

Control Over Land:

Competing Claims and Fuzzy Property Rights in the NorthEast of Sri Lanka

**Road Map Project:
Module VII, 3**

**CONFLICT-SENSITIVE MECHANISMS FOR REGULATING LAND AND WATER
DISPUTES IN THE NORTHEAST OF SRI LANKA**

Discussion Paper

FIRST DRAFT – NOT FOR QUOTATION

(Update: 21-03-2003)

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EXECUTIVE SUMMARY

This paper examines the land question in the NorthEast of Sri Lanka, because this will become a dominant issue in the current transition process from war to peace. Conflicting claims over land and water resources are at the core of the ethnicised conflict, particularly in the multi-ethnic east. Property rights to land are an issue of utmost complexity, since several layers of disputes, claims and grievances superimpose each other. Land conflicts have intensified during the civil war due to structural changes in population displacement, migration and land seizure. The main argument of the paper is that property rights to land and water are fuzzy (i.e. volatile and unclear) and politicised (i.e. ethnicised with powerful actors supporting and enforcing claims of their particular ethnic community). The ideologised arguments that all conflict parties utilize to justify claims to land and space are mirrored on inter/communal disputes (meso-level) and on the micro-level.

The paper therefore outlines a framework of analysis that delineates the vertical linkages and identifies key issues of concern on macro-, meso- and micro-level. These include:

- *Macro-level*: Land colonization policy and population ratio; devolution politics and power over land alienation; demarcation of administrative boundaries; strategic settlements and ‘underworld’ activities.
- *Meso-level*: restricted access due to security considerations; inter-ethnic disputes over water allocation in irrigation schemes; inter-ethnic and transfers; biased administrative decisions and powerlessness of administrators; politically encouraged encroachment.
- *Micro-level*: inter-individual disputes, especially between returnees and encroachers.

The paper concludes that the politics and administration of land are largely an outcome of bad governance in the clientelistic state of Sri Lanka, which has turned ethnicised in the NorthEast. Thus, transparent, accountable and just institutional arrangements for property rights in agricultural resources, in particular in land and irrigation water, call for a substantial reform of the political state in Sri Lanka and real devolution of power to the provinces. But this is not sufficient, because also within provinces, citizens deserve a fair and equitable treatment by state authorities and this is not the case at present in the NorthEast. Rather, we can observe that the entitlement to agricultural resources are largely ethnicised (Korf 2002), which reinforces the logic of the civil war in the daily lives of people and will impede inter-communal peace building fundamentally, if serious steps towards governance reform and against clientelism are not undertaken.

ACRONYMS:

AGA	Assistant Government Agent
BMZ	German Ministry of Economic Cooperation and Development
CFA	Ceasefire agreement
CPA	Center for Policy Alternatives, Colombo
DS	Divisional Secretary
GA	Government Agent
GoSL	Government of Sri Lanka
LTTE	Liberation Tigers of Tamil Eelam
NEP	Northeast Province
UNHCR	United Nations High Commissioner for Refugees

ACKNOWLEDGEMENTS:

This is a paper intended to further discussion on land issues in the NorthEast of Sri Lanka. It was commissioned as part of the “Road Map Program on Negotiating a Political Settlement and Promoting Conflict Transformation in Sri Lanka”, a joint initiative of the Centre for Policy Alternatives (CPA) and the Berghof Foundation for Conflict Studies, Sri Lanka Office. The paper is based on various empirical studies in the Trincomalee district that were carried out in 2001 (Korf et al. 2001) and in 2002. The author would like to thank all those who have participated in the research study and who have supported the field research. All errors remain the sole responsibility of the author. The interpretations of the empirical findings are purely those of the author and should not be attributed to any of the many people involved in the various studies. Editorial support from the Berghof-Foundation is gratefully acknowledged.

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I INTRODUCTION

The land question will become a dominant issue during the transition period from war to peace in the NorthEast of Sri Lanka (Rupesinghe 2002). The security situation in the North and East has created severe challenges for the future of the peace process in Sri Lanka. The Northeast Province (NEP) has been a theatre of war during the last two decades and has experienced gross Human Rights violations. Since the signing of the Ceasefire Agreement (CFA) between the government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) the inter-ethnic relations in the east suffered because of the intensification of fears and expectations among all communities and the volatility of the political future of the region. Conflicting claims over land and water resources were at the core of the ethnicised conflict, particularly in the multi-ethnic east. Entitlements to land are an issue of utmost complexity in the NorthEast of Sri Lanka, because several layers of disputes, claims and grievances superimpose each other. The north faces large-scale migration of displaced people back into their original places that seek to start cultivation on their original land again. However, the current situation still impedes many people of accessing their resources due to mine fields, occupancy by the security forces or encroachment.

Local conflicts over resources often intensify during protracted conflicts, mostly because the resource stock becomes more scarce, or rather the resource stock, which can be accessed and utilized. Protracted social conflicts cause changes in the structure of land occupation due to population displacement and land seizures. The ongoing conflict and war in the NorthEast of Sri Lanka has largely affected the *effective* entitlements of people to land and water resources in the war zones. Furthermore, existing governance structures at local and regional level have partly collapsed or are seriously undermined in enforcing the rule of law. Conflict is often rooted in inter-group competition over land and resources. In post-conflict situations, it is therefore essential to establish tenure institutions, which can resolve land disputes and tenure claims in a transparent and 'neutral' manner.

Both, the complexity and sensitivity of the issue made empirical work in the NorthEast difficult and demanded a great deal of ‘detective’ work. This paper thus cannot give a comprehensive account of the pending conflicts on the various levels of analysis, but seeks to deepen some of the mentioned issues in Rupesinghe’s Roadmap paper on ‘Enhancing Human Security in the Eastern Province’ (Rupesinghe 2002). I will outline key issues and highlight certain examples, mainly from the east (since field studies could thus far not be conducted in the northern parts of the island), that allow us to better understand what potential conflicts look like and how dramatic the impacts of such disputes can be if not properly addressed. In addition, I will point out further research needs that arise out of the discussion.

The report proceeds as follows: In Section II, I will give a context analysis discussing issues such as the ‘Tamil Homeland’ and the Sinhala colonization schemes, both being at the heart of the present political conflict. Section III provides a short stakeholder analysis focusing on the recent grievances of all three major ethnic communities. In Section IV, I will develop a framework of analysis for property rights to land resources and briefly review the current legislative framework. Section V will then review the key issues and develop scenarios for three levels of analysis that have been outlined in Section IV, namely the political dimension of competing claims over land (macro-level), how these claims are mirrored on local level in inter-ethnic resource disputes (meso-level) and finally how the ceasefire creates conditions of property claims and disputes between individuals, in particular returnees and encroachers (micro-level). In each of the three chapters, the report will discuss some policy recommendations, even though these cannot be comprehensive yet due to the limited information available. I argue in the concluding Section (VI) that the settlement of property rights issues is largely a question of good governance.

II CONTEXT ANALYSIS

Competing claims over space and land:

In the east of Sri Lanka, competing claims and disputes over land exist between the Tamils and the Sinhala, the Tamils and the Muslims, as well as the Sinhala and the Muslims. These rival claims to land, often by different ethnic groups, are rooted in memory and perception in the context of the politics of ethnicity and colonisation in Sri Lanka. Many Tamils have perceived the expansion of Sinhala settlements in the NorthEast as an act of political and geographic ‘colonisation of traditional Tamil areas’. The Sinhala saw it as an

expansion into areas that they had abandoned in ancient times (cf. Government of Sri Lanka 2001). In the context of the ethnicised conflict, the politicisation of land use rights, vested interests of armed actors and the link between land use rights and the causes of conflict make it difficult for administrators and decision-makers to enforce the rule of law.

‘Homeland is about land’: That the settlement of the ethnic conflict is among other key issues largely about land shows the importance of the concept of ‘homeland’ to the LTTE and large parts of Tamils living in the NorthEast of Sri Lanka. This Tamil homeland is constructed on the claim that Tamil settlements and Tamil kingdoms in the region in historical times substantiated customary rights for land and space. Political control over land and space has nowadays become even more important for a minority that does not necessarily trust in the central government authorities as neutral agents.

The claims for a homeland have been perceived by the government of Sri Lanka as a potential threat to its territorial integrity. Sinhala nationalists claim that the “oneness” of Sri Lanka as a whole must be maintained in order to be a viable entity. These claims are based on a historical ideology of an ancient Sinhala-Buddhist civilization, which enhances an understanding of Sri Lanka as the homeland of the Sinhala people. Thus, the demand for an independent Tamil homeland in the NorthEast would undermine, in this perception, the territorial integrity and the customary rights of the Sinhala.

Influential bodies and actors in both parties have therefore developed ideological underpinnings for the respective claims for land and space in the NorthEast, based on constructing the past and delineating historical claims for land. I do not intend to repeat these competing ideological justifications from either side, but would like to underline that spatial presence some hundred years ago does not necessarily justify spatial presence in the 21st century. If we look in comparison to the situation in Europe, claims for land and space based on historical records of five hundred and more years back would be perceived as ridiculous. Similarly, one could argue that the Veddha could claim the oldest historical rights to land over the whole island. However, none of the Sri Lankan politicians ever referred to their rights in the course of political restructuring of the state and its geographical entities. It is therefore essential to clearly reject such claims based on the very distant past of some hundred years ago, and instead try to encourage a pragmatic and constructive settlement of the political competition for space and land in the NorthEast.

Perceptions count:

This does not mean that perceptions and emotions of either side did not count. Scholars from both sides have attempted to justify the politics with numbers and maps. While Tamil scholars have enumerated the ‘change in population ratios’ in the eastern province, in particular in Trincomalee and Amparai districts (e.g. Tambiah 1986; Balasundarampillai 2002; Manogaran 1987), nationalist Sinhala scholars have often argued that the colonisation schemes largely touched unoccupied land, and thus did not expell Tamils from any land (e.g. Peiris 1991, 1994; Hennayake 1985). One could argue that even though Sinhala settlers were largely settled in only loosely populated areas, the change in population ratio (and thus electoral powers) were substantial and thus undermined the political claims of Tamils over their ‘homeland’. It is exactly in this line that many Tamils in the NorthEast perceived the Sinhala colonization schemes as a threat to their political aspirations and the security of their ethnic integrity.

Various studies from international scholars and consultants underline the Sinhala nationalist rhetoric of the colonization schemes, which were even officially promoted in project booklets and by high-ranking officials (e.g. Rösel 1998; Klingebiel 1999; Mallick 1998; Peebles 1990; Bastian 1995; BMZ 1998; Kearney & Miller 1987). This rhetoric was part of what Moore described as ‘peasant ideology’ in the Sinhala constituency (Moore 1985, 1989). Land colonisation and allocation was a crucial ingredient of the populist democratic state in Sri Lanka (Durham 1983). The capture of colonisation schemes by politicians and the politicisation of land issues is thus not confined to the areas subject to ethnicised disputes, but are a general feature of the political system in Sri Lanka.

Squeezed in-between? The Muslim community in the east

In addition to this dichotomous ideological battle between Tamil and Sinhala people, the Muslim community must not be forgotten as a major stakeholder in the east and some parts of the north. Mostly originating from settlers and traders that arrived at the coastal strips some 500 years back, Muslims in the east are largely involved in farming, fishing and trading. Since they have the highest population growth rates and tend to live in congested areas, their demand for land and space has constantly increased in the last decades. Some Muslim politicians have demanded an own independent Muslim homeland or administrative entity, however, without underpinning these with the same ideological basis than Sinhala and Tamil political leaders have tended to do.

III STAKEHOLDER ANALYSIS

Rupesinghe (2002) has developed a thorough analysis of the perceptions of different stakeholders, namely the Tamil, Muslim and Sinhala community in the political issues of the east, and these largely hold true for the politics of land as one of the core issue of the conflict and thus of a peace settlement. This paper largely shares this analysis.

Current fears and grievances:

The settlement patterns in the east are very complex. It is in particular the Tamil and Muslim population at the coastal belt that are living adjacent to each other. Cultivation areas are often separate from settlement areas, and farmers have to cross settlements of other communities to access their fields. During times of escalated conflict, many farmers could then not access their fields and suffered serious economic losses. Some individuals also utilised these situations to capture some of fields of the farmers of other communities. The Sinhala population lives in distinct settlements on their own, however, in so-called border villages, they come in direct contact with Tamil and Muslim farmers.

The Tamil population largely perceives itself as the most grieved ones. Their families have lost most lives; many Tamils migrated out of the area. The behaviour of army and police forces continuously undermined their dignity and personal integrity. The land question looms very large in the perception of Tamils. Especially in the east, Tamils argue that Muslims gained control over parts of the economy, and that accumulate economic surplus was often invested in land ownership, notably in buying out poor and distressed Tamil farmers that had no other choice than to sell their land. This adds on to the historical grievances towards the colonization policy of the Sinhala dominated central government. Many Tamils in the NorthEast now hope that a new Tamil dominated interim administration can rectify some of the grievances and correct some of the ethnically biased policies of the central government.

The Muslim population in the east fears to become squeezed between the lines, since in the aftermath of the ceasefire agreement, the relative bargaining power of Tamil farmers increased substantially due to the increasing political power of the LTTE in the east and its rising spatial mobility. Anti-muslim rhetoric has become increasingly popular among Tamils in the NorthEast that argue that Muslims were 'winners of the war', because they could trade with both parties leading to some Muslims acquiring considerable wealth, and because Tamils suspect them of collaboration with army, police and Special Task Force. This perception surely overlooks that some Muslims have also substantially suffered in the war, e.g. the

expelled population from the north and fishermen and farmers in the east that were unable to access their traditional livelihood resources (cultivation land in uncleared area, restricted fishing). Many Muslims in the east observe the current peace process with caution, because they fear to be marginalized in a NorthEast Provincial Council system. Muslims also feel threatened by ideologies attached to land, in particular when this could undermine their own demand for living space for the growing Muslim population.

Many Sinhala farmers now fear that in an interim administration dominated by the LTTE, Tamil politicians could outplay them. They experienced hardship being attacked by the LTTE, while the war also provided economic opportunities (home guard employment) that farmers might now lose. In addition, Sinhala farmers in border areas received specific state funds for economic and social services. All these benefits are now in danger.

These perceptions of different people in the east reflect the deep divide and the ethnicisation of thinking that has arisen in the years of civil war. The complexity of spatial power and ethnic settlement patterns in the east made some of the districts particularly vulnerable to strategic interventions. Changing administrative boundaries and electoral constituencies remain up to date subject to controversy among the different ethnic groups, in particular the resizing of various districts in the east and the north. Some Muslim politicians arguing for a Muslim homeland within the east have recently forwarded new claims and propositions. How such homeland could practically be designed remains, however, questionable in view of the highly dispersed and intertwined settlement patterns of Muslims and Tamils in the east.

Basically, there is a fear among Muslims and Sinhala that in the current transition process towards an interim administration, an ethnically biased policy from the central government (favouring Sinhala, and partly Muslims) will be replaced by an ethnically biased policy of a Tamil dominated administration towards its clientele. To better understand the different claims and their ideological underpinnings, it would be essential to focus more on *local* voices and perceptions: How do Tamil, Muslim, Sinhala farmers substantiate their property and user rights of agricultural resources? In how far did they accommodate the ideologies of their respective leaders? And how does the cultural affinity attached to land differ across the ethnic communities?

IV FRAMEWORK OF ANALYSIS

Local resources in the war zones:

Local natural resources in the NorthEast of Sri Lanka encompass land, water, forests, fisheries resources and other locally available resources. Local resources are often subject to multiple uses by a variety of users. It is therefore essential to differentiate the extent to which a local user has claims over a resource. The hierarchy of claims can stretch from influence over the use of a resource, access to it, control and ownership rights. It is important to bear in mind that the first three types of entitlements to agricultural resources are mostly traditional claims and hardly documented, while the official legislation of the state focuses on ownership rights.

The civil war reduces the options available to local users and thus undermines their claims, because

- War increases the level of uncertainty and risk in the life of people,
- Resources are often not accessible (mines, armed forces do not allow access to certain areas close to the jungle),
- Services to make economic use of natural resources are dilapidated or not accessible (credit, extension, markets etc.),
- Social networks that support resource use and provide insurance mechanisms in times of distress have often been disrupted or are eroded over time.

In addition, war increases the mobility of the local population inducing some to migrate out and forcing others to flee. The results are abandoned properties of land. We can observe that property rights to land become

- *'fuzzy'* (or blurred): War increases the volatility of land occupation in various ways. One is that encroachers might illegally occupy land or other properties of those who have left. Secondly, the disruption of civil life often makes a reconstruction of property rights impossible, since documents have been lost or burnt or intentionally destroyed.
- *politicized*: Behind the veil of 'fuzziness', powerful political actors create 'facts' on the ground to substantiate political claims for space and power. Civilians are both, victims and actors in this political game, since some civilians or ethnic groups might use their affiliation to a powerful party to enforce specific interests at the cost of other civilians or ethnic groups.

This report focuses on agricultural resources, namely cultivation land and irrigation water (both being closely interlinked) and to a lesser degree on homestead land. Other important resources where claims over property and use rights are subject to dispute are fisheries resources and jungle resources. The latter are not subject of this particular report.

Three dimensions of property conflicts:

Entitlements to land and water resources are an issue of utmost complexity in the NorthEast, because several layers of disputes, claims and grievances superimpose each other. The following distinction of macro, meso and micro level seeks to grasp the multiple dimensions of the issue (see also Annex 1):

- (i) The *macro* dimension discusses the historico-political and the structural dimension of competing claims over land resources between the Tamils and the Sinhala at large represented by what the Tamil population largely perceived as ‘state-aided’ colonisation of Sinhala settlers in their traditional hinterland. This was perceived as threatening the own political position in the eastern districts, in particular Trincomalee and Ampara. The macro dimension would also deal with the issue of the Muslim community being expelled from the LTTE controlled areas.
- (ii) The *meso*-level deals with communal resource conflicts, which have become ethnicised and thus caused grievances between communal groups. Such issues include lack of accessibility to certain cultivation areas, toleration of encroachment due to ethnically biased administrative and political practices. In the east, this includes competing claims between Sinhala, Tamil and Muslim communities.
- (iii) The *micro* dimension grasps issues of illegally occupied cultivation and homestead land and returning landlords. Which are adequate legal mechanisms to allow for a just and quick solution of such micro-level disputes? How can institutions deal with scattered documentary proof?

Legal framework in Sri Lanka

The legislative framework governing property rights to local land and water resources in Sri Lanka has been described as fractious and complex. The laws and regulations related to land use and land ownership are compartmentalised into numerous sub-sectoral statutes. The

legislative arrangements are complex and difficult to understand. Different legislative documents deal with various aspects of one specific type of land titles with confusing and overlapping responsibilities of different government institutions.

The current system of land tenure is based on a series of individual records of land transactions. The collection of these records in a series of 'chain of title records' forms the title. Transactions in land are consequently expensive and time consuming, because a proof of legality requires individual copies of evidence going back to 20 or 30 years (Government of Sri Lanka 2001a)¹. This guided tenorial system has been characterised as complex, uncertain and insecure, which leads to low credit ratings, wastage of investment opportunities, a weak land market and a large number of land disputes (ADB 2001; World Bank 2001).

The current status of land administration and the politics of land in the NorthEast are a history of state failure, weak governance and politicisation. Even outside of the NorthEast, land distribution has become a highly clientelistic business of politicians. In the NorthEast, this is further aggravated since clientelism in the context of the east means nothing else than ethnicisation. The complexity and fuzziness of the legislative framework has allowed powerful actors in the NorthEast to impose a hybrid form of governance, where the state administration exists parallel to a kind of 'underworld' in which powerful actors enforce own rules of the game by the force of violent power and intimidation.

Case Studies from Trincomalee:

The current report bases its empirical foundation on in-depth investigations from various case studies from the Trincomalee district, complemented by anecdotal evidence from other locations of the NorthEast. The Trincomalee district deserves particular attention, because all three dimensions of the framework of analysis are represented in one way or another in the politics of land of that district. Trincomalee possesses a geo-strategic location for the civil war in Sri Lanka and for the competing political claims of the Sri Lankan government and the LTTE. Trincomalee is the proclaimed capital of a Tamil Eelam as demanded by the LTTE. Furthermore, the district is located at the border between the north and the east. The Trincomalee district has also been subject to heated debate about government-supported settlement (or colonization) schemes, in particular in the Thimpu process and the negotiations between Tamil politicians and parties, the Sri Lankan government and the government of

¹ The World Bank therefore supports the Government of Sri Lanka to establish a 'Sri Lanka Land Titling and Related Services Project' (cf. Government of Sri Lanka 2001a, b), and the Asian Development Bank (ADB) has proposed technical assistance to the Secretariat, Ministry of Land Development & Minor Exports Agriculture to support the formulation of a Land Resource Management Policy (cf. ADB 2001). However, most of these exclude explicitly the NorthEast of Sri Lanka due to the ethnic disturbances.

India in the mid-eighties of the last century. In the Trincomalee district, all three ethnic communities are represented (30% Sinhala, 32% Tamil and 38% Muslims in 2001 according to government estimates). Land has been a contentious issue in Trincomalee, which the central government is particularly concerned about. This is underlined by the fact that all Government Agents (GA) in Trincomalee in the last decades have been Sinhala, and that the current GA and his predecessors have acted as Land Officers at the Kachcheri of Trincomalee in earlier times, thus providing the top administrative representative of the center a thorough understanding of the land issue.

The material presented hereafter is based on an in-depth case study of rural livelihoods in five locations of the district in 2001 (Korf et al., 2001) and on in-depth field studies in Muthur DS division in summer 2002 by the author. In addition, the author interviewed a number of government officials of the Trincomalee district and of the NorthEast Provincial Council as well as particularly selected key informants of all three ethnic backgrounds, such as academics, elders and local entrepreneurs.

Generally, there is a substantive lack of qualitative as well as quantitative data to assess the impacts of war on land use and on land rights. What this paper seeks to discuss in the subsequent sections therefore focuses on highlighting key issues of concern and deriving recommendations for future empirical research and policy action. More empirical research, however, is needed to outline a comprehensive review of the impact of war on property rights to agricultural resources, namely land, water and fisheries. This paper addresses only issues related to agricultural land and water.

V KEY ISSUES

Macro-dimension: Politics of Land

The politics of land and space in the NorthEast will constitute a core issue in a future peace settlement, since the 'homeland' and the opposition to it by the central government are both about the power over land resources. Therefore, the macro-issues on land can only be settled politically on top-level negotiations between the Sinhala, Tamil and Muslim representatives. Four key issues can be identified that will play an important role on this macro-dimension of land conflicts:

- (i) Land colonization policy and population ratios,
- (ii) Devolution politics and power over land alienation,
- (iii) Demarcation of administrative boundaries,
- (iv) Strategic settlements and ‘underworld’ activities.

(i) *Land colonization policy and population ratios:*

Government initiated colonization schemes in the NorthEast of Sri Lanka have been subject to heated disputes and have been perceived as one of the reasons for the escalation of the ethnic conflict into civil war. Nationalist Sinhala have often pointed out that these settlement schemes would just reclaim traditional Sinhala land. They argued that for achieving national policy goals such as overcoming landlessness in densely populated areas of the south (which are predominantly inhabited by Sinhala) and increasing the production of rice (national self-sufficiency ideology), it would not be reasonable to leave vast areas of land uncultivated and unutilised only because they are perceived by an ethnic minority as their hinterland. Tamils, on the other hand, largely perceived these settlements as encroachment into their hinterland. In fact, these settlement schemes have severely altered the ethnic population ratios in some of the districts in the NorthEast, in particular in the Trincomalee district and the Amparai district and reversed electoral and political power in these districts. Since these issues are highly politicised, solution to these issues can only be achieved on top political level between representatives of all three ethnic communities.

This paper argues that it would be essential for any constructive advance for both sides to recognise the perceived grievances from the ethnic other. However, it will be particularly important that the central government acknowledges that their ethnically biased land settlement schemes have contributed to ethnic grievances among the Tamil minority. This would be an important precondition for the Tamil population in the NorthEast to realise whether or not the attitudes of the central government have substantially changed in this for their perceived security and dignity vital concern.

(ii) *Devolution politics and power over land alienation:*

Closely linked with the politics of land settlements is the institutional framework that allowed the central government to initiate an influx of farmers from other geographical areas and different ethnic origin into the NorthEast. In the process of the passage of the 13th amendment, serious disagreements between proposals from the central governments and from

Tamil politicians and the TULF arose. There was a certain tendency for only half-hearted devolution of power over state land to the provinces. Tamil politicians and the LTTE always have claimed the full authority over state land within one province to be attributed to the provincial authorities, which would include rights over land, land tenure, transfer and alienation of land, land use and land settlements (Bastian 1995). However, the central government sought political control over land alienation in all inter-provincial schemes. The key was that most large-scale irrigation and settlement schemes, and in particular the Mahaveli scheme would remain under the control of the central government. The provincial land commissioner only retained control over so-called provincial lands and small-scale schemes.

Another dispute was about the ethnicity criteria for the selection of settlers in the large inter-provincial schemes. The central government argued for national ratios of ethnicity as criterion, which in fact would in all the three eastern districts be distinctly different from local ethnic ratios. The Tamil side, on the other hand, has always argued that ethnic ratios should follow the regional bases and settlers should predominantly be selected from the neighbourhood. Clearly, this dispute about the selection of settlers was about the political power of changing the control over land and space in the eastern province. In short, each side would argue for a system that would give a superior consideration for its own community.

It is not to be expected that further large-scale irrigation and settlement schemes be planned in the near future, thus provisions in the constitution might now be more of a political sign of goodwill than of much practical relevance. However, the past politics of the center and the vivid opposition from the Tamil minority raises the question how to handle what has happened in the past.

(iii) *Demarcation of administrative boundaries:*

Boundary changes of administrative districts and AGA divisions, carried out by the central government, have been a source of content and grievances among the ethnic groups, in particular the Tamils (Rupasinghe 2002; Bastian 1995). These changes were not perceived as neutral administrative decisions, but as ethnic politics. Balasundarampillai (2002) demonstrates the Tamil perception about some of the boundary changes carried out in the north of the Trincomalee district. These areas are strategically of particular importance, because it is here that one can interrupt the transition of the northern to the eastern province and its settlement patterns. The Tamil community perceived this as an essential threat to the integrity of the NorthEast as their homeland. This is just one example of several attempts of the central

government to alter the administrative boundaries of provinces, districts and AGA divisions, in particular in the 1970s and 1980s.

More recently, Muslim political leaders from the east have started to demand an own homeland and an administrative restructuring of AGA divisions into more ethnically pure entities. This should lead to 'pure' Tamil, Muslim and Sinhala AGA divisions. While the central government and Sinhala politicians might support these claims, since they would undermine the claims of the Tamils, the latter perceive this largely as a threat to the integrity of their homeland (in this sense behaving similarly to the central government when this is claiming the integrity of Sri Lanka as a national entity). While the political demand from the Muslims might be understandable to a certain degree in view of the volatile past of the east, it will just not be practical to implement such scheme due to the highly dispersed settlement patterns. Above all, ethnic minorities exist throughout Sri Lanka, as well in the central and southern provinces, and it would be more accurate to incorporate a culture and legislative framework for minority protection instead of trying to create ethnically pure administrative entities (Rajasingham-Dissanayake 2003). This holds true for the central government as much as for a future interim administration in the NorthEast.

(iv) *Strategic settlements and 'underground' activities*:

With the escalation of the conflict, strategic settlements of the central government with the support of the military in the course of the conflict have happened in various locations. Of particular prominence has been the Weli Oya scheme as part of the Mahaveli L system. This area that belongs to various districts (Trincomalee, Mullaitivu, Vavuniya and Anuradhapura) is now exclusively administered by Anuradhapura district. Tamils have perceived this Sinhala settlement as a strategic military move to disrupt the settlement patterns from north to east and the establishment of a militarised Sinhala settlement corridor (Balasundarampillai 2002; UTHR - J 1993). Similarly, recent encroachment of Sinhala settlers from outside the district along the main road from Habarana to Trincomalee and along the fishery market in Trincomalee have been perceived by Tamils as a continuous underground activity to increase the presence of Sinhala in the district under the protection of army and police. Tamils claim that nationalist Sinhala actors have actively encouraged these encroachments. These two issues will most probably arise as a major issue in discussions about a future land policy and the peace settlement.

(v) Capture of Muslim lands in uncleared area

In the east (Muthur, Amparai, Batticaloa) and some places in north (e.g. Mannar district), large tracts of lands from the Muslim community are located in areas that have been under the control of the LTTE, partly in grey, disputed areas or in uncleared areas, that were both not accessible to Muslims. In some cases, such as in Toppur (Trincomalee district), these lands were left abandoned and the LTTE discouraged potential encroachers to take over these lands. In other cases, the LTTE took over large tracts for own cultivation or to lease it out to farmers living in their realm of control. This has largely happened in Batticaloa and Amparai where an estimated 40,000 acres of paddy lands were taken over by the LTTE. This issue has risen to the macro-level being part of the negotiations between representatives of the Muslims and LTTE top-level where the LTTE promised to hand over these lands. However, in order to ensure a transparent transition of original property rights, these claims would have to be investigated first, and the loss of documentary proof which is widespread in the east, is a serious concern to re-establish original property rights.

Meso-dimension: Inter-communal disputes:

The meso-dimension of inter/ethnic disputes over resource allocation is a kind of mirror of the processes and structures observed at the macro-dimension of political claims over space and land. These might pose a particular challenge to a peace settlement, because they have often created considerable grievances not only among the population directly involved, but also across a much larger scale of the populace. They have often been perceived as visible examples of biased politics and own powerlessness or ethnic discrimination. The following key issues are particularly prominent in the Trincomalee district:

- (i) Restricted access due to security considerations,
- (ii) Inter-ethnic disputes over water allocation in irrigation schemes,
- (iii) Inter-ethnic land transfers,
- (iv) Biased administrative decisions and powerlessness of administrators,
- (v) Politically encouraged encroachment.

(i) Restricted access due to security considerations:

The prevailing insecurity and violence made a considerable part of agricultural resources inaccessible to farmers: In Kuchchaveli D.S. division in the Trincomalee district, for example, paddy fields close to the jungle were not accessible to Tamil and Muslim

farmers of the area that lived at the coastal belt. In some areas of Muthur D.S. division, Muslim farmers could not cultivate fields that were located in uncleared areas. Similar features can be observed in Amparai and Batticaloa district. There, large tracts of land belonging to Muslims were located in uncleared area and the LTTE leased out these lands for cultivation to Tamils living in these areas. While the LTTE has officially promised to hand over these lands, progress on the ground takes place very slowly. Meanwhile, the LTTE-Muslim confrontation over land in the east has become a prime concern for some political activists and has been studied in more depth. The latter example underlines how meso-level issues can rise up to the macro-level and be negotiated at the top level (cf. macro-level, section (v) above).

In their settlement schemes in the east, Sinhala farmers cultivated only with a high security risk under the protection of army and police in some of the border areas. In many instances, fields are located in considerable distance from settlements with other ethnic communities living in between. During times of escalation, many farmers could not access their fields and farmers from other communities started cultivation and encroached these fields. The fuzziness of war and violence allowed individuals and groups to encroach abandoned fields and property of other ethnic communities.

While the ceasefire agreement provided some relieve to farmers in this regard, it leaves many farmers with totally dilapidated irrigation structures and wild fields, which need considerable investment before cultivation. In some areas, especially in the north, mine fields provide a serious impediment to land owners in starting cultivation again.

(ii) *Inter-ethnic disputes over water allocation in irrigation schemes:*

In irrigation schemes, some farmers are posited in hydrologically favourable and disfavoured locations and fields. In general, tailenders face the problem that they depend on the good will of upstream farmers to receive sufficient water for cultivation in the required time period. In most of the larger irrigation schemes in the east, Sinhala farmers tend to be settled upstream whereas Tamil and Muslim farmers live downstream and are thus vulnerable to politically or ethnically motivated actions of upstream Sinhala farmers that cause harm to their cultivation. Such problems are, for example, reported from Kantalai, Allai Extension schemes in Trincomalee and from Gal Oya in Amparai. In some of these schemes, upstream farmers have encroached grazing and tank bed land and utilise more water than originally allocated to them, which leads to water scarcity down stream (at fields belonging to other ethnic groups) and consequently serious economic losses for tailenders. Due to the layout of

the schemes and the allocation of allotments, most of those suffering from water scarcity are Tamils or Muslims.

Since water allocation needs to be timely in order to avoid serious harvest failure in paddy cultivation, the threat of retarding or interrupting water supply is a strong power instrument of upstream farmers towards tail enders. In the recent Muthur incidence between Tamils and Muslims in June 2002, there were rumours that some Tamil farmers threatened to disrupt the water supply to Muslim fields downstream, all fields being irrigated through Allai Extension Scheme. Even though this did not happen in reality, the perceived vulnerability of the downstream Muslim farmers and their dependence on the goodwill of Tamil farmers upstream has substantially increased their grievances. Similarly, Sinhala farmers that are posited even more upstream could disrupt water flows to both, Tamil and Muslim farmers.

(iii) *Inter-ethnic land transfers:*

In some areas of the east, Muslims have bought land from Tamils (often reported from some areas in Batticaloa) and Tamils have bought land from Muslims (e.g. in Muthur DS division) taking advantage of the weak economic or political positions of the other exchange partner. Rupesinghe enumerates the patterns of ownership transfer from Tamils to Muslims, because of the economic power of Muslims (especially traders). At the same time, some Muslims preferred to sell land that was located adjacent to fields belonging to Tamils, because in times of communal riots or escalation of violence, they would not dare to go back for cultivation or harvesting. Mostly, such land transfers have created considerable grievances on both sides. Similarly, some tenants that cultivate land owned by a landlord from the other community, refuse to pay their land lease. Many landlords feel intimidated by armed actors to take further steps to enforce their rights. This is particularly true of Muslim landlords in areas where the LTTE has and had a substantial influence, e.g. in the Muthur area. This could be interpreted as an informal land transfer.

(iv) *Biased administrative decisions and powerlessness of administrators:*

The complexity of land regulations in Sri Lanka has triggered a lack of transparency in the alienation procedures of state land and in the allocation of or decisions over property rights. Interference from politicians in administrative decisions can have particularly damaging impacts if they favour certain ethnic groups at the cost of others. In Trincomalee district, up to the last election, Sinhala and Muslim MPs dominated the agenda in the district and intimidated the Tamil dominated administrative apparatus of the district and province.

Furthermore, key positions within the administration always remained in the hands of administrators inclined to the political agenda of the central government: in Trincomalee, all Government Agents (GA) of the last twenty years have been Sinhala. In addition, the central government kept its strong grip on the administrative structures of land administration for inter-provincial schemes, which constitute the large part of the land under macro-irrigation schemes (Kantalai, Allai). In some cases, powerful administrators from central government institutions, often in close alliance with the armed forces, imposed decisions on other administrative institutions.

(v) *Politically encouraged encroachment:*

Some reports claim that there has been politically ‘encouraged’ encroachment of private property, in particular in occupying houses, but also land in Trincomalee town by Sinhala encouraged or tolerated by army and police in the mid-1990s (cf. Rösel 1998). Such politically encouraged encroachment was perceived by many Tamils as an indirect policy of Sinhala colonisation in the overall agenda to change population ratios and thus electoral and political power.

Conflicts are an integral part of societal interaction. It is the escalation into violence that causes crises and war. It is therefore essential to root crisis prevention strategies into a post-war rehabilitation and reconstruction approach. This would call for a substantial reform of how politics are currently performed in Sri Lanka: it implies changing the rules of the game, formally (in the form of new law, a reformed constitution) as well as effectively (in the form of accountable national, regional and local governance structures and trustworthy political and administrative actors: the political ‘culture’). The medium-level of land conflicts could pose the most serious challenge to the peace process in the long term, because all these issues are about good or bad governance and challenge the whole political system of Sri Lanka.

Basically,

- Administrative decisions need a simple and transparent regulative framework that is understandable also to non-administrators and includes a step-wise procedure that allows decisions to be taken within reasonable time frames.
- Responsibilities have to be clearly alienated to one specific administrative unit,
- Civilian administration must be clearly separated from political and military influence (this would similarly hold for a Tamil dominated interim administration),

- Minority protection needs to be firmly rooted in governance structures, possibly with an independent ombudsman for complaints.

Micro-dimension: inter-individual disputes²

The mosaic stones of available evidence suggest that upon the return of refugees and internally displaced persons to their original homes, issues of property rights will arise. These will largely take place on an inter-individual level and need not be inter-ethnic in nature. Abandoned properties, such as land and homes, might be occupied and used by other people, sometimes for more than ten years. The current legislative framework offers the property owner the possibility to demand the vacation of the encroacher. However, the encroacher has the advantage of physically occupying the property under concern and the current law and court rule indirectly favours the one who is the physical occupant. An owner can then only file a case at court against the illegal occupant, which will, according to experiences of lawyers, under present conditions take at least ten years of administrative court procedures before final settlement. Since in the process of returning, court cases are expected to rise substantially, the time lag might rise even more. In effect, this means that under the present framework, a returnee has very weak bargaining powers towards an encroacher to enforce his legal claims within a reasonable time.

More issues arise from inter-individual disputes over property:

- (i) Encroachers often have invested in the land they are occupying and could demand a compensation for such investment, because this might have increased the value of the property. Where would such encroachers go and could this not cause new disputes at other locations?
- (ii) Another issue is the incomplete documentation of property rights, in particular the loss or destruction of documentary proofs. Refugees might have lost property titles in the chaos of displacement. At the same time, important administrative documents have been lost during the war: paddy land registries are often non-existent; land registrations have partly been burnt etc.
- (iii) Traditional, informal property rights, such as the use of forest or lagoon resources, are often important means of livelihoods, but hardly are documented at all. At present, these areas are often not accessible due to the still pending security situation and due to the problem of mines.

² The Center for Policy Alternatives (CPA), Colombo is currently preparing a study on 'Land Property Rights of Internally Displaced Persons'. Similarly, the UNHCR recently initiated a study on property rights and returnees. This underlines the current importance of the issue. For a more detailed account please refer to these studies.

The issue of property rights is further complicated by traditional laws governing property, especially in Jaffna, and by the tendency of the LTTE to establish an own legal system including courts. These overlaps of different legal systems and logics might cause a lot of concern in the resolution of conflicts, since it is by far not clear which law would enjoy primacy over the others, or how these different legal approaches could be incorporated with each other. It should be avoided that a vacuum occurs in which powerful actors choose the legal system which suits their interests first.

The current time gap in the resolution of disputes over property and the complexity of overlapping local and national laws provides highly dissatisfactory outcomes for internally displaced persons. A quick response to this situation and just handling of property rights are an essential prerequisite for economic development and social peace in the NorthEast. A *fast-track programme* setting up particular dispute settlement commissions for issues arising from returning property holders could, for example, contribute to reduce the duration of settlements considerably. This requires, however, that the commissions be staffed with people who are at the same time competent and trustworthy to all involved parties. Otherwise, the decisions from such commissions can easily be perceived as partial, undermining the authority of their decisions and increasing grievances among particular social or ethnic groups. In the long run, property rights are about accountable and transparent governance structures, which are trustworthy to all groups in civil society. This is a major challenge to the current clientelistic political system in Sri Lanka. Institutions and their decisions must, in the long term, be perceived as being ethnically 'neutral'.

VI CONCLUDING REMARKS

Most currently available reports on land conflicts related to the ethnic conflict tend to focus on a few of the many issues involved only. What this paper sought to achieve is to give a comprehensive account of the many different key issues and how these might be interrelated with each other. The framework utilized in this report allows to identify key issues at various levels of analysis. In fact, the linkages between the different levels are also of particular concern. Points of concern at the meso-level can rise to the macro-level, if grievances pile up. It has been the important point of this paper that one should not focus on one level or one specific issue alone, but have the full complexity of property rights issues in mind. In

particular, this paper warns to adopt a purely legalistic approach, since informal rights might be overlooked in such a process. Informal rights are often most important for the vulnerable and poor sections of the rural populace.

However, the report in its current form cannot yet provide a coherent set of policy recommendations, because the basis of information is still weak and needs to be further complemented through case studies from the north and east. What this discussion attempted to outline, however, is a coherent framework of analysis that can be utilised for in-depth investigation and a first overview of the key issues on various levels of analysis. The politics of land settlements and colonization in the NorthEast will be a central issue in the top-level negotiations. What is important in this context is that the meso-level and micro-level issues do not fall apart, but are equally negotiated and institutional mechanisms found for constructive dispute settlement on local and regional level.

This report has argued that the politics and administration of land are largely a problem of good governance, or more precisely, the lack of it in the clientelistic state of Sri Lanka. The peasant ideology (Moore 1989) of nationalist Sinhala politicians and the politicisation of land policies have particularly alarming impacts in the context of ethnicised grievances and tensions as they are present in the NorthEast, while they also undermine the authority of the democratic state in the southern areas of Sri Lanka. Thus, transparent, accountable and just institutional arrangements for property rights in agricultural resources, in particular in land and irrigation water, call for a substantial reform of the political state in Sri Lanka and real devolution of power to the provinces. But this is not sufficient, because also within provinces, citizens deserve a fair and equitable treatment by state authorities and this is not the case at present in the NorthEast. Rather, we can observe that the entitlement to agricultural resources are largely ethnicised (Korf 2002), which reinforces the logic of the civil war in the daily lives of people and will impede inter-communal peace building fundamentally, if serious steps towards governance reform and against clientelism are not undertaken. Laws and regulations can be formally blueprinted in the capital, however, what *effectively* happens on the ground often is a totally different story. It is essentially the *practice* of administration and local politics that will have to change. What is the role of donors in the setting? They have there an important point to make and to advocate for more transparency, at least in their realm of influence, for example in the planning and implementation of post-war reconstruction programmes and resettlement of internally displaced persons. This, in turn, can provide some 'model' example, which can encourage the demand for 'more of the same': citizens experience that governance can be different from what it was before.

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ANNEX 1: Three Dimensions of Land Disputes in the NorthEast

	Macro	Meso	Micro
Dimension	Politico-historical	Inter-communal	Inter-individual
Background	<p>(i) ‘state-aided’ colonisation schemes lead to a change in ethnic population ratios endangering the dominance of Tamil population in the eastern province.</p> <p>(ii) Muslims expelled from Jaffna and North have lost their belongings and do not have access to their assets (incl. Land?). <u>[more research needed]</u></p> <p>(iii) certain politico-administrative-military actors (S) create facts on the ground by encouraging encroachment by S settlers (e.g. Kandy road, fish market Trincomalee) and occupying trad. Tamil land (Pankulam).</p>	<p>(i) restricted access due to war (M, T, S)</p> <p>(ii) tolerated encroachment (e.g. Kandy road Trincomalee, tank bed encroachment)</p> <p>(iii) tailender problem in irrigation schemes affects some ethnic groups (T, M).</p> <p>(iv) political interference in land distribution leads to ethnically biased administrative decisions which are not transparent.</p> <p>(v) water allocation in large irrigation schemes favours some communal groups (S) (e.g. Kantalai).</p>	<p>(i) displaced landlords and encroachers on their cultivation and homestead land (intra- and inter-ethnic disputes).</p> <p>(ii) illegal encroachers backed by army and police or LTTE.</p> <p><u>[more research needed]</u></p>
Issues at stake	<p>(a) decision over land alienation at central or provincial level?,</p> <p>(b) strategic settlements to disrupt the Tamil settlement patterns (Weli Oya etc.) at the juncture of North and East.</p> <p>(c) can facts created on the ground (illegal settlements) be reversed? Are S in NEP to be re-settled back to the South? How many and from which places?</p>	<p>(a) unequal political representation leads to ‘ethnicised entitlements’ to land and water, and also input supply, markets.</p> <p>(b) administrative decisions are perceived as biased, government does not provide equal opportunities to all three communal groups with regard to land rights and land use.</p>	<p>(a) Long and expensive legal procedures (court decisions take ten years)</p> <p>(b) incomplete documentary proof (loss during displacement)</p> <p>(c) incomplete administrative documentation due to dilapidated and partly destroyed proofs of land titles (paddy land registry, land kachcheri Trincomalee).</p>

	Macro	Meso	Micro
Possible institutional mechanisms	<p>(1) Political solution to be found in the negotiations in Thailand: 'Homeland' places claims over land at the center of interest!</p> <p>[top-level decision]</p>	<p>(1) Setting up peace committees to mediate in communal resource conflicts involving elders, political representatives of the communal groups involved (see Muthur).</p> <p>(2) Ensuring a transparent and accountable administrative procedures involving ombudsmen from each ethnic group to supervise decisions</p>	<p>(1) accelerated legal mechanisms for solving individual land disputes on encroached private and alienated state land. Setting up extra land commissions?</p>
Threats	<p>T will demand some reversal of the created facts, while that would mean for S to implicitly admit that colonisation schemes had a political agenda.</p>	<p>(i) Ethnicised thinking on resource distribution is even enhanced and reiterates the logic of the war.</p> <p>(ii) Politicians use ethnicised power politics for short-term political gains.</p>	<p>Lack of sufficient legal experts to implement a fast-track dispute settlement programme.</p>