

Land Ownership and the Journey to Self-Determination

SRI LANKA Country Paper
Land Watch Asia





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- **Government, Authorities, Boards and Co-operations**

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Acronyms

CLEO	Crown Lands Encroachment Ordinance of 1840
CLO	Crown (State) Land Ordinance of 1947
CSO	civil society organization
FAO	Food and Agriculture Organization
ha	hectare
HSZs	high security zones
IDP	internally displaced person
INGO	international non-government organization
LDO	Land Development Ordinance of 1935
NIRP	National Involuntary Resettlement Policy
NLC	National Land Commission
NGO	non-government organization

Glossary

<i>Bethma</i>	Custom whereby only part of the paddy fields are cultivated during a season when the water level of the tank is low
<i>Chena</i>	Slash-and-burn agriculture in the highlands
<i>Deshodaya</i>	“Awakening the nation”; governance program for community empowerment
Farmer Organization	Official village-level institution established under the Agrarian Development Act
<i>Grama Niladhari</i>	Village-level government officer
<i>Grama swaraj</i>	Self-rule
<i>Krupanisa</i>	Agricultural research and production assistant operating at the village level
<i>Purana</i>	An ancient village in the dry zone
<i>Purana welas</i>	Old rice fields
<i>Samurdhi</i>	Poverty relief program aimed at creating prosperity
<i>Shramadana</i>	Donation of labor for self-help

LEGAL TERMS

Alienation of land — transfer of state land under the provisions of the Land Development Ordinance (1935)

Colonization schemes or “colonies” — state-sponsored land settlement schemes under major irrigation projects

Crown land — referred to as “state land”, includes all lands in Sri Lanka to which the government is lawfully entitled to or which may be disposed by the government with all rights and privileges attached to such land

Disposition — any transaction of whatever nature affecting land or the title thereto and includes any conveyance, devise, donation, exchange, lease, mortgage or transfer of land

Encroachment — unlawful occupation of state lands

Encroachment regularization — giving legal recognition to encroached land through permits

Evict — in relation to a tenant cultivator of paddy land, means to deprive a tenant cultivator of his right to use, occupy and cultivate the whole or any part of the extent of paddy land let to him by the use of direct or indirect methods

Instrument of disposition — any instrument or document whereby any disposition of state land is effected and includes a grant, lease, permit or license relating to state land

Kachcheri — the office of a government agent or the District Secretary also presently referred to as District Secretariat

Land grant — a grant of land from the government under an act or ordinance

Land grantee — the person to whom any state land or right or interest in such land is given

Land holding — land alienated by the government and includes any part thereof or interest therein

Land Kachcheri — a formal meeting held in the prescribed manner for the purpose of selecting allottees for alienating state land

Land officer — the officer dealing with state land matters at district or divisional level

Mapping-out — the allocation and reservation of state land for one or more of the purposes specified under the LDO

Regulation — a regulation made by a minister under an act or ordinance



Quick Facts

Sri Lanka has a land area of 65,525 square kilometers.

Agricultural land covers 2.3 million hectares.

Population: 20.2 million (Food and Agriculture Organization, 2009)

Major languages: Sinhala, Tamil, English

Major religions: Buddhism, Hinduism, Islam and Christianity

Per capita GDP: \$2,012 (World Bank, 2008)

The land reforms of 1972 and 1975 reverted lands exceeding 20 hectares to the state, making it the biggest landowner, controlling 82% of the total land area of the country. Privately owned lands make up the remaining balance.

Presently, one in three Sri Lankan families lives on land alienated by the government under long-term leases or other forms of tenure.



SRI LANKA

Policy AND Legal Environment OF Access TO Land AND Tenurial Security

EVOLUTION of LAND POLICIES of the STATE

Sri Lanka has a recorded history of over 2,500 years. Under the ancient monarchy, the king assumed the role of trustee of all lands and natural resources. In 1505, the maritime areas of the country fell under the control of the Portuguese, and of the Dutch in 1650, leaving a legacy of culture and legal systems. But it was the British rule after the conquest of Kandy in 1815 that left an indelible footprint in the country's affairs. Even after National Independence in 1948, the British system of governance prevailed. Land legislation has its origins in the British period.

Sri Lanka's population is predominantly Sinhalese (75%), followed by Tamils and Muslims. While the Sinhalese are Buddhists claiming ancestry to North India, Tamils in the north and those in the central hill country (brought in as indentured labor by British planters) are largely Hindu with origins in South India. Muslims first came as traders from Arabia and first settled in the northwest. Christians of different denominations live primarily along the western coastal areas. The multi-ethnic, multi-religious peoples that came under European rule still continue with customary laws and practices, including those related to land tenure.

A HISTORICAL SKETCH

The evolution of Sri Lanka's land policy and legal environment has four main historical episodes¹:

- Early period of monarchy and sovereign rule (up to 1815)
- Era of conquest and colonial rule (1505 to around 1915)

- Period of seeking roads to freedom (1915–1948)
- Era of National Independence (1948 to present)

In accordance with ancient traditions, the King was the overlord of the land, and was given honorific titles of *bhupathi*, *patawipathi*, *mahipati*, *dharanapati* and *bhumisara*, signifying his power over land. However, the concept changed with the century; the King became only a “custodian”—not the sole proprietor of land. Even during the last phase of indigenous rule under the monarchs of Kandy, the kings upheld the tradition that respected people’s individual land rights, indicated by recorded events such as purchasing land from private owners for donation to temples. Irate kings who plundered private property against custom were compared by historical chroniclers to “highway robbers”.

COLONIAL LEGACY

After the cession of Kandy in 1815, the British Crown took over as the sole owner and supreme authority of land in the colony, blatantly displaying the “right of conquest”. In 1840, the Crown Lands Encroachment Ordinance (CLEO) declared that “all forest, waste, unoccupied and unsettled land belonged to the Crown, unless the contrary thereof is proved.” People who owned land through *paraveni* (inheritance) but without documentary evidence were disenfranchised. The worst affected were the *chena* (shifting cultivation) farmers in the Kandyan areas. Anyone who attempted to occupy property under the CLEO were fined and summarily ejected. The CLEO declared that “diverse persons without any claim or pretense of title (who) have taken possession of land... belonging to Her Majesty...” necessitated expeditious separation of *private* land from *crown* land. The law was further reinforced by the Waste Lands Ordinance of 1897, and by the establishment of the Land Settlement and Survey Departments that functioned more like instruments of oppression than of land administration. The Survey Department was established in 1800 originally for preparing title plans and road development, while the Land Settlement Department was responsible for the separation of private and Crown lands.

PREVAILING LAND POLICIES of the GOVERNMENT

Sri Lanka remains a social democracy where regular elections are held and government policies change with each leadership. Socialist left-oriented governments earlier introduced policies of tenurial reform (Paddy Lands Act, 1957) and nationalization of private land (Land Reform Law, 1972 and 1975). However, “open economic policies” were introduced in the 1970s by a more right-wing oriented government and this rapidly opened-up land markets.

Through the 13th Amendment (1987), policy directions in land management were incorporated into the Constitution. However, this was not fully implemented because of a common public perception that the 13th Amendment was brought under pressure from India to seek a lasting solution to the Tamil separatist problem of the north. The central government was reluctant to devolve powers to the provincial councils as required by the Constitution. Provisions such as the establishment of the National Land Commission (NLC) were postponed, and the power-sharing between the central government and provinces created confusion in land alienation and agrarian services. This led to a virtual no-action on the land policy.

Attempts to develop a national land policy embracing all aspects of land development, alienation and conservation initially failed to receive Cabinet approval or legal recognition. This is probably due to complexities in law and sensitivity of the subject. Under the 13th Amendment, only the NLC is mandated to formulate a land policy.





In this context, the 2006 policies as outlined in the *Mahinda Chintana* (thoughts of President Mahinda) are likely to continue. Land policies are presented in the context of agricultural development policies:

“The availability of land is one of the major issues of our country. Due to the abandoning of arable lands, traditional attitudes and a multitude of other problems, farmers are gradually getting discouraged. This is a serious challenge facing our farming community. I am determined to meet this challenge and for that purpose a National Land Policy will be formulated. Under this programme, 100,000 plots of land will be given for cultivation to farmers who do not possess land. Land will also be provided to those in the next generation of settlement schemes as Mahaweli farmers. Laws will be enacted to confer freehold rights of Crown lands already allocated to farmers ... State land will be alienated to landless on a priority basis in order to resolve the landlessness of the Kandyan peasantry.”

The Ministry of Land and Land Development launched the *Bim Saviya* or Land Title Registration Programme in 2007 under the *Mahinda Chintana*. The program seeks to strengthen ownership of land by providing secure titles to those possessing or utilizing a parcel of land. It is implemented as a national program under the provision of the Registration of Title Act No. 21 (1998)—where land is surveyed, boundaries defined, and ownership ensured under a title certificate issued free of charge. It is anticipated that clear and secure land titles will lessen land disputes and litigation, while improving land security and its marketability.

EXISTING LEGAL ENVIRONMENT

The Land Commission reported that by 1985 there were at least 39 major pieces of legislation governing land management; this number has grown further in the last two decades. The Constitution forms the supreme law of the land, followed by acts, ordinances, and laws passed by Parliament. The following are the more prominent legislative land enactments:

13th Amendment to the Constitution (1987)

The 13th Amendment was introduced soon after the Indo-Lanka Accord, with provisions that addressed land issues in the context of ethnic reconciliation. The provincial councils established in 1987 received devolved powers under provisions of the 8th and 9th Schedules of the Amendment. Land, irrigation and agriculture came under the powers of provincial councils, subject to certain conditions. For instance, provincial councils were given the powers to initiate irrigation and land development schemes utilizing water from rivers within the province, while inter-provincial rivers remained under the central government.

Provisions of the 13th Amendment were not successfully implemented in Northern Province, even with the presence of the provincial council. The central government has been reluctant to devolve powers for fear of losing its grip on the provinces. Thus, there has been no clear delineation of powers between the provinces and the center in matters of agrarian development and internal security. The government has also failed to establish the National Land Commission for the purpose of establishing a National Land Policy, in accordance with the 13th Amendment. Attempts towards formulating a National Land Policy by any ministry or agency have been confronted with questions about their constitutionality.

Land Development Ordinance (LDO) of 1935

This ordinance was based on the recommendation of the first Land Commission of 1927. It was designed to address the historical injustices and impacts of the CLEO of 1840, as well as related colonial legislations that disenfranchised local populations. The LDO sought to “preserve the peasantry”, alleviate landlessness and develop available state lands. The LDO has been the primary legal instrument for reform through which lands were passed to landless families during the last 75 years. It enabled village expansion programs and major settlement schemes. The first Land Commission sought to “create a contented, prosperous and self-reliant multitude of peasant proprietors”.

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

This ordinance provided the terms for the grant and disposition of Crown lands; the management and control of such lands and the foreshore; and the regulation and use of water bodies. The CLO also provided for vesting land in naval, military and local authorities. This ordinance provided the legal basis for government to allocate land for non-farm activities in the Mahaweli development areas, and to provide long-terms leases of land to private enterprises such as the Pelwatta and Moneragala sugar companies.

Land Reform Laws of 1972 and 1975

These are acclaimed as the most far-reaching pieces of legislation that have transformed land ownership and nationalized private and foreign-owned land. The law encompassed private estates and imposed land ceilings on private ownership—giving government access to land exceeding one million hectares. It limited the maximum land that could be owned privately to 50 acres (20 ha) and paddy land to 25 acres (10 ha). However, less than 10% of the nationalized land was redistributed to the landless. Mismanagement also resulted in negative productivity.

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 of 2000 sought the establishment of agricultural tribunals, farmer organizations, and agrarian development councils that promote the interests of the farming community.

Other Sectoral Policies Related to Land

Land policies have also been incorporated in other development sectors—i.e., in policies related to forest and wildlife conservation, land use and watershed management, environmental protection and waste management. For example, the National Environmental Policy and Strategies (2003) devotes its first section to land policy, with 15 policy statements. Statement 5 stipulates that “land tenurial arrangements adopted in agricultural land and settlement areas should promote good land management.” Statement 13 declares that “attractive landscapes—rural and urban, coastal and

inland—as well as sites of archeological, cultural and religious interest (must) be protected.”

Customary Land Rights

In addition to common law (residuary law) inherited from the Roman-Dutch legal regimes of Europe, there are three prominent customary laws in Sri Lanka: *Kandyian* law, a residuum of ancient Sinhalese land tenure originating from the Aryans; *Thesavalamai*, applicable to the *Malabar* (Tamil) residents of Jaffna peninsula; and the Muslim law of intestate succession. There are also laws on tiny minorities such as Chetties and Parsees. Land owned by temples and Hindu shrines were governed under different laws and customs. None of them provided for a unitary form of inheritance in the case of intestate succession.



CUSTOMARY SINHALESE LAND LAWS²

The *Kandyian* 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 and as folklore maintains, she can send back a husband whenever she so desired. In *deega*, brothers can share the same wife (*eka gei kaema*), which prevailed until recent times, to avoid partitioning limited land. In such a situation, children were treated as those of a married person, but were brought under the care of all brothers.

Land inheritance under the *Kandyian* custom was generally equitable but gave a strong preference for the



eldest male child in intestate succession. This custom presumably found its way to the LDO of 1935 and came under criticism at the State Council at that time. Rising sentiments for gender equity paved the way for regulations permitting females the same rights of inheritance as males. Women were indifferent to this change due to continuing male domination in rural marriage customs and the fear of living under a dominating son-in-law. Today, it is still customary to sub-divide property equally among children, resulting in the fragmentation of paddy lands—proof that the unitary form of succession enshrined in the LDO ran against age-old customs.

Other customary practices still existing are *thattumaru* (rotation of cultivation among several family members) in using land at different cultivation seasons, and *kattimaru* (rotation of plots that allow a fallow period [puran] for soils to recuperate their fertility in the dry zone).

There is also the *bethma* system, a cultivation adjustment to recurrent water scarcity where only the village paddy tract, often near the tank-bund, can receive and economize water for a particular season. To ensure access to land for subsistence, every farmer under the tank is entitled to a land parcel in the *bethma*. During a *bethma* (literally meaning a divided portion), private ownership of the selected paddy land is temporarily suspended, and would revert back to the normal ownership only after the harvest.

THESAVALAMAI—CUSTOMARY LAND LAW IN JAFFNA³
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 *Malabar residents* (or Tamils) and were meant to preserve the dominant caste hierarchy among Jaffna Tamils. The law obliges a landowner to concur with adjoining landowners (who are given preemptive rights) before executing a land sale or transfer. The law was applicable to Jaffna Tamils but it had unintended effects such as preventing other ethnic groups (Sinhalese and Muslims) from acquiring land. Some argue that it

contributed to the segregating conditions for the Tamils. There is also some uncertainty as to whether *Thesavalamai* is subject to the same rules of land ownership in other parts of the country like Wellawatta in Colombo or in up-country areas. These complexities have called for proposals to repeal the *Thesavalamai*, but it has not been attempted so far due to ethnic sensitivities.

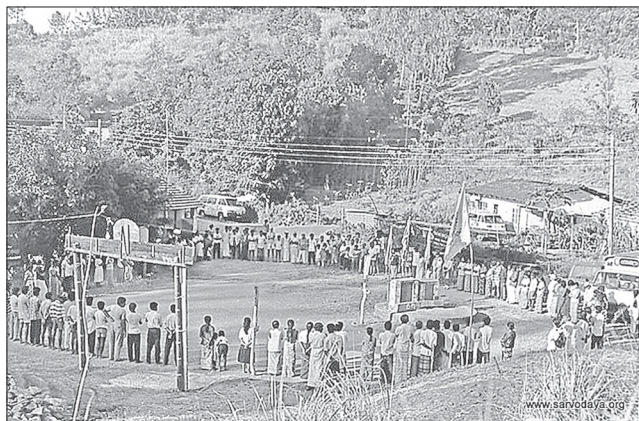
MUSLIM INTESTATE LAW⁴

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 provides 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

Starting in the 19th century, British colonial policy encouraged the expansion of plantation estates; however, this often came at the expense of villages and the neglect of the traditional peasantry. This created a duality of commercial (estate) and subsistence (traditional paddy) agriculture. Plantation estates were established from the sales of Crown lands, which covered some 886,667 ha in the period 1850–1930.

With the expansion of estates, not only was the peasantry disposed of the lands they cultivated, they were also neglected as insignificant to the export cash economy. Tenurial systems became more complex, and there was an increase in the volume of land litigation. There were reported cases of starvation in some parts of the hill country.⁵ The subsequent policy of large-scale imports of rice kept local *paddy* farmers poor and backward. The disadvantage faced by farming communities was never rectified even if subsidies have been granted to the farmers.⁶



THE CONCEPT of “PRESERVATION of the PEASANTRY”

The first Land Commission of 1927 attempted to change colonial land policy through large-scale alienation of land to the landless peasantry. This was undertaken through the key legal instrument of the LDO of 1935. Over 800,000 ha of Crown lands were redistributed under various schemes during the 50 years after the LDO enactment.

Moreover, two major land alienation programs were undertaken after 1985—the Mahaweli Project, and the Presidential Task Force on Land Alienation—where close to 1.2 million ha were distributed among farmers.

Initially, the unit size of land allotments was 2 ha of paddy land and 1.2 ha of residential land; this size was later reduced due to the increasing demand for land in new settlement schemes. In the Mahaweli settlements created in the 1980s, the size of land allotments was 1 ha of paddy land and 0.25 ha of homestead land. In some highland colonization schemes, the allotment was less than half a hectare, raising questions about the economic viability of such farm units in the dry zone.

To prevent the undue disposition of allotted lands, protective conditions were incorporated in LDO-issued permits. These included rules on the sub-division and fragmentation of awarded lands. Also, administrative mechanisms prevented the land from being passed on to non-peasants, paving the concept of “preservation of the peasantry”.

Despite these measures, however, illegal transactions took place. In some settlements including Mahaweli, a substantial portion of land allotments changed hands. Those who sold their land rights—usually at low prices—often remained in the settlements despite the poverty and deprivation. Thus, while the settlements discouraged urban slums, pauperization in some settlements reduced them to “rural slums”. Some of these settlements became breeding grounds for dissent and rebellion.

STATE MONOPOLY OVER LAND OWNERSHIP

The land reforms of 1972 and 1975 nationalized large estates above the established land ceiling of 20 ha for private landholdings, and brought these back under state ownership. With this, the state became the biggest landowner controlling 82% of the country’s total land area, leaving the balance of 18% as privately owned.

There were earlier efforts of alienating state lands to the landless. Recommendations of the First Land Commission (1927) led to the enactment of the Land Development Ordinance (LDO) of 1935, also called the *volte-face* (or reversal) of colonial land policy, as it facilitated the acquisition of all untitled land for opening up plantations. Today, 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.

The imbalance between state and private land ownership was eased to some extent by these earlier land alienation processes. However, land was often transferred under long-term leases or similar tenure arrangements, rather than through freehold where owners could enjoy rights in perpetuity. Thus, land values were low and land considered as “unencumbered” collaterals in credit provided by reluctant banks, due to the difficult procedures to recover defaulted loans. The government was reluctant to confer freehold status due to the fear of “improvident alienation” (i.e., poor families haphazardly selling off their lands).

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 1979 survey revealed that 5.8% of

the country's total land area came under some form of encroachment. With increasing politicization of land, successive governments resorted to "encroachment regularization" (giving legal recognition to occupants) to appease illicit occupiers. This policy was based on social research indicating that most encroachers actually made serious efforts to develop their lands.

Significantly, it should be noted that the largest proportion of government-alienated land today is due to encroachment regularization. For landless farmers, encroachment has become an easier way to obtain a parcel of state land, compared to the processes to be followed under the LDO. "Regularization" has further increased the encroachment of state lands.

Past Efforts AT Land AND Tenorial Reforms

PERIODIC LAND COMMISSIONS

Land Commissions (that incidentally come every 25 to 30 years) have proven useful for understanding changes in land issues and for formulating fresh policy directions. The First Land Commission of 1927 changed the colonial policy of land sales into a more people-oriented alienation of Crown lands. This led to the enactment of the Land Development Ordinance of 1935 which allocated crown lands for village expansion and colonization. The Second Land Commission of 1957 focused on tenorial issues related to land alienated under different laws. The Third Land Commission of 1985 embraced wider concerns, focusing on land degradation and title registration. In 1993, a Presidential Task Force was set up to directly address landlessness through the alienation of state lands.

REGULARIZATION of ENCROACHMENTS

Successive governments adopted "encroachment regularization" that was administratively expedient but which opened opportunities for corruption, even as it helped encroachers to purchase their own land. In urban areas, water and electricity were provided to encroachers, strengthening their claims for continued occupancy. However, it became hard to resolve occupancy of sensitive

areas as stream banks, reservoir buffer zones, forest reserves and railway reservations. This also became an impediment for long-term scientific land use planning. In some recent litigation, the courts upheld the view that, irrespective of the length of time of land occupancy, an encroacher would never be entitled to a prescriptive right of tenure.



TENANCY REFORMS

The Paddy Lands Act of 1957 generated important tenancy reforms in the paddy sector by protecting the rights of *ande* tenants (sharecroppers). It achieved greater social justice, but failed to increase productivity. This was offset by the introduction of high-yielding paddy varieties in the following period. Today, tenant protection measures continue to operate under the Agrarian Development Act of 2000.

LAND REFORM and REDISTRIBUTION

Land reforms affecting the plantation sector were introduced in the 1970s. Land ceilings were imposed on individual ownership (20 ha for highlands and 10 ha for paddy lands). The main recipients of acquired land 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%) were passed on as peasant smallholdings. 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. Moreover, the reforms brought plantation lands under state agencies with little

management experience and subjected them to undue political interventions. This proved detrimental, as the production of plantation crops like tea gradually declined and took many years to recover.

MIDDLE-CLASS ALLOTMENTS

With the intention of attracting investments on land, efforts were made to promote middle-class land allotments, and this produced mixed results. A thriving sector of middle-class tea smallholders emerged in the south; middle-class paddy holders continued to thrive in Anuradhapura and Ampara districts. On the other hand, middle-class highland schemes in the dry zone failed and were subsequently abandoned after extracting valuable timber from the allotments and nearby forests.

YOUTH SETTLEMENT SCHEMES

Efforts were made to attract the unemployed youth for land development under political labels such as “land armies” and new *janavasa* programs. However, these proved unsuccessful, along with dreams of creating collective farms due to demands for individual ownership. However, significant progress was made in some of the highland settlement schemes in Rajangane, Mutthaiyan Kaddu and Wiswamadu Kulam.

INVOLVEMENT of the PRIVATE SECTOR

There were failed efforts to invite private companies to develop dry zone areas like Minneriya, and to invest and develop farms in Mahiyangane that resulted only in deforestation and loss of valuable timber. There was promise in organizing private foreign investments in Pelawatta and Moneragala for sugar plantations while opening employment avenues for rural youth. Valuable lands were also given to entrepreneurs to start new industrial ventures.

LAND for HOUSING the URBAN POOR

There has been significant progress in addressing the shelter for the urban poor through arrangements like the Million Housing Programme—wherein slum dwellers in low-lying areas in Colombo City were provided with apartments in high-rise buildings. The net effect of filling up low-lying land and the continued occupation of sensitive reservations, however, has been a greater exposure to

natural hazards such as floods, where again the government has to come for rescue in times of disaster.

PRESIDENTIAL TASK FORCE on LAND ALIENATION

This task force was established in 1993 to address the issue of landlessness, with some 264,702 ha identified for both agriculture and housing. The largest category was for agriculture, where productivity did not improve despite government support, similar to the distribution of 100,000 allotments pledged 23 years later under the *Mahinda Chintana* policy of 2006. People and politicians took land allocation into their own hands, and officials were relegated to the position of merely endorsing those encroachments. Inefficiency in the system also aggravated the situation.

LAND-RELATED AGENCIES and PROGRAMS

Agriculture Policies

The National Food Production Drive, 2007–2010 focused on increasing food production and agricultural incomes. Among the initiatives undertaken were home gardens, increasing paddy and other food crops, cultivation of abandoned paddy lands, rehabilitation of minor tanks, transfer of technology, and development of marketing facilities.⁷ One special policy under the *Mahinda Chintana* was the *Gama Neguma* (village upliftment) program that aimed to develop villages as micro-centers of livelihood development and poverty reduction. This included provision for electricity for rural villages, access to drinking water, access roads, schools and health centers, community centers and factories, with the support of government agencies.

Relieving Poverty

From 1974 to 1994, the *Janasaviya* was the country's main poverty alleviation program that provided monthly cash grants to families in poverty. This approach was later replaced by the *Samurdhi* program which supplemented cash grants with other strategies to move people out of the poverty trap. These included livelihoods the creation of an enabling environment, technical know-how, improved infrastructure and marketing facilities, investments in special poverty reduction programs, and small enterprise development through microcredit facilities.

Reducing Food Insecurity and Undernutrition

The current policy is to enhance the food security and nutritional conditions of households through a twin-track approach of strengthening agricultural productivity and improving access to food. Also, a special food security project providing assistance in agricultural production, livestock and inland fisheries, and in strengthening farmer organizations in dry zone districts and less developed wet zone districts was initiated in 1995 and funded by the Food and Agriculture Organization (FAO).

Land Titling under *Bim Saviya*

Bim Saviya is a program launched under the *Mahinda Chintana* by the Ministry of Land and Land Development in order to strengthen the ownership and marketability of land. It seeks to introduce title registration (in place of deed registration), to resolve or make arrangements to resolve the ownership of unsettled lands, and to establish a Digital Land Information System for better land administration. *Bim Saviya* has been implemented under the provisions of Registration of Title Act No. 21, 1998 where lands are surveyed, boundaries defined, and title certificates issued free of charge. The Ministry hopes to complete this task in 15 years.

National Involuntary Resettlement Policy (NIRP)

This policy applies to displaced people whose homes and lands are acquired by public and private sector development projects, forcing them to move and resettle in unfamiliar locations. Under this policy, a comprehensive Resettlement Action Plan (RAP) is required where 20 or more families are affected. Where fewer than 20 families are involved, the policy still applies, but a resettlement plan can be prepared with less detail. The NIRP applies to all projects regardless of funding source. One gap in its coverage is that it can leave out people affected by small development projects. The NIRP also needs sound legal footing in some legislative enactment.

REBUILDING AFTER the TSUNAMI

The tsunami of 2004 that struck most of the country's coastal areas brought about serious problems of displacement and unavailable shelter. Local NGOs such as Sarvodaya and several international NGOs (INGOs) provided housing facilities, with government providing



legal land documents. NGOs acted as intermediaries in identifying suitable lands and eligible recipients, while government attached conditions to avoid “improvident alienation” or re-sale of awarded lands by the recipients.

One contentious issue was the establishment of buffer zones along the coasts. The government prohibited construction within 1,000 m from the shoreline, later amended to 500 m, reduced to 100 m, and modified to 35–100 m. Land values fell drastically following the tsunami; the impact on housing, tourism and coastal agriculture was massive as well. Attempts to introduce buffer zones to discourage people from returning to their traditional dwellings have proved unsuccessful, however, as short-term interests prevailed over long-term needs for safety.

KEY PLAYERS in the LAND SECTOR

The government's huge role in land administration and management and the limited role given to the private sector and civil society organizations (CSOs) have resulted in increasing inefficiencies in land management; malpractices; and corruption. State institutions dealing with land include:

- Departments of the Land Commissioner, Surveyor General, and Agrarian Development;
- Semi-government corporate bodies (state-owned enterprises or SOEs) that include the Urban Development Authority, Mahaweli; Sri Lanka Land Reclamation and Development Corporation, Land Reform Commission, and State Plantations Corporation; and
- Provincial authorities that have been established after the 13th Amendment to the Constitution, such as Provincial Commissioners, Provincial Directors, etc.

NGOs help the poor manage a small portion of lands. They take leasehold rights as in the case of Sarvodaya (see “*The Sarvodaya Shramadana Movement*”), Movement for Land and Agricultural Reform (MONLAR) and Sewa Lanka. INGOs such as Plan Sri Lanka, World Vision and Care International have also assumed a prominent role after the tsunami. Private companies are active in real estate transactions. Most of them acquire large blocks of land and portion them into smaller parcels for sale. In the process, they often come into conflict with encroachers with whom various deals are devised.

KEY LAND ISSUES in DIFFERENT SECTORS

Conversion of Developed LDO Lands to Freehold Ownership

The original intention of the LDO was to transfer full land ownership to allottees; however, this has been continuously deferred due to fears of “improvident alienation”, unnecessary fragmentation and multiplicity of ownership. Over the last five decades, land had been transferred under *leasehold* arrangements, and the conditional ownership conferred under LDO permits renders the land unacceptable to banks as collateral. The government has declared its intention to confer freehold ownership, yet enforcement is likely to be difficult due to inefficiencies in the system. It would be reasonable for the government to release its hold once the land is developed to a satisfactory level.

The Sarvodaya Shramadana Movement

Sarvodaya was founded in 1958 as a people's self-help organization inspired by Gandhian ideals of “truth, non-violence and service for all”. It has a reach of over 15,000 villages across Sri Lanka.

The wide range of services Sarvodaya provides includes community-based disaster management, early childhood development and child protection, health and nutrition, legal services, microfinance, environmental conservation, youth empowerment and leadership training, women's capacity building, provision of rural technical services, and psychosocial and spiritual healing. Sarvodaya's work on land rights and agriculture may be summarized as follows:

- **Sarvodaya shramadana societies and *Deshodaya*.** Sarvodaya currently works through a network of 5,200 community-based organizations known as Sarvodaya Shramadana Societies operating as legally

independent bodies. These societies pass through a five-stage village empowerment process for building *grama swaraj* (self-rule). The next stage, started in 2006, is a governance program called *Deshodaya* (awakening the nation) to empower and link communities together to obtain services from the state and other stakeholders, in a rights-based approach. *Deshodaya* forums are regularly organized at division, district and national levels where land issues are also discussed, including: collective use of public lands for agriculture; village-level land conflicts and leasing of lands to multinational corporations against the will of villagers; preservation of forests and natural reserves against encroachment; preservation of water bodies against polluting industries; and collective action to safeguard public irrigation infrastructure.

- **Land rights, documentation and legal services.** Services include mediation of land-related and minor conflicts at village level, awareness-raising and training sessions on various issues including land, and helping IDPs/returnees in the Northern Province acquire their missing documents, including deeds to their lands.
- **Sarvodaya Institute of Higher Learning (SIHL).** The SIHL provides education to rural communities on various subjects such as sustainable agriculture, home gardening, urban agriculture, water resources management, and climate change adaptation.
- **Complementing the “*Divi Neguma*” program.** Sarvodaya complements the government's *Divi Neguma* (uplifting lives) program that seeks to create 1.1 million agricultural units for the food security and livelihoods of marginalized populations. ■



Residual Matters Relating to *Ande* (Share) Tenancy in Paddy Lands

Ande tenancy is no longer an acute social issue as it was in the 1950s when the Paddy Lands Act was introduced. However, there are still residual issues to deal with, such as the nearly 300,000 share tenants and 1.2 million land-owning farmers who live in similar, dismal conditions. Any action to improve the lot of share tenants must also take into account the conditions of small land-owning cultivators.

Chena Farmers and Their Future

Chena continues in most dry zone areas despite restrictions, contributing to land degradation and thwarting efforts to introduce alternative farming systems. About a million farmers depend on *chena* for their livelihoods or as a secondary source of income.

Encroachment on State Reservations

The last encroachment survey was conducted in 1979, and no similar survey has been done since. It may be assumed that there are nearly half a million encroachments despite periodic regularization. Evicting encroachers may not be a good political option, but allowing “business-as-usual” not only increases proneness to natural hazards such as floods and landslides, but encourages further encroachments.

The Vedda Communities

The Veddas constitute an important portion of the Sri Lankan population. They are limited mainly to the jungle areas in Central and Eastern provinces where they maintain their identity including their language and way of life since ancient times. With the expansion of settlements and villages, forest authorities have taken strict measures to prevent encroachment into forest reserves. Vedda communities have thus challenged the rules and regulations restricting access to forest areas. Considering the rising concerns and protests by the Vedda communities and CSOs, the government recently granted the Vedda communities certain exclusive rights in the Maduru-Oya Forest Reservation. These include access to resources, work as guides and special identity cards to prevent them from being accused as “illegal encroachers”.

The Need for a Common Land Law

There is need for a common land law for the whole country that respects the culture and customary practices of minorities; this highlights the need for a comprehensive survey of all landholdings. Customary laws that accentuate the differences among ethnic groups bring about misunderstanding, unhealthy competition and occasional conflict among the multi-ethnic population.

CENTRALIZED and INEFFICIENT LAND ADMINISTRATION

There remains a lack of clear delineation of powers between provincial councils and the central government. Until powers are defined and devolved to provincial councils, most administrative functions will remain centralized at the Land Commissioner’s Department. This lack of devolution has led to highly politicized decisions on land, as well as to corruption in land administration. It also continues to affect the smooth functioning of agrarian services.

LAND TITLES and LEGAL FRAMEWORK of LAND TRANSFER

In Sri Lanka, land rights are transferred or passed to successors through conventional notarial deeds, but when landowners die intestate, the processes of land division among the next of kin, when there are many, become very complicated. To have clear land titles the successors need to go through time-consuming, costly court cases on land partition. In the absence of verdicts from the district courts, the land titles will remain unclear. Presently the Sri Lankan government has *Bim Saviya*, and hopefully this will correct the complicated notarial process the island has used for centuries.

THE CONFLICT and the WAR

The *de facto* conflict began in the mid-1970s but its roots date back to the beginning of the century, to the latter part of British colonial rule and the early days of the post-colonial era. A number of social, economic and political issues contributed to the emergence of conflict, including neglect of the Tamil language, lack of devolution of power to the Tamil dominant areas (the North and East provinces), economic marginalization after the introduction of the open market system in 1978,

and youth unrest that resulted from unemployment. In the post-independence era (after 1948), the Government of Sri Lanka established new settlements under a number of irrigation schemes such as Galoya, Minipe Ela, Elahara and Padawiya settlements, in parts of the North, North-central and East provinces as a measure to solve the landlessness among Sri Lankans. Land was distributed in accordance with the proportion of ethnic populations but since the majority is Sinhalese many perceived that the Government was establishing Sinhalese settlements in Tamil dominant areas and “threatening” the Tamil people with fears of losing land. The Tamil separatist movement started in the mid-1970s and by the 1980s it escalated into a full-scale war.

Displacement Due to War

During the war, the Tamil separatists attacked the bordering Sinhalese villages and due to the fighting many Tamil communities had to flee their land. Some sought refuge in camps in the southern Indian state of Tamil Nadu and many fled to European including Scandinavian countries, forming the Tamil Diaspora. People who could not leave the country moved to host families and internally displaced persons (IDP) camps elsewhere in the country. The most noticeable was the movement of displaced persons from Mannar district in the Northern Province to IDP camps in Puththalam district in Northwestern province in the mid-1980s. They have been living there for so long that they find it difficult to return to Mannar even after the war ended.

Massive Influx of IDPs at the Final Phase of War

The final phase of the war in 2008–2009 totally devastated the landscape and took a heavy toll on human lives in Killinochchi and Mulathivu districts in the Northern province. While the number of war casualties is still unknown, some 300,000 people were internally displaced and were accommodated in relief camps in *Manic Farm*, in the north of Vavuniya district. Many lost their property including houses and agricultural assets. The IDPs could not engage in any economic activity and they were completely supported by the Government of Sri Lanka, UN and affiliated agencies and by other CSOs including Sarvodaya.

Resettlement Process

By early 2010, the government started the resettlement process amidst immense international pressure to allow IDPs to return to their places of origin. Some could move to their places of origin directly while others had to spend considerable time in transit camps. But upon their return they could only find damaged and destroyed houses. Almost all of their economic assets were lost. The UN estimated housing needs at more than 80,000; the government's estimate was around 50,000. Many organizations worked to support the returnees with shelter by constructing transitional shelters and core-houses. But still many did not have roofs above their heads, so they lived in temporary huts and tents. While the majority of the IDPs could go back to their places of origin, some 8.5 *Grama Niladhari* divisions will be not available for resettlement due to security reasons and approximately 500 families will be relocated to a place called *Kombavil* in Mulathivu district.

Issues Related to Resettlement

Land demarcations were completely destroyed, and landmarks such as fences, small trees and buildings were no longer standing. Therefore, the returnees had difficulty in identifying the boundaries of their lands. On the other hand, many had lost their legal documentation including their birth and marriage certificates, national identity cards and land deeds. Deeds are vital in claiming land rights. Even though there is a possibility of recovering the copies of deeds from local land registration offices, a landowner should know a lot of information to retrieve deeds from registries, due to the complicated notarial systems followed in executing deeds.

High Security Zones (HSZs) and mine contamination have restricted farmers from accessing their land. Two and a half years after the end of the war, the extent under the HSZ has been considerably reduced, but large tracts of agricultural land still lie within the HSZ, to which farmers do not have access. Though mine-related accidents are relatively low due to extensive Mine Risk Education (MRE) programs implemented by the government and CSOs, wide tracts of land cannot be used for agricultural activities due to mine contamination.



Relocation in the Resettlement Process

Although resettlement works relatively well, relocation has created issues for IDP returnees. Relocation is done mainly for security reasons and the IDPs are prevented from returning to their places of origin. For instance the IDP returnees to *Kombavil* have been traditional fisherman, but they have been relocated away from the coasts. Meanwhile, the ownership and titles over the lands that belong to the refugees in India and elsewhere, will take a long time to resolve.

Devolution of Land Powers to the Provincial Council

The Government of Sri Lanka has already begun discussions with the Tamil political parties on possible solutions to address the root causes of conflict and war. The issue of land has again been highlighted as a major issue. Notwithstanding the 13th Amendment to the Constitution, the central government has never assigned land and police powers to the provincial council. To this day, this remains unresolved in discussions between the Sri Lankan government and Tamil political parties.

LANDLESSNESS and LAND TITLES

Tamil Populations of Indian Origin in the Tea Plantation Sector

Sri Lanka has been world-renowned for its high quality tea. But the human suffering behind the tea plantation sector is yet to be corrected two centuries after tea was first introduced by the British. Since the native Sinhalese refused to work in the plantations, the British brought almost 600,000 laborers from southern India. They arrived as families and started working in the tea plantation sector under highly deprived conditions. They were basically stateless and treated as slaves. They were treated as the “property” of the plantation companies and did not have access to minimum standards of life such as education and health. Native Sinhalese did not welcome the visitors and this made the workers’ lives difficult. After independence, as a result of positive discussions with the Government of India, a portion of the Indian laborers went back to India and others were given Sri Lankan citizenship.

Even though they have been given citizenship, their situation remains critical. They are considered as a

separate ethnic division as “Tamils of Indian origin”; while the Tamil populations in North and East provinces are considered as “Sri Lankan Tamils”. They live in long houses with their extended families in tea plantation estates, without land or land rights. There have been attempts by the government to encourage tea plantation companies to allocate land for their plantation workers, but still majority do not possess land rights.

Conflicts Between Tea Estate Workers and Villagers

Conflicts between plantation workers and adjoining villages have been minimal. However, tea plantation workers are rarely welcomed to the native Sinhalese villages around the tea plantation estates. Attempts to distribute land among the tea plantation workers have been strongly challenged by the villagers, whose ancestors were the original owners of the land centuries ago when they were forcibly evicted by the British rulers to create plantation estates. Due to the difficult terrains and extended families, the villagers also face immense pressure on land for their livelihoods, particularly farming.

Some of the second and third generations of tea estate workers have started vegetable cultivation in the upper catchments of their hilly terrain. In some cases, excessive use of fertilizers and pesticides has polluted the water in the streams, which nourishes the rivers downstream. Presently this is a concern to environmentalists and also to dominantly Sinhalese villages downstream.

OTHER LAND-RELATED ISSUES

- One issue is the plight of the forgotten poor in *purana* (old) villages who are dependent on minor irrigation systems in areas that are highly vulnerable to severe droughts. Another is the need for land among the urban poor and displaced people.
- Another issue is the availability of utilizable land in certain districts especially in the north and east. Land and ethnic issues continue. Lands may be allocated for religious institutions, as religious groups tend to grab lands and establish places of worship, sometimes resulting in open conflict. There is a need to look into unused and idle land

(both state and private) so that they can be utilized. Irregularities in land administration have reached serious proportions, victimizing the weaker segments of society.

- There is a lack of field-level officers like *krupanisa* (village agricultural workers) in the north, south and east districts, causing undue delays in service delivery. There should be relocation of people from hazard-prone lands along the coast, and people aggrieved by relocation must be given realistic resettlement alternatives.
- Rural out-migration for employment in industries locally and in the Middle East has affected the availability of female labor for agriculture in the rural sector. On the other hand, the population of young males has dwindled in war-affected areas in the north and east due to armed conflict and out-migration. Natural out-migration from villages leaves only the educationally backward youth for land-based employment.
- The *Mahinda Chintana* policy supported by fertilizer subsidies and higher prices for rice helped to some extent in arresting the decline in the paddy sector, and in keeping farmers in cultivation.
- Climate change is a threat to food security and land. In recent years rainfall patterns have changed: either rains do not come on time, or if they do, they come with high intensities that often result in flashfloods. In 2010, Sri Lanka experienced waves of flash floods that devastated almost 40% of the total harvestable crop. The government and civil society organizations are focusing on local food security based on maximum utilization of available land.
- There is limited availability of land information required for planning and decision-making.
- Land degradation may increase the stresses on poor people who often occupy marginal lands.

EFFORTS of CIVIL SOCIETY in SAFEGUARDING LAND RIGHTS

Issues pertaining to land are not just of technical or legal importance. Land is a sensitive subject and needs to be handled with care irrespective of ethnic and social differences. Also, land is more than merely an economic asset: the legacy of land in Sri Lanka is much connected to the culture of different communities living in the country.

People value land and other fixed assets more than other movables such as cash, vehicles or luxury commodities and they are devoted to safeguard the same for the future generations. The customary marital and land laws focus on the preservation of ancestral land within the nuclear families. For instance, a few centuries back in the upcountry Sinhalese communities, two brothers could have one wife, and the intent was to preserve the land within the family without division. Under the provisions of *Thesavalamai* law in the northern peninsula including Jaffna, traditional Tamil communities cannot sell their land without giving priority to family members who may be interested in inheriting the land.

Opportunities in Addressing Land Issues

RELIEVING LANDLESSNESS and the BURDENS of LITIGATION

The end of the war and the ensuing relative peace provide opportunities for developing long-term solutions to landlessness and the burdens of litigation. The registration of landless people has been initiated at the administrative district level. The government has established special tribunals to handle the volume of litigation that has piled up for long periods in the courts.

POSSIBILITY of ATTRACTING EXPATRIATE COMMUNITY for INVESTMENT in LAND DEVELOPMENT

The migrant population in 2008 was around 1.8 million, while around 250,000 are employed abroad. Foreign remittances amount to nearly \$3 billion annually. Since the sale of developable land to foreign nationals is generally considered undesirable, there is an opportunity to harness the expatriate community to develop land, particularly in the north and east.

OPPORTUNITIES for AGRICULTURAL MODERNIZATION

Demand for agricultural labor due to demographic change and out-migration is increasing, providing opportunities for modernization and more extensive

forms of agriculture, as shown by the gaining popularity of combine harvesters and agri-roads. New developments in biotechnology irrigation technologies (such as drip and sprinkler methods for dry-zone lands) and technological advances in land and resource surveys (GPS, GIS and satellite imagery) can be utilized to increase productivity.

HARNESSING HIGHER LITERACY

Sri Lanka's high literacy rate (over 90%) offers opportunities for innovation, diffusion and creating greater awareness in better land management. It should be harnessed for adaptation to global climatic changes, managing pests and diseases, and obtaining and optimizing productivity.

SECURING TITLES to LAND

Registration of land titles is now in progress although still experimental in small areas. This may reduce the volume of land litigation and facilitate the land market. New strategies are needed to capitalize on this opportunity. The government is thinking of creating land tribunals to address the chronic issue of delays in land related cases in courts.

CONFERRING FREEHOLD LAND OWNERSHIP

Empirical evidence suggests that owner-cultivators have the highest overall yields per acre in agriculture. There is an opportunity to confer freehold rights to peasants currently under leasehold or tenancy arrangements.

LAND INFORMATION DATABASE for LAND DEVELOPMENT

The Land Commissioner's Department and the Survey Department have an available land database. The *Bim Saviya* is also doing database development. By law, it is the duty of the Surveyor General to provide parcels-based information for developing a land information system (Section 8, Survey Act No 17, 2002). Agencies must be equipped with the needed technical know-how to enable them to develop a sound land information system that would facilitate decision-making on land policy.

Endnotes

- ¹ Simpson, R.S. (1976) *Land Law and Registration*, Cambridge University Press, U.K.
- ² Among these are Buddhist Temporalities Ordinance of 1956; Service (Paraveni) Lands Ordinance 1852; Kandyan Law Declaration and Amendment Ordinance 1956; Kandyan Succession Ordinance of 1956; Kandyan Marriage and Divorce Act, 1956.
- ³ Among these are Thesavalamai Ordinance No.5 of 1869 and its regulations; Thesavalamai Pre-emption Ordinance; Jaffna Matrimonial Rights and Inheritance Ordinance of 1911 and 1947.
- ⁴ This includes the Muslim Intestate Succession or Wakfs of 1956; Muslim Marriage and Divorce Act of 1956
- ⁵ Le Mesurier, 1983
- ⁶ Moore, 1987
- ⁷ HARTI, 2008

References

Sri Lanka has a relatively rich array of writings of the subject of land from colonial times. The bibliography presented below is not only a list material referred in the text. In order to provide a deeper understanding of the subject, some of the key writings have been included. It may also be noted that some annotations have been provided with regard to some key publications.

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