SECUURING LAND RIGHTS OF DISPLACED AND EVICTED COMMUNITIES IN NORTHERN AND EASTERN SRI LANKA

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ABOUT THE RESEARCH

Three decades of civil war and subsequent development initiatives in Northern and Eastern Sri Lanka have resulted in large-scale displacements and evictions. Communities who lost their lands have demanded the release of their land and security of tenure. However, their demands have been met with challenges such as lack of political will, insufficient legislative and administrative processes, and denial of information. Communities, with the support of civil society organizations (CSOs), have mobilized themselves, often led by women. This paper examines the different strategies and mechanisms utilized to hold institutions accountable to secure tenure rights of communities. It also documents the challenges, setbacks and victories, and captures lessons learnt. A case study of the land rights struggle of a forcefully evicted community in Paanama village demonstrates how persistent community activism and advocacy at different levels have held institutions to account and made progress towards the guarantee of land rights.
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1 INTRODUCTION

Land is central to the lives of people and its protection as a basic human right is key to ensuring human dignity. As human rights essentially uphold human dignity, it is imperative that land rights of all people are guaranteed. Land is intrinsically linked to many other aspects of our lives, including food, health, housing and education. Secure land rights serve as the premise upon which many other civil, political and socio-economic rights can be realized, such as the right to adequate housing, the right to an adequate standard of living, the right to health, the right to education, gender equality and equity, and protection from violence and injury or abuse.

Access to land and related natural resources, such as forests and water sources, is critical to guarantee sustainable livelihood options and opportunities, especially for impoverished rural communities. In practice, this means that with secure rights over land comes the certainty required for investment and productivity, ensuring food security, increasing economic opportunities and in particular, helping smallholder farmers with cultivation. Land is a source of wealth, important for the economic wellbeing of people.

Land is one of the fundamental factors that shape the social and cultural identities which define who we are and how we are viewed by others. Land and related natural resources are thus closely bound with other factors of identity, such as culture, ethnicity, gender, nationality and religious beliefs.

For women, land is inherently linked with their position in the family and community. Access to and control over land has a direct bearing on women’s decision-making power within the family and the community as a whole. Often, access to land is dependent on women’s relationship with male family members. Women are faced with further challenges under gender discriminatory land laws, customs and community land tenure systems. Unequal access to education hinders women’s access to information as well as their economic growth. When faced with displacement or forced evictions, the culmination of the above factors has devastating impacts on women, making them more vulnerable.

Displacement due to war or conflict give rise to a host of land issues which often take years to resolve. Loss of documentation to prove land ownership, inability to return to land, limited financial resources to defend land rights and lack of awareness of rights have further impeded the resolution of these land issues. Land rights are often threatened in the context of increased demand for land and natural resources and unequal power relations when it comes to large-scale land-based investments and privatization of natural resources. Land acquisitions without recourse to due process of the law and forced evictions are common in areas where there is increased competition for land for development initiatives.

Security of tenure and freedom from forced evictions thus become important elements in ensuring that people’s land rights are recognized and protected.

Sri Lanka has witnessed large-scale displacement and evictions as a result of the civil war which crippled Northern and Eastern Sri Lanka for three decades. Communities’ demands to return their land and for guaranteed security of tenure have met with many challenges. However, with the support of CSOs, communities have been able to mobilize themselves to assert their land rights. This paper will examine the different strategies and mechanisms used to hold institutions accountable to secure the land rights of communities in the Northern and Eastern Provinces of Sri Lanka. It will firstly set out Sri Lanka’s obligations internationally and under national law to protect land rights. It will proceed to set out the key land issues faced by the displaced and evicted communities in the Northern and Eastern Provinces; it will then
examine the strategies used by civil society to assist these displaced communities, and will
document the challenges, setbacks and victories, and capture lessons learnt. A case study of
the land rights struggle of a forcefully evicted community in Paanama village in Eastern
Province will demonstrate how these strategies and persistent community activism and
advocacy at different levels have held institutions to account and taken steps to guarantee land
rights.

2. SRI LANKA’S OBLIGATION TO
SECURE LAND RIGHTS AND
ENSURE FREEDOM FROM
FORCED EVICTIONS

The importance of protecting land and property rights has been highlighted in several
international human rights instruments and frameworks. The Universal Declaration of Human
Rights (UDHR, 1948), which marks a milestone in the history of human rights, recognizes in
Article 17 that everyone has the right to own property and that no one shall be arbitrarily
deprived of property. The International Covenant on Economic, Social and Cultural Rights
(ICESCR, 1966) in Article 11 (1) recognizes the right of everyone to an adequate standard of
living, including housing.

The right to adequate housing also encompasses the right not to be forcefully evicted from
one’s home. The Committee on Economic, Social and Cultural Rights (Committee on ESCR,
1997) issued General Comment No. 7 specifically addressing the issue of forced evictions, and
defines forced evictions as the ‘permanent or temporary removal against their will, of
individuals, families and/or communities from the homes and/or land which they occupy, without
the provision of, and access to, an appropriate form of legal or other protection’. While forced
evictions patently breach the rights enshrined in the ICESCR, they may also violate civil and
political rights, such as the right to life, the right to the security of the person, and right to non-
interference with privacy, family and home (Wickramaratne and Rupesinghe, 2007).

As per the test laid down by the Committee on ESCR in General Comments 4 and 7 to
determine the legality of forced evictions, firstly, forced evictions are prima facie incompatible
with the requirements of the ICESCR and can only be justified in the most exceptional
circumstances and in accordance with the relevant principles of international law. Secondly,
governments must ensure that all feasible alternatives to evictions are explored in consultation
with affected people; and thirdly, procedural protections must be guaranteed in carrying out
evictions. Prior to carrying out any evictions, especially those involving large groups, State
Parties should consult with affected people and explore all feasible alternatives for avoiding or
minimizing the need to use force. Legal remedies and compensation must be available to
affected people.

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and
Forests in the Context of National Food Security (VGGT) also provides for a framework, serves
as a reference and sets out principles and internationally accepted standards for practices for
the responsible governance of tenure.
### 3. LEGAL FRAMEWORK PERTAINING TO LAND IN SRI LANKA

In Sri Lanka, the right to land and property is not a constitutionally guaranteed right, although there has been a strong push for its elevation as a fundamental right in the recent constitutional reform processes.¹

The legal framework governing land is complex. Most of the laws were enacted several decades ago and were not drafted using a rights-based approach. Thus, many of these laws are not compliant with international human rights standards and obligations.

While there are three personal laws² applicable to different segments of the community, based on their ethnicity and/or residence, general laws apply to the rest of the public. Although the general law governing land is largely said to be fair, the personal laws contain several gender discriminatory provisions which inhibit women’s right to own, inherit and manage land. In the absence of post-enactment judicial review and an express constitutional provision that validates existing law notwithstanding any inconsistency with the fundamental rights chapter, these gender discriminatory laws continue to be valid even though the Constitution guarantees equality before the law and prohibits discrimination based on gender.³

Over 80% of Sri Lanka’s land belongs to the state and its management is governed by the State Lands Ordinance (SLO), Land Development Ordinance (LDO) and the Land Reform Law. The SLO and LDO provide the mechanisms under which state land can be distributed to persons. The policy of the state has been that state lands ought not to be transferred to people freehold, and hence the permits and grants under which state lands are distributed contain many conditions requiring development of the land and restrictions on selling or otherwise disposing of the lands. As will be demonstrated below, fulfilment of these conditions has proved to be challenging in the context of displacement, resulting in many people losing their lands. Where private land is required for a public purpose, the Land Acquisition Act (LAA) makes provision for acquisition of private lands according to a clearly specified procedure upon payment of compensation, but without providing durable solutions to those affected. This Act has been used to acquire land for purposes including constructing schools, hospitals, roads or infrastructure development projects. The LAA has been used to acquire large areas of private land for military purposes in the Northern and Eastern Provinces, exacerbating the already pressing land issues in these provinces.

Where a person or an entity is in unauthorized possession of state land, the process of recovering its possession by the government is set out in the State Lands (Recovery of Possession) Act. It is a procedural law aimed at securing the rights of the state against unauthorized occupants and is considered a draconian piece of legislation which fails to afford any protection to occupants of state land. Where the competent authority is of the opinion that any land is state land and that any person is in unauthorized possession of such land, they may serve a quit notice on such a person, requiring them to vacate the land on a date not exceeding 30 days. This completely precludes inquiries or the opportunity for the occupants to make representations to the competent authority to assert their rights. An inquiry before a magistrate is possible only where the occupant fails to comply with the quit notice, denying protection to law-abiding citizens and violating the norms of natural justice. There is also no appeals procedure against the decision of the competent authority, allowing arbitrary or erroneous decisions.

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¹ Securing Land Rights of Displaced and Evicted Communities in Northern and Eastern Sri Lanka
² In Sri Lanka, the right to land and property is not a constitutionally guaranteed right, although there has been a strong push for its elevation as a fundamental right in the recent constitutional reform processes.
³ While there are three personal laws applicable to different segments of the community, based on their ethnicity and/or residence, general laws apply to the rest of the public.
decisions to stand. Even the magistrate cannot question the decision of the competent authority. Occupants can get an order in their favour only if they can prove before the Magistrates’ Court that they occupy the land upon a valid permit or written authority of the state granted in terms of a written law, and that such a permit or authority is still in force.

As will be detailed below, these provisions have adverse impacts on displaced communities who are unable to fulfil the conditions attached to the permits or return to their lands to extend the permits. There is no room under this law for considering such explanations or difficulty faced by the occupants. This law is frequently used to recover possession of state lands occupied by landless, displaced or evicted communities, even though they may have occupied the lands for a considerable period. This is especially the case in the post-conflict era, where lands have been earmarked or preferred by political powers for development projects.

Sri Lanka does not have a well-formulated overall land policy. Over the years, different policies have been adopted under the ancient Sinhala tenure systems, British rule and, after independence, under successive governments. Under the Constitution, the National Land Commission is tasked with the responsibility of developing a national land policy. However, the National Land Commission was never set up; hence, what remains today is a multiplicity of sectoral land policies such as the National Land Use Policy 2007, National Policy on the Protection and Conservation of Water Sources, their Catchments and Reservations in Sri Lanka 2014, National Wetland Policy 2006, National Forest Policy 1995, and National Involuntary Resettlement Policy 2001 (Nanayakkara, 2018).

The National Involuntary Resettlement Policy 2001 (NIRP) provides a framework to protect the rights of people in situations of development-induced land acquisitions or recovery of possession by the state. It aims to avoid involuntary resettlement where possible by reviewing alternatives to the project and within the project and – where resettlement is unavoidable – to minimize negative impacts. It also aims to offer affected persons a similar or better standard of living compared to their situation prior to displacement. However, this policy is seldom applied in practice (Gunathilleke and Nathaniel, 2014). Although there is some element of a consultative process where affected persons would be fully involved in the selection of relocation sites and livelihood compensation, the NIRP does not encompass the full ambit of Free, Prior and Informed Consent (FPIC) best practice principles.

4. LAND ISSUES ARISING OUT OF DISPLACEMENT AND FORCED EVICTIONS

Northern and Eastern Provinces of Sri Lanka have seen large-scale displacements and evictions due to the civil war the country witnessed for nearly three decades. The largest number of internally displaced persons (IDPs) recorded was 800,000 in 2001, and during the final phase of the conflict, between April 2008 and June 2009, more than 280,000 people were internally displaced (IDMC, 2014). As of July 2015, more than six years after the conflict ended, 73,700 people remained internally displaced (IDMC 2015), and at present it is estimated that approximately 28,700 remain displaced (IDMC, 2019).

Displacement continued even in the aftermath of the war as these Province areas were identified as key for development initiatives. The trend has now shifted from conflict-induced displacement to development-induced displacement, and is built on a legacy of unresolved conflicts arising from previous multiple displacements, competing land claims, continued military
occupation of private lands and engagement in activities that belong in the civilian realm, etc. This poses a very volatile situation for affected communities, making it harder for them to rebuild their lives and ensure social cohesion and stability.

Internal displacement has given rise to numerous land and property issues which the Sri Lankan legal system is not designed to address. The majority of laws dealing with land, housing and property-related matters were enacted well before the conflict began and hence are not equipped to address the complexities arising as a result of the war. The required remedial legal amendments have not been forthcoming. Lack of political will to provide speedy resolution of these issues has aggravated the situation. Although ad hoc policies and administrative mechanisms have been introduced from time to time, there has been no overall policy framework to address these issues (Wickramaratne and Rupesinghe, 2007).

Northern and Eastern Provinces of Sri Lanka have the highest percentage of state lands. State lands are occupied by people with grants or permits issued under the LDO and SLO, the extension of which are conditional upon fulfilment of certain conditions specified in the permit, such as development of the land and continuous occupation for a quantified period. The mere fact of abandoning the land due to displacement and resulting inability to develop the land often breach the conditions stipulated in permits, rendering them liable for cancellation. On their return, IDPs have found that their permits have been cancelled, or – even without cancellations – that other people have been given permits to occupy the lands they held prior to displacement. In other instances, secondary occupants are found occupying the lands without a permit or licence. The SLO and LDO are not catered to address these issues.

In cases of private land, IDPs on their return find that others have been occupying their land for over 10 years and are claiming prescriptive rights. The Prescription Ordinance, which recognizes prescriptive title of a person who occupies land for 10 years, has proven an insurmountable obstacle for returnee IDPs.

Multiple displacements and forced evictions have resulted in loss of documentation to prove rights or title to lands, which is also one of the main obstacles preventing returnees from securing their rights.

The Land Circular 2013/1, which introduced an ‘Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces’, sought to address some of these issues, such as loss of documentation. However, it had several shortcomings, notably reinforcing the Prescription Ordinance by giving secondary occupants priority over original owners.

The LAA was used to acquire large areas of land to establish military camps or for other military purposes. In April 2013, the government initiated an acquisition process for 6,381 acres of private land in Jaffna in the Northern Province, on which a military base had already been established during the war (CPA, 2013, p.44–45). Similar large-scale acquisitions took place in areas such as Sampur in the Eastern Province for the establishment of high-security zones or special economic zones, some of which have subsequently been used by the military for commercial purposes, such as operating military-run businesses and tourist hotels (CPA, 2013, p.45–48).

Since the war ended in 2009, the government has been slow to declassify high-security zones and return lands used for military purposes. This has caused significant delays in the resolution of the land issues faced by IDPs. On the other hand, these areas have been identified as fitting for tourism development projects and other investments. Certain areas have been designated as special economic zones or used for other development purposes, and when the conflict ended the government at the time promoted economic and infrastructure development as a means to achieve reconciliation (Oxfam International and PARL, 2016). The recent upsurge of prospective investors wishing to acquire large pieces of land in various parts of the country in
response to the country’s investment promotion policy has also increased the competition for arable land (Nanayakkara, 2018).

This has not only restricted the land return and distribution process to already displaced communities but has also resulted in further forcible takeover of lands and restrictions imposed on access to pasture lands, forests, lagoons and beaches, causing severe impacts on the livelihoods of communities whose members are primarily farmers and fisherfolk. In most situations, political power is exerted in favour of powerful and rich individuals and companies eager to exploit the lands, to the exclusion of community-centred development. The military is engaged in managing many of the development projects and commercial establishments.

The communities, on the other hand, have been told that their lands are now required for ‘public purposes’, a sacrifice for the greater good, and they have been denied Free, Prior and Informed Consent (FPIC). Restrictions on media freedom and freedom of expression limited people’s access to information about development plans for their neighbourhoods. State officials were often unwilling to divulge information on planned development projects and communities were left in the dark. Shrinking civic space inhibited community leaders and CSOs from working effectively on rights-related issues. Working on land issues was viewed by government as ‘contentious’, and human rights activists often worked in risky environments.

The change of government in 2015 opened up possibilities for addressing some of these issues as civic space significantly opened up, enabling communities and CSOs to have constructive dialogues with state officials in the resolution of their land issues. The introduction of the Right to Information Act proved an effective mechanism for communities to obtain vital information from state agencies.

During the period 2009–2015, the government released 41,658 acres of land and a further 47,563 acres were released during 2015–2019. It is estimated that 28,910 acres of land are still occupied by the military (Wimalagunaratne and Hettiarachchi, 2019). In 2015, the government, through a Cabinet decision, ordered the release of large areas of lands held by the military. However, the implementation of this decision has been problematic and delayed. Several communities are still unable to access land even after its release, and many who have been resettled are struggling to restart their livelihoods. With the change in government in 2020, it is yet to be seen what the state policy will be in addressing these land issues and how much civic space will be available for CSOs to work on land rights.

5. STRATEGIES USED BY CIVIL SOCIETY TO ASSIST DISPLACED COMMUNITIES

The above-mentioned circumstances called for a collaborative effort by civil society actors, especially those working on land rights, to join forces and adopt different approaches to assist communities to secure their land rights. Some of the strategies and mechanisms used by civil society actors to overcome the challenges and work towards securing communities’ land rights are set out below.
Empowerment of communities faced with land rights issues is a key strategy used by CSOs. Building communities’ capacities through awareness raising, community mobilization and leadership trainings have enabled communities to mobilize themselves and effectively engage with stakeholders to discuss and resolve their land issues. They have been equipped not only with knowledge of their rights but also of the obligations of duty bearers and the applicable legal and policy frameworks, which has enabled constructive discussions to take place. Furthermore, it has enabled community representatives to apply more pressure on duty bearers to provide solutions to their land issues.

Awareness-raising initiatives among local communities have proven very effective over the years. It has been witnessed how communities affected by land rights violations have been able to successfully demand their rights through increased awareness of their rights, applicable laws and policies, powers and duties of responsible stakeholders/institutions and available remedies. Increased awareness instilled at the initial stages of collective activism at community levels has led to community members engaging with a higher level of consciousness and enthusiasm, thereby making mobilization efforts more sustainable and lasting.

Sri Lanka has several laws dealing with different aspects of land and property, and the legal framework relating to land is complex. Some of the affected communities previously occupied state lands while others had private land, and some were displaced while others were forcefully evicted. Thus, it is important that communities are presented with a simplified framework relevant to their land rights and tailored to their specific context. Where literacy levels of communities are low, CSOs have developed simplified communication materials including cartoons and other pictorial depictions.

Building community leadership has proven an effective and sustainable strategy which ensures stronger ground-level community movements that are able to take sustained actions in the longer term, even without the support of CSOs. These trainings often take the form of Training of Trainers (TOT) programmes, where participants receive in-depth training in a variety of areas. Community leaders receiving such training have led their communities to advocate their issues with stakeholders at different levels, including at national level, and even to present their cases at international forums. Their strategic thinking and capacity have remained within the communities to sustain change.

Communities subjected to displacement and eviction mostly lived in camps or with relatives, which hindered them from mobilizing as a group to fight for their rights. CSOs have played a key role in promoting active citizenship through setting up community groups and strengthening their capacity. Some of the more dynamic community groups have subsequently formed themselves into formal or informal community-based organizations (CBOs) and have strengthened their capacities to enhance social capital and empower communities to claim their rights and take collective action. Community groups have been linked with district- and national-level land rights networks to ensure that ground-level voices are heard at national platforms.
FACILITATING COLLECTIVE ACTION THROUGH ESTABLISHING NETWORKS AND LINKS TO GLOBAL CAMPAIGNS

Working on land issues through coalitions and networks has proved to be effective in Sri Lanka, especially in the aftermath of the war when civic space was considerably restricted and human rights activists, particularly land rights activists, were at risk. The networks have provided activists and organizations a cover and an ‘alternative brand’ to work under, protecting them from being directly exposed. The People’s Alliance for Right to Land (PARL) is a network that has played a significant role in the protection of land rights of rural communities by providing support for mobilizing communities, campaigning, litigation and policy influencing.

**People’s Alliance for Right to Land (PARL)**

PARL was established in 2011 by transforming the Land Forum, a national-level network of about 15 organizations working on land issues, into a more dynamic and representative coalition. It presently consists of over 35 national-level CSOs, NGOs, think tanks and activists specializing in advocacy, campaigning, community mobilization, research and legal services. The PARL network’s capacity was developed to ensure it can effectively function in terms of coordination and funding (Oxfam Australia, 2017). Members are highly capable and motivated in their field of expertise and have used the network to multiply their influence. The PARL network has been expanded to establish district-level networks, which has enabled local-level land issues to be voiced at the national level and has led to more vibrant community campaigning.
PARL has taken a leading role in many land rights struggles in Sri Lanka, especially in the Northern and Eastern Provinces, by supporting communities to engage with stakeholders and ensuring that their voices are heard at local to national forums. Legal and policy representation at the national level is a cornerstone of PARL’s function, with most nationally based members regularly engaged in one or the other. The network has engaged with government on numerous policy interventions and has been effective in raising localized land issues in international forums and human rights mechanisms through regular shadow reporting to keep issues on the agenda and exert pressure on the government.

PARL works on both the immediate legal and longer-term policy implications of land acquisition and return. National-level public campaigning has been one of its strengths. It has played an instrumental role in linking communities scattered across the island who are affected by similar land issues and bringing them together in national campaigns. Some of the key public campaigns spearheaded by the PARL network include the campaign against the eviction of the Paanama community and the campaign calling for the return of the military-held land in the Northern and Eastern Province.

Collective actions by community groups have been supported at village to district levels to put continuous pressure on district-level state officials to take steps to resolve land issues in their areas. Communities facing similar land issues have been linked with each other through cross-community learnings, exchange visits and national-level symposiums, giving them the opportunity to understand and learn from the experiences, successes and failures of other communities in similar circumstances. This has brought communities from different parts of the island together to fight for a common cause. We have witnessed situations where, when development-induced evictions take place in the north of the country, communities from the south in similar circumstances would take solidarity action with the northern communities at public mobilizations, creating greater pressure on the government to resolve the issues. In addition, national-level public campaigns have been launched demanding justice for affected communities.

Themed ‘Our Land is Our Life’, the PARL network led a national-level campaign calling on the state authorities to return the land held by the military in the Northern and Eastern Provinces. The campaign was intensified in the run-up to the presidential elections of 2015, which led to presidential candidate Maithripala Sirisena making an election promise that lands taken over for military use would be released. After his election as President, a large area of the land held by the military was released and in February 2015, a Cabinet decision was taken to release a further 1,000 acres of land in Valikamam and 325 acres of land in Paanama. In May 2015, the President revoked the Gazette by which over 1,300 acres of land in Sampur were taken over for development as a special zone for heavy industries.

With the support of international NGOs, it has been possible to link local- and national-level campaigns with international campaigns. In 2016, the land rights struggle of a rural community in Paanama on the east coast of Sri Lanka was linked with the Land Rights Now campaign. This global campaign reached 7.7 million people across the globe and over 22,000 people from 141 countries pledged their support for the community’s struggle by signing a petition calling for the return of the Paanama lands to the community. A travelling photo exhibition – a series of photographs showing milestones of the Paanama land rights struggle – drew the attention of locals and tourists, sensitizing them to the issue of the Paanama land rights struggle and wider issues related to tourism development and land grabbing. Tourists made aware of this issue pledged their support to promote ethical tourism.
ENSURING GREATER ACCESS TO JUSTICE THROUGH LEGAL EMPOWERMENT, LEGAL AID AND STRATEGIC LITIGATION

NGOs specializing in providing legal services have supported communities with awareness raising on rights, legal provisions, policies and administrative processes on land. They also hold legal aid clinics where individuals facing land issues are provided with free legal advice and connected with organizations providing free litigation support, or with a district-level panel of lawyers who have agreed to support with litigation at concessionary rates. In other instances, they have been linked with the government’s Legal Aid Commission, which provides free litigation support to people earning below a specified threshold. A legal support hotline which provides free legal advice has been established, enabling rural communities affected by land issues to reach a panel of expert land lawyers and obtain free legal advice, and also to be connected to a panel of regional lawyers.

The Human Rights Commission of Sri Lanka (HRC) is empowered to look into complaints of human rights violations, and communities have been supported to submit complaints to the HRC. The HRC has less stringent procedural and time limits for submitting complaints than fundamental rights cases filed in the Supreme Court and is more accessible to rural communities as it has regional offices. Strategic litigation has been instituted by communities in the superior courts of the country with the support of CSOs, especially in cases which involve large-scale displacement or evictions. In addition, communities have been supported to defend themselves in legal proceedings on evictions instituted by the state authorities under the State Lands (Recovery of Possession) Act.

FACILITATING GREATER ACCESS TO INFORMATION THROUGH USE OF THE RIGHT TO INFORMATION ACT

The right of access to information was granted constitutional protection and guaranteed as a fundamental right in 2015.4 Enabling legislation was brought by the Right to Information Act (RTI) in 2016. The RTI Act is hailed as a pro-citizen progressive piece of legislation with a transformative impact. The RTI Act sets up the process by which citizens can access state-held information. CSOs have raised community awareness of this newly enacted law and have facilitated RTI applications to be filed. Communities have been able to request vital information from the government to support their land rights claims and to establish the illegal nature of land acquisitions. Using this process, the community in Paanama has been able to obtain documentation from the government showing that the lands they were evicted from were not legally handed over to the military to establish camps or to construct hotels. These documents significantly strengthen the community’s claim for return of their lands.
BUILDING INTERNATIONAL PRESSURE BY FACILITATING ACCESS TO INTERNATIONAL HUMAN RIGHTS MECHANISMS

National and international NGOs have been instrumental in coordinating joint civil society submissions of shadow reports to many international human rights mechanisms and participating in sessions where Sri Lanka has come up for review under these mechanisms. Shadow reports are regularly submitted under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which often highlights land-related human rights violations in Sri Lanka.

Some of the notable concluding observations received include recommendations from the Committee on ESCR, which recommended the adoption of a legislative framework providing adequate legal protection against forced evictions, relocation for those without security tenure to land and housing, and also the provision of compensation and redress to those who are forcibly evicted. The Committee, being concerned about the impact of lands held under military control, recommended that the government take measures to map lands under the control of the military and ensure its restitution, and also end military involvement in commercial and other civilian activities. On the question of the absence of an overall land policy, the Committee recommended that the government establishes an independent National Land Commission and develops a national land policy in line with the recommendations of the Lessons Learnt and Reconciliation Commission. The CEDAW Committee in its concluding observations recommended the repeal of the gender discriminatory provisions in the Land Development Ordinance relating to succession, inheritance and joint ownership, as well as the amendment of all personal laws applicable to the Muslim, Kandyan and Tamil communities by removing discriminatory provisions on land ownership, tenure and inheritance rights.

In addition, representations have been made to UN Special Rapporteurs to draw their attention to specific land issues faced by certain communities.

PROMOTING RIGHTS-BASED POLICY ADVOCACY

The civil society movement in Sri Lanka has led many legal/policy advocacy initiatives to ensure that the land rights of communities are secured.

In 2015, the government commenced a constitutional reform process and appointed the Public Representations Committee (PRC) to hold public consultations and receive proposals from the public on constitutional reforms. The PARL network made comprehensive submissions to the PRC advocating the granting of constitutional protection of right to housing, land and property, and freedom from arbitrary evictions. The PRC, in its report to the Constitutional Assembly, recommended the inclusion of these rights in the proposed fundamental rights chapter of the Constitution. This was also accepted by the Sub-Committee on Fundamental Rights of the Constitutional Assembly. However, the constitutional reform process did not proceed due to lack of political will.
The Prescription Ordinance provides that a person who has 10 years of undisturbed and uninterrupted possession of immovable property adverse to the owner can claim a statutory title to the property by prescription. This provision proved problematic to IDPs, especially after the war, as they had been living in camps for well over 10 years and on their return found that their lands had been occupied by others for over 10 years, who could now claim prescriptive title. The Ordinance provides for certain exceptions such as infancy and absence beyond seas, in which case the prescriptive period is extended to 30 years. CSOs called for internal displacement also to be recognized as an exception, thus protecting the lands and properties of IDPs from secondary occupants claiming prescriptive title. After a lengthy advocacy process supported by evidence from the ground on the hardships faced by communities due to this legal lacuna, the Prescription (Special Provisions) Act No 5 of 2016 was brought in to provide relief to IDPs so long as they continued to be disadvantaged due to activities of terrorist militant groups.

The need to amend the Land Development Ordinance by removing gender discriminatory succession rules and the need to change administrative practices enabling the granting of joint ownership of state lands to both spouses have been advocated by CSOs for a number of years. Although there is agreement among policy makers on the need to amend the LDO, it has been challenging to break the patriarchal value systems, as there is a misconception that granting joint ownership of state lands to both spouses would make the title ‘unclear’ and would require state intervention in family matters in case of family disputes.

In addition, national-level think tanks and research-oriented CSOs have carried out extensive desk research as well as field research and proposed a number of evidence-based policy reforms in various aspects relating to land. Absence of an overall land policy has been highlighted in these initiatives, and proposals have been made to formulate a comprehensive land policy.

6. CASE STUDY: THE PAANAMA LAND RIGHTS STRUGGLE

The Paanama land rights struggle marks a milestone in the history of land rights struggles in Sri Lanka. Paanama is a coastal village in eastern Sri Lanka, with breath-taking views of the ocean and boasting many famous surfing spots. Much of the land in the village is claimed to be state land. Villagers use the land for cultivation and the adjoining forests, shores and lagoon for fishing and other livelihoods.

In 2010, Paanama village was burnt down and 350 families were forcibly evicted from the land which they had been occupying for over 40 years. The lands were used to establish military camps and are now being used to promote tourism. The community’s attempts to return to their lands have been met with violent threats. The PARL network has assisted the Paanama community was linked with the PARL network by a CBO and the network has been assisting the community since then in its fight for justice.

At the community level, investments were made in developing the capacity of ground-level activists on land rights and forming and mobilizing community groups. Subsequently, the community formed its own organization, Paanama Pattu Protection Organization, under which it continued its advocacy. A land rights awareness programme for community activists built their capacity to document their case and link with the necessary actors and institutions for remedial action. A striking feature of the Paanama land rights struggle is that women were at the forefront. Female community members played a proactive and leading role in organizing community members, questioning duty bearers and being in the frontlines of public
demonstrations. Defying traditional patriarchal norms, female community leaders in Paanama had – and continue to have – a key role in their community’s demand for justice.

Through connecting with members of PARL, follow-up and long-term support for these activists was arranged. Being in this collective platform enabled the Paanama community to link with other communities who were affected by similar land acquisition cases. This broadened their understanding of different communities, leading to the realization that different ethnic groups have been affected by this situation and that there is a need for collective action. Representatives from Paanama community participated in a number of collective campaigns in Colombo, Jaffna, Ampara and Puttalam against land grabbing and land rights violations.

The Paanama community was supported by the PARL network to file a complaint at the Human Rights Commission of Sri Lanka in 2010 and to represent itself before the Commission. The HRC found that officers of the Sri Lanka Police attached to the Pottuvil Police Station had wrongfully and unlawfully, without any legal authority, prevented the villagers from returning to their homes which were destroyed by an unidentified armed gang in October 2010, and recommended that the complainants be given land for cultivation or be granted compensation.

A submission to the UN Human Rights Council and to the UN Special Rapporteur on the Right to Food was facilitated by PARL members in 2012. Media linkages were also established to raise awareness on the issue nationally and internationally.

PARL network’s ‘Our Land Our Life’ campaign led the government to release lands held under the control of the Air Force in Paanama (except for 25 acres in which buildings had been constructed). However, no steps were taken by the authorities to implement this Cabinet decision and therefore the Paanama community members re-entered the land in March 2016 and commenced cultivation, a process which was supported by the PARL network.

Against such re-entry, the Pottuvil Police filed action in the Magistrates’ Court of Pottuvil and obtained an interim order prohibiting villagers from conducting any demonstrations and entering the lands. The community members were supported by the PARL network to represent themselves in court and upon hearing the villagers, the Magistrates’ Court removed the interim order and permitted the villagers to enter the lands, especially taking into consideration the Cabinet decision of 11 February 2015.

However, disregarding the Magistrates’ Court order, the Divisional Secretary issued quit notices to the villagers directing them to vacate the lands, and thereafter filed action in the Magistrates’ Court to evict them from the lands. The community was then supported to file action in the Court of Appeal against these arbitrary actions of the Divisional Secretary. Upon hearing the case of the villagers, the Court of Appeal issued notice on the Respondents. Considering the case filed in the Court of Appeal, the Magistrates’ Court case was laid by until the conclusion of the Court of Appeal case.

The Paanama land rights struggle was also a focus of the Land Rights Now campaign in 2016 pursuant to which 22,000 people from 141 countries signed a petition calling on the Sri Lankan government to return the Panama lands to the community. As part of this campaign, the PARL network facilitated discussions between the community and high-level stakeholders such as the President, the Prime Minister, Members of Parliament and officials of national ministries.
Key Members of Parliament supportive of the community’s cause were engaged and they raised the issue in Parliament and committed to extend their support in future. A commitment was given by the Minister of Lands that the government intends to return the lands to the community and confirmation was made that there is no impediment to the implementation of the Cabinet decision. This commitment was given in response to private member’s questions raised by a Member of Parliament who supported the community.

The case of the Paanama land rights struggle was presented at the International Tribunal of Evictions in Italy. This is a people’s and opinion tribunal established by the International Alliance of Inhabitants and CSOs. PARL network supported two community members to attend and to present their case and the Jury of the Tribunal was supported with the required additional information on the Paanama case, legal basis relied on by the community, etc. The Tribunal issued the recommendations in favour of the community and stressed the obligation of the government to release the lands to the community.

The date 11 February 2020 marked five years since the Cabinet decision was taken to release the lands. Despite these strong and persistent advocacy efforts, the lands have still not been returned. The Paanama community will continue to fight their case until justice is done.
Civil society has been a key force behind the land rights struggles in Sri Lanka and has played an active and important role in shaping land policy discourse in the country. Some of the key learnings from its work include the following:

- Close coordination among CSOs and working through networks has proved an effective way to operate when civil space is restricted and monitoring of CSO activities is tightened, causing greater risk for human rights defenders. The PARL network in particular has been a useful ‘alternative brand’ enabling organizations and activists to work on so-called ‘contentious issues’ such as land rights.
- Empowering communities with knowledge on their rights, the obligations of duty bearers and applicable laws and processes, and capacitating them to advocate their issues effectively with duty bearers, is a strong and sustainable way to tackle land rights violations.
- Creating international pressure by having recourse to international human rights mechanisms, other international processes and global campaigns puts greater pressure on national authorities.
- Using a multi-pronged approach is effective to tackle gross violations of land rights, by advocacy at local to international level and use of multiple strategies.
- Ensuring a higher level of female engagement in community mobilization and supporting women’s leadership in organizing, mobilizing and decision making has proven effective.
- Setting up localized support systems, including close ties with a district-based network of legal advisors and like-minded CSOs, is a useful way of assisting the community and activists involved in the struggle.
- Strategic use of mainstream and social media helps to create a public discourse on the issue. Publicizing media reports of land rights violations is effective, as this not only gets the attention of duty bearers but also puts pressure on them to act promptly.
BIBLIOGRAPHY


Draft Bill of Rights, 2009, by the Committee on a New Chapter of Fundamental Rights in Sri Lanka.

General Comment No. 4 on the Right to Adequate Housing, 1991, by the Committee on Economic, Social and Cultural Rights.


Land Acquisition Act No. 9, 1950.


Land Development Ordinance No. 19, 1935.

Land Reform Law No. 1, 1972.


Right to Information Act No. 12, 2016.

State Lands Ordinance No. 8, 1947.


Universal Declaration of Human Rights (UDHR), 1948.


NOTES

1 Attempts have been made to include the right to land and property in the Constitution Bill, 2000 and the draft Bill of Rights, 2009. Recommendations of the presidential Lessons Learned and Reconciliation Commission, 2011 and the Report on Public Representations on Constitutional Reform, 2016 have also recommended protection of land rights in the constitution.

2 Kandyan Law is applicable to the Kandyan Sinhalese, the Thesalawamai Law applies to Tamil inhabitants of the Province of Jaffna, and Muslim Law applies to Muslims in Sri Lanka.


4 Article 14A of the Constitution introduced by the 19th Amendment to the Constitution provides that every citizen has the right to access information, as provided by law, which is held by the state, ministries, departments, statutory bodies, provincial authorities and local governments.


