their lands due to the war in 2009. They are now resettled in new lands. They did not receive the original lands which were used for a Navy camp. They complained that the previous lands were developed by their ancestors and themselves. They contain trees that they planted during that period. Now the Navy is not ready to give their land back. They are demanding their own lands and do not like to stay in the unfertile lands provided for settlement.

11.4.4 Kokkilai

Respondents belong to the Tamil community. They had permits for the lands. They lost their lands in 1984 when the civil war erupted, and were displaced until the end of war. Some say that they had to leave the place several times and were in India during this period. When they resettled in Kokkilai in 2011 they found that some of their lands were occupied by persons belonging to the majority Sinhala community. These people complained that they could not get their lands back because the armed forces support the people who presently occupy their land. They want to get back their own lands. These areas are now subjected to a new wave of colonization by the majority community supported by the security forces. They felt that they are still suffering from communally motivated conflict as the Sinhalese settlers not only occupying their

traditional land but also obstruct them from engaging in fishing in the lagoon. They claimed that the Sinhalese settlers threaten them when they fish in the lagoon. Since the security forces are not providing them protection, now they are having a twin problem; losing the right to land and the right to employment.

11.4.5 Mullivaikal

Mullivaikal is a locality in the North Eastern seacoast of Sri Lanka. It is the place where the final battle between the LTTE and the Sri Lanka Armed forces took place in 2009. The place is well known internationally due to the humanitarian issues raised focusing on the final phase of the war. The people who lived in the area left their lands in 2009. The lands are privately owned but now controlled by the Navy who has established a camp. People are ready to accept alternative lands as they don't want any more trouble. Some have lost their permits during the displacement in 2009. The Divisional Secretary office has informed them that they can issue the permits for these lands but has still not been implemented.

11.5 Jaffna District

In the District of Jaffna the field survey was conducted with the participation of 114 Respondents. Among the respondents there were 49 (43%) males and 65 (57%) females. The families of these 114 Respondents have a total of 396 persons. The gender representation in this population is 48 percent males and 52 percent females. The number of Chiefs of Households among the Respondents was 67 and the number for non-house Chiefs of Household was 37. According to the information provided, 57 percent of the family units were represented by females. Among the Chiefs of Household the female representation is 44.7 percent and among the Non-Chiefs of Household it is 74.5 percent.

This shows the effects of war on the social fabric of society. The female members have come forward to protect the family interests in restitution. This is highly unlikely during the time of peace as the female's role was restricted to household activities in traditional Hindu society. In Jaffna District the field interviews were conducted in five

welfare camps, namely, Sapabathy welfare camp, Newhaven welfare camp, Konalpulam welfare camp, Urumpirai welfare camp and the Point Pedro welfare camp. All the Respondents have been living in these camps for more than twenty years without having a proper attention from the government authorities.

11.5.1 Valikamam

In 1990, the Ministry of Defense established a High Security Zone (HSZ) in Valikamam North division of the Jaffna peninsula. It is reported that more than 5800 acres were acquired for this HSZ. The demarcation of the HSZ displaced approximately 9,905 Tamil families. These displaced people have been living with families of relatives. Food and other relief provided for the people in the camps were terminated by the government in 2010.

These families were engaged in farming and fishing as their main livelihood. Being displaced they faced severe hardships as they no longer had access to their farming and fishing grounds. The Myliddy Fisheries harbor is such a place which is no longer accessible for fisher folk and villagers as it is occupied by the Sri Lanka Navy.

After the government stopped the relief for IDPs in 2010, the IDPs have been working as laborers for daily wages, workers in agriculture, machinery helpers, fish vendors, food sellers, and some of young girls are working at a garment factory. Some families who have relatives working in European countries received some financial assistance from their relatives. However, majority are helpless as there is no funding assistance. They do not even receive financial support from the Samurdhi scheme, which is the poverty alleviation scheme organized by the State to help the poor in the country. In our sample only 01 person among the 114 Respondents received Samurdhi (see below the Table on Respondents receiving financial assistance) and 98 Respondents said that they do not receive any financial assistance.

The restrictions imposed on NGO/INGOs declaring that there wasn't a single IDP in the country in September 2010 at the UN HR council at Geneva have deprived these people receiving assistance from NGOs

or INGOs. For example among the Respondents only 15 persons (excluding 01 receiving Samurdhi) said that they receive financial assistance through other sources.

In 2015 a Cabinet decision was taken to release of 1100 acres of land in Valikamam North. Despite the release of some land, most of the original families in Valikamam are still in IDP camps. According to the information provided by the Respondents who live in camps, only around 20 families have gone back to their original lands. Some families are struggling to go back because of the lack of basic facilities. The government promised to release the land of the Valikamam people by end June 2016, but people are still waiting for the decision to be implemented.

Those who have returned to their land have had support from some NGOs for temporary housing. Most of the displaced families were smallholder farmers before displacement. After the displacement and eviction they have become daily wage laborers struggling to find work every day. In these situations women, children and elder people have to suffer and female members have to defend the rights of their families. Tenure insecurity has become the burning issue as many people have lost deeds or permits for their land during sudden and long displacements. Another striking feature is the changes taken place in family structures due to the marriages of second generation members in the family: the elders are isolated in the area while children have died or disappeared or gone abroad. The new families are asking land to live on. In the survey we found 45 persons saying that they don't have land, and requesting new land.

According to the information gathered in the field survey, nearly 6100 acres of land are still to be released in Valikamam North. Although the releasing of 200 acres of land in 2016 can be considered as keeping the promise made to the people, they were given to the extended families that did not have any land ownership previously. The 13 km along the coastal areas - the lands from KKS up to Myliddy - are still under high security zones and keep more than 10,000 fishing and agriculture families as IDPS.

The baseline survey was conducted by dividing the displaced families into five camps, namely, Sapabathy welfare camp, Neethavan welfare camp, Konalpulam welfare camp, Urumpirai welfare camp and Pointpetro welfare Centre. Most of the respondents have similar issues. The lands that belonged to them are now under the high security zones declared in Valikamam North, particularly Kankesanthurai. Their lands are private lands and they have the deeds to prove ownership. They have been displaced from their land from 1990 onwards because of the war. These lands are under the control of the security forces. Although the people attempted to return to their lands when the civil war ended in 2009 the security forces did not allow them to enter their own lands. The people are not willing to receive any compensation or alternative lands. Some of them don't have any land except the land occupied by the military as they were born and married during the displacement. The government has promised to give them Rs.400,000 to buy 20 perches of land through the Divisional Secretary. They complained that they could not find any land for that money and that they do not have enough money to buy land.

Some of their lands were acquired by the Air Force. They received a letter from the District Secretary for compensation for the acquired land. When they claimed compensation from the Divisional Secretary office, they were told that the DS office was unaware of such a letter and did not get any compensation yet. From 1990 to date they have not had a permanent residence. Their occupation is mainly fishing. Because of this displacement, their livelihood is affected and the family system is not functioning properly. Thus they are below the threshold of basic human rights standards.

11.6 Ampara District

In the Ampara district the field survey was conducted with the participation of 100 Respondents from the five villages in the Panama lagoon area, the resettled Muslim Community in Ashraf Nagar and Sinhala villagers who have been living and engaged in agriculture in the Deegawapiya area using state lands. The gender representation among the Respondents is 50 males and 50 females. The Heads of Household were 76 and Non-Heads of Household were 24. The families represented

by female Heads of Households were 26. Interestingly, all 24 Non-Heads of Household who attended were female members of the family. The total population represented by the Respondents was 404 persons including 89 children and 16 elderly people. The people in Ragamwela and Shasthrawela were directly affected by the security forces entering and cordoning land for security activities during civil war. The people in Ragamwela entered the land after the war, but were chased away by an unidentified group of people in 2010. The victims say that a local politician was behind the move and that the participants were members of the security forces and police personnel. The people in Ragamwela entered the land forcibly after the change of government in 2015. They obtained a court order, and are living in small huts without leaving the land in fear of being unable to return to the land afterwards. There is a security check point at the entrance and the security forces have erected a fence surrounding the land area. The other villages also complain that their access to the original land is denied by the security forces. These details are given below.

11.6.1 Panama

Panama is a locality in the Eastern seacoast of Sri Lanka inhabited by the people belonging to the majority Sinhala community. It comprises five small villages, namely, Shasthrawela, Ragamwela, Ulpasa, Egodayaya and Horekanda. It is situated in the Ampara District under the jurisdiction of the Divisional Secretariat of Lahugala. The Peasant Communities in Panama who have lived there for at least three generations and engaged in chena (Shifting) Cultivation also fished in the nearby lagoon.

The people have been displaced several times. They had to vacate their land during the Tsunami for a short period. The longest displacement took place during civil war due to the LTTE using the lagoon and the forests areas. When they were away from their lands due to LTTE activities, the security forces moved into the area and establish a military camp and several security points encircling the lagoon area.

When the war ended in 2009, the area from Arugambay to Panama lagoon of the Eastern sea coast became a major area of tourist attraction.

Since Arugambay has become one of the most popular areas for surfing, the sea beaches in the area became attractive places for the tourist industry. However, these new attractions were a misfortune for the people in Panama as the politicians in power and their supporters were eyeing for the land which the people had been utilizing for generations. As in the other parts of the country, especially in the Northern Province, the security forces were mobilized to take over these lands for various business purposes in addition to security installations.

According to a report, approximately 1210 acres of residential, agricultural and forestry lands have been occupied by the Sri Lanka Navy and Sri Lanka Air Force establishing military camps, villages for disabled soldiers, hotels and other constructions denying these people their homes and livelihoods.¹ The people were not consulted on their lands being used for the continuation of military installations and establishing business ventures. They were not offered compensation or new land. The authorities simply used the government's administrative organs to declare them encroachers of state land = evicted or barred from entering into the area.

The people in the area who were subjected to multiple displacements over the years were again displaced after the end of the war due to the acquisition of land by the security forces. Two of the villages in Panama = Ragamwela and Shasthrwela = were at the heart of this eviction. According to the village leaders of the Panama community who assisted the Researchers these two villages together had an area of 365 acres occupied by 85 families (35 main families and 50 sub families) in Ragamwela and 100-150 families in Shasthrwela before the eviction.

After the end of war in 2009 the people of Ragamwela returned to their lands, but the people of Shasthrwela could not return as the military camp was not removed. However, the people in Ragamwela were not fortunate enough to return to normal life as they were forcibly chased away from the land one night in 2010. It was a sudden attack in the night by an unidentified group of people whose faces were covered with black cloths, using clubs and weapons including T56 assault rifles.

1 National Fisheries Solidarity Organization (NAFSO), Briefing of Panama Land Issue, 12 February, 2016, Website of NAFSO www.nafso-online.org

The group burnt their houses and crops to chase them away from their lands. The people had to run into safety while watching their houses burn. The villagers alleged that the attackers consisted of officers of the nearby police station and Sri Lanka Air Force. They further alleged that some local politicians of the government party were behind the incident too as they wanted to bring their henchmen into these lands. The Sri Lanka Air Force erected an electrical fence surrounding the area using their camp as a pretext in order to keep people out of farmlands. Finally the people of Ragamwela fell into the same category as the people of Shashrawela.

These actions deprived them of access to the land violating their right to shelter, food and livelihood. Their cultural rights were also denied as the temple they used became a prohibited land. Amidst these incidents the Buddhist monk who stayed at the temple was compelled to vacate it. The people questioned how the security forces were using these lands for profitable economic activities such as Lagoon Cabana while the government agencies informed the people that these lands couldn't be released due to security reasons. It was alleged that under the cover of these activities, the previous government launched millions of rupees worth building project (include Luxurious Chalets) to establish a holiday resort in the Panama lagoon area. This was abandoned due to the change of government after spending huge amount of state funds. The regional leaders of the new government promised to launch an inquiry into such spending of government funds for this building project.²

The people in Ragamwela claimed that they lost most of the documents related to the lands they occupied as the court building of Lahugala was burnt down by the LTTE when they had submitted them to a court case involving a compensation plea for damaged crops. They further claimed that the original documents such as the deeds and the permits were kept with them until they were destroyed by the burning of their houses by the unidentified group in 2010. Knowing very well that most of them have lost their documents, the authorities ask the villagers to prove their ownership.

2 Panama Land Grab Exposed, Sunday Leader (News Paper), 20 April, 2017

During the survey respondents claimed that a politically influential person at the same vicinity (they showed the land to the enumerators) was having a peanut farm without any obstruction as he has ties with the local politicians and the military personnel. He occupies nearly 10 acres and receives protection from security personnel. The military personnel regularly visit his farm going through the land occupied by the peasants sometimes intimidating them.

The situation in Shashrawela is slightly different since they have not been given access to their lands after their displacement. The village is adjacent to Ragamwela and consists of 300 acres of land which they shared with the forest and the coast. Approximately 100-150 families made their living through fishing and chena cultivation which was overrun by the forest when they were forced to leave their lands due to the war. The STF occupied the land during that period and set up a camp. The Air Force erected an electric fence creating a barricade at the entrance to both Ragamwela and Shashrawela.

The other villages, namely, Horekanda farmlands, Ulpassa and Egodayaya villages consists of 250 acres of land which the Sri Lanka Navy has acquired together with another 590 acres of land to build a camp and a hotel called “Panama Lagoon Cabanas”, which covers close to 100 acres. Approximately 185 families used these lands for residential and cultivation purposes. After their eviction, these villagers live with relatives.

At the last Presidential and Parliamentary elections the eviction of people in Panama became an issue discussed at the election platform. The new government that came to power in 2015 is obliged to solve the issue as their representatives openly campaigned in favor of the restoration of land rights of these people. However, some Respondents claimed that these new leaders are now not showing any interest in helping them to regain their land instead they have established a foundation stone to build an industrial park in the nearby area.

In 2015 a cabinet decision was taken to release 340 acres of land except 25 acres (on which SLAF has constructed) to the people in Shashrawela and Ragamwela which included 240 acres of residential and agricultural land with the rest of the land consisting of a lake, forest

and coastal land. This was supplemented by the judgments given by the Magistrate of Pothuwil and the Human Rights Commission, which respectively ordered and recommended the land to be handed over to the people. However, these orders/recommendations have not been implemented. Following the court order and the cabinet decision, the villagers in Ragamwela entered their lands in January 2016 and continue to live and farm on the land. The villagers live in fear of eviction and being homeless yet again as the authorities have not complied with the decisions of Cabinet, Court and Human Rights Commission.

11.6.2 Deegawapiya

The village is situated in the Ampara district which comes under the jurisdiction of the Addalaichenai Divisional Secretariat and falls within two Grama Niladhari Divisions (Deegawapiya 01 and Deegawapiya 02). These villages derive the name Deegawapiya from the famous Deegawapiya Maha Viharaya which is of great historical significance. At present around 1400 families live in the village. The people claimed that they originally settled in these lands in the 1960's when they (or their parents) came to work in the sugar cane farms belonging to Gal Oya Plantations Ltd. They settled on state lands and started cultivating sugar cane on company lands. Though some families managed to obtain government grants or annual permits, most of the families do not have legal documents for the lands they presently occupy. Some farmer families have documents issued by the government authorities responsible for land alienation as proof of registering their requests for the regularization of land. However the people complained that the promises given in these documents were not fulfilled.

What makes this village different from all the other places in the Ampara District is its geographical location. Being the only Sinhala village adjacent to a majority Muslim area and administered also by a Divisional Secretary Office manned by Muslim personnel. The people complained that they are being discriminated because they belong to the Sinhalese community, which is a minority in the Muslim majority area. They stated that since the officers of the Divisional Secretariat are Muslims they do not receive adequate attention from the government. They further complained that Muslim people in the adjacent area have

received permits for their land. At present, the people's main request is to be granted a permit or grant for the land they occupy to secure tenure. It seems that land tenure has been a cause for ethnic tension within the community, inviting outside Sinhalese to intervene.

11.6.3 Ashraf Nagar

Ashraf Nagar, comprising a few small villages was inhabited since the 1950s by people belonging to all three main communities, but the majority was Muslim. Ashraf Nagar's name was changed in the year 2006 to Oluvil first division. It was reported that 272 Muslim families were living in Ashraf Nagar in 1972. In 1983 due to increased terrorist activities, many people from Ashraf Nagar were displaced, but a few who lived close to the Mosque remained. In 1990 the people living there had to flee due to an attack against them by unidentified persons. More than 15 people were killed in the attack. In 1996 resettlement of people gradually started amidst many difficulties including the movement of terrorists. In 2011 the people were forced to leave the area by the military forces as they wanted to set up a military camp. The military claim that their presence was a temporary action. Later they declared a High Security Zone in one part of the area denying a large number of people access to their land and houses. There was a Fundamental Rights violation case against the military by the settlers who have valid permit to use the land. The people lived outside their land with the help of relatives. Now they want to get their land back from the military.

11.7 Monaragala District

In Monaragala district the survey was attended by 110 Respondents representing 451 persons including 129 Children and 12 elders. The male and female representations among the Respondents were 69 (62.7%) males and 41 (37.3%) females. The Chiefs of Household were 81 and Non-Chiefs of Household were 29. Among the Chiefs of Household female members were 17.3 percent and among the Non-Chiefs of Household they comprised 93 percent. The Pelwatta sugar cane farmers are complaining about insecurity of tenure after more than

30 years. They are demanding a deed or grant for the lands given for their settlement as they want to hand their land to the second generation as family inheritance. Their argument is that they have developed these lands by building houses and planting trees while having a community life with other members of the community. They wanted to get free holding rights for the land assigned to them some thirty years ago to provide a better life and a future for their children. They complained that the company is interested only in receiving the yield of sugar cane farming in the field, and not about the stability of their life in the settlement areas. They wanted to use these lands to apply for bank loans and as their children's inheritance. The people we interviewed in the Wellawaya area were poor rural farmers occupying state land for generations. They wanted to have land Kachcheries to regularize their lands. The detailed information is given below.

11.7.1 Wellawaya

Wellawaya is a town located in Monaragala District, Uva province. During the field survey respondents from five localities, namely, Dahasayagama, Randeniya Watta, Maduruwa, Ranawarawa and Inguruyaya were interviewed. All of these areas are within the Wellawaya district secretariat. The lands with issues consist of a combination of 13 acres under the Land Reform Commission, and 460 acres of land of which ownership is uncertain. According to local sources, the lands consisted of both state and private land where some people were occupying a rubber estate which they claimed belonged to a private owner called 'Walimada Mahaththaya'. Their livelihoods depended on many methods such as chena cultivation and manual work etc.

Though they were from different villages, their major issue was finding a legal document for the land they cultivate. The information provided by the respondents in these areas demonstrates how desperate the landless people are to receive a land from the government. They are waiting for "encroacher regularization" for their land for which they did possess legal documentation.

Most of the people have lived on the lands for more than 10 years and some for more than 30 years. The interviewees included people whose

parents had initially settled on the lands, and they inherited these lands from their parents. Among the group we also found people who have settled in recent years and are waiting to join the other group when an inquiry is held to distribute land to the landless people. We also met people who had bought the land from people who did not possess legal documents.

It was observed that their legal knowledge on land related laws and procedure was very poor and some of the people who occupy LRC land have met the district secretariat asking title to the land. They continue to live on the land with the hope that the government will acknowledge their right and provide them with a grant or a permit to the land.

By analyzing these issues, it can be seen that lacking legal right to your land is also a major issue as these communities are deprived of the social services which are available to the public.

11.7.2 Pelwatta

The History of the Pelwatta Sugar Company Goes Back to late 1970's when the then government wanted to check the feasibility of establishing a rain fed sugar cane cultivation in the Monaragala District. Accordingly, Booker Tate Ltd - BTL (Formerly Known As Booker Agriculture International Ltd. - BAI) carried a feasibility study under the request of the Sri Lanka government in 1980. They recommended the establishment of sugar cane cultivation in the Pelwatta area. Pelwatta sugar industry was incorporated in Sri Lanka on 19th February 1981 as a private company managed by Booker Agriculture International Ltd. It was converted into a Public Liability Company on 10th December, 1982 and quoted in the Stock Exchange in 1984. In 1990, the company changed its name to Pelwatta Sugar Industries Ltd. Subsequently The Company was taken over by "Guang Dong" a Chinese company in 1994. Thereafter, Government of Sri Lanka took over the management. A Sri Lankan Company named Master Divers (Pvt) Ltd purchased 53.5% shareholding and took over the management in year 2002. Master Divers Private Limited then sold approximately 47% of the issued capital to Melstacorp which is a subsidiary of Distillery Company of Sri Lanka PLC in the year 2011 March. On 11 November

2011 The Government took over the company under the Revival of Underperforming Enterprises or Underutilized Assets Act No.43 Of 2011 and came under the Ministry Of Productivity Promotion and the Secretary to the Ministry. Today Pelwatta Sugar Plantation comes under Lanka Sugar Company Limited (LSCL) which is a fully government owned company under the Treasury of Sri Lanka coming under the authority of Ministry Of Industries And Commerce and is managed by the Ministry of Plantation Industries.

The factory and plantation are located in the Monaragala District of Uva Province. The estate lies on the boundary of the intermediate and dry rainfall zones of Sri Lanka, immediately south-east of the central mountain massif at an altitude of 175 m above sea level. The sugar company has settled people in 15 blocks and they mainly engage in sugar cane cultivation on lands provided by the company.

The farmers who were engaged in cultivating in the forest area earlier agreed to settle in the lands provided for settlements (one acre to the farmers who had a permit and half acres to those who did not have such permits). They were allotted another 04 acres from the area reserved for the company to cultivate sugar cane. Some of the farmers did receive an agreement and signed it in 1986. Under this agreement they have to farm sugar cane only in the season and supply them to the company. They were identified as the lease holders of those lands given to them by the company as the agent handling the state land. Later when this agreement was offered to others they refused to sign it, but continued farming sugar cane and living in the settlements. After more than 30 years this arrangement has produced unrest among the sugar cane farmers regarding the insecurity of land tenure as they don't have a legal right to at least for the settlement land. The people claim that they have two additional issues. The first is regarding the provision of basic amenities for their family and community life such as roads, schools and bus services. The local authorities are not interested claiming that these lands belong to a company. The company is interested only in the sugar cane farming not about their community facilities. Second is the alleged exploitation taking place in the production of sugar cane. They complained that even after producing 60 tons for Rs.5000.00 per ton the final take home amount is around Rs.125,000.00 after deducting

the dues for fertilizer, insecticides, seeds and the loans taken. They complained that they have now become bonded agricultural laborers earning less than Rs.1000.00 per day. Some farmers complained that they have physical ailments as a result of the pollution of water and soil created by the continuous use of artificial fertilizer and chemicals.

We found five categories of settlers in the 15 residential blocks established by the company:

1. Farmers who received 01 acre for settlement as they had permits to cultivate a plot of land within the land area allotted to the company for sugar cane cultivation
2. Farmers who received ½ acre for settlement as they were engaged in farming a plot of land within the area allotted to the Company for sugar cane cultivation
3. Persons who were displaced due to a landslide in Kegalle district somewhere in the 1990s and became the sugar cane farmers and received a ½ acre for settlement
4. Persons who were rehabilitated after the JVP uprising in 1988/89 and became sugar cane farmers receiving ½ acre for settlement
5. Persons who have purchased a residential block from an original settler without having any arrangement with the company

Categories 1 and 2 above are persons who were removed in the 1980s from their original lands, which were state lands, in areas such as Burtha Road, Buttala with their consent and relocated in these blocks. The persons who had permits for their original lands were given one acre in the residential blocks and non-permit holders were given half acre of land to settle. Additionally all of them were given four acres each to cultivate from company land under the condition that only sugar cane can be cultivated.

At the time of transferring from the original place, some had received compensation for the cultivated crops in the land. Though they did not complain about the relocation in the 1980s due to illiteracy, they have now realized that they have become lease holders. The complaint is

that they are now in a highly vulnerable position as for more than 30 years they have been deprived of any right to the land they occupy, and constantly live under the threat of eviction. Almost all the respondents, excepting a few, do not possess any right to the land they live on, or to the lands they cultivate.

The failure to recognize their right has given rise to many issues such as the company using the situation to keep the people under their control, issues of livelihood due cultivation restrictions, denial of financial assistance, and lack of infrastructure. Another issue they face is the reference to areas as blocks which they feel is demeaning and they expect to develop the areas as proper villages with the hope of creating their own identity. Sugar cane cultivation is harvested once a year and the farmers have to take loans from the company for seeds and other services which the company deducts from the harvest together with the interest. After the examination of receipts it was identified that only a very minimum amount is left in the hands of the farmers at the end of every year which is insufficient to sustain their families and which puts them in debt for the next year.

It is important to note that the lease agreement signed by some families for the residential lands which was entered into between the original occupants and the company which is now more than 30 years old. The agreement is in the English language, and the people have signed it without knowing that they have become Lessees under the new agreement. In block 9 we were informed that there are lands belonging to the Katharagama Dewalaya within the sugar cane farm area. If it is correct it makes the issue even more complicated as the land belonging to a Temple and Dewala Lands cannot be handed over to the private purposes. However, a responded who had received financial aid from the Divisional Secretariat for her disabled soldier son-in-law stated that the Divisional Secretariat Officers after examining the land registry map had informed her that there were no such lands within the Sugar Company Land area.

Today the major land issue they face is the lack of land tenure security. They have approached many public authorities in order to resolve this matter without success. They are requesting a land grant for the plot of land where they have built houses for their families and which they

have developed during the last twenty year enabling them to even apply for Bank loan. We also came across persons whose married children have also built houses and settled on the same land. The people who had permits for state land received 01 acre and other received half acre which is sufficient to build several houses.

When considering the root causes for these issues there are certain facts which stand out from the rest such as poverty, and the lack of basic legal knowledge which authorities in power have used to control and contain these communities.

For the survey four residential blocks were selected from the settlement blocks belonging to Lanka Sugar Company Limited, Pelwatta (block 3, block 9, block 10, and block 11).

11.8 The Violation of Land Rights

This section presents information based on the data collected from the field survey on the nature of the violations of people's land rights. Further it included land deprivations, displacements or evictions. The different aspects related to the claims made by the Respondents, especially information strengthening or weakening their claims for previously occupied land - both state and private lands - are also provided.

Table 11.11 below explains the reasons associated with the violation of the land rights of the victim population. According to the information given in the table, 344 Respondents claim that they were displaced during the immediate period during which they lost access to their land. The number of Respondents who were displaced during the civil war is very high in Trincomalee, Mullaitivu and Jaffna. A high number of Respondents; 114 in Jaffna, 95 in Mullaitivu and 91 in Trincomalee claim that they lost access to their land due to military reasons such as the continuation of High Security Zones and Military Installations, while 39 people in Sampur identified the electricity power plant project also as an impediment to access to their land.

Respondents from Ampara district account for 44 displacements. These are the people who left their land in the two villages, Ragamwela and Shasthrwela in the Panama Lagoon area. Among these people, 22

Respondents say that they are now occupying the original land as the court and new government decided in their favor. But they complained that they live with insecurity of tenure as the authorities have not implemented the decisions of the Court, Human Rights Commission and the Cabinet. The number of Respondents who claimed that they had government permits (as temporary lease holders) to these lands is 308, and the number of persons waiting for the regularization of encroachments is 83. However many Respondents who claim that they had permits to develop the land have also to be accounted in the latter category as many of them have to go through the regularization process again as the validity period of their permits have expired.

Table 11.11 - Reasons for violation of land rights

	Displacement	Military Purposes	Commercial or Development Purposes	Access Denied to the Land	Regularization issues	Temporary Lease Holder
Total	344	213	39	246	83	308
Monaragala	00	00	00	00	31	79
Ampara	44	32	00	26	41	59
Trincomalee	91	31	39	70	11	69
Mullaitivu	95	36	00	36	00	98
Jaffna	114	114	00	114	00	03

Table 11.12 presents information on the number of years the Respondents and their families possessed the land appropriated or denied access to. According to the information presented in Table, 36.7% of the Respondents and their families used the land for more than 30 years and the percentage for 11 to 30 years is 38%. The totals of Respondents have lived on their lands for 6 to 10 years is 5 percent, and the percentage for less than 5 years is 5.3. The highest number of Respondents who claimed that their families have lived on these lands for more than 30 years is from Trincomalee, Mullaitivu and Jaffna Districts. The percentages for these three districts are 46.6, 51.9 and 35.9 respectively. The percentages for Monaragala and Ampara Districts

are 11.6 and 15.8. However, the vast majority of Respondents, 74.7 percent, claim that their families have lived on these lands for 11 to more than 30 years. Although the longevity of living and utilization of state land does not give any legal rights according to the existing legal system the State administrators have a responsibility to find a way to end the land rights violations of these people as they were trapped into a war situation which was beyond their control.

Table 11.12 - Years of possession before the displacement or eviction

	>05	%	06-10	%	11-30	%	30>	%	Unknown	%	Total
Total	28	5.3	26	5.0	202	38	195	36.7	80	15	531
Area Breakdown											
Monaragala	04	19.0	05	18.5	79	39.1	22	11.6	00	00	110
Ampara	06	28.5	10	37.0	54	26.7	30	15.8	00	00	100
Trincomalee	09	8.7	04	3.8	32	31.0	48	46.6	10	9.7	103
Mullaitivu	08	7.6	06	5.7	21	20.1	54	51.9	15	14.4	104
Jaffna	01	0.8	01	0.8	16	14.0	41	35.9	55	48.2	114

Table 11.13 provides information on the current residency of the people who were evicted or denied access to land they had previously occupied. The persons who have returned to their original land - privately owned or having a Tenancy or waiting for Regularization - have also been included. According to the information given in the Table, the percentage of persons living on the same land is 42. However, this does not mean that a large number of people return to lands they have been evicted from. The 110 persons in this category from Monaragala are not returnees after displacement. They included 79 persons who live in the settlements of Pelwatta Sugar Plantation and 31 persons occupying state lands in the villages in Wellawaya waiting for regularization. If this number is removed from the total, only 112 persons have actually returned to their original land (21.8%) after displacement. The 114 Respondents (100%) from Jaffna live in welfare camps. The percentage living in temporary places is 27.0. This is inclusive of 80 percent and 59

percent of Respondents from Trincomalee and Mullaitivu respectively. These figures indicate that the lands appropriated from the people were earlier used not only for farming but also for residential purposes. As such the evictions of land or denials of access to land has made the people homeless and displaced once again after the end of the civil war. Hence on these occasions people became powerless and internally displaced within their own environment.

Table 11.13 Respondents by current residence

	Same Land		With Relatives or Friends	%	On Temporary houses/ lands	%	Camps	%	Total
Total	222	42.0	49	9.22	146	27.0	114	21.78	531
Area Breakdown									
Monaragala	110	100.0	00	00.0	00	00.0	00	00	110
Ampara	49	49.0	49	49.0	02	02.0	00	00	100
Trincomalee	20	19.5	00	00.0	83	80.5	00	00	103
Mullaitivu	43	41.0	00	00.0	61	59.0	00	00	104
Jaffna	00	00.0	00	00.0	00	00.0	114	100.0	114

Table 11.14 presents information received from Respondents on the availability of legal documents such as Title Certificates or Deeds for Private lands and Permits, or License or Grant or Deed of Declaration for the utilization of State Land, or other documents to prove their use of land and the development of such land for a considerable period. Accordingly 12.4 percent of the people who have been evicted or denied the access to land have deeds for their lands and 6.8 percent have permits for the state lands they occupied, while 1.1 percent have expired land permits. In Jaffna Districts 42 percent of the Respondents claim that they have deeds for their lands. Among the Respondents 69 percent are in the category of “No Document”, meaning they do not have legally valid documents though they claimed that they have occupied and cultivated these lands for several years. All the Respondents in this category from Trincomalee, Mullaitivu and Jaffna Districts are displaced

people. The percentages for the “No Land” category in these three districts are 52.4, 71.0 and 43.0 percent respectively. In the table all Respondents from Monaragala are identified under the “No Documents” category. This is valid for the farmers in Wellawaya villages who are occupying and cultivating forests lands and have attempted to obtain regularization several times. The researchers came across a document containing a lease agreement signed by the original settlers in Pelwatta. One person presented this document issued to him in 1986. According to this agreement the settlers agreed to cultivate sugar cane in the 04 acres allotted from the main plantation area and to use the land given from the settlement blocks for building their houses as leaseholders of state land. It seems that the original settlers may have this document in their possession. Though they claim that the settlers who arrived later refused to sign such an agreement with the company, it seems that all the farmers in Pelwatta are treated as lease holders of state land, which was granted to them by the company which is represented as the agent of government. They were in the category of “No Land” as they are demanding a land grant for the land on which they have built their houses.

The information on “No Documents” and “No Land” are very significant findings with regard to the areas where a large number of displaced people lost their lands to the military. The “No Document Category” points to the difficulties faced when organizing the legal and administrative support for these persons. They would easily fall into the category which does not have legally accepted documents to retain state land. According to enforceable law, these people become encroachers. This could be equally applied to the people in Panama, Deegawapiya and Wellawaya areas. As such, the effects of the Crown Land Encroachment Act of 1840 still prevail in Sri Lanka. The persons identified under the “No Land” category in Trincomalee, Mullaitivu and Jaffna reflects the changes that have taken place in family structures during the prolonged displacements. There were young people who have married and set up new families within the old families, attending the interview expecting the attention of the authorities.

At the interviews we noticed that a small number have Deeds of Declarations for their land as proof for continuous use. The percentages

for Trincomalee and Mullaitivu are 13 and 05 percent respectively. If we exclude the Pelwatta sugar cane farmers, others in Wellawaya and Ampara Districts are landless rural farmers occupying & cultivating state land. In the Ampara District we have found that 14 percent of the Respondents claim that they have permits issued by government authorities. In Mullaitivu District the percentage having permits for their land is 48 which is the highest number in the total sample.

Table 11.14 – Availability of documents

	Deeds	%	Grant	%	Permits	%	No Land	%	Lease Expired	%	No Docs	%	Total
Total	66	12.4	10	1.8	37	6.9	45	8.4	06	1.1	367	69.1	531
Monaragala	00	00	00	00	01	01.0	00	00	06	5.4	103	93.6	110
Ampara	00	00	00	00	14	14.0	00	00	00	00	86	00	100
Trincomalee	13	13	10	19	09	13.5	17	16.5	00	00	54	52.4	103
Mullaitivu	05	05	00	00	13	48.0	12	11.5	00	00	74	71.0	104
Jaffna	48	42.1	00	00	00	00	16	14.0	00	00	50	43.0	114

During the field survey, the Researchers paid special attention to find out the reasons for the “no documents” claim made by Respondents. Table 11.15 provides information collected from 286 out of the 367 Respondents who were in the category of “No Documents”. The information identifies 47.7 percent as persons who have lost their documents, and 5.3 percent as having misplaced their documents. This category also includes Respondents who said that they lost or misplaced their documents as a result of displacement as they had to run away from their houses with little preparation and moved from one place to another several times. A section of the Respondents claim that their documents were destroyed due to terrorist attacks and military incidents that occurred at the time of displacement. For example, the Respondents in Ragamwela Panama said that copies of documents they had handed over to the Courts of Lahugala for a compensation case were destroyed when the LTTE set fire to the Court buildings. The originals were burnt or destroyed when they were chased from their homes by unidentified armed groups in 2006.

Table 11.15 Reason for No Documents

REASON FOR NOT POSSESSING A DOCUMENT								Action Taken	
District	Total No Documents	Lost or Destroyed	%	Misplaced	%	Did not keep the documents	%	Application submitted for a new permit	%
Monaragala	103	00	00	00	00	103	100	00	00
Ampara	86	74	68.5	12	100	00	00	56	65.1
Trincomalee	40	40	37.0	00	00	00	00	35	87.5
Mullaitivu	47	47	48.5	00	00	00	00	47	100.
Jaffna	10	10	9.2	00	00	00	00	10	100.
Total	286	108	47.7	12	5.3	103	45.7	148	65.4

Table 11.15 indicates that 65% of this group has submitted fresh applications requesting a new permit to use state land.

The next table provides information on another aspect related to this situation. The proof of Cultivation and Residence available with the Respondents who do not have documents for their lands is given in the next table. Only 214 Respondents out of 286 have information to prove that they have used the land for cultivation or residence. According to the answers provided by these Respondents they have evidence to prove that they resided or cultivated these lands. The percentage for Residence is 63 and for cultivation 37.

Table 11.16 - Proof of Cultivation/Residence

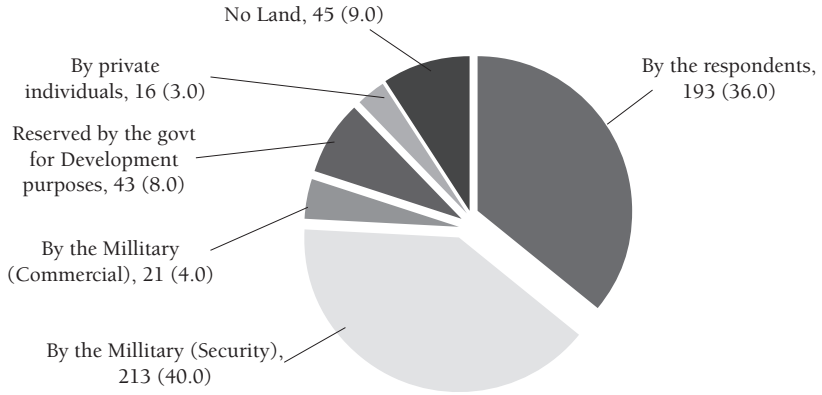
	Proof of residence	%	Proof of cultivation	%	Total
Total	135	63	79	37	214
Area Breakdown					
Monaragala	79	50	79	50	158
Ampara	20	100	00	00	20
Trincomalee	25	100	00	00	25
Mullaitivu	10	100	00	00	10
Jaffna	01	100	00	00	01

Table 11.17 & Chart 11.2 present the current use of the lands which have been identified for land rights cases by the study. According to the information provided in the table, 193 Respondents out of 531 are currently using their land. Accordingly around 36 percent of Respondents live in the previously used lands. However, this number included 110 Respondents from the Monaragala District where 79 persons occupy lands given by the Pelwatta Sugar Plantation and 31 landless villagers occupy state land in Wellawaya villages. This total also included 48 Respondents in Panama who have been occupying their land despite several obstacles. The percentages for this category in Trincomalee and Mullaitivu are 16 and 19 percent respectively. The numbers in these two districts included displaced people who have resettled in their original lands but are still struggling to overcome tenure insecurity. As noted above, the people in the Panama lagoon area have tenure insecurity as the military, powerful politicians and the government bureaucracy have not implemented the decisions of Court, Human Rights Commission and the Cabinet to return the land to the people. Further, the information in the table indicate that land belonging to 234 Respondents are under the military controlled areas. The percentage for this category of lands is 44. The area break down indicates that 40, 100 and 29 percent of land in Trincomalee, Jaffna and Mullaitivu districts respectively are occupied by the military forces. The percentage of lands taken or under military control in Ampara (Panama) district is 47. These numbers demonstrate that the security forces have been using lands that belonged to 234 Respondents (47 percent). The information identifies 21 people in the Panama area who claim that the security forces are using their land for commercial purposes. Another 43 Respondents claimed that their lands are reserved by the government for development projects. This included 39 persons claiming that they are affected by the electricity power plant project in Sampur. These people were evicted by the government for the Sampur Electricity project in 2011. The other interesting phenomenon is the occupation of land belonging to the people by private individuals backed by politicians and the military. The percentage for this group is 3.0 and included one person in Panama and 15 in Killali (Mullaitivu).

Table 11.17 - Current land use and purpose

		Total	Area Breakdown				
			Monaragala	Ampara	Trincomalee	Jaffna	Mullaitivu
By the respondents		193	110	48	16	00	19
%		36.0	100.0	48	15.5	00	18.2
By the military	Security purposes (HSZ/Camp)	213	00	26	42	114	31
	%	40.1	00	26	40.7	100.0	29.8
	Commercial Purposes	21	00	21	00	00	00
	%	4.0	00	21	00	00	00
Reserved for development and other purposes by the government		43	00	04	39	00	00
	%	8.0	00	04	37.8	00	00
By corporate		00	00	00	00	00	
%		00	00	00	00	00	
By private individuals (politicians, Businessmen or new owner)		16	00	01	00	00	15
	%	3.0	00	01	00	00	14.4
Abandoned		00	00	00	00	00	
%		00	00	00	00	00	
No Land		45	00	00	17	12	16
%		9.0	00	00	16.5	10.5	15.3
Total		531	110	100	103	114	104

Chart 11.2 – Current Users of Land & Purpose



Finally the Research Team focused on the knowledge and awareness of the people on Land Laws and Land Rights. The findings were that the knowledge of 73.6 percent of the Respondents is poor, 23.7 percent fair, and 2.6 percent good (Table 11.18). The assessment was personally done by the Enumerators by discussing land laws and administrative processes related to their issues. The people in these areas feel that they need to be educated on the land laws in Sri Lanka, and the administrative processes they have to follow in the restoration of their rights. It is interesting to note that 414 Respondents (77 percent) stated that they wanted to participate in legal awareness training.

Table 11.18 - Knowledge and awareness on land laws and land rights

	Knowledge on Legal and Administrative processes						Total	Need of further legal support and awareness	%
	Poor	%	Fair	%	Good	%			
Total	391	73.63	126	23.72	14	2.63	531	414	77.96
Area Breakdown									
Monaragala	92	83.6	18	16.3	00	00.0	110	110	100.0
Ampara	46	46.0	49	49.0	05	05.0	100	100	100.0
Trincomalee	93	90.2	08	07.7	02	01.9	103	70	67.96
Mullaitivu	75	72.1	26	25.0	03	02.8	104	60	57.69
Jaffna	85	74.5	25	22.0	04	03.5	114	74	64.91

Conclusion

The discussion presented in the beginning focusing on the discourses and practices of land rights, and the practical issues related to global land grabbing provided a clear perspective to understand the local situation from a global view. It has enabled us to understand land grabbing as a phenomenon associated with the struggle for power in local societies and the flow of global capital. The power struggles within local societies in developing countries in the global south were reinforced by the colonial global capital flows that entered the global south with the emergence of industrial capitalism. It now moves with new actors associated with globalized capital movement which dominates national level development policy making which is influenced by neo-liberal ideology.

In Sri Lanka, the colonial legacy of land grabbing and the legal regime established during that period are still continuing despite several measures introduced to distribute land among landless people

since the 1950s, and with the passage of land reform laws related to ownership in the 1970s. A new wave of land grabbing started in the 1980s as development policy makers gave high priority to attract foreign investment under the influence of neo-liberal agendas of donor agencies, and continues to date.

During the civil war period, when people were displaced, the security forces, government agencies and local elites backed by politicians grabbed lands belonging to the people. The Security forces have been occupying land in several places by establishing camps in all the Districts in the Northern and Eastern Provinces. The people, who have lost their land or have been obstructed from using their land due to military camps, belong to all the communities in Sri Lanka (Sinhalese in Panama, Muslims in Ashraf Nagar and Tamils in Valikamam, Silawatthai, Mullivaikal, Sampur and Keppapulavu).

It seems that global industries such as Tourism, Agro Businesses, Garment and Industrial Park based productions as well as the local corporate sector have been motivating these actions. Amidst these developments, the conflict between the state and the rural people for land is continuing, as during the period of colonialism, with the rural landless people occupying and cultivating “State Land”, the term which replaced the term “Crown Land”.

The field survey found that the issues related to land to be addressed in particular areas have arisen due to violation of land rights of the people consequent to (a) appropriation of their land by agents of State, (b). denial of access to their land by outsiders, and (c) tenure insecurity faced by the people who have settled, resettled or cultivated on state lands.

In the Northern and Eastern provinces the majority of the victims of land grabbing are also war victims. They are still living in welfare camps or temporary places. Some have lived in camps in India and have been displaced more than three or four times for a period of more than thirty years. The change of family structures has also been noted in the study as a number of new families have been created within the displaced families identifying themselves as landless, and waiting for new lands from the government. The data analysis

indicates that these areas have a large number of vulnerable groups such as widows, children, elder and disabled persons. Among the widows we noticed a considerable representation of war widows and female heads of single parent families. The Researchers met a female Chief of Household without both legs participating in the survey in order to get restitution for her family.

The “Tenure Insecurity” issues faced by the sugar cane farmers in Pelwatta Sugar Plantation have to be discussed with the ruling bodies of the Sugar Plantation Company and policy makers as there are issues related to the sugar cane production lease arrangement. The state lands in the Pelwatta Sugar Plantation were initially given to the Pelwatta Sugar Company and it has leased out these lands to the sugar cane farmers as the Agent of the State. Therefore the land belonged to the company and the state has to follow the regularization process to issue a land grant to these people. This would include providing them proper community services through Local Government Institutions, and declaring these settlements as part of the village settlements belonging to these authorities.

A large numbers of people have lost their documentary evidence during displacement. On the basis of the findings of the survey, we could assume that around 69 percent of persons do not have proper legal documents to make a claim for the land appropriated by the military or government agencies. Finding the legal information from government offices is also a problem as those places were abandoned or destroyed during the civil war. As such the government officers have to look into other evidence by conducting field level surveys through “Land Kachcheries” as stipulated in the Land Commissioner General’s Circular (LLRC 2014/02) on “The points to be considered under the scheme of solving the post-conflict state lands issues in the Northern and Eastern Provinces”.¹

The rural poor struggling to find a plot of land for farming and settlement has to be addressed through short term measures such as regularization as well as long-term national level policy development

1 Law and Society Trust, Training Handbook, Circulars of Land Commissioners General’s Department, Colombo, undated

to address the rural landlessness (by appointing a National Land Commission as proposed by the Public Representation Commission on Constitutional Reform) and through proper devolutionary arrangements based on the “Principle of Subsidiarity”.²

2 Public Representation on Committee on Constitutional Reform, Report on Public Representations on Constitutional Reform, Public Representation on Committee on Constitutional Reform, Colombo, May, 2016, pp.65-66; 195-197

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