



# Landmines and Land Rights in Sri Lanka

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## Acronyms

|        |                                      |
|--------|--------------------------------------|
| CFA    | Ceasefire Agreement                  |
| CTF    | Community Trust Fund                 |
| DMAO   | District Mine Action Office          |
| DDG    | Danish Demining Group                |
| DS     | Divisional Secretariat               |
| FHH    | Female Headed Households             |
| FSD    | Foundation for Demining              |
| GA     | Government Agent                     |
| GBV    | Gender-Based Violence                |
| GOSL   | Government of Sri Lanka              |
| HDU    | Humanitarian Demining Unit           |
| HSZ    | High Security Zones                  |
| IDP    | Internally displaced People          |
| MAG    | Mines Advisory Group                 |
| LDO    | Land Development Ordinance           |
| LTTE   | Liberation Tigers of the Tamil Eelam |
| NMAC   | National Mine Action Centre          |
| SEZ    | Special Economic Zones               |
| SHH    | Single Headed Households             |
| SLA    | Sri Lanka Army                       |
| UNDP   | United Nations Development Programme |
| UNICEF | United Nations Children's Fund       |
| UXO    | Unexploded Ordnance                  |



## 1. Introduction

This paper briefly examines the linkages and dynamics within mine action and land issues in Sri Lanka, focusing primarily on the North and East Provinces, areas of the country which are conflict-affected and contaminated by mines/UXO.

Sri Lanka is an island situated in the Indian Ocean, south of India. It has a population of 20 million people with a multiplicity of ethnicities. Sinhalese, the dominant ethnic group, consists of 74% of the population followed by 18% Tamils, 7% Muslims and 1% other.<sup>1</sup> Sri Lanka is composed of 9 Provinces, 25 Districts, 256 Divisional Secretariats, and 160 Electorates. 38% of land in Sri Lanka is agriculture land.<sup>2</sup> Principle agriculture produce is rice paddy, followed by tea, rubber and coconut.<sup>3</sup>

### 1.1 Brief profile of the conflict

The seeds of discontent among Sri Lanka's different ethnic groups date back to the British colonial period, but flared up after independence, when the Tamil and Muslim minorities were discriminated against by the majority Sinhalese community. This was due to various practices and policies, including in relation to land related disputes and language rights, eg the 'Sinhala Only Act'<sup>4</sup> introduced in 1956. With increasing discrimination meted out to the minorities, there was a growing upsurge of violence among Tamil youth. This led to the creation of militant groups in the North and East of Sri Lanka. The most noted and violent militant youth group was the Liberation Tigers of Tamil Eelam (LTTE).

Conflict officially began in July 1983 between the Government of Sri Lanka (GOSL) and the LTTE. The LTTE was a separatist militant group which used armed struggle to create an independent state within Sri Lanka, covering the North and East of the country. The bloody conflict that spanned nearly three decades had a heavy toll on lives, livelihoods, infrastructure and development.

During the course of the conflict, various governments initiated several rounds of peace talks. The most notable was the ceasefire negotiated in December 2001 by the Norwegians, which led to the signing of a ceasefire agreement (CFA) between the government and the LTTE in February 2002. Soon after the Presidential Elections in November 2005, hostilities resumed and increased. In 2006, fighting in the Eastern Province of Sri Lanka started again between government forces and the LTTE. In July 2007, government forces 'liberated' the Eastern Province, parts of which were previously occupied by the LTTE.<sup>5</sup> Soon after the 'Eastern Liberation,' the government focused its attention on the North, the stronghold of the LTTE.

In January 2008, the GOSL formally announced its withdrawal from the CFA, which by that time, had been violated by both parties. The hostilities in the North continued until May 2009, when government forces defeated the LTTE.

During the last phase of the conflict, over 300,000 civilians were displaced from their homes in the Vanni region<sup>6</sup>. Resettlement work is now underway, with over 280,000 having left internally displaced persons (IDP) camps. Among these, 3000-5000 families are stranded and are unable to return to their land due to the establishment of high security zones (HSZs) and ad hoc high security areas in the North. Several who returned to Killinochchi, Mullativu and Mannar are living in transit

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<sup>1</sup> [www.priu.gov.lk](http://www.priu.gov.lk)

<sup>2</sup> <http://data.worldbank.org/topic/agriculture-and-rural-development>

<sup>3</sup> Economic and Social Statistics of Sri Lanka 2010, Central Bank Annual of Sri Lanka

<sup>4</sup> The 1956 Sinhala Only Act (formerly the Official Language Act) mandated Sinhala as the sole official language of Sri Lanka, instead of English which was previously used under British rule.

<sup>5</sup> [www.defence.lk](http://www.defence.lk)

<sup>6</sup> The areas including Killinochchi, Mannar, Mullativu and Vavuniya districts are sometimes referred to as the Vanni.



camps such as Killinochchi Central Collage and Shanthapuram Tamil MV, with host families or in new temporary sites such as in Echchalavakkai in Mannar. The people that remain in IDP camps (around 37,000), are those whose land is contaminated or in the process of being demined. Resettlement is largely dependent on mine action work. This has been a contentious issue with many actors demanding speedy return and resettlement in areas yet to be cleared.

## 2. Main land rights issues in Sri Lanka

In the North and East of Sri Lanka, land is classified as either state land (also known as Crown land) or private land. State land is owned and controlled by the State, with certain lands being alienated<sup>7</sup> to private individuals and organisations on permits, grants and leases. Private land is owned, and in most cases controlled, by private individuals. However, given the recent conflict, there have been issues with full control and access of some of this land.

In Sri Lanka, land plays a critical role, defining individual identity and status and affecting livelihoods as well as community development. Ownership, control and access to land are key factors in enabling a person to fully enjoy and use his or her land. Secure land rights and tenure result in better prospects for obtaining loans and supporting livelihoods. Therefore, land in itself doesn't facilitate better prospects. However, secure title and tenure, control and access are key elements for full enjoyment and use.

Many factors related to land have been closely linked to the ethnic conflict, exacerbating tensions between the different groups. These factors include:

- the thousands displaced from their land and the occupation by others;
- the arbitrary seizure of land belonging to Muslims by the LTTE in the North and East;
- the existence of High Security Zones (HSZs), Special Economic Zones (SEZs) and *ad hoc* high security areas;
- the creation of land settlements under development programmes such as the Mahaweli Scheme.<sup>8</sup>

In the North and East, there have been numerous obstacles to accessing, controlling and owning land. Due to the conflict and security threats, large numbers of people were displaced and were forced to flee their land. This land left unoccupied was then taken by various actors, including the Sri Lankan military, the LTTE, other armed actors and IDPs. For example during the conflict, and even at the present moment, large tracts of land in the North and East are classified as HSZs and *ad hoc* high security areas, used for military installations and camps. There are also new High Security Zones that have been created in Silavathurai and Mullikulam in Mannar (occupied by the navy) and Shanthapuram and Thirumukandy in Mullativu districts (by the Sri Lanka Army-SLA).<sup>9</sup> Because of military occupation of land, thousands of IDPs are unable to return to their land. In some cases, some have been displaced for decades, eg the 'old IDPs'<sup>10</sup> in Puttalam and Jaffna.

What is unclear and not publicly shared is whether the GOSL will continue to maintain a high military presence in the North and East, or return land to their owners. Several individuals and organisations have raised the issue of the use of large areas of land for military purposes.<sup>11</sup> This has resulted in the

<sup>7</sup> Land alienation involves providing state land to individuals for specific purposes such as cultivation and livelihood. Conditions are usually stipulated for the development of state land which is included in the document and needs to be satisfied by the person using the land.

<sup>8</sup> The Mahaweli Scheme is a massive irrigation project commenced by the Central Government of the then President J.R. Jayawardena which developed the Mahaweli River. However, the process resulted in the displacement of communities and the creation of new settlements.

<sup>9</sup> Information from field visits to the North, June and August 2010

<sup>10</sup> Several humanitarian agencies and donors classify the IDPs in Sri Lanka into two categories. The 'Old IDPs' are those who were displaced prior to 2008 and the 'New IDPs' are considered to be those displaced since 2008.

<sup>11</sup> For more information- "Commentary on Return, Resettlement and Land Issues in the North", Bhavani Fonseka, CPA, September 2010, available on [www.cpalanka.org](http://www.cpalanka.org)



military returning certain areas to the original residents. However, this remains an ad hoc process and needs to be addressed speedily. Statements by government officials, including Cabinet Ministers and the Sri Lankan Army Commander, indicate that the GOSL plans to keep HSZs and have military cantonments in the North and East for the foreseeable future. This raises questions regarding the fate of IDPs in the area.<sup>12</sup>

There are also concerns regarding reconstruction and development work in the North and East, and the creation of Special Economic Zones (SEZ). In Sampur, Trincomalee, the HSZ gazetted under Emergency Regulations in 2007 still remains, (though reduced in size) and overlaps with a SEZ.<sup>13</sup> Other areas in the North are inaccessible and locals fear that land will be acquired by the State for development.<sup>14</sup> There are no plans to indicate that private land will be taken over for development purposes. However, the lack of information and transparency with development in the North raises fears and tension among communities who have been affected by the conflict and displaced multiple times.

Cases of new land settlements, land grabbing by powerful actors and encroachment have been reported in the North and East. A recent study by the Centre for Policy Alternatives documented several cases where land has been used for new settlements or where land in the Eastern Province has been illegally taken by politicians or religious actors.<sup>15</sup> There are fears that similar trends will occur in newly cleared areas in the North.<sup>16</sup> These are further exacerbated when the SLA commander stated that land in the North and East will be given to service personnel and their families. This has raised fears of possible attempts to displace original owners and change ethnic demographics.<sup>17</sup>

Landlessness and encroachment of land are also issues that need to be highlighted. Sri Lanka has had several programmes in the past to give state land to the landless. However, a continuing problem in several parts of the country, including the North and East, is encroachment on land belonging to others. With the end of the war, many people were able to return to their land and land tenure was examined for assistance packages. This helped highlight the whole landlessness issue. To address landlessness and halt further encroachment, the GOSL introduced a new scheme to provide land. This is presently underway in all provinces, except the North.<sup>18</sup> It is yet to be seen how the GOSL will address landlessness in Jaffna, where as much as 85% of the land is private (it is estimated that HSZs cover approximately 42 km<sup>2</sup> of land) and there is limited state land to be provided to the landless.

Due to the conflict, many households lost either one or more family members. As a direct result of the conflict, the number of Single Headed Households (SHH) increased, including significant numbers of Female Headed Households (FHH).<sup>19</sup> In relation to land, there are several laws which discriminate against women.<sup>20</sup> The LDO ensures preferential treatment of male heirs in succession. The non-

<sup>12</sup> [http://srilankawatch.com/index.php?option=com\\_content&task=view&id=1012&Itemid=1](http://srilankawatch.com/index.php?option=com_content&task=view&id=1012&Itemid=1),  
[http://www.sundaytimes.lk/100110/News/nws\\_01.html](http://www.sundaytimes.lk/100110/News/nws_01.html)

<sup>13</sup> "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010,  
[http://www.humansecuritygateway.com/documents/CPA\\_LandInTheEasternProvince\\_PoliticsPolicyConflict.pdf](http://www.humansecuritygateway.com/documents/CPA_LandInTheEasternProvince_PoliticsPolicyConflict.pdf)

<sup>14</sup> Information gathered from interviews in the North, June and August 2010; Report of the visit of Members of Parliament of the Tamil National Alliance (TNA to Santhapuram and Vavuniya, 29<sup>th</sup> July 2010

<sup>15</sup> "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010

<sup>16</sup> Field interviews in the North June and August 2010

<sup>17</sup> [http://srilankawatch.com/index.php?option=com\\_content&task=view&id=1012&Itemid=1](http://srilankawatch.com/index.php?option=com_content&task=view&id=1012&Itemid=1)

<sup>18</sup> "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010

<sup>19</sup> There is no comprehensive data on this subject since it is still difficult to conduct assessments and research on the topic in the North.

<sup>20</sup> For more information- Women's Access to and Ownership of Land and Property in Batticaloa,

Jaffna and the Vanni", CPA, April 2005; "Land and Property Rights of Women – Discriminatory Laws, Regulations and Administrative Practices", Law and Society Trust, December 2009



recognition of joint ownership under the Land Development Ordinance<sup>21</sup> (LDO) has also given rise to a number of problems, where women are discriminated against and have limited control over land.<sup>22</sup> However there are other laws such as the State Land Ordinance that permit joint ownership between wife and husband, thereby avoiding further discrimination and possible future disputes.<sup>23</sup>

## 2.1 Government response to land issues

The inability to return to land and continue to live in camps, with host families or being stranded raises questions about the GoSL's resettlement plans and its larger plans for the North and East of Sri Lanka. Fifteen months after the end of the conflict, there is still no public document highlighting what the government plans are for the North. Although the Government has presented plans such as the "Uthuru Wasanthaya" (Northern Springs) and Nagenahira Navodaya (Eastern Revival)<sup>24</sup> which give a general sense for the future of the area, they do not indicate what is actually planned for the North and East. Government statements and programmes indicate that there is a focus on economic development and revival, with government funds being spent on road and infrastructure development and construction, tourism and business.<sup>25</sup> These have been introduced at the cost of governance and people's rights including land rights. The Sampur HSZ and SEZ are examples where no public information was circulated prior to their creation and they are rumoured to be driven by economic incentives.<sup>26</sup>

Prior to the Presidential elections in January 2010, it was evident that the GOSL wanted to return as many IDPs as possible, with no clear information or planning by district-level actors. It appeared to be more of a political manoeuvre to demonstrate that displacement was not an issue. Decisions were taken by the central government in Colombo rather than in consultation with local government officials, humanitarian agencies and other local actors. As a result many who returned in December 2009 and early 2010 were transported en masse without sufficient information as to the status of their homes, land, and livelihoods. The majority, who were housed in detention-like conditions in government-run camps, were keen to return to their own homes and attempt to rebuild their lives. Although the return drives have somewhat improved, there continues to be cases where those returning are unable to return to their land and continue to be dependent on assistance. These are indicators that the return process and related issues of reconstruction and development are far from perfect and need attention. The lack of coordination and information sharing among relevant actors and the lack of attention given to land rights of affected communities needs immediate addressing.

There are also larger governance, legal and policy issues that need to be addressed when dealing with land. The GOSL is yet to fully implement the Thirteenth Amendment to the Constitution, which is meant to shift land powers from the Central Government to the Provincial Councils, and to also constitute the National Land Commission. For more than two decades however, the GOSL has made no progress in this regard. No progress has been made either on amending legislation, such as the Land Development Ordinance and the Prescription Ordinance<sup>27</sup> in order to reflect current problems

<sup>21</sup> The LDO is used to provide state land to individuals through a land permit for specific purposes which can subsequently be transferred to a grant, if conditions have been satisfied. For more information, please read "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010, [http://www.humansecuritygateway.com/documents/CPA\\_LandInTheEasternProvince\\_PoliticsPolicyConflict.pdf](http://www.humansecuritygateway.com/documents/CPA_LandInTheEasternProvince_PoliticsPolicyConflict.pdf)

<sup>22</sup> For more information, read "Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni", CPA, April 2005

<sup>23</sup> "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010

<sup>24</sup> These are two programmes introduced by the Government for the development of the North and East respectively

<sup>25</sup> "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010

<sup>26</sup> For more information, please refer to "Trincomalee High Security Zone and Special Economic Zone", Bhavani Fonseka and Mirak Raheem, CPA, September 2009

<sup>27</sup> The Prescription Ordinance provides for those occupying private land belonging to others to claim ownership, if the occupation has been unhindered for ten years, and when there has been no payment towards the owner. For more information, please read "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010, [http://www.humansecuritygateway.com/documents/CPA\\_LandInTheEasternProvince\\_PoliticsPolicyConflict.pdf](http://www.humansecuritygateway.com/documents/CPA_LandInTheEasternProvince_PoliticsPolicyConflict.pdf)



and issues. The GOSL has also yet to formulate a National Land Policy or National Resettlement Policy, meaning that there is no policy document in place to guide and inform the various actors on the ground. This demonstrates a lack of political will and interest on the part of the GOSL to address key issues that could improve governance and address the root causes of the conflict.

Recent statements by the Commander of the SLA on housing families of military personnel in the North and East, and a statement by Media Minister Keheliya Rambukwella regarding the continuation of the HSZ in the North and East, raise questions about GoSL intentions for this area. This is despite assurances by the Government that people should return to their land. The lack of clarity on GOSL policy coupled with the contradictory statements by key Government officials creates confusion among affected communities and stakeholders. It also raises the critical question of the nature of plans made for the North and East of Sri Lanka and the process that has been followed and will be followed in the future. With rumours of possible new settlements and land colonization that may lead to new ethnic demographics, it is imperative that the GOSL immediately shares information on any plans and the process for the North with all stakeholders including the communities.

## 2.2 Government structures dealing with land

There are many line ministries within the central government that deal with land and land-related issues. These include, but are not limited to, the Ministry of Land and Land Development, the Ministry of Resettlement, the Ministry of Irrigation and Water Resource Development, the Ministry of Economic Development and the Ministry of Defence. The Ministry of Land itself has a number of departments within it devoted to particular subject areas, some of which overlap.<sup>28</sup> This creates confusion and leads to the duplication of work. At the provincial and district levels, one also finds Government Agents (GAs)<sup>29</sup>, land officers and divisional secretariats (DS) that work in land and land-related areas. The DS plays a critical role regarding land issues.<sup>30</sup>

The presence of so many actors and the absence of a coherent structure cause confusion and problems in coordinating land and land-related policies. To clarify things and reduce confusion, it is necessary to have a few key ministries and institutions handling land and land related issues at the centre that works closely with actors in the provinces and districts.

## 2.3 Land ownership and titling

The Sri Lankan legal framework for land and property rights consists of statutory law, Roman-Dutch Law, which is the common law of Sri Lanka, and principles of English common law. Land and property rights relating to marital property and inheritance are also subject to Sri Lanka's system of personal or customary laws, consisting of the Tesawalamai, Kandyan Law and Muslim Law. These customary laws seek to protect the traditional rights and customs of religious or ethnic groups.

There is both State and private land. State land is vested with the GOSL. Although land is a devolved subject under the Thirteenth Amendment to the Constitution, the Central Government plays a critical role in how state land is alienated and used. It is further complicated by the numerous laws and policies that are relevant to both state and private land and numerous processes involved in the various functions of land.

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<sup>28</sup> The Ministry of Land contains the following departments: the Land Commissioner, the Department of Land Settlement, the Land Use Policy and Planning Division, the Survey Department and the Land Titling and Related Services Project.

<sup>29</sup> GAs have been renamed District Secretaries, although the old term is still used.

<sup>30</sup> Under the Transfer of Powers (Divisional Secretaries) Act 1992 which decentralises powers to the DS ensures that the DS can under Section 3(2) exercise, perform and discharge within such Division any power, duty or function imposed or assigned by a statute of the Provincial Council or by power delegated by the Governor of a Province.



### **State Land**

There are several forms of documentation that divests state land to those in need of land. This is done through permits or grants/deeds.

**Permits:** Permits are issued by the respective Divisional Secretaries to those who need state land. They are issued subject to several conditions, including fairly stringent conditions. For example, a permit-holder may not dispose of the land, and may only mortgage his interest in the land with the permission of the Government Agent (GA)<sup>31</sup>. The permit can also be cancelled if the permit holder has not developed the land or has breached the stipulated conditions.<sup>32</sup> A permit cannot be sold, regardless of the conditions. A permit can be converted into a grant after conditions are met, and after a specific time period has passed.

**Grants or Deeds:** Permit-holders may apply to the Land Commissioner for their permits to be converted to the status of grants or deeds. Grants or deeds confer legal ownership, and cannot be taken back by the state except under the Land Acquisition Act. A permit can be converted to a grant after the permit holder fulfils certain criteria.<sup>33</sup> A grant can be sold with the permission of the respective Divisional Secretary.

### **Private Land**

Several laws govern the ownership and control of private land. In most areas, deeds are used to prove ownership of private land, which is registered in the respective land registries of the area. The Registration of Documents Ordinance provides that a deed of transfer or document, registered under this Ordinance, has priority over an unregistered document. This is the case even if the unregistered document is dated prior to the registered document. This Ordinance applies to leases, mortgages and all forms of transfers. Failure to register will not make a deed invalid. However, subsequent transfers made in relation to the same property that are registered will take precedence.

The Registration of Title Act of 1998 provides for (i) the investigation and registration of title to land parcels and (ii) the regulation of land transactions. The provisions of the Act apply only to those Provinces, Districts or Divisions as gazetted by the Land Minister.<sup>34</sup> The Act may be used in cases where all documents, including those held by Land Registries, Notary Offices and property owners, have been lost or destroyed. The Act creates a new system for the registration of title replacing the existing system which required a court decree to obtain clear title. The Act creates land parcels that must be registered with the Registrar-General of Title. This has only been initiated in a few places. However, it is a model that can be used in areas such as the North and East, where land documents have been lost or destroyed.

## **3 Mine action in Sri Lanka**

### **3.1 Mine/ERW contamination**

Several districts in Sri Lanka have been affected directly or indirectly by the conflict. At least ten districts, including Ampara, Anuradhapura, Batticaloa, Jaffna, Kilinochchi, Mannar, Mullaitivu, Polonnaruwa, Trincomalee, and Vavuniya are contaminated or were contaminated and have been cleared. It is estimated that the majority of the areas in the East have now been cleared. However, there are reports that several pockets in the Eastern Province remain contaminated. Survey and

<sup>31</sup> A GA is the district secretary to the respective district

<sup>32</sup> Where a permit is cancelled, the permit holder cannot make a claim for compensation for deprivation of property.

<sup>33</sup> The criteria are- develops the land in a manner satisfactory to the GA; erects a house, toilet and fence upon the land, and maintains them in a satisfactory manner, all within the time specified in the permit; clears and cultivates the land as set out in the schedule of the permit, if the land is meant for cultivation; resides upon the land for at least three years if it is farmland and at least one year if it is for housing; adopts measures for soil conservation; and is a citizen of Sri Lanka.

<sup>34</sup> Extraordinary Gazette No 1508/20 which specifies the districts falling under the Registration of Title Act 1998, 1<sup>st</sup> August 2007



mine clearance operations are currently concentrated in the North, with residential lands prioritised for clearance. With a significant proportion of land cleared for resettlement, the focus of mine clearance operations is slowly shifting to land used for agricultural and other livelihood purposes. It is estimated that approximately 482km is contaminated by mines and UXO in the North.<sup>35</sup>

Both the GOSL forces and the LTTE used mines during the conflict. However, the extent of the contamination problem is unclear due to several factors. The vast land area in the LTTE-controlled Vanni region<sup>36</sup> has not always been used during the nearly three decade-long conflict. No surveys have been done for the entirety of the area, and therefore the nature of contamination is unknown. There are vast areas which were mined by the LTTE without any documentation. Furthermore, those in charge of security issues, mine action activities and resettlement, are not always informed or aware of previous phases of the conflict when mines and UXO were used. All of these factors have contributed to a complex environment for mine action.

### 3.2 Mine action actors

Mine action and related activities are driven by the Central Government with specific actors taking the lead in key areas. Currently mine action comes under the Ministry of Economic Development, where a National Steering Committee on Mine Action functions. The Sri Lanka National Mine Action Programme is governed by the Steering Committee which provides overall policy guidance to the programme. The Steering Committee is comprised of government ministries, donors, UNDP, UNICEF, demining agencies and others. The Steering Committee is made up of government ministries, donors, UNDP, UNICEF, demining agencies and others. Due to the control of the Government and also due to assistance provided by donors and the UNDP, both financial and technical, the present structure does work somewhat. There are plans in place to improve it however, in order to ensure that government actors are able to take the lead, rather than rely on external actors. Parliament is considering a bill to establish a National Mine Action Centre (NMAC) but there is no timeframe in place yet. When established, the NMAC will take over the coordination and management of mine action activities, as well as a significant portion of work done by the UNDP.

At the district level, the GAs and district steering committees for mine action play a key role. UNDP supports district mine action offices to manage operational coordination. The district steering committee meets on a monthly basis, and is attended by mine action actors and related actors. Other meetings also take place at the district level. In Vavuniya, all mine action agencies meet at the DMAO on a weekly basis, where UNICEF, UNHCR and UNOCHA are also present. This provides a platform for mine action actors to raise issues, as well as stay informed of the areas that will soon be open for resettlement and other possible ways forward.

Several actors are involved in mine and ERW removal, including the Sri Lanka Army – Humanitarian Demining Unit (HDU), which is the biggest demining actor in Sri Lanka. Several non-government actors are also active, including the Danish Demining Group (DDG), the HALO Trust, HORIZON, Mines Advisory Group (MAG), Sarvatra, the Swiss Foundation for Demining (FSD) and the Milinda Moragoda Institute for People's Empowerment.

Donors are an integral part of mine action in the present context. Due to the emergency, the need to demine as quickly as possible, and the dependency of the GOSL for foreign funds for rebuilding and reconstruction, donors have played a key role in the past. With reduced funding for demining and humanitarian assistance in Sri Lanka, there are fears that the pace of clearing land will slow down. This could further lengthen the time it takes to release land to affected communities, slowing resettlement and livelihoods strengthening. This in turn impacts directly on food assistance,

<sup>35</sup> UNDP District Mine Action Office, June 2010

<sup>36</sup> The areas including Killinochchi, Mannar, Mullativu and Vavuniya districts are sometimes referred to as the Vanni.



especially the provision of dry rations and other aid. The impact of mine action is multi faceted, spreading to several spheres and impacting reconstruction and development in the area. Continued stable funding for demining is needed to ensure action can be taken to release land and resettle communities in accordance with international standards.

In addition to clearing land, there are also other sectors that are relevant to mine action work in Sri Lanka. Mine risk education is a key component of mine action and UNICEF is the lead in this area. It is supported by local organisations such as Sarvodaya and Community Trust Fund (CTF) who are based in the areas of return and conduct mine risk education and awareness programmes. The Ministry of Education is involved in ensuring that awareness programmes are conducted in schools and other educational premises. Further, there are services for mine survivors in the government health care system. Physical rehabilitation centres produce artificial limbs and assistive/mobility devices, and are operated by agencies including Handicap International, Jaffna Jaipur Center for Rehabilitation and the Valvuthayam Mannar Rehabilitation Center.

### **3.3 Impact on different groups**

There is no available data to show how contamination affects different groups, based on gender, age, etc. However, it is clear that special groups such as women, youth and children are particularly vulnerable due to the impact of the conflict. Many are unable to return to their homes and land live in camps, transit sites or with host families. Protection issues such as Gender Based Violence and abductions have been reported in both the IDP camps and return areas, mostly involving women. Also, the high military presence in the North and East creates fear within the local communities, especially among women.

Due to the ongoing clearance efforts, many areas in the North are dynamic, with regular returns taking place. Resettled areas typically have very basic services. Some do not have adequate schools, hospitals and toilets. In such areas, upon return, both men and women face hardships in rebuilding their lives. This is more difficult for female heads of households (FHH), who, following the death/disappearance of the male head of household, may not have the support of family members. Upon return to their land, without functioning toilets, many have to resort to using wooded areas near homes. These areas in most cases remain mine-contaminated, as priority for clearance is usually given only to residential areas. This becomes a security issue for those returning, especially women.

Women also face hardships in terms of livelihoods. Many FHH find it difficult to manage both a livelihood and caring for children and other dependents. This is made even more difficult by the absence of support mechanisms in these areas, largely due to family members having disappeared, been killed, displaced or having relocated. If land near their homes is contaminated, the options are limited to either using land elsewhere, seeking other forms of livelihood or else depending on food assistance.

### **3.4 Land rights issues in mine contaminated areas**

As already highlighted in this report, there are several obstacles for IDPs and those being resettled in terms of accessing, controlling, owning and fully enjoying their land. These range from HSZ, ad hoc high security areas, SEZs, contamination due to mines and UXO, secondary occupation, disputes of boundaries and documentation to name a few. Although this is not an exhaustive list of the problems facing those in the conflict affected areas, this short study highlights the diverse and complex land issues faced in the North and East, which have resulted in land disputes and conflict, continued displacement and problems with land tenure.



Prioritising the clearance of land is necessary due to the large extent of contaminated land and the limited resources available. Priority has been given to the clearance of residential land so that IDPs are able to leave camps and host families, and move to their places of origin. While this policy has enabled a significant group of IDPs to leave the camps and host families, it does not promote durable solutions. Those who have been able to return to their homes now face the problem of rebuilding their lives and homes, and restarting livelihoods. Returning home has not meant that livelihoods can automatically commence, as residential land has been prioritised for clearance, ahead of land used for livelihood purposes. This has impacted the quality of life of those who have returned as they are still dependent on donor and agency assistance.<sup>37</sup>

With communities being unable to cultivate, the need for donor assistance continues. According to a recent assessment<sup>38</sup>, out of a total of 100,000 hectares of agriculture land, only 20,000 hectares were cultivated during the last harvest (Maha) season.<sup>39</sup> Of this 20,000, only 11% of rice farmers were able to harvest during the last Maha season. 67% of the population in the Vanni relies **of on** agriculture for subsistence. Of this 67%, only 34% are currently able to farm. The rest are unable to, largely due to mine/UXO contamination. The inability to restart livelihoods has meant that there is a heavy dependency on food assistance. 40% of the daily expenditures of the returnee population are on food. In 2010, 249,422 IDPs and returnees are receiving emergency food assistance. With shortages of donor funds, there are concerns that this assistance will end soon, with no permanent solution for those dependent on assistance.

Although most areas in the East have been cleared, there still remain pockets of land which need to be cleared. Given the humanitarian situation in the North, the majority of mine action agencies have moved North with limited attention on the East. Lessons from the East need to be reflected on by all stakeholders to ensure that similar mistakes are not repeated, including issues related to mine action, resettlement and land. The Eastern experience highlighted some key issues that are presently being raised in the North. For example, several actors conducting MRE work stated that the government desire to reduce displacement in the East resulted in some IDPs being taken back to parts of the East even before proper survey/mapping and MRE work was completed.<sup>40</sup> The process of demining and clearance for land lacked transparency and was controlled largely by the GOSL. Therefore, mine action agencies had very limited input in the process. Further, agencies who worked in the East stated that the speed and success of mine action work was also dependent on local officials. For example, in Batticaloa the process ran smoothly due to the support of the GA in the area. In Trincomalee, there were problems as a result of the GA, who is a former military official and a political appointee.

The GOSL, donors and agencies need to examine the issue of land rights in the area. Land assessments and surveys are needed immediately in order to document and highlight the key issues and trends that need addressing. Although a few studies have been done in the Eastern Province<sup>41</sup>, there has been no comprehensive study done on the issues in the North due to the dynamic ground situation, where there is regular clearing of land and continuous returns, removing and creating ad hoc high security areas and other developments. An enhanced understanding of the dynamics on the ground is needed, especially given the challenge of distinguishing clearly between areas that are mined, occupied by the military and those that may simply have fallen into disuse.

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<sup>37</sup> For more information- "Commentary on Return, Resettlement and Land Issues in the North", Bhavani Fonseka, CPA, September 2010, available on [www.cpalanka.org](http://www.cpalanka.org)

<sup>38</sup> WFP Emergency Food Assessment Report Vanni Districts, Sri Lanka, April 2010

<sup>39</sup> Maha refers to the specific period of cultivation and geographic areas in Sri Lanka. Cultivation is usually called 'Maha' or 'Yala' cultivation. 'Maha' refers to the North-East Monsoon and the 'Yala' to the 'South-West Monsoon'.

<sup>40</sup> Interview with UNICEF, 24<sup>th</sup> July 2010

<sup>41</sup> "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010; "Sri Lanka's Eastern Province: Land, Development, Conflict", International Crisis Group, 2008



### 3.5 Mine action response to land rights issues

Land rights issues in Sri Lanka are not given much attention by the mine action community. Mine action work is driven by land use and is prioritised by the GOSL and mine action organisations. Currently, resettlement of communities is the priority, followed by livelihoods. Recent mine action work has been focused on clearing residential land so that IDPs can return home. However, as there are so many areas being resettled in the North, the transition from residential to livelihood activities is starting, and so land for livelihood purposes has started to be cleared.

There has been no systematic effort by mine action organisations to address land issues. None of the agencies interviewed for this study indicated that they pay attention to land rights, to whether the land is private or state owned, by whom it is owned or controlled, or whether documentation exists to prove ownership. At the time of the study, mine action organisations did not have a programme to look at land issues nor any guidelines or procedures in place in regard to handling land issues. There are several mine action organisations in Sri Lanka however who feel that land rights are not an aspect that they should concentrate on.

There is no systematic coordination, planning and information sharing that involves all stakeholders, including government actors, donors, humanitarian agencies, mine action organisations, other organisations and affected communities. The lack of information on government plans is a major obstacle in agencies being able to plan resettlement work and assistance, and ensure there are durable solutions for affected communities. In the North, the priority is to resettle as many IDPs as possible. Therefore, the HDU and demining agencies are tasked by the Government to concentrate on residential land, subsequently followed with the second phase of clearing agriculture land.

The GOSL, donors, humanitarian agencies and mine action organisations need to consider the land rights of those affected and plan returns in a way that is equitable and looks into durable solutions. Some mine action organisations think land rights is an issue that should be given attention so that there are solutions in place to help resolve disputes that may arise, particularly in regard to post-clearance land use by returnees. Demining operators such as MAG, FSD and Horizon have community liaison officers who conduct follow-up activities with affected communities to assess obstacles and problems that they may face.<sup>42</sup>

There are as yet no compensation or restitution schemes for war-affected communities, and most returnees are facing difficulties with rebuilding their lives. While this is not the mandate of mine action organisations, several agencies have realised the need to have community networks and follow-up systems to ensure that people's problems are addressed either by the mine action organisations or by others. Only a few mine action agencies actually communicate on an individual basis with humanitarian and other agencies that provide assistance on land and related issues. For example, an interesting pilot project is planned by DDG in partnership with DRC. However, at the time of writing, this project had not yet started as DRC did not have access to villages that DDG is presently working in.<sup>43</sup> If the project is approved, and DDG and DRC obtain access to the same village, DRC intends to provide assistance for livelihoods projects to people whose land has been cleared by DDG.

Some agencies see their role as purely the work of demining and offer nothing else. This narrow interpretation of their work, without attention to issues such as land rights, can lead to discontent and frustration among communities and will possibly be the cause of future disputes.

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<sup>42</sup> Interviews with MAG (23<sup>rd</sup> June 2010), FSD (7<sup>th</sup> July 2010) and Horizon (6<sup>th</sup> August 2010)

<sup>43</sup> Interview with DDG, 7<sup>th</sup> July 2010



There are no documented cases where mine action has exacerbated land rights issues. This can be attributed largely to the stringent control by the GOSL over areas being cleared and the priority given to demining over humanitarian work. It is most likely that land conflicts and disputes may arise after people return to their land. Due to continued resettlement in the North at the time of writing, land conflicts and disputes are most likely to be documented in late 2010 or onwards.

Unlike mine action organisations, humanitarian and development organisations do examine land issues in Sri Lanka. Several organisations provide support for resettlement and examine and provide assistance on land rights. This includes providing assistance to obtain land documentation, as well as accessing land and discussing solutions for land disputes. There are also donors and agencies that provide assistance with construction or reconstruction of housing.

### **3.6 Potential risks of ignoring land issues**

Most donors in Sri Lanka funding mine action work admitted that land problems and conflicts may arise and that attention needs to be given to land rights. However, they did not have a plan for the future on how to move forward on this issue. Some donors stated that there were ongoing discussions to examine ways of addressing this issue. The lack of attention to land rights can be attributed largely to the lack of initiative by the GOSL whose main priority is to clear the land rather than address rights. The GOSL imposes stringent controls on agencies and donors. These include the necessity of obtaining approval from key government actors in Colombo for every activity that happens in the North. Attacks on western donors, UN and I/NGOs have created a climate where engagement and discussion on various issues, including land rights, is limited or non-existent.

In such a context, it is paramount that donors, UN, humanitarian agencies and mine action organisations agree on basic principles of engagement in Sri Lanka, including respect for humanitarian principles such as access to areas, protection for agencies and their staff, and respect for human rights, including land rights. However, past experiences in this area have been rather bleak. For example, during the conflict, donors were unable to agree on basic principles for engagement during a humanitarian crisis.<sup>44</sup> It is unlikely that mine action organisations will agree to basic standards unless there is pressure from key actors, including the GOSL and donors. However, the past track record and present policies of the GOSL indicates that it is unlikely the GOSL will be strong on issues such as land rights. Therefore, the impetus is upon donors to be strong in this area.

This lack of attention to land rights and other issues could result in future conflicts and disputes among the communities. Durable solutions are needed, such as attention on military occupation, HSZs and secondary occupation, compensation and restitution and ensuring that there is land documentation. It is imperative that all stakeholders are aware of the issues, share information and are part of a planning process to ensure land rights are respected and future conflict is avoided. Mine action organisations that have worked in the area before resettlement and continue to work on agriculture land after resettlement and have a link with the community, need to be involved in these discussions and planning programmes.

## **4 Conclusions and recommendations**

Land issues in Sri Lanka have been a fundamental component of the political, constitutional and legal fields and a key attribute in the discrimination faced by minorities. Even with the end of the conflict in 2009, a host of land disputes and conflicts remain. This is largely due to the lack of a comprehensive plan and programme to address problems related to land.

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<sup>44</sup> "Protection in practice: the Sri Lankan case" Bhavani Fonseka, published in Working Paper Series No. 58, Refugee Studies Centre, University of Oxford, 2009



Fifteen months after the end of the conflict, with resettlement ongoing and a transition from emergency assistance towards early recovery, reconstruction and development, no public discussion has taken place on GOSL initiatives and plans with regards to land issues and land rights. Access and obtaining approval to work in the North has become increasingly difficult for the UN and humanitarian agencies, with new measures introduced on a regular basis, and increased bureaucracy. The North and East are still highly militarised with key administrative posts held by senior or retired military officials.

The GOSL priority is to reduce the number of IDPs and facilitate a speedy resettlement, at the expense of land rights and sustainable solutions. Although there are several areas that require improvement and the needs are great among IDPs and returnees, the space to engage and raise issues with the GOSL is extremely small. Actors who are most vocal and critical are permitted access to work in the resettled areas. As a result many working in the North and East are reluctant to be vocal, and are unwilling to speak out on contentious issues, including land rights.

Many demining organisations working in Sri Lanka have interpreted their role narrowly, seeing it as simply clearing and then handing the land back to the GOSL before moving to the next plot. A few have indicated that land rights should be the sole responsibility of the GOSL and humanitarian agencies, and not of mine action organisations. However there are mine action organisations such as FSD and MAG who work with communities after handing over land.

Several agencies recognise the importance of land issues and conduct surveys and assessments and have continuous discussions with the communities. This indicates that a few mine action organisations don't see their work under such a narrow interpretation, but also try to facilitate communities in restarting and rebuilding their lives.

Such different perspectives among mine action organisations demonstrate that greater discussion is needed among the mine action community and with relevant actors, such as donors.

#### **4.1 Lessons learned**

Land rights are not given due attention in mine action work in Sri Lanka. This is largely due to the GOSL policy of reducing displacement and speeding resettlement, thereby prioritising land use rather than land rights. The GOSL is the lead actor on mine action, and sets the agenda for mine action activities. Other stakeholders, including some donors and mine action organisations, have not pushed for greater attention on land issues and possible links to mine action work.

A few agencies who conduct needs assessments post clearance and/or have community liaison groups working with resettled communities, have documented several issues. For example, many in the north are only returning to their homes and land at the time of writing. Due to priority being given to residential land, those resettling do not always have access to their agricultural land and sometimes have to travel elsewhere to earn a livelihood. Concern remains for the safety of those who go in search of water or firewood in areas which remain contaminated. Insufficient toilets in residential land also means that people use jungle/forest areas which are also contaminated, resulting in possible security issues.

According to several agencies, the main livelihoods obstacle is the presence of mines and UXO which hamper access to farming, grazing and other land used for livelihood purposes. Since harvesting in most areas will be delayed and many need an income, attention should be given to small plots of land being cleared near residential land, to enable people to do home gardening and thereby earning some income.



Staff members of mine action organisations should be aware of land rights to ensure better understanding and appreciation of the local context. This may help reduce problems and disputes. MAG has recently commenced a project with the Norwegian Refugee Council (NRC) where training is provided to MAG staff by NRC on land issues. This project is meant to raise awareness among staff and assist in the community liaison work that MAG plans to do in the communities. It is also an attempt to predict negative impacts in the area and for MAG to consider whether issues should be forward to NRC or other actors working on land issues.

There are a host of land issues that should be factored in when discussing demining, humanitarian and development work in Sri Lanka. It is important to factor in whether the land is state owned or privately owned. This can be accessed through the land documentation available or information available with local government officials or both. It is also relevant to have information on land use, whether land is for farming, grazing cattle or for other purposes.

Previous studies have also documented that land problems and disputes may arise due to encroachment, landlessness, lack of documentation, boundary issues, political or military influences that may impact land ownership, control and/or access to the land.<sup>45</sup> The complexities related to land in Sri Lanka should be understood by donors, mine action organisations and others to ensure that land disputes can be avoided or addressed. In this regard land surveys and assessments should be done as early as possible, sequencing with mine clearance so that all actors can use the information to better understand the area and the communities.

These steps not only provide a better understanding of the context and local issues, but also will help resolve disputes and reduce any harm that can be done through mine action work and other projects that are meant to assist the communities.

## 4.2 Recommendations

This section provides recommendations to key stakeholders and it is hoped that the actors in question will consider the recommendations and commence implementation immediately. What is paramount is that these stakeholders need to coordinate efforts and not work in isolation. A well informed, coordinated system where planning is participatory and inclusive will ensure that demining work takes on board the views and rights of affected communities including their land rights and sustainable solutions.

### Government of Sri Lanka

The GOSL should:

- Involve all stakeholders in planning programmes and policies related to land, demining, resettlement, reconstruction and development. In these programmes, there should be transparency, participation and inclusiveness, particularly with regards to local actors and affected communities.
- Immediately implement the Thirteenth Amendment to the Constitution and devolve land powers to the Provincial Councils, as provided by the existing framework. Immediate implementation will include passing decision making powers to the next level of government and the establishment of the National Land Commission.
- Establish the National Mine Action Centre (NMAC).

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<sup>45</sup> "Land in the Eastern Province: Politics, Policy and Conflict", Bhavani Fonseka and Mirak Raheem, CPA, May 2010



- Decentralise decision making related to resettlement, reconstruction, development, land and other issues, so that local officials who have the best knowledge of issues relevant to the area are able to decide on future initiatives.
- Ensure that good governance principles such as participation, transparency, inclusiveness, equity and conflict sensitivity are practiced at all times.
- Ensure that assistance packages are equitable and address the needs of all affected communities, regardless of the period and cause of displacement, timing of return etc.
- Follow established procedures in mine action work and resettlement. Resettlement should only be done when land is cleared and not done merely to reduce IDP figures. There should also be attention in providing systematic MRE for all those who are returning.
- The GOSL and its agents need to ensure that land rights and other related issues are factored in when mine action plans and programmes are decided and implemented. Mine action should not be done in isolation but connected to other relevant fields.
- Formulate and implement policies for land, compensation, restitution and resettlement immediately.
- Ensure that all IDPs are able to 'Go and see' their lands before deciding whether it is feasible and safe to return. This will reduce the problems faced upon return including re-displacement, being stranded and becoming dependent on assistance.

### **Donors**

The donors should:

- Ensure that there is sufficient funding for demining work. This would enable demining agencies higher local personnel and speed up the demining work. There should be security in funding to ensure consistency, quality and speedy clear of contaminated contaminated.
- Support land assessments and surveys which can be used by all stakeholders including the GOSL and mine action organisations to better understand the local context, dynamics and avoid possible disputes.
- Agree on benchmarks and standards that are relevant to supporting work in resettlement, land, reconstruction and mine action work.
- Ensure that assistance is provided in an equitable manner to all affected communities.
- Support the NMAC and other initiatives such a land policy, compensation and restitution policy and resettlement policy.
- Provide support to local government officials and mine action organisations and others to build their capacity
- Sequence donor support for mine action so that it is complimented with other issues such as land and resettlement.



- Encourage the GOSL, UNHCR and humanitarian agencies to have 'Go and see visits' for all IDPs before resettlements so that IDPs themselves can make an informed decision about whether or not the return would be safe and feasible.

### **Mine Action Organisations**

- Consider local dynamics, land issues and other relevant areas. Factor them in when planning and conducting mine action work in the areas. This includes having discussions with relevant organisations and individuals working on land issues to factor in any aspects that maybe relevant to work done by mine action organisations.
- Ensure that community liaison takes place before, during and after mine clearance. Follow up work after completion of mine action work will provide information on any remaining threats to the area including monitoring resettlement, reconstruction and land issues.
- Share findings with relevant stakeholders so that responses can be better planned, coordinated and supported.
- Provide staff with training on land issues and relevant national legal and policy frameworks so that they are aware of issues and can avoid disputes and if necessary forward questions to the relevant land actors.

### **Humanitarian Agencies and Development Partners**

- Conduct land surveys, studies and other assessments immediately in the return areas to better understand the dynamics and complexities and use the data to inform project support systems. This information should be shared with all stakeholders.
- All actors working in the North and East, on land issues and with affected communities should be aware of national land laws, policies and programmes.
- Plan resettlement, reconstruction and development work ensuring that principles such as equity and do no harm are respected and implemented.
- In the case of UNHCR and humanitarian agencies: Support 'go and see visits' so that IDPs can make informed decisions about whether or not to return to their land. This would not only enable better planning and facilitate the avoidance of problems on returning, but will also help the provision of assistance to the returnees.
- Better coordinate and share information with mine action organisations to ensure that relevant projects by the different groups are complimented.