

REPORT

LAND OCCUPATION IN THE NORTHERN PROVINCE: A COMMENTARY ON GROUND REALITIES AND RECOMMENDATIONS FOR REFORM

CENTRE FOR POLICY ALTERNATIVES
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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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SRI LANKA - Reference Map 



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Acronyms

CPA	Centre for Policy Alternatives
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
GOSL	Government of Sri Lanka
HSZ	High Security Zone
IDMC	Internal Monitoring Displacement Centre
IDP	Internally Displaced Person/s
LAA	Land Acquisition Act
LLRC	Lessons Learnt and Reconciliation Commission
NIRP	National Involuntary Resettlement Policy
NLC	National Land Commission
PLIP	Property Law and Implementation Plan (Bosnia)
RRC	Reparations and Rehabilitations Committee (South Africa)
TRC	Truth and Reconciliation Commission (South Africa)
UDHR	Universal Declaration of Human Rights
UNHRC	United Nations Human Rights Council

1. Introduction

Land is a key issue for reconciliation in Sri Lanka. Throughout the years, during the near three-decade war, post tsunami and post war period, land has played a prominent role in local and national efforts with regards to coexistence, durable solutions and reconciliation. The prevalence of active hostilities, land mines, high security zones and other zones such as development, economic and industrial zones resulted in tens of thousands being displaced from their homes and lands, some multiple times. Since the end of the war, many displaced from their lands have been able to return to their places of origin, although concerns remain regarding durable solutions and related issues. Durable solutions are critical for reconciliation efforts, which must include reparations, designed to address past injustices and the root causes of displacement. Other aspects for sustainable returns must also be addressed such as access to homes, livelihood support, ensuring that development and infrastructure is in place and that internally displaced persons (IDPs) and affected communities are able to live as equal citizens in Sri Lanka.

Reparations, including the restitution of land if implemented correctly, can contribute to long-term peace building efforts and prevent further marginalisation of war -affected communities. With promises by the government of Sri Lanka (GOSL) to initiate reforms including with transitional justice processes and mechanisms, the Centre for Policy Alternatives (CPA) examines a key issue that is crucial for reparations and reconciliation in Sri Lanka: occupation of land in the Northern Province. While recognising that a comprehensive study of this issue in Sri Lanka is needed, the present study examines the situation of land occupation in the Northern Province and comments on steps required if the GOSL is genuine in its commitments. CPA hopes that this initial study limited to the North, can be expanded to other parts of Sri Lanka, data gathered from such an exercise potentially feeding into reform processes and informing policy options.

While more attention is needed with specific issues impacting land and reconciliation, a major problem is the lack of systematic information and understanding of key concepts and commitments. Despite official statements, there continues to be limited awareness and understanding as to what transitional justice entails and the concept of reparations. Throughout the present research, CPA encountered a lack of understanding among those who were interviewed in the Northern Province as to what reparations means within the Sri Lankan context. This was evident at a recent meeting hosted in Jaffna by CPA to discuss the findings of the research where many participants were unaware of a reparations framework and the GOSL's own commitments in the area.¹ Despite limited discussions and awareness with regards to reparations and GOSL commitments, this was not the case regarding land occupation by different actors and the inability of thousands of people to return to their own lands. The Internal Displacement Monitoring Centre (IDMC) has estimated 73,700 IDPs in Sri Lanka as of July 2015, based on statistics released by the Ministry of Resettlement, Reconstruction and Religious Hindu Affairs, with the majority in Jaffna, Puttalam and Mannar². However, there seems to be a discrepancy regarding the number of IDPs in Sri Lanka as the Ministry website states that only 43,000 IDPs, significantly lower than IDMC's estimate based on the Ministry statistics^{3,4} Additionally,

¹ Jaffna Meeting, February 2016

² Internal Displacement Monitoring Centre, 2016, <http://www.internal-displacement.org/south-and-south-east-asia/sri-lanka/figures-analysis>

³ Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs, 2015, 'Towards a Durable Solution, July 2015, accessed at <http://resettlementmin.gov.lk/site/images/stories/pdf/per2015e.pdf>

⁴ See for explanation of this discrepancy Raheem, M., 2013, 'Protracted Displacement, Urgent Solutions: Prospect for Durable Solutions for Protracted IDPs in Sri Lanka', *Centre for Policy*

as of March 2016, around 100,000 Sri Lankan refugees remain in camps across the Tamil Nadu in India⁵.

Government Commitments

A consensus resolution, co-sponsored by the GOSL, was adopted at the 30th Session of the United Nations Human Rights Council (UNHRC) in October 2015⁶. This consensus resolution, among a range of commitments, aims to promote reconciliation, accountability and human rights in Sri Lanka, expedite the process of the delivery of durable solutions for all IDPs and to review High Security Zones⁷. Prior to the announcement of the UNHRC resolution, the President stated that the government would pay special attention to the recommendations made by the UNHRC.⁸ In January 2016, President Sirisena appointed a Committee headed by the Secretary of Defence, to expedite the release of lands, reconstruction and resettlement work in the North.⁹

Although these are welcome statements by the GOSL, land occupation continues to be a problem for returns, durable solutions and reparations. In the present research conducted by CPA, a total of 12,751.240783478 acres of land¹⁰ (which amounts to 51.60244065818675807 km² including both state and private lands) continues to be occupied in the Northern Province, with lack of clear information in many cases as to whether there is actual acquisition in adherence to the legal framework in Sri Lanka. The total land area in the Northern Province is 8,848.21 km² (2,186,440.307 acres)¹¹. Although this can be interpreted by some as a low figure, the impact of displacement and the inability to return home is significant. Consideration must be given towards IDPs displaced for decades and the impact on identity, community support systems, education, livelihoods and voting rights, among others. There must also be attention on the arbitrariness of the occupation and lack of process, with many cases not adhering to the legal and policy framework in Sri Lanka.

Alternatives, pp. 20 – 28, accessed at: <http://www.cpalanka.org/protracted-displacement-urgent-solutions-prospects-for-durable-solutions-for-protracted-idps-in-sri-lanka/>

⁵ Daily News, 2016, 'Sri Lankan refugees return to homeland', 16 March 2016, accessed at <http://www.dailynews.lk/?q=2016/03/16/security/76706>

⁶ The Government News Portal of Sri Lanka, 2016, 'UNHRC adopts the Sri Lankan Resolution', accessed at <http://www.news.lk/news/sri-lanka/item/10088-unhrc-adopts-the-sri-lanka-resolution>

⁷ Adaderana.LK, 2015, 'Resolution on Sri Lanka tabled at UN Human Rights Council', 24 September 2015, accessed at <http://www.adaderana.lk/news/32459/resolution-on-sri-lanka-tabled-at-un-human-rights-council>

⁸ News 1st, 2015, 'Breaking News: President delivers special statement on UNHRC Resolution', 22nd October 2015, accessed at: <http://newsfirst.lk/english/2015/10/breaking-news-president-delivers-special-statement-on-unhrc-resolution/115301>

⁹ Kamalendran, C., 2016, 'Committee appointed to speed release of lands in the North', *The Sunday Times*, 24 January 2016, accessed at: <http://www.sundaytimes.lk/160124/news/committee-appointed-to-speed-release-of-lands-in-north-180538.html>

¹⁰ See Annex 1

¹¹ See Department of Census and Statistics, 2011, 'Area of Sri Lanka by province and district', Statistical Department, 2015

CPA has researched and advocated on issues pertaining to land rights for over a decade¹² and the present research was designed to address the lack of public information on exact extent of land under occupation by the military and others, which is a key factor preventing thousands of civilians from returning to their own homes. For reconciliation to be sustainable, people must be able to enjoy basic fundamental rights including those guaranteed in the Constitution¹³. Additionally, internationally the right is recognised and protected including in Article 13 of the Universal Declaration of Human Rights (UDHR).¹⁴ As the research demonstrates, the rights of a significant population in Sri Lanka continue to be violated due to the occupation of land. The table (Annex 1), which provides greater detail of the occupation of land, which CPA believes, is a starting point to understand the land ownership and control patterns in the Northern Province and the obstacles in terms of durable solutions and reconciliation. CPA urges authorities to conduct a more comprehensive mapping exercise and study on land use across Sri Lanka, which should assist in designing reparations programmes, informing reform initiatives and policy options.

Methodology

This report is based on four months of field research and interviews with different stakeholders in the Northern Province of Sri Lanka to understand the extent of land occupied, nature of land under occupation including extent of private and state land, reasons for occupation and related issues. The research was conducted in the five districts – Jaffna, Kilinochchi, Mannar, Mullaitivu and Vavuniya –in the Northern Province and relied primarily on the data from the divisional and district level government actors, and initial sources to check on occupation patterns per division. This was crosschecked with data gathered from individual residents, civil society actors and other government officers in the five districts. Data was collected from 15 divisions in Jaffna District, 4 divisions in Kilinochchi District, 6 divisions in Mullaitivu District, 5 divisions in Mannar District and 4 divisions in Vavuniya District.¹⁵

While most officials had data pertaining to occupation in their areas, CPA encountered gaps in the availability of data and in some instances a reluctance to disclose exact figures of occupation.

Land occupation includes both state and private land occupied by actors other than the legal owners. Research findings indicate to land in the Northern province occupied by the army, air force, police and navy, among others.

¹² Centre for Policy Alternatives, 2007, 'Land and Property Rights of Internally Displaced Persons, *Centre for Policy Alternatives*, August 2007

¹³ The Constitution of Sri Lanka, 2016, Article 14 (h) of the Sri Lankan Constitution states that every citizen is "entitled to the freedom of movement and of choosing his residence within Sri Lanka and the freedom to return to Sri Lanka", accessed at http://www.priu.gov.lk/Cons/1978Constitution/Chapter_03_Amd.htm

¹⁴ United Nations, 2016, 'The Universal Declaration of Human Rights', accessed at <http://www.un.org/en/universal-declaration-human-rights/>

¹⁵ See Annex I

2. What are Reparations?

Reparation is one of the main pillars of transitional justice. The other three pillars include the right to know, the right to justice and guarantees of non-recurrence. Transitional justice provides recognition of the rights of victims, promotes civic trust and strengthens the democratic rule of law.¹⁶ Reparations initiatives can take the form of compensating for the losses suffered and recognising the rights of victims as having options for redress¹⁷. CPA has previously published reports on the importance of transitional justice in Sri Lanka including examining issues of displacement and reparations¹⁸ and reiterates these calls here.

The Right to Reparation is enshrined in a number of International human rights instruments.¹⁹ Reparations are primarily carried out on behalf of the victims and they are meant to redress gross and systematic human rights violations.

The following Basic Principles of the Right to Reparation were adopted at the UN General Assembly²⁰ in 2005:

- i) **Restitution** – Article 35 of the Draft Articles on State Responsibility provides that a State responsible for an internationally wrongful act is under an obligation to make restitution provided that this “is not materially possible” and does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation”. The purpose of restitution is to re-establish the situation that existed before the wrongful act was committed. Restitution can involve release of persons wrongly detained, or the return of wrongly seized property.
- ii) **Compensation**. The 1907 Hague Convention (IV) ensures that a State, which violates international humanitarian law, must pay compensation, if the case demands. Additionally, in the Draft Articles on State Responsibility, a State is obliged “to compensate for the damage caused ... insofar as such damage is not made good by restitution”. The role of compensation is to fill gaps so as to ensure full reparation for damage suffered.

¹⁶ International Centre for Transitional Justice, 2016, ‘What is Transitional Justice’, accessed at <https://www.ictj.org/about/transitional-justice>

¹⁷ Ibid

¹⁸ Centre for Policy Alternatives, 2015, ‘Transitional Justice in Sri Lanka and Ways Forward Exploring Four Thematic Areas – Recruitment and Conscription of Child Soldiers, Disappearances, Sexual Violence & Internal Displacement’, July 2015

¹⁹ Article 18 of the Universal Declaration of Human Rights accessed at <http://www.un.org/en/universal-declaration-human-rights/>, Article 2 of the International Convention of Civil and Political Rights accessed at www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination Act accessed at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>, Article 14 of the Convention Against Torture accessed at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, Article 39 of the Convention on the Rights of the Child accessed at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> and Articles 68 and 75 of the Rome Statute accessed at https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

²⁰ United Nations Human Rights, Office of the High Commissioner, 2005, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law’, accessed at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

- iii) **Rehabilitation** “should include medical and psychological care as well as legal and social services”.
- iv) **Satisfaction** is a broad category of measures, ranging from those aiming at a cessation of violations, to truth-seeking, the search for the disappeared, the recovery and reburial of remains, public apologies, judicial and administrative sanctions, commemoration and memorialization, and human rights training.
- v) **Guarantees of non-repetition** should include measures that will contribute to prevention such as (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

3. Importance of Land Restitution and Reconciliation

Restitution of land is an important part of reparation. Restitution is enshrined in the Right to Reparation, which defines restitution as the ‘restoration of liberty, legal rights, social status, family life and citizenship; return to one’s place of residence and restoration of employment and return of property.’²¹ Additionally, the right to reparation ensure that States perform their duty to provide a comprehensive reparations policy and package.²²

Equally important is the role land and property rights play in long-term peace-building and reconciliation efforts. Establishment of durable solutions for the displaced should be addressed as part of reconciliation policy²³. Restitution of land is critical to peace-building as it recognises the violations and ensures the restorations of rights, such as the right to freedom of movement, right to self-determination, right to property, right to an adequate standard of living and a right to work²⁴. Land ownership is generally viewed as a means to escape from poverty and will give the displaced an opportunity to re-establish their lost livelihoods. In the Sri Lankan context, land is a critical aspect of one’s identity and belonging, with many having links to the land and community, which cannot be quantified. Displacement also results in the breakdown of social relationships and support systems, issues that must be addressed when initiating reconciliation and reform agendas. Furthermore, reparations and restitution of land will give people confidence in the State and its institutions, recognising them as equal citizens with the same rights and entitlements.

²¹ United Nations Human Rights, Office of the High Commissioner, 2005, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law’, accessed at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

²² Echeverria, G., 2016, ‘The draft Basic Principles and Guidelines on the Right to Remedy and Reparation: An effort to develop a coherent and consistent practice of reparation for victims’, *Asian Human Rights Commission*, accessed at: <http://www.humanrights.asia/resources/journals-magazines/article2/0106/the-draft-basic-principles-and-guidelines-on-the-right-to-remedy-and-reparation-an-effort-to-develop-a-coherent-theory-and-consistent-practice-of-reparation-for-victims-gabriela-echeverria>

²³ International Organisation for Migration, 2016, ‘Land and Property Rights and Victims Reparations’, accessed at https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/moving-to-safety-complex-crises-2012/Land_Property_Rights_Victim_Reparations.pdf

²⁴ *ibid*

However, restitution of land may not always be possible due to various factors such as unwillingness to return due to economic reasons, political resistance and tensions that may arise between the current and past community members.²⁵ Therefore, in some instances alternative durable solutions may need to be explored. More information on durable solutions introduced in other post-conflict states is included below in the section on comparative case studies.

4. Current Status of Reparations in Sri Lanka

Since the end of the war, several attempts have been made to address issues related to land in the conflict affected areas including introducing circulars²⁶, the appointment of a Presidential Taskforce²⁷ and the appointment of the Lessons Learnt and Reconciliation Commission (LLRC), among others. Reparation was specifically referred to in Paragraph Preambular 15 of the UNHRC consensus resolution on Sri Lanka, “*emphasising the importance of a comprehensive approach to dealing with the past incorporating the full range of judicial and non-judicial measures, including, inter alia, individual prosecutions, reparations...*”²⁸. Additionally, an Office for Reparations was part of the four mechanisms announced by Sri Lanka’s Foreign Minister to specifically address reconciliation.²⁹

Although some efforts were made, the occupation of large extents of land, both private and state, was a factor in the continued displacement of thousands of IDPs³⁰. This was further exacerbated by attempts to acquire large tracts of arable land in the name of national security with lack of due process and in contravention to the established legal process.³¹ Although some steps were taken to address land issues after the end of the war, the larger scheme of land occupation and the deprivation of a home and lack of basic rights resulted in credible concerns of land grabs and changes to ethnic demographics for electoral purposes.³² It also had a direct effect on any efforts at reconciliation, with IDPs and affected communities seeing the inability to return to one’s land and to cultivate lands as a direct link to the occupation. The lack of trust in the government has resulted in war-affected communities being weary of any plans by the central government or the military

²⁵ International Organisation for Migration, 2016, ‘Land and Property Rights and Victims Reparations’, accessed at https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/moving-to-safety-complex-crises-2012/Land_Property_Rights_Victim_Reparations.pdf

²⁶ M.A. Sumanthiran Vs. R.P.R Rajapaksa and others (Land Circular Petition), 2011, *Centre for Policy Alternatives*

²⁷ Presidential Taskforce for Resettlement, Development and Security in the Northern Province

²⁸ Adaderana.LK, 2015, ‘Resolution on Sri Lanka tabled at UN Human Rights Council’, 24 September 2015, accessed at <http://www.adaderana.lk/news/32459/resolution-on-sri-lanka-tabled-at-unhuman-rights-council>

²⁹ Tamil Guardian, 2015, ‘Sri Lanka’s Foreign Minister announces four new institutions to deal with truth, accountability and reparations’, 24 October 2015, accessed at <http://tamilguardian.com/article.asp?articleid=16322>

³⁰ Internal Displacement Monitoring Centre, 2016, <http://www.internal-displacement.org/south-and-south-east-asia/sri-lanka/figures-analysis>

³¹ Raheem, M., 2013, ‘Protracted Displacement, Urgent Solutions: Prospect for Durable Solutions for Protracted IDPs in Sri Lanka’, *Centre for Policy Alternatives*, accessed at:

<http://www.cpalanka.org/protracted-displacement-urgent-solutions-prospects-for-durable-solutions-for-protracted-idps-in-sri-lanka/>

³² *ibid*

as another ploy to deprive and disposes of lands. This trust deficit must be addressed if reconciliation is to have a chance, with reparations being able to play an essential role in reinforcing the notion of citizenship and equal rights for all.

Although there are concerns with the status and progress of reparations, one must note some developments. In 2011, the LLRC report which examined the issue of land, recommended the following - for unofficial High Security Zones (HSZ) to be withdrawn and for official HSZs to be reduced, alienation of state land to be prevented unless it is for the resettlement of IDPs, withdrawal of security forces from administrative duties in the North and East, the establishment of a National Land Commission (NLC) and perhaps more importantly, for restitution of land to the displaced in the Northern and Eastern Provinces to be recognised as a national issue.³³ However, many of the LLRCs constructive recommendations are yet to be implemented. As highlighted in the present research, much more is required in terms of land occupation and reparations.

With the election of President Maithripala Sirisena in January 2015, some progress was witnessed with regards to land releases in the North and East of Sri Lanka. According to the Secretary of the Department of Prisons Reforms, Rehabilitation and Resettlement, V. Sivagnanasothy, 1000 acres of land from Jaffna and 500 acres from Kilinochchi have been released for resettlement³⁴. Official statements indicate that more land is likely to be released, though no information is publicly available regarding details. Furthermore, CPA was informed by officials that despite promises to release more lands, bureaucratic delays persist impacting GOSL promises.³⁵

While this report is not a commentary on the legal and policy framework in Sri Lanka, attention must also be paid to the need for reform in these areas. CPA has in previous studies commented on the legal and policy framework and areas for reform.³⁶ CPA reiterates these same concerns, urging authorities to take immediate steps to reform the Land Acquisition Act (as amended) and transform the National Involuntary Resettlement Policy (NIRP) into legislation and fully implement its provisions.³⁷

Several months have passed since the adoption of the UNHRC Consensus resolution on 1 October 2015, however there is no public information as to what the GOSL has planned to implement its obligations in terms of the resolution. At the time of writing, the Consultation Taskforce was preparing to commence its work in consulting communities

³³ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation Commissions Report, 2011, accessed at http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf

³⁴ Daily News, 2015, 'More land released for resettlement in Jaffna', 31 December 2015, accessed at <http://www.dailynews.lk/?q=2015/12/31/local/more-land-released-resettlement-jaffna>

³⁵ Interviews in Jaffna, February 2016

³⁶ Fonseka, B., & Jegatheeswaran, D., 2013, 'Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka', *Centre for Policy Alternatives*, November 2013 & Fonseka, B., 2014, 'A Policy Brief: Legal and Policy Implications of Recent Land Acquisitions, Evictions and Related Issues in Sri Lanka', *Centre for Policy Alternatives*, November 2014

³⁷ More information can be found- Fonseka, B., & Jegatheeswaran, D., 2013, 'Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka', *Centre for Policy Alternatives*, November 2013 & Fonseka, B., 2014, 'A Policy Brief: Legal and Policy Implications of Recent Land Acquisitions, Evictions and Related Issues in Sri Lanka', *Centre for Policy Alternatives*, November 2014

on different aspects of transitional justice including on reparations³⁸. It is to be seen what information, if any, will emanate from this process in terms of land and reparations and any implementation plans.

5. Importance of Ownership and Control of Land in Sri Lanka

This report highlights that continued occupation, despite some instances of attempts to acquire land via the legal framework, is a key impediment in terms of durable solutions and reconciliation. In order to legitimise this practice, the government has to justify the land acquisition on a public purpose and the owner must be justly compensated.³⁹ Section 2 (1) of the Land Acquisition Act states that “ where the Minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area”.⁴⁰ CPA has previously discussed how the Sri Lankan courts have interpreted what is meant by ‘public purpose’, ensuring there is a public utility for any acquisition of land and using the public trust doctrine to protect the rights of land owners.⁴¹

The present research and previous studies by CPA indicate that most people are not officially informed as to why their land has been acquired or occupied by the government and the public purposes for the acquisition, contrary to what is provided within the legal framework. This is further exacerbated by fears of using land to change ethnic demographics. CPA has documented efforts by previous governments to change demographics in the North, including land settlements schemes that create fears of ‘Sinhalaisation’ of areas that were predominantly Tamil.⁴² Continued land occupation by the military and police, fuels suspicion of plans to use land to effect demographic change and ultimately, impact electoral representation of the area. Such fears must be addressed if the GOSL is genuine in its commitment to reconciliation. The lack of information and public consultation around land occupation, releases and reparations is a key impediment for reconciliation efforts, further exacerbating mistrust and tensions among affected communities.

³⁸ Hiru News, 2016, ‘Consultation Task Force to analyse public input on reconciliation’, 13 February 2016, accessed at: <http://www.hirunews.lk/126131/consultation-task-force-to-analyze-public-input-on-reconciliation>

³⁹ Lindsay, J.M., 2012, *Compulsory Acquisition of Land and Compensation in Infrastructure Projects*, WORLD BANK (Aug. 2012) 2.

⁴⁰ Land Acquisition Act, 1950, accessed at: [http://www.hrcsl.lk/PFF/Llibrary Domestic Laws/Legislation related to Environment/Land%20Acquisition%20Act%20No%209%20of%201950.pdf](http://www.hrcsl.lk/PFF/Llibrary%20Domestic%20Laws/Legislation%20related%20to%20Environment/Land%20Acquisition%20Act%20No%209%20of%201950.pdf); more information on the issue of land acquisitions can be found at- Fonseka, B., 2014, ‘A Policy Brief: Legal and Policy Implications of Recent Land Acquisitions, Evictions and Related Issues in Sri Lanka’, *Centre for Policy Alternatives*, November 2014

⁴¹ Fonseka, B., & Jegatheeswaran, D., 2013, ‘Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka’, *Centre for Policy Alternatives*, November 2013

Fonseka, B., 2014, ‘A Policy Brief: Legal and Policy Implications of Recent Land Acquisitions, Evictions and Related Issues in Sri Lanka’, *Centre for Policy Alternatives*, November 2014

⁴² Fonseka, B., & Raheem, M., 2011, ‘Land in the Northern Province – Post-War Politics, Policy and Practices’, *Centre for Policy Alternatives*, November 2011

Additionally, the Thirteenth Amendment to the Constitution places land control and alienation of lands in the provinces within the Provincial Councils. Land, including “rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement” specifically falls under the purview of the Provincial Councils⁴³. However, CPA has also noted previously the role of specific central government entities in relation to land use in the North. For example, CPA has documented the role of the Mahaweli Authority, an entity within the central government and its impact on land ownership, control and use.⁴⁴ While the present report does not examine these issues, it has to be emphasised that the multiple actors at the different levels with a role on land use, further complicate ownership and control of land and possible reparations programmes. The suspicion of numerous government actors including those who have powers of zoning are perceived as another form of control over land and possible deprivation of legal owners of their land.⁴⁵

6. Land Mapping Exercise in the Northern Province

The present research attempts to understand the extent of land occupation and land ownership and control patterns in the Northern Province in Sri Lanka. The primary aim is to understand the extent of land occupied by a range of actors including the Army, Air Force, Navy and Police, the nature of the land in occupation and its broader implications for reconciliation. Annex I has the table with more details per division and district.

The following are some findings based on the data collected through the present project:

- In the **Jaffna district**, a total of 73.9475 acres of state land and over 6,400 acres of private land are occupied.⁴⁶
- In the **Mullaitivu district**, a total of 1,551.088668538 acres of non-alienated and alienated state land are occupied.
- In the **Kilinochchi district**, a total of 515.534255 acres of state land and 138.6426553 acres of private land are occupied.
- In the **Mannar district**, a total of 1,717.75 acres of state land and 29.3 acres of private land are occupied.
- In the **Vavuniya district**, a total of 2,115.77 acres of state land and 43.28 acres of private land are occupied.

As discussed in the methodology, challenges remain with identifying the exact extent of land occupation in particular areas and whether it is private or state land. This is not a new issue and has been raised by CPA previously. While recognising this is complicated and requires careful consideration as to avoid future conflicts, this must be addressed to ensure competing claims are avoided leading to potential disputes.

⁴³ The Constitution of the Democratic Socialist Republic of Sri Lanka, 2015, amended 15 May 2015, cited by Foreman, E., 2016, accessed at <https://www.parliament.lk/files/pdf/constitution.pdf>

⁴⁴ *ibid*

⁴⁵ Jaffna Meeting, February 2016

⁴⁶ More information is available in Annex 1

7. Examples of Reparations in other Post-Conflict Settings – Colombia, Bosnia and South Africa

It is important to compare and analyse the reparations policies of other post-conflict countries because their policies can be instrumental to shaping Sri Lanka's own reparations policy. The countries below have developed reparations policies centred on land restitution, resettlement and other forms of assistance.

7.1 COLOMBIA

Colombia experienced and is still experiencing a decades-long internal conflict, which started in 1948.⁴⁷ The conflict is between four sides – the right-wing paramilitary groups, the Colombian government, narcotic crime syndicates and left-wing guerrilla groups such as the Revolutionary Armed Forces of Colombia (FARC)⁴⁸. The conflict is primarily centred on land ownership⁴⁹. Land reform was the main reason behind FARC's initial anti-government insurgency but the conflict has actually exacerbated the landlessness issue and has caused mass displacement. So far, 16 million acres of land have either been stolen, abandoned and/or forcibly changed hands during the fighting.⁵⁰ As a result, in 2004, the Constitutional Court redesigned the government's policy on IDPs in order to ensure the protection of their fundamental rights in the Constitution and in accordance with international Guiding Principles on Internal Displacement⁵¹. Additionally, the Colombian court introduced a Victims and Land Restitution Law (Law No. 1448), as a framework for land restitution and other forms of assistance.⁵² This Law also produced a Land Restitution Office⁵³.

Colombia's Principles for Reparation are⁵⁴:

1. Consultation with the beneficiaries for the definition of reparation measures, specifically collective and symbolic reparations.
2. Coherence and complementarity with the remaining components of transitional justice
3. Balance between integrity such as measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition must be taken into consideration.
4. The type of reparation measure must match the type of damage.
5. Effectiveness, promptness, proportionality and gender and equity must be taken into consideration for reparations.

⁴⁷ Brooks, J., 2015, 'As Conflict Continues, Inadequate Restitution for Colombia's Displaced', *Harvard Humanitarian Initiative*, <http://atha.se/blog/conflict-continues-inadequate-restitution-colombia%E2%80%99s-displaced>

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² *ibid*

⁵³ Human Rights Watch, 2013, 'Colombia: Landmark Ruling for Land Restitution', 20 February 2013, accessed at <https://www.hrw.org/news/2013/02/20/colombia-landmark-ruling-land-restitution>

⁵⁴ Leongomez, E.P., 2010, 'Victims and Reparation: The Colombian Experience', *President of the National Reparation and Reconciliation Commission – Colombia*, https://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf

In addition, two types of reparations were introduced⁵⁵:

1. Judicial Reparation Process, where the victims are entitled to participate at all stages of the proceedings and are also entitled to be represented by a public defender.
2. Administrative Reparation Process, where the State, is obliged to repair and without excusing the perpetrators of their obligations, should have an administrative procedure to repair the suffering of the victims. Also, the Program also supplemented reparations when the perpetrators' resources were insufficient. The Law has ensured that the State cannot use budgetary constraint as an excuse to not compensate the victim.

Commission for Reparation and Reconciliation

This Commission was established as a result of the Victims Land and Restitution Law, in order to ensure the right of victims to collective reparations⁵⁶. The Commission is a combination of government representatives, state institutions, civil society actors and victim representatives⁵⁷. A Regional Commissions for the Restitution of Assets was also established to identify the owner of land and so far, voluntary restitutions have been handed out⁵⁸. A National Victims Unit was also established to coordinate the land restitution for the displaced and humanitarian assistance⁵⁹. The Law has also established a Fund for the Reparation of Victims⁶⁰.

7.2 BOSNIA

Bosnia's declaration of independence from the Yugoslav Republic resulted in the ethnically driven war in Bosnia that started in 1992 and ended in 1995.⁶¹ Bosnia was made up of three major ethnic groups – Serbian, Croatian and Bosnian Muslims.⁶² The Croats and Serbs expanded their territory within Bosnia, and eventually, the Serbian army with the support of the Yugoslav National Army (JNA) ended up controlling 70% of Bosnia and killing many along the way.⁶³ In 1995, the war ended with a ceasefire, as a result of NATO intervention and combined ground efforts from the Bosnian and Croatian armies.⁶⁴

⁵⁵ Redress, 2015, 'Reparations for Victims in Colombia', accessed at <http://www.redress.org/downloads/events/ReparationsVictimsColombiaJG.pdf>

⁵⁶ *ibid*

⁵⁷ Leongomez, E.P., 2010, 'Victims and Reparation: The Colombian Experience', *President of the National Reparation and Reconciliation Commission – Colombia*, https://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ Redress, 2015, 'Reparations for Victims in Colombia', accessed at <http://www.redress.org/downloads/events/ReparationsVictimsColombiaJG.pdf>

⁶¹ Office of the Historian, 2016, 'The War in Bosnia', US Department of State, accessed at <https://history.state.gov/milestones/1993-2000/bosnia>

⁶² *ibid*

⁶³ *ibid*

⁶⁴ *ibid*

Reparations in Bosnia

- General Framework of Agreement for Peace in Bosnia and Herzegovina dictated that refugees and internally displaced people would be able to return home; as a result, the Property Law Implementation Plan (PLIP) was established⁶⁵. The aim of the PLIP was to ensure that all outstanding claims by refugees and displaced persons to repossess their properties are resolved⁶⁶.
- Implementation of the PLIP was up to administrative authorities, however, with weak institutions and political inaction, the implementation was slow⁶⁷.
- Additionally, political resistance to reintegration and a shortage of housing has prevented the full implementation of PLIP⁶⁸.
- Also, a Commission for Real Property Claims of Displaced Persons and Refugees was established in 1996 to determine claims for property that has not been voluntarily sold and transferred since 1992⁶⁹. This Commission consisted of representatives from the Republika Srpska, European Court of Justice and the Federation⁷⁰.

- A Commission for Displaced Persons and Refugees was also established in 1995 as part of the Peace Agreement.⁷¹
- An Amnesty Law was passed in 1996, but excluded people who deserted or avoided military conscription.⁷²
- New focus on reparations for wartime rape victims, as a British-backed legal initiative in Bosnia has recently given rape victims the opportunity to claim compensation for the first time.⁷³ However, the funding for the compensation remains to be seen as victims of sexual violence were excluded from Serbia's Law on Civilian Invalids of War.⁷⁴

⁶⁵ Interagency Framework Document, 2000 'Property Law Implementation Plan (PLIP)', accessed at http://www.oscebih.org/documents/osce_bih_doc_2000101511402819eng.pdf

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ *ibid*

⁶⁹ United Nations General Assembly Security Council, 1995, 'General Framework Agreement for Peace in Bosnia and Herzegovina', <https://peaceaccords.nd.edu/accord/general-framework-agreement-peace-bosnia-and-herzegovina>

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² *ibid*

⁷³ Borger, J., 2015, 'Bosnia rape victims may claim compensation for the first time', *The Guardian*, 30 June 2015, accessed at <http://www.theguardian.com/world/2015/jun/30/bosnia-victims-compensation-landmark-ruling>

⁷⁴ Amnesty International, 2012, 'Bosnia and Herzegovina: Time for Republika Srpska to Make Reparations for Wartime Rape', 31 October 2012, accessed at <http://search.proquest.com.ezproxy1.library.usyd.edu.au/docview/1122702203?accountid=14757>

7.3 SOUTH AFRICA

South Africa was under apartheid rule from 1948 to 1994⁷⁵. A Truth and Reconciliation Commission (TRC) was subsequently established to deal with the damages caused by the apartheid.⁷⁶ The TRC defined a victim as “someone who had suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or substantial impairment of human rights (i) as a result of gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted.”⁷⁷ Around 3.5 million black South Africans were displaced from 1960 to 1983, in order to mandate residential segregation.⁷⁸ Additionally, many black South African farmers lost their livelihood due to the mechanisation of agriculture and were then moved to poor townships.⁷⁹ Furthermore, in the 1960s, thousands were moved to resettlement camps in the Eastern Cape, in an attempt to strip them of their citizenship.⁸⁰

Reparations in South Africa

- Truth and Reconciliation Commission was established in 1995 through the Promotion of National Unity and Reconciliation Act No. 34.⁸¹ The TRC’s main objectives were to investigate human rights abuses that happened between 1960 and 1994; to grant amnesty to perpetrators in exchange for full disclosure; to provide an impartial record of the past and to provide recommendations relating to a reparations package for the victims.⁸²
- The Reparations and Rehabilitations Committee (RRC) was established as a result of the TRC’s recommendations.⁸³ The RRC, guided by international law and other models of best practice, developed a set of recommendations based on the needs of the victims and national consultative workshop.⁸⁴
- The RRC was divided into five categories – urgent interim reparations, individual reparation grants, symbolic reparation and legal administrative measures, community rehabilitation and institutional reforms.⁸⁵
- Community rehabilitation programs included resettlement of displaced persons and communities, national demilitarisation and reintegration of perpetrators into the community.⁸⁶
- Additionally, the RRC recommended administrative, legal and institutional reform in the media, judiciary, security forces, education system, business sector and correctional services in order to prevent the recurrence of human rights violations.⁸⁷
- Monetary compensation was also recommended by the RRC, not just from the government, but from the business sector too who benefited from the apartheid

⁷⁵ Daly, E., 2003, ‘Reparations in South Africa: A cautionary tale’, *The University of Memphis Law Review*, 33 (2), 367

⁷⁶ *ibid*

⁷⁷ De Greiff, P., 2008, *The Handbook of Reparations*, Oxford University Press

⁷⁸ *Overcoming Apartheid*, 2015, accessed at <http://overcomingapartheid.msu.edu/>

⁷⁹ *ibid*

⁸⁰ *ibid*

⁸¹ Naidu, E., 2004, ‘Symbolic Reparations and Reconciliation: Lessons from South Africa’, *Centre for the Study of Violence and Reconciliation*, Johannesburg, South Africa

⁸² *ibid*

⁸³ *ibid*

⁸⁴ *ibid*

⁸⁵ *ibid*

⁸⁶ *ibid*

⁸⁷ *ibid*

rule⁸⁸. The RRC asked the business sector to contribute to the restitutions program.⁸⁹

- Restitution of Land Rights Act and Restitution of Black Land Act were established in 1994 to deal with restitution of land rights to citizens displaced by racially discriminatory laws and practices that were introduced after 1913⁹⁰. Also, a Commission on Restitution of Land Rights, a Land Claims Court and a Regional Land Claims Commissioner were established⁹¹.
- In some cases, after the Land Restitution Act was established, the Chatha village was used as a model example. In Chatha, the residents demanded for restitution to be made in terms of monetary payments, not return of land to the displaced⁹². Cheques were paid out to 334 claimant families in 2000.⁹³ However, the success of this model is hard to quantify due to lack of data.
- Implementation of RRC's recommendations has been slow due to political unwillingness.⁹⁴ In order to monitor and audit the implementations, a post-TRC Unit was established within the Department of Justice, with the objective of reporting the progress made by government departments to Parliament⁹⁵.

⁸⁸ Naidu, E., 2004, 'Symbolic Reparations and Reconciliation: Lessons from South Africa', *Centre for the Study of Violence and Reconciliation*, Johannesburg, South Africa

⁸⁹ Southern African Legal Institute, 2001, Restitution of Land Rights Act 22 of 1994, accessed at http://www.saflii.org/za/legis/consol_reg/rolra22o1994rangnr703744/

⁹⁰ *ibid*

⁹¹ *ibid*

⁹² De Wet, C., 2012, 'The Application of International Resettlement Policy in African Villagization Projects', *Human Organisation*, Volume 71, No. 4, pp. 395-406

⁹³ *ibid*

⁹⁴ Naidu, E., 2004, 'Symbolic Reparations and Reconciliation: Lessons from South Africa', *Centre for the Study of Violence and Reconciliation*, Johannesburg, South Africa

⁹⁵ Naidu, E., 2004, 'Symbolic Reparations and Reconciliation: Lessons from South Africa', *Centre for the Study of Violence and Reconciliation*, Johannesburg, South Africa

8. Recommendations

This report discusses the importance of land issues in the context of the government's commitment to transitional justice and reconciliation, specifically focusing on how land and reparations can be and must be addressed. The following recommendations are identified on the basis of information obtained in the course of the research and on the basis of recommendations made previously.

TO THE GOVERNMENT

- Fully implement the 13th Amendment to the Constitution including the establishment of a National Land Commission.
- Introduce legal and policy reform including amending the Land Acquisition Act and introduce legislation in adherence to the NIRP.
- Provide for a comprehensive reparations package and policy, which will subsequently be implemented by the proposed Office for Reparations. The package and policy should have a focus among key areas including issues affecting land. This can look at and implement individual and collective reparations, symbolic and material reparations.
- Conduct a comprehensive land mapping exercise in Sri Lanka, commencing with the North and East, which experienced the brunt of the war. The mapping exercise should identify land ownership and control patterns, extent of private and state land per district, occupation patterns and other issues such as zoning that may affect ownership, control and accessing land.
- Create a registry of those affected by land issues including displacement and dispossession. Clear criteria as to who is eligible to be included in the registry will need to be decided via a transparent and inclusive process, ensuring that all factors affecting land ownership, control and use patterns are studied and other related issues are also considered.
- Return lands to legal owners as much as possible and as quickly as possible. Legally acquire lands, which are absolutely necessary for a public purpose and inform land owners what the particular purpose is. Furthermore, landowners should be compensated in adherence to the NIRP.
- When acquiring land for a public purpose, conduct consultations with affected communities to explain reasons and provide information. Include representative from provincial councils and local government in consultation process.
- Establish a monitoring body in order to ensure the return of land to its rightful owners is done accordingly and to investigate competing claims. Expand the application of mediation boards that has been established in some districts.
- Factor in vulnerable groups and their rights, ensuring that any reparations programmes in the future take into consideration specific needs. It is important that the GOSL take note of the 58,121 female-headed households in the North⁹⁶ and design programmes and packages to address specific needs.
- Initiate a documentation exercise to provide land documentation that is provided in the legal framework.
- Establish district-based committees to focus on land issues affecting the particular district headed by civil administrators – including actors from the Provincial Councils. These committees should consider issues related to

⁹⁶ Gunasekara, V., & Fonseka, R., 2015, 'Women Headed Households: Busting some Common Myths', *Centre for Poverty Analysis*, 14 October 2015, accessed at: <http://www.cepa.lk/blog/details/women-headed-households-busting-some-common-myths-06e56ec1c43d298fa67fb8e0c377d23c.html>

ownership, control, use and access of land, including matters of zoning and other issues to return, durable solutions and sustainable development.

- Commence an outreach campaign in Sinhala, Tamil and English to explain concepts of transitional justice including reparations, why it is important and timely and why land reparations is critical for reconciliation.
- Implement the recommendations, which were accepted by the government in 2012 that were made at Sri Lanka's Universal Period Review. These include: to ensure IDPs rights to adequate restitution by putting in place and implementing long-term housing and property restitution policies that follows international standards and to ensure legal ownership and return or restitution of houses and lands to IDPs ⁹⁷

TO CIVIL SOCIETY

- Sustain the pressure on the GOSL to establish reparations office with information publicly available regarding its mandate. Civil society groups can work to assist the GOSL in ensuring principles of the NIRP, such as facilitating the resettlement process, are fully implemented.
- Raise awareness on the scale of military occupation in Sri Lanka and its impact on displacement and durable solutions. Engage with the GOSL on this issue to identify and support ways of restitution and durable solutions.
- Educate citizens on their rights, in particular land ownership and control, reparations and related issues.
- Where possible, provide free legal advice and assistance to individuals and communities who are experiencing landlessness issues.

TO DONORS

- Support the GOSL to undertake a comprehensive study on land occupation across Sri Lanka that can feed into reparations programmes and other initiatives
- Support the GOSL in identifying suitable reparations packages and policies and the establishment of the Office for Reparations.

⁹⁷ The Universal Periodic Reviews include the following documents: National Report, Compilation of UN information, Summary of stakeholders' information, questions submitted in advance, Addendums, Outcome of the Review and Report of the Working Group.

ANNEX 1

Below is a table that demonstrate the extent of private and state land is still occupied by the a range of actors in the Province⁹⁸ All figures are in acres:

DISTRICT	STATE LAND	PRIVATE LAND	TOTAL LAND (IN ACRES)
JAFFNA DISTRICT (total)	73.9475 acres	1,125.1405446	1,199.0880336
Divisional Secretariats:			
- Delft	4.75 acres	32.2432986	
- Velanai	0.34375 + 0.25 alienated land	99.0625	
- Vadamarachchi East		721.40625	
- Vadamarachchi North	unavailable	10.65211	
- Vadamarachchi Southwest	unavailable	7.860625	
- Chavachcheri	64.34375	8.9	
- Nallur	unavailable	42.5625	+ 5341.28 (occupied land in Valikamam North with unknown origin*)
- Karainagar	unavailable	18.316875	
- Kayts	unavailable	1.05	
- Jaffna Town	0.26	see next column	
- Valikamam North	see next column	13.1625 acres	
- Valikamam East	unavailable	83.17	
- Valikamam Southwest	unavailable	5	
- Valikamam West	4	No land acquired	
- Uduvil	No land acquired		
MULLAITIVU DISTRICT (total)	1,551.088668538	99.5	1,650.588668538
Divisional Secretariats:			
	544.778417438	71.5	
	146.09a	28a	

⁹⁸ See New South Wales Government, Land and Property Information, available at http://rgdirections.lpi.nsw.gov.au/land_dealings/nos_form/area_conversion

- Maritimepattu	436.0015011	Unavailable	
- Manthai East	+ 2 (alienated)		
- Thunukkai			
	164 (alienated)	Unavailable	
	+ 152		
- Puthukkudiyiripu			
	106.21875 acres	Unavailable	
- Oddusudan			
VAVUNIYA (total):	2,115.77717104	43.28 acres	2,159.05717104
Divisional Secretariats			
- Vavuniya	16.61	19.28a	
	+ 1,539.2 (forest)		
	+ 36.46		
	(alienated)		
- Vavuniya North		24a	
- Vavuniya South	4a	Unavailable	
- Vengalcheddikulam	28.00717104	Unavailable	
	491.5a		
MANNAR (total):	1,717.75	29.3	1,747.05
Divisional Secretariats			
- Musali	0.25 + 928*	3.0125	
- Manthai West	570 + 90*	3.3875	
- Mannar	50 + 15*	8.9	
- Madhu	37	12	
- Nanaddan	27.5a	2a	
KILINOCHCHI (total)	515.534255	138.6426553	654.1769103 acres

<p>Divisional Secretariats</p> <ul style="list-style-type: none"> - Kandavalai - Pachchilappalli - Karachchi - Poonakary 	<p>23 + 126.8175 (Alienated) + 20 (Forest)</p> <p>66</p> <p>244.406245</p> <p>35.31051</p>	<p>8a</p> <p>76</p> <p>23.5625</p> <p>31.0801553</p>	
<p>TOTAL</p>			<p>12,751.240783478 (including occupied land with unknown origin*)</p>

*Sources were unable to verify if the occupied land was private or state