

Report-I

Land in the Eastern Province: Politics, Policy and Conflict *

Most individuals in Sri Lanka will identify land as a fundamental element that defines their life. Ownership and control of land, including the location of and the extent of land owned indicate a person's wealth and social status. The respect that flows from this has a number of other repercussions including access to schools and marriage prospects. Secure land rights imply economic security and provide surety for loans and thereby facilitate income generation and improve livelihoods.

In Sri Lanka, land has been a critical factor in the ethnic conflict that intensified and resulted in the outbreak of a war that spanned over two decades. State aided land settlement projects under development and irrigation schemes, the failure in addressing key land and development related issues, violence against particular communities that resulted in the abandonment of properties, and the establishment of *ad hoc* security restrictions in areas all contributed to the increasing tensions that ultimately led to the outbreak of war in Sri Lanka. Over the course of the war, the land problem was exacerbated by increased displacement of entire communities from their land, occupation of land belonging to private individuals by the military and LTTE, arbitrary seizure of land belonging to Muslims by the LTTE in the North and East, the establishment of High Security Zones (HSZ), Special Economic Zones (SEZ) and the loss of documentation.

Although discussions on land and related issues and attempts to resolve disputes at a community level did run concurrent to the conflict and heightened during the Ceasefire Agreement (CFA) and post-tsunami period, there were no concrete steps taken by the State or any other actor to fully address the root causes of grievances, provide sustainable alternatives and introduce modalities that could have reduced some of the underlying problems and disputes.

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In a post-war context, with the defeat of the LTTE in May 2009, the Government, political parties, civil society and citizens at large are faced with an unprecedented opportunity to address the root causes of the ethnic conflict and long-term grievances faced by different communities. Although there is an opportunity to address a fundamental issue such as land through looking at both the constitutional, legal and policy framework and the problems on the ground, very few initiatives have been put forward by the different actors. Nearly a year after the end of the war, with two national elections held and the current Government enjoying an overwhelming majority in Parliament, this is clearly the moment to unveil concrete proposals for constitutional and political reform and a roadmap that introduces changes to the current set up. There are, however, unconfirmed reports of impending constitutional reform including changes to the Thirteenth Amendment and the role and powers of the Provincial Councils. Whether such a framework will guarantee the rights of all citizens or only a certain group or none at all, are yet to be seen. What is noteworthy is that though a significant time period has passed since the end of the conflict, there has been little public information, discussion or debate on Government proposals for possible ways forward. In the current post-war climate, there is no information as to whether the numerous HSZs will be dismantled; whether all IDPs will be able to return to their land; and furthermore, whether there would be a restitution and compensation policy. The lack of transparency and due process with regard to Government procedure into the post-war context are issues of grave concern and need to be reversed.

The present report explores the complex web of land issues in the Eastern Province. At the outset, CPA states that this report only highlights key land issues in the Eastern Province in the post war context and is not a historic study of the use, management and control of land in the area. The specific time period in focus spans 2007-2010. It provides an overview of the situation soon after the Eastern Liberation to that of the post war context in Sri Lanka and the status of land within a three year period.

The Eastern Province was militarily liberated by government forces in 2007, following which the region has seen a host of developments related to land. The military liberation of the East and the resulting process of normalization have provided the context for the return of the displaced and land reclamation, the provision of resettlement, reconstruction and development assistance by humanitarian agencies, donors and the Government. This has had a dramatic impact on the quality of life for civilians, even while they continue to deal with the long-term repercussions of the war, including the loss of lives, destruction and damage to property, the loss of livelihoods and incomes, and the disruption of community ties.

Some of the critical land issues and problems in the Eastern Province and their impact on larger political and governance issues are

highlighted in the report. For instance, access to land is a critical aspect to land use and control. In the East, security restrictions and military occupation have somewhat curtailed full enjoyment of land rights. Furthermore, obstacles to accessing land have resulted in disputes and grievances which if left unresolved can lead to a multitude of problems. Another complicating factor is the manner in which the subject of land has been approached by both state and non-state actors to fuel as well as mitigate ethnic tensions, to facilitate development projects and economic growth, to develop particular communities, dispossess and displace others, establish new administrative divisions and settlements and change ethnic demographics - all of which have had long term implications.

Land as a highly politicised and ethnicised issue was an underlying cause of the war. The report examines the post-war context of new land settlements and land grabbing, landlessness, encroachment on state land, illegal land sales and the implications of the loss or destruction of land documentation in the East. These have all aggravated issues of ownership, access and control of land between land users/owners. There have been reports of communal violence breaking out as a result of land disputes. There are also sporadic reports of intimidation and even assaults, indicating the real potential for violence over land disputes. A number of land disputes were reported to CPA some of which were described as land colonization, but these are claims that CPA could not verify, even though there was a significant level of political and military involvement in some of these cases. Nonetheless, CPA repeatedly encountered a strong perception among many of the interviewees at the community, district and administrative levels of State actors being partial to particular ethnic communities when dealing with land. Hence even when the State is acting in good faith in advocating particular policies there is strong mistrust and fear on the ground. Rather than ignoring these fears the Government needs to ensure greater transparency, information and participation in order to address these perceptions.

The present report also explores the constitutional, legal and policy framework that governs land in the region. The issue of land is further compounded by the different levels of government involved - the Centre, province and district and the powers vested in them. Although the Thirteenth Amendment to the Constitution was introduced with the goal of devolving powers to the Provincial Councils including in the area of land, as discussed in the report, the Central Government overrides provincial council decision-making and policy implementation on land and continues to be the major actor.

Even though the number of ministries, including those dealing with land, has been cut in the current cabinet, there continue to be multiple actors at the different levels of administration, especially in the case of the Centre with several departments and authorities overseeing various issues

related to land. The lack of progress made in resolving land disputes and the inability to introduce and amend much needed laws and policies demonstrates the ineffectiveness and inefficiency of a bureaucracy and a multiplicity of actors with some overlapping functions.

Though CPA has met several government officials who within their limited mandates are attempting to address the grievances of the communities and land conflicts, a common problem documented by the CPA team is the inertia and lack of initiative among some senior political appointees and the disturbing trend of the high levels of politicisation. Though this is not a new phenomenon regarding land and the Eastern Province, the provision of secure land entitlements and development requires that this systematic problem is addressed without delay. A fundamental problem is the lack of political will and political imagination to address the ground realities and grievances of the affected communities and to engage in policy reform.

The report recommends possible solutions to the problems and gaps highlighted. It calls for reform at the constitutional, legal and policy levels. While the issue of power sharing and a political solution needs to be addressed and any solution has to grapple with the subject of land, there are areas which the Government can move on without delay, including the strengthening of the powers of the Eastern Provincial Council (EPC) and consulting the EPC on key land related issues. Despite the twenty year lag, it is not too late to constitute the National Land Commission (NLC) which would strengthen the process of establishing a fair land policy. Developing a policy framework on land could be advantageous for long term development provided that it ensures greater transparency and inclusiveness in decision making and formulation of policies. Existing land related legislation has to be amended, including the Land Development Ordinance and Prescription Ordinance. Specific initiatives to provide land for the landless as discussed in this report or compensation and restitution to those whose land and property has been affected by the war, need to be strengthened, taking into consideration the issues on the ground which are set out in the following chapters.

In responding to the problems on the ground, CPA recommends a two-track approach of developing a policy framework and establishing/strengthening community-oriented mechanisms and processes. Land disputes and conflicts which have intensified in the post-war context, probably in relation to an increased feeling of personal security, improved freedom of movement and a greater number of returns, need to be addressed through clarification of the legal status of individual cases. This also requires community-oriented and mediated solutions, be they land kachcheris, land task forces or mediation boards/committees.

The Government, political parties and bureaucrats also need to ensure that governance is made more effective and sensitive to community

needs. Existing issues such as the confusion over divisional boundaries for instance need to be clarified so as to improve administration. In dealing with issues of military restrictions such as high security zones and occupation of individual properties that obstruct civilian access, there has to be a commitment to review security requirements in the post-war context, and accordingly provide a time line for withdrawal.

There should be rent schemes for continuing occupation and compensation/restitution in the case of permanent occupation which should be kept to a minimum. While the cases and issues discussed in the report are very specific to the Eastern Province, these are not isolated issues and trends peculiar to the East alone. These issues and trends have resonance in other parts of the country, but more so in other conflict affected areas such as the North. The latter is presently going through a phase of rebuilding and development and will face similar as well as unique problems with land. If 'the Eastern model' is to be used in the North, best practices and solutions in the East need first to be developed and implemented before they can be replicated elsewhere. For Sri Lanka to move forward in a post war context, where fundamental grievances including land issues are addressed there needs to be larger political and constitutional reform. An underlying theme in the report is that this and the policies and programmes it produces must be underpinned by a people-centric approach – one that is pivotally representative of the needs of the people in the area. Such a shift will not only addresses grievances of the affected communities but could also mitigate conflict and ethnic tensions.

This report highlights the gaps and shortcomings in the existing constitutional, Legal and Policy framework, the practical challenges to accessing land, land disputes and conflicts as well as boundary issues between administrative divisions and current initiatives addressing landlessness and compensation/restitution. While profiling existing problems in the post-war context, through this report, CPA hopes to increase public understanding of the nature of the land problem in the East and to provide alternatives and solutions. The report is also meant to increase engagement of the public and policy makers on land issues, to ensure that future initiatives take into consideration present problems and to contribute toward a rights-based policy framework for land issues. There are a host of recommendations which can be made with regards to each aspect of the land problem, but most importantly there has to be a two-fold transformation in approach. Firstly, the need for policy reform has to be acknowledged. There needs to be full implementation of existing provisions in and amendments to the Constitution and ordinary law, and a comprehensive land policy introduced by the Government setting out State policy. Secondly, the focus has to shift from national level requirements of the State to a people-centric and community approach. This would ensure more responsive governance and strengthen the Government's initiatives on

re-building trust between communities, promoting development and strengthening peace in the East and in the country at large.

The chapter “Constitutional, Legal and Policy Framework” briefly discusses several constitutional and policy related issues which impact, with specific reference to land in the Eastern Province. The present report demonstrates the complexity of issues related to land and that a fundamental factor contributing to this complexity is the lack of comprehensive, coherent and clear constitutional and policy frameworks on land which sets out the Government position on land and its plans for its use and management. As discussed in this chapter, a fundamental problem related to land in Sri Lanka is the failure to fully implement the Thirteenth Amendment to the Constitution which was meant to devolve powers including land powers to the Provincial Councils and the lack of a comprehensive government policy. The lack of a comprehensive and coherent framework should not be taken to imply that there are no provisions in the Constitution, laws and policies that focus on land. On the contrary, as the report demonstrates, Sri Lanka has a rich collection in this regard. What is missing is the clarity on Government plans for the use, management and control of land. The confusion is further compounded by the contestation of roles of the different levels of government and the lack of implementation of existing provisions which facilitate greater devolution and participation, and the respect and protection of rights. The lack of legal reform is an additional area of concern. Laws pertaining to both state and private land need to be reformed either at the national level as in the case of joint ownership for grants or with specific reference to the East as in the case of the Prescription Ordinance. The Government needs to give priority to setting out its policy on land and related topics, spelling out what it has in mind for state and private land and its plans for fundamental areas such as governance, control, ownership, access and dispute settlement over land. Without this, the problems documented and highlighted in this report will continue, creating further conflict and ethnic tension. The present focus of the Government seems to be economic development as indicated in the various policies, plans and programmes discussed briefly in this section. The priority given to economic development begs the question of how issues such as land, human rights, rule of law and other key areas will be managed by the present regime and whether key principles of governance would be sidelined or disregarded in fulfilling the goal of economic development.

In the chapter “Politicisation and Ethnicisation of Land Problems” it is argued that land disputes are by no means unique to the Eastern Province. In fact, land disputes may be the most common issue for litigation in the Sri Lankan legal system, in particular, cases of intestacy and inheritance between family members and associates, as well as boundary disputes between neighbours. In the Eastern province, land has an overt political and ethnic dimension. With the intensification of the ethno-political

conflict during the post-independence years, the issue of land in the East became a sensitive issue with charges of State colonisation, communal riots and land settlements as well as demographic changes. These tensions were exacerbated during the war, both in terms of existing disputes and the emergence of new problems such as displacement and violence over the control of and access to land. This report attempts to document some of the different and distinct and conflicts and disputes. It will highlight key trends, demonstrating that issues such as politicisation and ethnicisation are critical factors in land issues.

The following section of the report consists of chapters that are based on ground realities. In the chapter “Land Disputes and Conflicts in the Eastern Province in a Post-War Context”, it is shown how land has become a highly contentious issue in the Eastern Province. As noted earlier there are multiple factors which have contributed to it being such a highly politicised and ethnicised issue. A series of developments which took place with regard to land in the East during the post-independence years, particularly relating to land settlement, have resulted in land being viewed as a root cause for the conflict and the war to which it gave rise. In addition to the other impacts of the thirty-year old war, civilian use and control over land use has also directly suffered. In effect, the war complicated and exacerbated existing land issues and even created new problems on the ground, which has made addressing land issues in the post-war context a highly challenging process. It needs to be noted that many of these disputes are not “new” but they are affected by the dynamics of a postwar situation. A post-war context is most often identified with the return of displaced people and reestablishment of land control by owners and users. However, the perceptions and suspicions on the one hand, and on the other, the changes on the ground during the conflict relating to the individual land plots as well as the space to reclaim land provided by the post-war context, create a heady cocktail for intensifying land disputes. A post-war context may, in fact, see more overt inter-communal tensions over land as individuals are generally more able and willing to voice their land claims, but it also offers an opportunity to address these issues provided there is a concerted effort to approach the problem in a systematic and sensitive manner. While developing a policy at the Central Government level to handle competing land claims, documentation and landlessness issues, there has to be a concerted effort to develop mechanisms at the community and divisional level in order to address and mediate these issues. Given the suspicions and mistrust over land built up over time, there has to be a concerted effort to deal with the issue of perceptions. At the outset it needs to be noted that the land conflicts and disputes highlighted in the media and those raised with CPA during its field visits tended to be those which were highly ethnicised and politicised. It cannot be inferred from the cases discussed that there are very few disputes between members of the same

ethnic community, or that these disputes do not become politicised. There have been some initiatives to map land claims and conflicts. One of the most comprehensive initiatives was undertaken by the Muslim Rights Organisation (MRO) in 2003 to document land owned by Muslim forcibly occupied by Tamils. MRO recorded 14,872 cases covering some 62,670 acres. While such extensive land mapping may not be required nor practical, there has to be an effort to understand the extent and nature of the current land problem in order to design an effective response.

The chapter “Accessing Land, Ground Realities and Challenges” depicts the problems and gaps in laws and policies relating to land confronting civilians in the East and the rest of Sri Lanka who are attempting to secure land tenure and control. In addition, on the ground there are a number of problems which prevent or restrict civilians from being able to use and regain ownership and control over their land and property. There have been and continue to be significant improvements with access to land since the military liberation of the East in 2007 and the end of the war in May 2009 which have enabled civilians to return and reclaim their lands. The intensification of violence, in particular ground operations and bombardment resulted in mass displacement of entire areas, especially areas which were controlled by the LTTE. In the wake of the military liberation, mass resettlement of new IDPs and the opening up of areas to civilians allowed both new and old IDPs, and others who lost access to their lands over the course of the conflict, to secure access. However, there continues to be serious obstacles to accessing land and property. These challenges include military restrictions and occupation, occupation by other armed actors, other forms of secondary occupation including by civilians, zoning off of public and private land by the Government for economic, cultural or environmental purposes, and land conflicts. With the end of the war, the expectation on the ground was that these problems would dramatically diminish as part of a larger post-war recovery. De-militarisation, amelioration of ethnic tensions and the restoration of administrative and judicial processes are generally assumed to play a key role in the post-war context to bring about normalcy, including efforts to restore access to land. However, there has been limited success in these areas, with some of these problems still persisting and in need of attention. Access to land and property is critical both at the family and community level. Families who cannot access their homes are forced to undergo continuing displacement and suffering, as they are unable to return and rebuild their lives. Others who cannot access their farming or grazing land may be unable to recommence and re-build their livelihoods, which could result in a variety of problems, including being unable to support families and find durable solutions. Land also has tremendous economic and social value, so families whose access to their lands are restricted or curtailed may be unable to take out bank loans by using land as security or use it for dowry purposes. At a

community level, various restrictions on land could hamper the local economy, making it less self-sufficient and effectively disempowering communities. Obstacles to accessing land and property can also be an infringement of the rights of people. The challenges to land access also hamper the post-war recovery process as restrictions by armed actors or ethnic tensions would make clear to the affected civilians that normality has not been restored. These problems could in turn create undue suspicions, fears and tensions among civilians and between actors such as the State and different communities. This could also off-set key processes such as confidence and trust building. Thus, there is a very clear necessity to deal with this problem of access to land at the macro and community level. While a number of restrictions are based on security requirements, this needs to be re-evaluated according to the changes in context and balanced against the rights of the citizens of this country. Increasing information, including a time line relating to the future plans for the areas affected by these restrictions would significantly benefit those affected by the restrictions.

In the chapter “Administrative Boundaries, Land Allocation and Border Disputes” the key contributory factor to land disputes relating to state land, confusion over administrative boundaries is discussed. In a number of land disputes the confusion over the administrative boundary, be it the district or the division, has meant that it has been very difficult for claimants whose ownership is being challenged by the administrators and others to find easy solutions. The most common example of this is when there is contestation of an administrative boundary by two divisions and where an individual who claims land in the border area is attempting to secure documentation. As will be detailed below, there are a whole range of problems either resulting from or aggravated by confusion and disputes over administrative boundaries and issues. In April 2010 a new initiative to re-demarcate DS and GS boundaries has been put forward by the Government. As will be discussed below, the call for public submissions should be welcomed but there has to be greater attention to ensuring that the process is inclusive, transparent and consultative.

The chapter “Encroachment and Landlessness in the East: A Commentary on a New Initiative” relates that a regular problem that was encountered during the research is that not all those residing on land are aware of the relevant processes for securing and maintaining ownership of the land. Many have stated that they and their families have resided in a specific plot of land for decades, assuming that residency on the said land for decades automatically ensures ownership. Many are unaware of whether the land is private or state land, further complicating the status of ownership and control. More than two decades of conflict, the tsunami, destruction of documentation and continuous displacement have led to complications pertaining to the status of land in the Eastern Province. The paucity of available documentation, often a result of improper issuing practices or

destruction, means it is extremely difficult to prove ownership or the extent of boundaries. In some cases, there are ways of facilitating proof of ownership. For example, neighbours and others who resided in the area for many years can in some cases attest to the veracity of claims but, as seen in the past, neighbours were often among the large numbers displaced in the Eastern Province. The issue of long-term displacement of entire villages or sections of the village population further compounds this problem. There is also the added development of encroachment of state and private land by those who do not have land or are unable to reclaim their own. With time encroachments become permanent and many who have lived on encroached land treat the land as their own. This chapter discusses an initiative presently underway in the Eastern Province to address the issue of landlessness and those who have encroached state land. Initiatives to address landlessness are welcome but as documented in this Chapter, there are concerns with regard to motive, goal and process of the present initiative. A fundamental area of concern is whether the present initiative is *bona fide* or whether it is a front for other objectives of the Government which if stated at the outset may result in an outcry by affected parties and challenges to the Government. As documented in this report, a credible threat to minorities in the East is whether new initiatives, settlements and policies contribute to changes in ethnic demographics in the Eastern Province, creating and sometimes exacerbating existing ethnic tensions. While this initiative is welcome, the Government must clearly avoid any abuse of or deviation from the objective—the provision of state land to the landless and the regularisation of encroachment. The chapter “Land Restitution and Compensation” proposes that in a post war context, Sri Lanka needs a comprehensive restitution and compensation package for those affected by the conflict. Restitution is meant to restore to the rightful owner something that has been taken away, lost, or destroyed. Compensation is providing assistance including financial assistance for the loss or destruction of land, housing, and other property affected by a disaster. Restitution and compensation is critical in addressing the grievances of those who have lost land, property, houses and livelihoods and an essential component of reconstruction, rebuilding and reconciliation efforts. In the present context in the East and North, where resettlement is still ongoing and there are drives for reconstruction and development, it is essential to look at how to restore what has been lost by the communities affected and where restoration is not possible, to adequately compensate such loss and destruction. Not having a restitution and compensation package impacts short and long term development plans and political and social stability. Housing, land and property restitution is one of the key factors in stabilising returns and settlements and promoting sustainable growth after conflicts. Restitution is one of the key tools available to mitigate post war and post conflict disputes over housing, land and property as IDPs return to their land and houses. For those returning to their houses

and land and to rebuilding their lives, there needs to be evidence of problems and issues they faced previously being addressed, including the loss and destruction of property, houses and documentation, secondary occupation, HSZs and high security areas and obstacles to ownership and control of land, housing and property. Where restitution is not possible, compensation needs to address the loss and destruction, ensuring that there is conflict sensitivity, equity and transparency in how it is done. In addressing restitution and compensation schemes, greater attention needs to be given to vulnerable groups including single headed households, widows, the physically handicapped and those injured by the conflict.

Devising a people-focused approach to dealing with land is essential. As highlighted in the access section, rather than relying on national security and national development as the primary motivating forces, the Government has to look at the impact of these policies on people's lives and the subsequent political fallout. In addition, the Government has the responsibility to review problems faced by people and come up with solutions that address administrative short falls such as the lack of clarity of administrative boundaries. While the legal system needs to be more widely used, there also need to be alternate mechanisms that could mediate solutions such as Land Kachcheris, Land Task Forces and Mediation Boards/committees with a focus on land issues. The responsibility for addressing land disputes, however, extends beyond the Government to other political and civil society actors. Cognizance of this will avoid the compounding of problems and ensure that disputants reach amicable and mediated solutions in keeping with the law. Given this historical experience, there is one very clear lesson. It is that land is a highly controversial issue and needs to be approached in a very sensitive manner. The State in particular has a primary responsibility to take this into consideration in its formulation of policy and law on land and related issues such as resettlement or development. Otherwise it will risk exacerbating tensions and undermine the peace and unity it has actively sought to promote. If these issues are tackled in a comprehensive manner sensitive to the needs of the communities in the area, it could strengthen peace and allow communities to rebuild their lives. In addition, as there are potential land problems in the province, it could serve as a model for the North which is presently opening up areas for resettlement. The failure to acknowledge the full scale of the problem and to devise solutions at the national and community level could, however result in off-setting the movement towards stability and security. As noted above, land has a tremendous potential to serve as a source of suspicion and hostility, and could stir up communal tensions and even violence. If there is the political will to respond to the challenges and devise policy solutions, while encouraging local actors to take up a pro-active role, then the East could become a model, not just in Sri Lanka but for other post-war contexts.