

Sri Lanka

**Land and Conflict in the North and East
Policy Note¹**

EXECUTIVE SUMMARY

1. In Sri Lanka, land has been an important trigger in the political dynamics leading to the outbreak of armed conflict and the armed conflict itself has also significantly affected land use and land rights in the North and East regions of the country. Agricultural land use has declined, access to land has been restricted and tenure security has been uncertain in view of the delicate security situation and population movements due to displacement and return. While the ceasefire agreement has brought some relief to people in the North and East, it has also created new land related disputes due to population return and the emergence of inter-ethnic tensions in the East. The impact of the Indian Ocean Tsunami on coastal land in the North and East has produced additional land-related issues.

2. The core premise of this report is two fold: land issues in Sri Lanka cannot be seen in isolation from the ethnic and political conflict and, at the same time, even though land conflict is often linked with the ethnic conflict in Sri Lanka, a large number of land conflicts in the North and East can be resolved prior to a full and national political solution to the ethnic situation. This report therefore:

- analyzes constraints and opportunities for an effective governance framework for land access and land tenure security in the conflict-affected areas of Sri Lanka,
- develops a comprehensive typology of land-related conflicts to inform policy dialogue and to identify types of conflict that may be resolvable in the current situation and to distinguish them from those which are not,
- identifies policy criteria to further ensure a conflict-sensitive approach in a post-conflict and post-tsunami context whereby regional, religious and ethnic balances in the allocation and/or restitution of land and property rights are to be addressed.

The report synthesizes existing studies, mainly qualitative assessments of limited scope and outreach, but a more in-depth quantitative assessment may be conducted later on, when the political situation is conducive to do so.

¹ Policy Note on Land and Conflict in the North and East of Sri Lanka prepared by Benedikt Korf (Department of Geography, University of Liverpool), and Isabel Lavadenz (Senior Land Policy Specialist-SASAR-World Bank).

3. In the present (semi-) post-conflict situation, the different ethnic communities living in the North and East have developed ethnicity-specific interpretations of the historical process and the current status of land tenure security, land access and the policy framework. These different perceptions are expressions of accumulated grievances of inter-ethnic antagonisms and deep-lying searches for improved livelihoods. Although these grievances are now mostly expressed in ethnic dimensions, the underlying causes for such disputes are often rooted in structural causes not necessarily related to the ethnic question, such as increasing pressures on scarce resources and limited economic life opportunities. The armed conflict, however, has changed the dynamics and the political environment within which such land issues are to be resolved. Some of the Government's land use policies have been considered to be a trigger to create these ethnicized interpretations of land-related issues.

4. Furthermore, the impacts of the civil war on land use have resulted in a dramatic decline in the extent of agricultural land currently utilized. The Agricultural census estimates that the acreage of utilized agricultural land has diminished by more than 25% from 1982 to 2002, while it has increased in the not war-affected North Central Province by 30% in the same time period. This dramatic decrease in land use is largely due to population displacement, restricted (physical) access to land (due to insecurity), political instability and shrinking economic opportunities. A general level of insecurity has often decreased tenure security and restricted land access.

5. The signing of the ceasefire agreement (CFA) in February 2002 has created prospects for reconstruction and development in the North and East. The CFA provided freedom of movements and offered opportunities for displaced persons and absentee landlords to return to their places and properties. A number of land-related issues have arisen in this highly dynamic environment: On the one hand, returnees often find their properties occupied by secondary occupants. At the same time, some dormant land disputes that had been suppressed during the times of armed confrontation now emerge to the open. Many of these disputes have their roots in structural, long-term issues (e.g. land scarcity in densely populated areas), but have become politicized and reinterpreted in ethnic terms. If the latter cannot be contained, they may contribute to a destabilization of inter-ethnic areas, in particular in the East.

6. This report provides a detailed analysis of different types of land-related issues in the North and East after the ceasefire agreement (Table 4; Annex 1). It distinguishes three types or levels of land issues. On each of the three levels, the analysis distinguishes between land tenure security (property rights, security of rights, transactions, documentation etc.), land access (informal access to land-related livelihoods) and governance issues (legislation, law enforcement, land management):

- i. Level 1 - inter-individual, *intra*-ethnic land disputes and property issues (individual-individual, individual-state) – no inter-ethnic dimension involved: *Land tenure* issues include unlawful secondary occupancy of property and land, disputed titles (esp. false deeds), boundary disputes, loss or destruction of title documents, unclear property rights to temple lands. *Access* problems are prevalent in particular in heavily mined areas, but also relates to the problem of landless returnees.

- ii. Level 2 - inter-communal or inter-individual, *inter-ethnic* land disputes or property rights issues (individual-individual, individual-communal, communal-communal): *Land tenure* and property rights issues include inter-ethnic disputes over water allocation and land access in irrigation schemes, competing land uses, fishing rights and land transfers done during times of distress. *Access* problems relate to the inaccessibility of agricultural land due to persistent insecurity.
 - iii. Level 3 - inter-individual or inter-communal land or property rights issues, where the *inter-ethnic* dimension has become dominant and the issue highly politicized: These land issues are subject to political negotiations between the parties to the conflict. They include land tenure and land access problems relating to high security zones or militarily occupied territories and issues of devolution of powers between centre and provinces.
10. The Indian Ocean Tsunami has further added to land-related problems in the conflict-affected areas of the North and East. The tsunami has displaced more than 500,000 people adding to the already large number of conflict-affected displaced persons. The originally proposed buffer zone policy of the Sri Lankan government has created confusion about the property status of land situated within the buffer zone. Table 7 specifies the land-related issues pertinent in the post-tsunami recovery process. Particularly important are issues relating to loss of title documents during the tsunami (incl. the state's back-up copies in the registries), and the uncertainties relating to relocation from the buffer zone, including shifting land values and prices.
11. Following the analysis in the report, six major trajectories are identified that define opportunities and constraints for effectively governing land-related issues in the North and East:
- i. Current and emerging land disputes need to be understood in the context of the history of past land policies and the perceptions of ethnic biases that have developed out of these.
 - ii. The armed conflict has further aggravated the pressure on land and has increased ethnic grievances related to land use.
 - iii. Although ethnic tensions appear in relation to land disputes, competing access to land is often rooted in deeper lying structural causes, such as scarce resources, decreasing economic opportunities etc.
 - iv. There is some evidence to suggest that some past policies and the impacts of armed conflict have transformed the governance frame for land access and land tenure in the North and East, which has tended to encourage ethnic favoritism on local and regional scales.
 - v. In more operational terms, key aspects of tenure security include the recognition and recording of land-related rights.
 - vi. The government's buffer zone policy after the tsunami has increased uncertainty over land tenure security in the affected areas.
12. This report does not provide blue print solutions, but rather aims at contributing to the overall debate distinguishing issues that are possible to address through

administrative and operational decisions from those which are ethnically and/or politically sensitive and will be part of negotiations between the conflict parties in the peace process. These policy issues include:

- i. *Land tenure security*: there is a need for an effective land administration system that responds to the particular context of a conflict and reconstruction situation. It is imperative for the state to provide public guarantee of tenure security by establishing, among others, alternative means for effective conflict resolution at the local level (e.g. inter-communal mechanisms). Fully equipped and capable land-related institutions should be put in place, in order to effectively enforce property and land use rights. These are required at the national and local levels and within and outside the governmental machinery.
- ii. *Land access*: The particular Sri Lankan conflict context calls for differentiated and innovative approaches to guarantee access to land, in particular for the most vulnerable population, taking the ethnic balance should be a primary criteria. Issues related to access include addressing (and further preventing) conflicts arising from displacement and returnees, land mines, female headed households (usually widows), and biased state-driven land allocation processes. Unambiguous policy framework for state land distribution, land allocation to returnees, tsunami affected and displaced population, and overall access to land is essential.
- iii. The overriding principle for dispute resolution should be subsidiarity, i.e. disputes should be solved on the lowest institutional level possible. There is also a need for fast-track mechanisms that could, for example, deal with minor land disputes surrounding residential land, boundary disputes etc. (Level 1) and for making use of inter-communal dispute resolution mechanisms in minor inter-ethnic land disputes (Level 2) (see Annex 2, table 8 for details).
- iv. Governance is a cross-cutting issue for land tenure security and land access. A number of legal reforms are currently discussed to make land rights and land use policies more effective. These reforms in policy need to trickle down to the practice of land administration, especially with regard to land allocation and land rights. As part of good governance, limiting discretionary bureaucratic behavior is a must. Bureaucratic practices need to become inclusive, transparent, accountable, participatory and consultative as well as locality-specific, criteria-based and comprehensive. Such good governance practices are instrumental in re-establishing the credibility of land administration.

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INTRODUCTION

1. In Sri Lanka, land has been an important trigger in the political dynamics leading to the outbreak of armed conflict and the armed conflict itself has also significantly affected land use and land rights in the North and East regions of the country. Agricultural land use has declined, access to land has been restricted and tenure security uncertain in view of the delicate situation and population movements due to displacement and return. While the ceasefire agreement has brought some relief to people in the North and East, it has also created new land related disputes due to population return and the emergence of inter-ethnic tensions in the East. The high percentage of the population living in rural areas combined with the high dependence on agricultural production puts high pressure on land resources and further reduces land availability. Due to the current situation of post-conflict transition and post-tsunami recovery, a careful analysis is required to ensure that land-related issues do not interfere with the prospects for social and economic recovery and peace building.

2. Experiences from other conflict-affected countries, such as Uganda, Mozambique, East Timor, and South Africa have demonstrated that the relationship between land and conflict is complex and multidimensional (USAID, 2004), and that usually it needs to be addressed sooner rather than later. Land combines strong economic, cultural, social and emotional values in society and constitutes both an essential source of livelihood in rural areas characterized by a scarcity of productive assets, but also more generally a central element in entangled, varied and complex social relations within which conflict between individuals and groups are bred. Although land issues are often rooted in conflict situations, it is quite difficult to establish the precise role that land plays in the outbreak of conflict (OECD, 2004). However, as conflict deepens and turns violent, territorial control and land grabbing are frequently used as the most effective war strategy or conversely, conflict and war are used to gain access to resources, including land. In post-conflict transition, countries face a number of land-related challenges associated with post-conflict reconstruction and peace consolidation, which often are extremely difficult to address successfully. The importance of land and property issues to post-conflict development is often not recognized early in the process, even though they are intrinsically linked to the political economy, livelihood strategies, vulnerability and socioeconomic development.

LAND ISSUES IN POST-CONFLICT AND POST-TSUNAMI SRI LANKA

3. In Sri Lanka, competing control over land has been intimately linked with the history of agricultural development, especially in the colonization areas of the East (Moore 1989; Peebles 1990) and has been an important trigger for inter-ethnic violence. Territorial control, spatial distribution of ethnic groups and access to land and distribution of government welfare have become contentious political issues. At the same time, it is believed that the armed conflict has significantly affected land access for agricultural and residential purposes, especially due to access restrictions imposed by the conflict parties, insecure and unclear property and use rights due to population displacement and high mobility as well as inefficient or ethnically biased implementation of land-related laws and regulations. There are enough elements to believe that without a sustainable, fair, and grounded solution of the land and property rights question in the North-East, tensions could not only increase but prevent a sustainable peace and reconstruction process.

4. Since land disputes are often related to the broader ethnic conflict, very little is done to address these in fear of triggering inter-ethnic tensions and grievances further. However, although the ethnic conflict and armed confrontation have aggravated land tenure insecurity and land access problems, not all of these originate from the armed conflict alone. Many are rooted in structural issues, such as increasing land scarcity due to population pressures and decreasing economic returns from land use, as well as weak and/or politicized governance structures relating to land use issues. The challenge of post-conflict reconstruction and development lies therefore in addressing these structural factors, in improving the related governance framework in the North and East and in avoiding land disputes to become enmeshed with broader political dynamics of ethnicized grievances.

5. This report suggests that one cannot wait with addressing land conflicts in the North and East, until a formal settlement of the ethnic conflict is accomplished. Land issues affect many development and reconstruction efforts after the ceasefire agreement and in the current post-tsunami recovery process. Therefore, this report analyses what kind of land conflicts have emerged in the North and East and how they are linked with the broader ethnic conflict (or not). It suggests which types of conflict may be addressed immediately in order to sustain development and reconstruction efforts and how this may best be undertaken. The report also delineates those issues which may be too sensitive to be tackled before a broader political settlement has been reached.

6. The effects of the Tsunami of 26 December 2004 have added further land-related problems. First of all, it has washed away lands in already land-scarce areas and displaced more than 400,000 people leaving more than 100,000 homeless/landless. Secondly, the majority of the victims often also lost proof of ownership or land use rights both in the books and on the ground (e.g. most land markers and boundaries are totally or partially destroyed). Finally, right after the tsunami, as part of its recovery and rehabilitation strategy, the Sri Lankan government has announced and made legal notification of its intention to enforce a setback area. As a result, people formerly living in these areas will be relocated to areas outside the setback area.

OBJECTIVES, SCOPE AND AUDIENCE

7. This report analyzes constraints and opportunities for an effective governance framework for land access and land tenure security in the conflict-affected areas (CAAs) – many of which are also tsunami affected. In particular, it aims at deepening the understanding of the relationships between the current land tenure system, existing land policy and (semi-)post-conflict and post-tsunami reconstruction and development programs.

8. The scope of the analysis entails a mapping of all issues pertaining to land rights, land access and land policy in the CAAs, such as land tenure security, restitution of property rights, access to land for vulnerable groups and the practical implementation of land allocation policies. In this context, the study

- looks into private land and state land alienated for private use rights with a focus on rural areas and covers urban CCAs affected by the Tsunami, where appropriate.
- develops a comprehensive typology of land-related conflicts to inform policy dialogue and to provide the foundation for a more in-depth assessment later on.
- identifies policy criteria to further ensure a conflict-sensitive approach in a post conflict and a post-tsunami context whereby regional, religious and ethnic balances in the allocation and /or restitution of land and property rights need to be adequately and promptly addressed to ensure a peaceful and equitable reconstruction and development process.

9. **Methodology.** The policy note synthesizes existing studies to derive a typology of land-related issues and their best-suited resolution mechanisms. The typology allows to map out policy issues and interventions relevant for (semi-) post-conflict and post-tsunami reconstruction efforts and to suggest new sets of research questions which could form the basis of a more in-depth quantitative analysis in the future.

Data sources. Due to the conflict situation, quantitative data is largely out of date, government statistics often rely on crude estimations. Thus far, no comprehensive household survey has been conducted and the agricultural census conducted in 2002 was not comprehensive for the whole North and East. In view of these data limitations, this report works with the following qualitative studies conducted in the last five years: the Centre for Policy Alternatives (CPA) has conducted various studies on land issues after the ceasefire agreement, with a particular focus on gender issues (CPA 2003, 2005a, 2005b, 2005c). The Northeast Housing Reconstruction Programme (NEHRP) has investigated land issues relating to housing (NEHRP 2004a, 2004b). UNHCR Sri Lanka has conducted a study on land and property issues relating to the return of internally displaced persons and refugees living abroad, with an update after the Tsunami (UNHCR 2003, 2005). The Foundation for Co-existence (FCE) has been involved in restitution of Muslim land rights in the East and has conducted various studies in this regard (Rupesinghe 2002, FCE 2003, Hasbullah et al. 2005). Although these reports have compiled a large amount of information, they cannot yet claim a complete representation of the situation in the North and East; however, the state of information collection is

sufficient to develop a typology of land-related issues and to identify some policy recommendations.

10. **Audience.** The report comes at a critical juncture, since the major players in the Sri Lankan conflict are currently seeking to establish political, social, and economic stability following almost twenty years of armed conflict. A ceasefire agreement has been in effect since February 2002, which marked the beginning of a transitional phase that could lead to a permanent solution of the conflict. However, the current political situation in Sri Lanka remains fragile with the two conflict parties being situated in a stalemate of no war, but not yet peace either. It is now widely accepted that both the dynamics and solutions of the conflict are closely linked to domestic politics and development processes. This report is meant to feed reconstruction efforts and policy dialogue on development and land-related issues. As such, it is expected to be useful for policy makers, practitioners, Government officials and civil society actors.

Structure. The report starts with an analysis of the link between past land policies and inter-ethnic grievances relating to land in Sri Lanka pointing to the different perceptions pertaining among the three ethnic groups. In the subsequent section, the report discusses the impacts of the armed conflict on land use in the North and East. The report then assesses the current situation regarding land tenure security and land access as it can be found after the ceasefire agreement in 2002 and suggests a typology to analyze different forms and types of land issues. It also discusses the implications of the tsunami and policies taken after the tsunami with regard to land issues in the North and East. The report comes up with five core trajectories of findings and uses these to derive some policy conclusions.

BACKGROUND AND OVERVIEW

11. The ethnicized conflict in Sri Lanka can be characterized as a multi-dimensional phenomenon, or a ‘conflict cocktail’ (Korf, 2004), because social and political cleavages occurred at various levels along many lines of dissent between Sinhalese, Tamils, and Muslims. The fundamental issue of the conflict is the grievance between the Tamil minority and the Sinhalese-Buddhist majority, which escalated into a war between the Liberation Tigers of Tamil Eelam (LTTE) and the largely Sinhalese armed forces. In the conflict-affected North and East, rival claims to land are rooted in the memory and perception of the multi-ethnic population. Many Tamils have perceived the expansion of Sinhalese settlements in the Northeast as an act of political and geographic ‘colonization of traditional Tamil areas’ (Peebles 1990). The Sinhalese have seen it as an expansion into areas that they abandoned in ancient times (Peiris 1991). Muslim grievances have intensified after being evicted from their land by the LTTE during the civil war (Hasbullah et al 2005).²

² The conflict affected mainly the Northeast and neighboring provinces. Districts of the Northeast are Ampara, Batticaloa, Jaffna, Kilinochchi, Mannar, Mulaituva, Trincomalee and Vavuniya. Neighbouring

PERCEPTIONS OF THE THREE ETHNIC COMMUNITIES:

12. In the present (semi-) post-conflict situation, the different ethnic communities living in the North and East have developed ethnicity-specific interpretations of the historical process and the current status of land tenure, land access and the related governance and policy framework. The following representations of community perceptions focus on interpretations of the current situation, but it must be noted that these perceptions are influenced by their interpretations of past land policies.³

- i. *Sinhalese perceptions:* Many Sinhalese settlers in the North and East are particularly concerned that devolution of powers or wide-ranging autonomy for the North and East in an administrative set-up dominated by Tamils and the LTTE will place them in a politically vulnerable position and will make it difficult for them to claim their rights to land. These Sinhalese settlers came to colonization schemes in the North and East in expectation of finding a stable livelihood. Instead, they were affected by Tamil militancy, insecurity due to armed conflict and some became displaced. Many displaced Sinhalese continue to be afraid of resettling in their places of origin because of the continuous uncertainty of these often highly disputed border areas. Especially border villages have been affected by attacks from the LTTE and have sought closer collaboration with the Sri Lankan security forces. Many Sinhalese farmers continue to face obstacles and fear to access paddy fields located close to or in LTTE controlled areas. In addition, Sinhalese living in Amparai have expressed concern about the organized efforts by local Muslim representatives to acquire state lands for their own community.
- ii. *Tamil perceptions:* Most Tamils living in the North and East portray land tenure and access problems through the lens of what they consider ethnically discriminating past land colonization policies. In the view of many Tamils, these land colonization policies and the practice of land administration in the North and East thereafter have favored Sinhalese settlers and disadvantaged Tamils. Many Tamils expect some of these perceived injustices to be rectified in a peace process. In addition, many displaced Tamils still await their chance to return to their places of origin, because they are either not accessible or insecure. In the East, Tamil-Muslim grievances over land access have emerged over the last twenty years. Tamils are particularly concerned about the growing influence of Muslim politicians and politics, which in the view of Tamils, favor Muslims and make them in their view partial war winners, especially in Amparai. Some of these grievances have come to the open after the ceasefire agreement. The continuous militarization of public space in the North and East and the rising political violence between different Tamil militant groups and the LTTE creates a place of high uncertainty and insecurity for Tamil citizens living in the North and East.

districts are Anuradhapura, Pollonnaruwa (North-Central Province), Moneragala (Uva Province) and Puttalam (North-Western Province).

³ Sources: Asia Foundation 2004, FCE 2003, Hasbullah et al. 2005.

- iii. *Muslim perceptions:* Muslims, the second largest ethnic group in the North and East feel that they have always been discriminated against in past state land alienation and development. Further, they feel that the armed conflict has prevented them having access as well as maintaining ownership of land. Muslims consider that they own and occupy comparatively lesser proportion of usable (private) land in the East. Due to natural population growth, land scarcity in their own settlements continues to increase. Muslims tend to live in concentrated locations, which are considered places of Muslimness. Their place of work is often geographically separated from their place of living. Muslims continue to be aggrieved about their inability to access cultivation and residential land located in LTTE controlled areas. In addition, they are concerned about their rights and political leverage power in a prospectively LTTE dominated autonomous North and East. Therefore, Muslim politicians have started to argue in favor of an own Muslim homeland, which is considered to bring security to Muslims living in the East.

These different perceptions are expressions of accumulated grievances of inter-ethnic antagonisms and deep-lying searches for improved livelihoods. Although these grievances are now mostly expressed in ethnic dimensions, the underlying causes for such disputes are often rooted in structural causes not necessarily related to the ethnic question, such as increasing pressures on scarce resources and limited economic life opportunities, but the armed conflict has changed the dynamics and the political environment within which such land issues are to be resolved. Past land use policies of the central government have been an important trigger to create these ethnicized interpretations of land-related issues.

PAST LAND USE POLICIES⁴

13. Successive Sri Lankan governments have developed land use policies supportive of the rural small-holder farmers and their request for cultivation land. These past land policies in dry zone Sri Lanka need to be understood as a response to colonial land use policies. The British colonial administration, aiming at facilitating the acquisition of land for (private investors') plantation development, declared all land not permanently cultivated or demonstrably under private ownership to be Crown ownership (Lands Encroachment Ordinance No. 12 of 1840, also known as Waste Lands Ordinance). This denied a large part of the rural population, especially in the wetlands, legal and physical access to grazing land and land for shifting cultivation (*chena*). Since this time, almost 80% of the overall land area in Sri Lanka is considered to be state land. Since the establishment of the 1928 Land Commission, the 1935 Land Development Ordinance and specifically after Sri Lanka gained independence in 1948, successive Sri Lankan governments have alienated state land under various titles for private, corporate or state use, especially though to rectify colonial policies and grant access to land for the rural peasantry.⁵

⁴ For more comprehensive reviews of land laws, see NEHRP 2004a, b; CPA 2003, 2005a; Bastian 1995.

⁵ Sources: Bastian 1995, Brow and Weeramunda 1992, Farmer 1957, Herring 1983, Moore 1985, Peiris 1996, Singh 1989.

Legislative framework

The legislative framework on land use policies and property rights has ensured that the (central) state authorities have maintained core powers on alienating state land to private users for both, residential and agricultural purposes.

The Land Development Ordinance (LDO) of 1935 enacted the policy of land alienation to the rural poor and made provisions for land use plans. Land alienated under the LDO was given first as a permit for an initial stage. This permit could then be transferred and a grant issued, which was subject to specific conditions for the title holder, including limitations on transferring ownership. Overall, the state has kept a strong power on land rights, giving the Government Agent power to cancel the permit if land is not properly used. The LDO has been complemented by other ordinances regulating land allocations for other than agricultural purposes (State (Crown) Lands Ordinance 1947) and for alienating land vested in the state after the Land Reform in 1975 (Land Grants (Special Provisions) Act 1979). In addition, the state was able to acquire private land for public purposes through the Land Acquisition Act No. 9 of 1950.

The Mahaweli Authority Act makes provisions for the authority to declare any area as a Mahaweli area and this will vest all powers to administer land in the Mahaweli Authority of Sri Lanka in the so gazetted areas. Similar powers can be vested to the Urban Development Authority (UDA) under the Urban Development Authority Act No. 41 of 1978 to declare any area as urban area, which vests all areas gazetted so under the UDA. Similar provisions hold for the Board of Investment (BOI).

14. Land use policies of the central government authorities in post-independence Sri Lanka have been influenced by three broad policy concerns, which required that central government authorities retain control over land vis-à-vis land users and vis-à-vis local government authorities:

- (i) *Land productivity, viable production units and food self-sufficiency:* Agricultural policies in Sri Lanka have for a long time focused on small-holder agriculture as a response of its neglect during colonial times. This policy is reflected in the Paddy Lands Acts, the Land Reform of the 1970s and various land alienation schemes for village expansion and agricultural colonization. In the last years, recognition is growing that small-holder agriculture has not been a viable means to eradicate rural poverty, especially due to increasing land fragmentation, which has kept many small-holders in poverty. A new policy approach seeking to make (agricultural) land use more productive is reflected in the formulation of a National Land Use Policy, the World Bank supported Land Titling Project and other attempts to liberalize rural land markets to achieve a consolidation of land parcel sizes.
- (ii) *Land use policy and poverty alleviation:* After independence, agricultural policies needed to address the problem of increasing land scarcity in the densely populated wet zones and the resulting impoverishment of rural peasants in these areas. Colonization of the sparsely populated dry zone was

considered a means to provide new land to these peasants to overcome landlessness and to prevent social upheaval by an impoverished rural population.

- (iii) *Land use and territorial control:* Land colonization in the dry zone has become intimately linked with the ethnic conflict in Sri Lanka. The Tamil minority has perceived land colonization in the North and East as an encroachment of Sinhalese settlers into their traditional homeland. Sinhalese politicians have considered land colonization as a necessary instrument to overcome rural landlessness in the wetland areas and as a reinvigoration of past Sinhalese-Buddhist hydraulic civilization. Ethnicity has gathered momentum as a means to assert rival claims to state controlled resources, including land. Since the 1950s onwards, Tamil and Muslim politicians became concerned about what they considered ethnically disproportionate benefits of land colonization scheme and resulting ethnic composition of settlers have become a politically sensitive issue since the 1950s.

ETHNICIZATION AND POLITICIZATION OF LAND ISSUES

15. The ethnicization and politicization of land related issues is closely linked with the history of land policies and land colonization in the North and East. Land colonization schemes in the dry zone have been controversial in Sri Lankan politics since independence and have become one of the grievance issues of the Tamil as well as the Muslim minorities. The centrality of this issue is shown in the fact that control over state land has figured as key issue in all negotiations between Tamil representatives and successive Sri Lankan governments since the 1950s and land will also be one of the core issues in future negotiations between the conflict parties. The principal demand of Tamil representatives has been for land in the Northeast Province to be vested with provincial bodies having autonomous powers independent of the Central Government.

16. The specific concern of the Tamil minority constituency has been that state sponsored colonization would change the demographic characteristics in the North and East, in particular ethnic population ratios. Tables 2 and 3 compile changes in ethnic population ratios in the districts of the North and East from 1911 to 1981. The data shows that the relative proportion of Sinhalese population has increased significantly in Trincomalee and Batticaloa/Amparai districts, though part of this increase took place prior to independence (1948). The relative increase in Sinhalese population, notable in Trincomalee, is not only related to colonization schemes, but Sinhalese also migrated to Trincomalee town for work in ports and other development areas.⁶ Overall, the controversy over past land colonization policies has been differently received in the three ethnic constituencies:⁷

⁶ Source: Peiris 1991, 1996.

⁷ These “perceptions” represent the dominating discourse within each ethnic constituency. Needless to say that of course, there are also differing opinions within one ethnic constituency; however, the ones considered here are those which have become politically relevant in the post-conflict transition process, especially for the peace negotiations.

- Sinhalese representatives tend to argue that dry zone colonization is a necessity as a means to overcome widespread rural impoverishment in the wet zone and that it would not be justifiable to leave large tracts of unutilized land in the dry zone without proper economic use. Furthermore, it is asserted that land colonization schemes did not displace Tamil or Muslim residents, but largely were located in formerly uninhabited areas or in areas settled by Sinhalese. Sinhalese settlements in the East are reportedly of very ancient origin (6-10 Century BC) and land colonization was considered by some Sinhalese representatives as a return to land, which they occupied in those ancient hydraulic civilizations and a rectification of past colonial injustices.⁸
- Tamil representatives were particularly concerned about the change in ethnic population ratios in several districts of the North and East as a result of colonization, which, in their view, favored Sinhalese settlers disproportionately at the expense of Tamils and Muslims. This applies for the Gal Oya scheme in Amparai, the Kantalai tank in Trincomalee and parts of the Mahaweli scheme in Trincomalee and Batticaloa, where a majority of settlers has been Sinhalese. Coupled with this was the concern about redrawing of administrative and electoral boundaries in the East, which was expected to weaken Tamil representation in parliament.⁹
- Muslim representatives in the East largely share grievances of Tamil representatives with regard to past land colonization and feel discriminated in land alienation of these settlement schemes. However, in the national policy debates, Muslim politicians have not played a major role until the mid 1990s and their grievances have been less noted due to the dominating Sinhalese-Tamil dichotomy.

⁸ Sources: Peiris 1991, 1996, Silva 1998.

⁹ Sources: e.g. Balasundarampillai 2002; Manogaran 1987; Tambiah 1986; Wilson 2000.

Table 2: Ethnic composition in the North and East (percent)

	Sinhalese			Sri Lankan Tamil			Indian Tamil			Muslim		
	1911	1946	1981	1911	1946	1981	1911	1946	1981	1911	1946	1981
Jaffna	0.1	1.1	0.6	98.3	96.3	95.3	0.3	1.0	2.4	1.0	1.2	1.7
Mannar	2.7	3.8	8.1	64.6	51.0	50.6	6.3	11.2	13.2	33.2	30.1	26.6
Vavuniya/ Mullaitivu*	10.7	16.6	11.4	77.7	69.3	65.4	3.4	4.2	16.9	7.0	8.7	6.0
Trincomalee	3.8	20.7	33.6	56.8	40.1	33.8	1.1	4.4	2.6	32.0	29.2	29.0
Batticaloa/ Amparai*	3.7	5.8	21.8	54.2	49.7	43.4	0.4	0.6	0.7	39.2	42.0	33.5
North and East	1.8	4.9	13.2	81.6	75.5	65.1	0.7	1.7	3.6	14.9	16.4	17.6

Source: Kearney and Miller (1987), calculated from Department of Census and Statistics, various years. Note that the 2001 Population census was not being conducted in most districts of the North and parts of the districts of the East.

***Amparai and Mullaitivu have been carved out as separate districts after independence.**

Table 3: Ethnic composition of Batticaloa and Amparai district populations (percent)

	Batticaloa		Amparai	
	1963	1981	1963	1981
Sinhalese	3.4	3.2	29.3	37.3
Sri Lanka Tamils	71.3	70.8	23.2	20.1
Indian Tamils	0.9	1.2	0.6	0.4
Muslims	23.4	24.0	46.3	41.5

Source: see Table 2

17. A number of studies have underlined the link between land colonization and increasing ethnic grievances in the North and East.¹⁰ Donor agencies have also become more critical about their own involvement in financing such schemes, in particular in the case of Mahaweli.¹¹ Grievances related to land colonization overshadow many land-related disputes and conflicts to the present day and land disputes in the North and East in the current (semi-) post-conflict and post-tsunami situation need to be understood in the context of this historical legacy of disputed claims to territories and control over state land in the North and East.

¹⁰ Sources: Bastian 1995; Klingebiel and Rösel 1998; Manogaran 1987; Peebles 1990; Shastri 1990; Spencer 1990; Tambiah 1986.

¹¹ Bush 2001; Klingebiel and Rösel 1998; Gillies 1992; Mallick 1998; Uphoff 1992.

Devolution of powers

The 13th Amendment to the Constitution was introduced in 1987 in an attempt to devolve and delegate certain powers of the government to the provincial councils. This was seen as an important step to accommodate concerns of Tamil and Muslim politicians for ensuring a larger control of provincial authorities over land use policies in the North and East. The 13th amendment has not yet been effective in decentralizing powers over land alienation. The amendment categorizes subjects as Provincial Council List, Reserved List and Concurrent List subjects, falling under the purview of the Provincial Council, the Central Government and both respectively. However, the government keeps overriding powers over provincial councils in all matters. Rights in or over land, land tenure, transfer and alienation, land use, land settlement and land improvement fall under the purview of the Provincial Council, however, all state land continues to vest in the Republic and the Provincial Council can only alienate land under the seal of the President. Furthermore, land alienated under inter-provincial irrigation and colonization schemes remain under the purview of the Central Government. Furthermore, the government has alienated large tracts of state land in the Northeast Province to central government agencies, such as the Ports Authorities, which are outside of the administrative control of the provincial council.

The National Land Commission envisaged in the 13th amendment has not been appointed leaving many responsibilities unclear between Central Government and Provincial Councils. Since 1990, the Northeast Provincial Council (NEPC) has no elected Council, and subsequently, the Governor who is appointed by the President holds wide-ranging powers. Control over finances and staff continue to depend on decisions of the central government, which makes the 13th amendment in large parts of land administration in the North and East ineffective. In addition, the administrative capacities of Provincial Land Commissioner and Divisional Secretariats have been weakened during the ethnic conflict due to acute staff shortage.¹²

¹² Sources: Bastian 1995, CPA 2003, 2005, NEHRP 2004a, 2004b, UNHCR 2003.

IMPACT OF ARMED CONFLICT ON LAND

19. The extent of human suffering caused by the conflict has been very high and includes loss of lives, physical injuries and disabilities, displacement and loss of means of livelihood through the destruction of the physical infrastructure and productive assets in the affected provinces. It is estimated that over 65,000 people have lost their lives and double that number have been disabled due to the war. UNHCR estimates that approx. 900,000 people have been displaced due to armed conflict, of which 380,000 have returned since the ceasefire agreement.¹³ According to a Comprehensive Needs Assessment Survey carried out in 2003, a total of 326,000 houses have been fully or partially damaged (World Bank, 2004b). While it has not been possible to carry out comprehensive household surveys in the Northeast during the conflict, it is likely that the poverty conditions in these regions are far more severe than in other parts of the country (World Bank, 2003a). The loss of economic assets due to displacement and conflict is colossal and in many parts of the CAA the population needs to restart their livelihoods from scratch (Centre for Policy Alternatives, 2003).

DYNAMICS OF THE ARMED CONFLICT

20. The dynamics of the armed conflict have differed geographically: while in the North, military contestation after 1995 took place along clearly defined fortified lines, the East was affected by more guerrilla type contestation with changing boundaries of military control between the two conflict parties. In the North, Jaffna peninsula has been heavily contested in military terms, especially after 1995 until the Sri Lankan armed forces regained control over large parts of Jaffna in 1996. In these militarily contested areas, large tracts of land are mined, destruction is severe, also in the urban outskirts of Jaffna. In the East, the spheres of control in the East differed during day and night with the army controlling the major towns and roads during the day and the LTTE being in control of large parts of Trincomalee and Batticaloa during the night. Rural areas have been the main area of military contestation with the LTTE staging military attacks from their basis in the interior spaces under its control. Urban areas have been largely under control of the Sri Lankan armed forces, though the LTTE used to extract taxes from the population in the night. The East had also been a theatre of inter-ethnic violence on community level between Tamils and Muslims as well as Tamils and Sinhalese creating deep-rooted suspicion and resentment between the three ethnic groups.¹⁴

These military dynamics have had implications for changes in land use, land rights and land access for the North and East respectively. In the North, the major challenge is the large-scale displacement of people from Jaffna and the ways how to deal with return of displaced after the ceasefire agreement. In the East, a major concern is related to agricultural production, which was restricted in some areas due to limited access to cultivation land, especially those lands located in highly disputed areas. Also, the multi-ethnic settlement patterns of the East have been vulnerable to inter-ethnic tensions and

¹³ UNHCR: Statistical Summary as at 28 February 2005.

¹⁴ Sources: Goodhand et al. 1999, 2000.

violence after the ceasefire, since livelihoods of different ethnic groups are closely linked, especially those of Tamils and Muslims.¹⁵

DECLINE IN AGRICULTURAL LAND USE

21. The regional economy in the North and East is largely agriculture based and land use plays a major role in the economic recovery process. The majority of the population in the conflict-affected North and East derives their livelihoods from agriculture and fishing. On average agricultural activities contribute to almost 40% of the total income of rural households in the North and East with rice being the dominant crop accounting for 44% of the cultivated area whereas higher value crops, such as fruits and vegetables, are only of minor importance. In comparison, agriculture contributes in average only 8% to the incomes of rural households in the Western province and 22% to the incomes of rural households in the Central provinces (World Bank, 2003b).

Table 3: Change of Extent Under Agriculture by District in the Northeast – 2002, 1982

District	Extent under Agriculture (Hectares)			
	2002 [Ha]	1982 [Ha]	Difference 1982-2002 [Ha]	Difference 1982-2002 [%]
Jaffna	16,876	} 49,204	} -17,199	} -35.0
Kilinochchi	15,129			
Mannar	8,791	18,484	-9,693	-52.4
Vavuniya	13,567	27,773	-14,206	-51.1
Mullativu	16,089	19,170	-3,081	-16.1
Batticaloa	33,165	50,886	-17,721	-34.8
Ampara	72,023	62,641	9,382	15.0
Trincomalee	22,220	41,597	-19,377	-46.6
NORTH	70,452	114,631	-44,179	-38.5
EAST	127,408	155,124	-27,716	-17.9
<i>NORTHEAST</i>	<i>197,860</i>	<i>269,755</i>	<i>-71895</i>	<i>-26.6</i>
Anuradhapura	147,894	113,590	34,304	30.2
Polonnaruwa	69,367	53,396	15,971	29.9
<i>NORTH CENTRAL</i>	<i>217,261</i>	<i>166,986</i>	<i>50,275</i>	<i>30.1</i>
Sri Lanka	1,916,210	1,973,840	-57,629	-2.9

Source: Agricultural Census 2002, Department of Census and Statistics

¹⁵ Sources: Korf et al. 2001; Korf 2004, 2005, McGilvray 2003, Thangarajah 2003.

22. The civil war has heavily affected agricultural production in the CAA. In many areas, access to land and livelihood resources have become restricted or insecure due to the politico-military dynamics of the civil war. Agricultural producers have lost revenues and productive assets such as tractors, livestock, seeds, fertilizers etc. The impacts of the ethnic conflict on land use can only be estimated. Table 3 shows government statistics on the changes in the extent of land under agricultural use in the Northeast Province (NEP) in comparison to the North-Central Province (NCP). Both provinces belong to the dry zone and have been colonized in state-supported settlement schemes, such as the Mahaweli. The data illustrates the dramatic decline in land under agricultural use throughout the North and East with the exception of Amparai district since 1982. In contrast, agricultural land use has significantly increased in other rural districts of the dry zone outside of the NEP, as the numbers for the NCP indicate. In the NCP, agricultural land use has risen by 30% from 1982 to 2002, while it has decline by 26.6% in the NEP (and by 38.5% in the Northern districts).

23. This dramatic decline in agricultural land use in the North and East is therefore a result of the dynamics of the armed conflict. It can be related to population movement due to military escalation in specific areas (displacement) or to restricted spatial access to livelihood resources and political uncertainty limiting the economic life perspectives in the North and East during the armed conflict:

Displacement: One of the most significant effect has been population displacement, which left large areas of the North and East vacated and dilapidated. UNHCR estimates a total of 882,601 persons having been permanently displaced during the armed conflict.¹⁶ This number includes internally displaced persons (IDPs) and refugees abroad (India, other countries). In addition to these permanent displaced, a lot of temporary displacement of people living in the North and East took place due to military contestation and/or communal violence between ethnic groups. The latter became displaced during increasing military contestation, but returned as soon as the military confrontation eased and political tensions reduced. Many of these people have been displaced several times since 1983.

Restricted (physical) access to land: Many people remaining or returning to their places of home in the North and East faced and partly continue to face severe access problems to their agricultural land.

- a. Security forces occupy large tracts of agricultural and residential land for their military purposes for buildings, camps and fortifications. This problem is particularly notable in Jaffna peninsula, but not confined to Jaffna alone. Similar issues apply for the LTTE's high security zone.
- b. The LTTE restricted access for Muslims to fields located in the uncleared areas, especially in Batticaloa and Muttur. Similarly, the LTTE acquired land for their camps and fortifications.
- c. Paddy fields were often located in remoter places away from settlements, which made them insecure, so that farmers were reluctant to access their fields and

¹⁶ UNHCR: Statistical Summary as of 28 February 2005.

practice cultivation. This applies for farmers from all three ethnic groups, depending on the specific location.

- d. Poor people often use common-pool resources, such as forests and lagoons for livelihood activities, such as hunting and gathering, firewood collection etc. When jungle and lagoons became militarily disputed, civilians were reluctant to continue using these resources (such decline in land use is not reflected in the statistics, since statistics do not account for this kind of informal land use). This particularly affects the very poor, such as widows and landless households.
- e. Landmines have been a constant threat for people to return to their places of origin or to continue cultivation, especially in the Jaffna peninsula.

Political instability and inter-ethnic tensions, especially in the East, discouraged some farmers to continue cultivation during the ongoing armed conflict. For example, Sinhalese farmers in border villages were reluctant to cultivate remotely situated paddy fields. Muslim cultivators, whose fields are located side-by-side with Tamil fields in mixed Tamil-Muslim areas, would not dare to go to their fields in times of inter-ethnic tension. Tamil farmers were not given access to their fields by security forces or their fields were located in militarily contested areas. During times of ethnic tensions, farmers whose fields were located in areas dominated by another ethnic group often sold their land to unfavorable conditions, landlords did not dare to collect their rent or tenants did not bother to pay their rents. The latter particularly happened in the Tamil-Muslim inhabited areas of the East, where Tamils and Muslim settlement are situated close to each other and where livelihoods depended on mutual cooperation in the past. In effect, these processes have created ethnically more homogenous spatial entities and grievances among those who had to leave¹⁷.

Lack of economic opportunities: Some farmers have abandoned cultivation due to lack of incentives to produce. The extent of the impact of declining economic opportunities and incentives has not been systematically studied yet and it can be expected that the situation differs considerably across the North and East. Discouraging frame conditions for agricultural production include limited or no availability of inputs, restricted marketing opportunities, taxation by militants, restricted mobility through the established checkpoint system and the problems of transporting some goods into or out of uncleared areas or into areas which were highly disputed (even though not officially declared "uncleared"). On the other hand, some studies also indicate that some farmers have continued agricultural production even under adverse conditions; in some circumstances, substantial investments in agriculture have been done in politically unstable areas, where marketing opportunities and access to inputs were given.¹⁸ There are cases where farmers have opportunistically overexploited soils using high value crops, such as onions, to make quick gains in view of an uncertain future.¹⁹

¹⁷ Source: Hasbullah et al. 2005.

¹⁸ Source: Korf et al. 2001.

¹⁹ Source: Korf et al. 2001.

LAND USE AND POST-CONFLICT RECONSTRUCTION

24. The signing of the ceasefire agreement (CFA) in February 2002 has created prospects for reconstruction and development in the North and East. These new political and economic dynamics have also affected land tenure security and land access in the North and East. In the three years since the signing of the ceasefire agreement, a number of land-related disputes and grievances have emerged. One needs to distinguish those issues which originate from new opportunities and constraints after the CFA (i) and more protracted land disputes, which have been pending during the armed conflict and whose nature has been altered due to the changing political constellations after the CFA (ii). The ceasefire agreement has provided freedom of movements and has offered opportunities for displaced persons and absentee landlords to make claims for their properties. Many people who had left their property and homes during times of war are now returning to their original place and are claiming their belongings or are demanding assistance from the government. When returning, many of them are not able to access or claim their property and land. In addition, rural households use this freedom to restart traditional and new livelihood activities for which they require access to common-pool resources, such as jungle and lagoon resources.

In this situation, dormant land disputes that had been suppressed during the armed conflict now emerge to the open with new political power dynamics developing in the North and East. Many of these conflicts have their roots in structural issues (e.g. land scarcity), but become reinterpreted in ethnic terms and politically linked with the broader ethnic conflict. A number of inter-communal (inter-ethnic) disputes have emerged after the CFA which have the potential to trigger inter-ethnic violence and/or which have been subject to ethnic and political manipulation. These issues differ regarding extent, intensity and scale between different regions and localities in the North and East

LAND ISSUES AFTER THE CEASEFIRE AGREEMENT

25. The legacies of the armed conflict continue to influence land tenure security and land access in the North and East even after the ceasefire agreement - they affect the ability of displaced persons to return, limit the prospects for reviving local livelihoods and create potential constraints to post-conflict reconstruction:

- i. Land tenure insecurity has significantly increased:* During the ongoing armed conflict, due to the overall political instability and prevailing insecurity, land users could never be sure that they would be able to claim their rights to land in the future. Displaced persons often lost their title documents. Many farmers in the North and East only had temporary permits on state land, which can be cancelled by the respective Government Agent. In some circumstances, persons from another ethnic group made opportunistic use of the current political conditions and occupied property of a person from another ethnic group, when the political situation was conducive to do so.

- ii. *Land access has been restricted in many places:* The political instability, military contestation and territorial politics produced conditions, which made large tracts of land under agricultural or other use inaccessible for civilians. Many farmers lost important assets and agricultural implements to make productive use of their land. Access to common-pool resources was often denied or people were reluctant to make use of them due to precarious security conditions, since most of the common-pool resources were arenas of military contestation. Even after the ceasefire agreement, many of these access-related problems are not yet solved (high- security zones, land mines etc.).

26. Land administration in the North and East continues to be ineffective and prone to political interferences. The implementation of land use policies and land management in the North and East is still hampered by a lack of administrative capacity in the hands of the provincial council administration, the reluctance of administrators to become involved in land disputes, which had an inter-ethnic dimension and the influence of political favoritism in administrative decisions, which often means *ethnic* favoritism. This situation paralyzes land management in the North and East even after the ceasefire agreement and creates serious repercussions for the *perception* of land holders about the accountability and effectiveness of land administration. The LTTE has established a separate system of police and courts in the area under their control. The Eelam courts work together with the Tamil Eelam Police to enforce LTTE laws. In the uncleared areas of the East, both courts administered by the Government of Sri Lanka and the courts administered by the LTTE operate. This situation creates confusion amongst civilians regarding the effectiveness, applicability and validity of the judicial system.²⁰ In effect, this situation contributes to persisting land tenure insecurity and insecure access to land for rural households.

27. Since the late 1990's the Government of Sri Lanka has been piloting approaches to introduce land title registration in limited locations outside of the conflict affected regions. The advantages of a title registration system over the existing deeds registration system are as follows. The deeds registration system is based on registering legal documents, such as contracts of sales, and has weak, if any, mechanisms for ensuring consistency among these registered documents for a particular land parcel. Therefore, it is possible to have multiple deeds registered against a single property which are mutually contradictory. The title registration system is based on the land parcel itself. Each land parcel is identified by a unique number and rights registered against that property are tracked in a single title registry entry for that parcel. Furthermore, the State guarantees the information in the title registry as being conclusive and is obliged to indemnify parties that suffer as a result of unreliable information. While the land titling program has thus far been piloted on a small scale outside of the conflict affected regions, the successful implementation of this program in the North and East of the country could be an important instrument for addressing the identified conflict related land issues.

²⁰ Source: CPA 2003

TYPOLGY OF LAND-RELATED CONFLICTS AFTER THE CFA

27. In order to analyze the convoluted situation of land disputes after the CFA, this report suggests to differentiate three types of land conflicts. This differentiation is necessary to separate out the structural causes of land disputes from their link with the political dynamics of the ethnic conflict. Three types or levels of land issues are distinguished:

- i. *Inter-individual* land disputes and property rights issues (individual-individual, individual-state) which remain *intra*-ethnic and where there is no inter-ethnic dimension involved.
- ii. *Inter-communal* and inter-individual land disputes and property rights issues (individual-individual, individual-communal, communal-communal) with an *inter*-ethnic dimension involved.
- iii. Inter-individual and inter-communal land disputes and property rights issues (individual-state, communal-communal, communal-state, conflict parties) *where the inter-ethnic dimension has become dominant*. These issues are highly politicized and considered as core fundamental grievances of one or more of the conflict parties.

28. In order to differentiate and scrutinize the three types of conflicts, two analytical categories are proposed which are essential for understanding the link between land and rural livelihoods: land tenure security and land access.

- i. *Land tenure security* addresses issues of land and property rights, perceived security of these rights among right holders, problem of loss of documents, impacts of conflict on land transactions, land disputes arising from resettlement and reconstruction, especially in the housing sector.
- ii. *Land access* analyses the link between access of vulnerable groups to land and their livelihood opportunities. It looks at the impact of the conflict and the tsunami on livelihood assets (e.g. loss of property) and how the conflict has affected access (and informal rights) of these groups to their land-related livelihood resources (such as agricultural land, common pool resources, e.g. forests).

Governance issues are important for both land tenure security and land access. They entail the policy framework, including formal legislation and traditional laws, as well as the enforcement mechanisms of such laws. The enforcement mechanisms are crucial, since they define the practical implementation of laws. Enforcement mechanisms include land administration (e.g. title registration, title alienation), informal or customary mechanisms for resource access and the involvement of other actors which may influence, legally or illegally, the implementation of land laws and related policy frameworks.

Table 4 enumerates the various land-related issues relating to Level 1-3 types and distinguishes land tenure and property rights, land access and governance issues. The category “Land tenure and property rights” relates to disputed claims for user rights to

land (or property), whereas “land access” entails physical and spatial access to land for livelihood purposes which may be restricted due to political insecurity after the ceasefire agreement. Both categories are related to “governance issues”, which look into questions of land administration, land alienation and political interferences in these. Annex 1 provides detailed elaboration and the data sources for each of the listed issues.

29. The boundaries between the three levels of land issues can be fluid, in particular when we look at Level 2 and Level 3. Some issues elaborated as Level (2) type conflicts may become politicized to an extent that they need to be categorized as Level (3) type conflicts. For example, inter-ethnic disputes over land resources, which have structural roots in increasing land scarcity, can become subject to political and ethnic manipulation and then a source of inter-ethnic grievances, which go out of hand or which are used by political spoilers to steer inter-ethnic resentment. Examples could be Sinhalese grievances about inaccessible land controlled by the LTTE or Tamil-Muslim grievances over land access, or disputes over religious structures.

Table 4: Three Levels of Land Disputes and Related Governance Issues

Level 1 type	Level 2 type	Level 3 type
<p>Inter-individual land disputes and property rights issues; no inter-ethnic dimension involved.</p>	<p>Inter-communal and inter-individual land conflicts; inter-ethnic dimension involved.</p>	<p>Highly politicized issues (individual-state, communal-communal, communal-state, conflict parties); Inter-ethnic dimension dominant.</p>
<p><i>Land tenure and property rights:</i></p> <ol style="list-style-type: none"> 1. Disputed occupation of land (secondary occupants, encroachment of abandoned land), 2. Disputed titles. False titles, illegal alienation of land (“Japan” deed), 3. Transfer under duress or forcible fraudulent transfers, 4. Unclear property rights and occupation of temple lands, 5. Boundary disputes, 6. Loss, destruction of title documents, 7. Gender issues (e.g. legislation discriminating against women, traditional laws). 	<p><i>Land tenure and property rights:</i></p> <ol style="list-style-type: none"> 1. Inter-ethnic disputes over water allocation and land access in irrigation schemes, 2. Inter-ethnic disputes over competing land uses, 3. Disputes over fishing landing rights, 4. Inter-ethnic land transfers during the armed conflict, 5. Land disputes between returnees and secondary occupants being from different groups, 	<p><i>Land tenure and property rights:</i></p> <ol style="list-style-type: none"> 1. Sinhalese encroachment close to military camps, 2. Inter-ethnic transfers of land and property, in particular in and around Trincomalee,
<p><i>Land access:</i></p> <ol style="list-style-type: none"> 8. Landlessness among IDPs and refugees (e.g. second generation), 9. Land mines and unexploded ordinances makes access to land and property dangerous, 10. Access problems to common-pool resources (e.g. jungle, lagoon) due to insecurity. 	<p><i>Land access:</i></p> <ol style="list-style-type: none"> 6. Restricted land access in inter-ethnic areas due to political insecurity and fear. 	<p><i>Land access:</i></p> <ol style="list-style-type: none"> 3. Land inaccessible for Tamil farmers located in high security zones and land or property occupied by military, 4. Land inaccessible for Muslims in LTTE controlled areas, 5. Land inaccessible for Sinhalese located in or close to LTTE controlled areas (border villages).
<p><i>Governance issues:</i></p> <ol style="list-style-type: none"> 12. Existing laws creating impediments in obtaining re-possession from long-term occupiers, 13. Encroachment on state land, sometimes supported by political or militant groups, 14. Existence of parallel court system established by LTTE can create confusion due to plural institutions in charge for land issues. 	<p><i>Governance issues:</i></p> <ol style="list-style-type: none"> 7. Disputes over religious symbols and their territorial implications, 8. Resentment towards increasing power and influence of politicians in ethnically biased allocation of state land, 9. Biased or ineffective administrative rulings on inter-ethnic land rights disputes. 	<p><i>Governance issues:</i></p> <ol style="list-style-type: none"> 6. Land in the North and East alienated to government corporative bodies, 7. Devolution and administrative powers over land administration, 8. Boundary redrawing of districts and divisional secretariats according to ethnic lines, 9. Militarization of administration in some parts of the North and East, 10. Strategic settlements in the North and East established during the 1980s.

Source: own categorization and compilation from various data sources. Detailed explanations and references are provided in Annex 1.

30. Encroachment on state land has been an issue of much concern in the North and East (as it has in other places of Sri Lanka). A Government Circular issued by the National Land Commissioner requests relevant authorities not to regularize any encroachments that took place after the 15 June 1995. Part of the encroachment, often labeled “genuine” encroachment arises from the need of growing families to give land to their children or from displaced persons to find some place to stay. In other cases, encroachment has been politically supported by often unidentified forces, with the help or silent consent of Army and Police or the LTTE.²¹ Or militant groups have illegally alienated land to IDPs, for example in Vavuniya. If such encroachment raises issues of inter-ethnic concern, they are to be classified under Level (3) types of issues, since their resolution needs to be incorporated into a broad political settlement.

31. Depending on different use types of land, the specificities of property rights to land may also differ. In addition to private ownership rights, there are a number of user rights without full ownership rights. User rights can be formal, e.g. documented through permits or grants issued by government offices and they may be informal, such as customary rights to use common-pool resources (forests, lagoons etc.). In addition, there can be other types of “rights” or perceived rights, such as illegal occupation of state land, encroachment of forests, and encroachment of private ownership. Some of these land uses can be considered as rights if their legitimacy is based on specific rules, others may be illegal and may require intervention by the state (Table 5).

Table 5: Characteristics of Various Tenure Rights

Land Rights	Ownership Rights	User Rights
Formal	Inherited or purchased or government transfers with title deeds – mainly urban and plantation.	Largely legal time bound agreements such as lease holdings – mainly urban
	Surveyed and mapped.	Long-term lease of land such as in colonization schemes – mainly rural
Informal	Traditionally inherited, largely unsurveyed and without legal documents – mainly rural	Traditional land sharing, theoretically legally binding, such as ande, thattumaru and kattimaru – totally rural
	Access to common property – both urban and rural	
Other “rights”	Illegal use of public land – squatting on urban public land; encroached forests for agricultural purposes; informal “sharing” of common property land such as for free grazing.	

Source: IPS (2004)

²¹ Source: UNHCR 2003.

32. The specific forms of ownership and user rights and the complex legal specifications of different titles create further confusion and prospects for disputing claims. These convolutions in user rights are manifest in a number of issues relevant for Level 1 and 2 type land conflicts:

- i. The boundaries of state and private land ownership are fuzzy, in particular for the case of permit titles, since the state alienates land for private use, but retains some powers to control the proper use of it. Such legislative clauses are open to interpretation and offer scope for corruptive uses or political interferences, for example the possible cancellation of permits. The misuse and other types of malpractices and frequent changes in land policies with regard to title specifications have contributed to further confusion on the aspect of land ownership, both among title holders and the local administrators.
- ii. The responsibilities of different state authorities to alienate state land for different uses are often unclear or disputed between central and provincial authorities, because central government authorities have vested land in the North and East with a number of state agencies which too have conflicting claims over land.
- iii. The land administration system, in particular regarding documentation of titles, is complex for both, state and private land. Overlapping administrative responsibilities for specific land issues, for example governing agricultural land use and water rights in irrigation schemes, further confuses responsibilities for land administration and land dispute resolution among different government authorities.
- iv. A serious concern after the ceasefire agreement has been that a number of rights holders have lost their documents and that parts of the documentation held by the state in land registries have been destroyed or damaged. In some cases, illegal transfers have been “regularized” by false deeds or other documents.

33. There is also an ethical dimension in land transactions: although the formal dealing of land transfers may have been legal, some land transfers have been done out of a situation of distress by the seller and created conditions favouring the buyer of the land. Such allegations are often brought forward by the various ethnic groups.

LAND USE AND POST-TSUNAMI RECOVERY

34. The Indian Ocean tsunami on 26 December 2004 has affected the conflict-affected areas of Sri Lanka with particular gravity. It displaced some 430,000 people and left more than 100,000 homeless/landless. Around 70% of the affected areas are within the conflict-affected areas, placing an additional burden to this already affected zone. The overall damage is estimated to be around 1 billion US \$ (4.5% of the GDP). The percentage of population affected was highest in the Amparai and Mullaitivu districts with concentrations of Tamil and Muslim populations respectively. The Batticaloa and Amparai districts alone account for 43% of the affected population island-wide.²² In these areas, the tsunami affected people were already highly vulnerable in social and economic terms due to the effects of armed conflict and as a consequence, their resilience to respond to the disaster was limited. Some people who were internally displaced due to the armed conflict have become displaced again by the tsunami. Coastal Muslims many of whom are fishing communities suffered by far the largest casualties as a result of the tsunami accounting for 53% of the Tsunami deaths.²³

Table 6: Districts in the North and East Affected by the Tsunami

District	Displaced Persons			Deaths	Injured	Missing	Damaged Houses	
	In welfare centers	With relatives	Total				Completely	Partially
Jaffna	7,635	33,381	41,006	2,640	1,647	540	6,084	1,114
Kilinochchi	0	1,603	1,603	560	670	0	246	-
Mullaitivu	8,212	14,390	22,602	3,000	2,590	412	5,033	424
Trincomalee	13,778	59,208	72,986	1,078	1,328	45	4,830	3,835
Batticaloa	19,770	35,047	54,817	2,975	2,375	340	12,232	5,376
Amparai	22,215	77,797	100,012	10,436	6,711	161	17,117	10,574
<i>Total Northeast</i>	<i>71,600</i>	<i>221,426</i>	<i>293,026</i>	<i>20,689</i>	<i>15,321</i>	<i>1,507</i>	<i>45,542</i>	<i>30,323</i>
Total Sri Lanka	87,270	424,158	511,428	31,229	23,189	4,093	63,447	43,361

Source: UNHCR statistics as of May 2005, compiled from District Secretariats of the affected Districts (<http://unhcr.lk/statistics>).

²² Source: Frerks and Klem 2005.

²³ Source: UNHCR 2005, 12.

35. The tsunami has further added to land-related problems in the conflict-affected areas of the North and East.²⁴ The impacts of the tsunami on rural livelihoods in the conflict-affected areas have been dramatic.²⁵ The tsunami surge completely destroyed around 99,480 homes and partially damaged about 44,290. The completely and partially damaged houses together comprise 13 percent of the housing stock in the administrative divisions along the coast. The tsunami has displaced more than 500,000 people adding to the still unresolved problems of resettlement of persons displaced by the armed conflict.²⁶ The destruction and loss of lives has been highest in the most densely populated areas of Amparai and Batticaloa coasts and it is difficult to find alternative housing locations for tsunami affected families in these areas, limiting the potential scope for preventive policies to deal with future tsunami disasters. In some areas, sea water intrusion and dune formation have affected coastal land quality in an already densely populated area with high pressure on residential and cultivation land and have contributed to decreasing land availability for cultivation.

THE BUFFER ZONE POLICY

36. Immediately after the tsunami, one core government policy for future disaster prevention has been the establishment of a setback area (or a buffer zone) on the coastal belt to provide protection against future tsunami events. This policy has involved the large-scale relocation of people living in those coastal areas declared as a setback area. The government's policy on this, in particular on the specifications of the setback area has changed several times since January 2005 and seems to have been largely abandoned by the end of 2005. Originally, the government announced a modification of the rules governing land use along the coastal belt of Sri Lanka declaring a 100/200m setback area. The Urban Development Authority (UDA) published guidelines²⁷ providing rules regarding the development of the 1km wide stretch of land from the mean tide line. These guidelines defined a setback area or buffer zone which is limited to vegetations, parks, ports, fishery harbors and related developments as well as historical monuments and archeological sites. This setback area was defined as 100m landwards from the coastal line in the western half of the country from Point Pedro to Point Dondra and 200m landwards from the coastal line in the eastern half of the country from Point Pedro to Point Dondra. The Task Force for Rebuilding the Nation (TAFREN) has specified this buffer zone further providing district-based specifications of the 100/200m setback area. Reconstruction of damaged or destroyed houses will not be permitted within the 100/200m setback area. The government's policy was to provide free of charge a house with minimum 500 sq.ft. in close proximity to the original location for those to be relocated from the setback area. The LTTE declared a 400m setback area in the eastern coastal shores of the Vanni and implements this in areas under its control.

²⁴ Sources: CPA 2005c, Frerks and Klem 2005, Hasbullah et al. 2005, World Bank et al, (2005).

²⁵ Source: World Bank et al. (2005) Sri Lanka 2005 Post-Tsunami Recovery Program. Preliminary Damage and Needs Assessment.

²⁶ Source: see Table 8.

²⁷ These guidelines were published in a Public Notice dated 17 January 2005. These guidelines were specified by the newly created Task Force for Rebuilding the Nation (TAFREN) in two separate Public Notices issued on 27 February 2005.

37. The government's originally rigid proposal on the setback area has created a number of land-related concerns in the conflict-affected areas. A strict implementation of the original proposals would have implicated a large-scale relocation of tsunami victims, which was difficult to implement in some parts of the East, where population densities are very high along the coastal belt and alternative (state) land was not available in sufficient quantity. In addition, population relocation in multi-ethnic areas touches upon the fragile ethnic balances we have referred to above. It became clear that for practical reasons a strict enforcement of such policy would not be possible. For example, in the East, such enforcement would have required the relocation of considerable parts of major cities, such as Batticaloa and Trincomalee. In response to these criticisms, the Sri Lankan government has revised its original proposal various times, in particular increasing the flexibility of its handling and also revising the overall specifications of the setback areas in different localities and seems to have abandoned it overall by the end of 2005. The repeated changes in government policies have created a situation of uncertainty and confusion among administrators, aid agencies and affected tsunami victims formerly living in the declared setback areas.²⁸ At the same time, local authorities had to take account of possible changes in administrative responsibilities arising from a joint mechanism Post-Tsunami Operational Mechanism (P-TOM) between the Sri Lankan government and the LTTE for administering aid funds in the North and East in summer 2005. Many rules and decisions remained ambiguous even to local government officials as a consequence of pending decisions at the centre.²⁹

38. Moreover, the centralized emergency planning after the tsunami has reshuffled the delicate balance of administrative responsibilities between central government and provincial councils and within the central government:³⁰ The government has made use of the regulations passed in the Coast Conservation Act No 57 of 1981 as well as the powers granted to the Urban Development Authority (UDA) in the Urban Development Act No. 41 of 1978 and the Gazette (Extraordinary) No. 223/16 dated 17 December 1982, which declares the coastal zone area 1km from the mean high water line as "Development Area" falling under the purview of the UDA requiring approval from the UDA for any developmental activity in this zone. After the tsunami, the UDA has withdrawn powers with regard to this Development Area it had formerly delegated to the local authorities by Public Notice dated 31 December 2004. In addition, the government has passed an Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 providing police officers or members of the armed forces with powers to order any person in or about certain areas, including "the seashore" to remove them from that place or to use force to give effect to such order.³¹ Administratively, the coordinating power has been vested in newly created authorities attached to the President's office, such as the Task Force for Rebuilding the Nation (TAFREN), which is responsible for construction of permanent shelter for the displaced of the tsunami from the setback area.

²⁸ Source: CPA 2005b, 2005c, Frerks and Klem 2005, UNHCR 2005.

²⁹ Source: Frerks and Klem 2005.

³⁰ Sources: CPA 2005c, Frerks and Klem 2005.

³¹ Source: CPA 2005c, Welikala 2005.

BUFFER ZONE POLICY AND LAND CONFLICT

39. Land scarcity and pressure on land is likely to increase in the densely populated areas of the East, especially in Amparai, Batticaloa and Kinnyia. The government's original relocation policy also implied that reserve land and agricultural land be converted into residential land for relocation schemes. This would have been likely to increase the pressure for economic use of land by cultivation, livestock grazing and other uses with potential for local land disputes. Due to the delicate multi-ethnic composition of the population in these areas, land disputes can easily be reinterpreted in ethnic terms or used for political purposes. Also, increasing pressure for land may decrease land access based on informal user rights which are often important for vulnerable households (e.g. firewood collection). Many tsunami victims also lost proof of ownership or land use rights both in the books and on the ground (e.g. most land markers and boundaries are totally or partially destroyed). For those having lost their documents, similar problems apply as compared to conflict-related IDPs losing their property documents.

40. Table 6 summarizes the major concerns relating to land and conflict that have emerged in the post-tsunami recovery phase. Some of these issues are linked with the ethnic conflict, for example the concern about relocation and how it may affect “ethnic population ratios” in specific localities of the East, but also the fact that some state legislation discriminates against women (CPA 2005, UNHCR 2005). Of particular concern is the differential treatment of conflict-affected people and tsunami-affected people regarding the entitlement to state welfare packages and to state land allocation, which may create grievances among those conflict-affected IDPs, who do not benefit from the post-tsunami recovery aid and are also not allocated state land in the process.

The table follows the analytical framework set out above (see Table 4) and differentiates three levels of land conflict and three categories (land tenure, land access and governance). The table lists issues which have emerged in the post-tsunami recovery process as well as enumerates items that may potentially create disputes and inter-ethnic tensions in the future. The former largely relates to the government's buffer zone policy, how it may affect land markets and thus land access for poor households and the kind of uncertainty the policy process has created. The latter points to the potential ethnic sensitivity of some policies, e.g. population relocation in multi-ethnic areas.

Table 7: Post-Tsunami Reconstruction and Land Related Issues

Level 1 type	Level 2 type	Level 3 type
<p>Inter-individual land disputes and property rights issues; no inter-ethnic dimension involved.</p>	<p>Inter-communal and inter-individual land conflicts; inter-ethnic dimension involved.</p>	<p>Highly politicized and ethnicized land issues (individual-state, communal-communal, communal-state, conflict parties); Inter-ethnic dimension dominant.</p>
<p><i>Land tenure and property rights:</i></p> <ul style="list-style-type: none"> • Government's conditions for acquisition of private land for relocation program has long not been specified creating uncertainty, • Loss, destruction of title documents in the turmoil of the tsunami, • Existing state legislation and traditional inheritance laws discriminating against women. 		
<p><i>Land access:</i></p> <ul style="list-style-type: none"> • Fishing communities feel insecure about their future livelihood options related to the coastal zone and their access to land located in the buffer zone. • Land mines and unexploded ordinances washed away by tsunami make access to land and property dangerous. 	<p><i>Land access:</i></p> <ul style="list-style-type: none"> • Government's policy on relocation creates additional pressure on scarce resources, which may trigger further resource-based disputes between different communities and their competing land uses, potentially triggering inter-ethnic disputes. 	
<p><i>Governance issues:</i></p> <ul style="list-style-type: none"> • Lack of transparency and accountability in beneficiary selection for housing relocation, 	<p><i>Governance issues:</i></p> <ul style="list-style-type: none"> • lack of transparency and accountability in the allocation of land for relocated families creates suspicion of ethnic favoritism. • differential treatment of tsunami affected populations belonging to different ethnicities or resentment of non-affected communities vis-à-vis the large-scale assistance granted to tsunami-affected communities from another ethnic group. 	<p><i>Governance issues:</i></p> <ul style="list-style-type: none"> • The government's policy to recentralize land acquisition for alienating it under the relocation program affects the delicate question of balance of powers between centre and provincial authorities, • relocation may affect ethnic settlement patterns and political concerns from different ethnic groups may arise in this regard.

Sources: CPA 2005b, 2005c, Frerks and Klem 2005, Steele 2005, UNHCR 2005.
 Own categorization.

CONCLUSIONS

41. Post-conflict and post-Tsunami reconstruction processes need to reflect the changes which have taken place during the times of armed conflict and the dynamic shifts in land use after the ceasefire agreement. Reconstruction processes are closely linked with land use, in particular with regards to housing (re)construction after the armed conflict and the Tsunami and livelihood support projects to revive the regional economy in the North and East, which relies on agriculture as its backbone. In addition, any constitutional and administrative reform as part of reconstruction processes and as part of peace building will affect the power balances between central and provincial authorities with regard to land administration.

42. As shown throughout this report, land and conflict in the North and East includes a large number of different types and levels of land issues depending on specific locations. The research has identified five major trajectories, which define the opportunities and constraints for a comprehensive and effective policy framework for land access and land tenure security in the North and East after the ceasefire and after the Tsunami:

- i. Current and emerging land disputes need to be understood in the context of past land policies, which have kept administrative power over land use with central government authorities. The ethnicization of some land use policies has been mirrored in biased and partial implementation of land access and tenure security in the North and East, in particular in state land alienation, in regularization of encroachments and in delayed and controversial rulings for land disputes.
- ii. The armed conflict has further aggravated the pressure on land resources and has increased ethnic grievances related to land use. Land use has declined dramatically due to population displacement, restricted access to land (mines, military confrontations) and low economic incentives to invest on land due to the prevailing political insecurity. The armed conflict has therefore increased land tenure insecurity and reduced access to land, in particular for vulnerable families.
- iii. Although some ethnic tensions are aggravated by land disputes, competing access to land and restrictions over land use are often rooted in deeper lying structural causes. They are only partly an expression of inter-ethnic grievances that deepened during times of armed conflict, but are caused by increasing pressures for scarce resources, such as population pressures, bad governance, unfavourable social and economic processes as well as political decisions. Since the signing of the ceasefire agreement, protracted disputes over land access and use have surfaced in the North and East after being suppressed during the armed conflict. In addition, new land issues have emerged as a result of the return of displaced persons.
- iv. Anecdotal evidence shows that some past policies and the impacts of armed conflict have transformed the governance frame of land access and land tenure security in the North and East creating ethnicized avenues for land administration even on local and regional levels. In this context, citizens, as claimants of rights

or applicants for land, have developed a general mistrust vis-à-vis perceived partialities of local and regional administrators according to their ethnicity or political affiliation.

- v. In more operational terms, key aspects of tenure security include the recognition and recording of land-related rights. The Government needs to move forward with plans to put in place a parcel-based title registration system, building upon the experiences with piloting this activity in recent years. This will likely be a long-term undertaking, however. In the meantime, intermediate options can be implemented (communal recognition of property and use rights; improvements in the existing deeds registration system, etc.).
- vi. The government's policy after the Tsunami has added to this general level of mistrust vis-à-vis state authorities. The set-up of the buffer zone and the decision to relocate houses from within this buffer to more secure places have been taken and implemented without adequate participation of the affected population. Selection procedures have been prone to political manipulation. Due to the sensitive nature of land issues, in particular when relocation of populations in multi-ethnic areas is involved, lack of transparency and accountability can contribute to perceptions of partiality of state authorities among ethnic minorities.

43. The analysis of the different levels and types of land issues suggests that, while land conflict needs to be placed in the broader political and historical background, many land issues in the North and East can be solved prior to a final political resolution of the ethnic conflict. This applies in particular for Level 1 type conflicts, where no inter-ethnic dimension is involved, and largely to Level 2 type conflicts, where an inter-ethnic dimension is involved, but is not dominant. The latter types of conflict are of particular concern, since if left unattended, they may become politicized and ethnicized, so that they need to be considered as Level 3 type conflict where the inter-ethnic dimension has become dominant. In order to avoid such escalation of land issues into inter-ethnic grievances, it is important that aid agencies, non-governmental organizations and government agencies involved in reconstruction and development work of the conflict-affected areas, including post-tsunami recovery work, carefully consider the constraints and the opportunities of settling land issues in their area of work.

POLICY IMPLICATIONS

44. The core premise of this report is two fold: land issues in Sri Lanka cannot be seen in isolation from the ethnic and political conflict and, at the same time, even though land conflict is often linked with the ethnic conflict in Sri Lanka, a large number of land conflicts in the North and East can be resolved prior to a full and national political solution to the ethnic situation. Many of these land conflicts ought to be solved as a prerequisite for ensuring a sustainable reconstruction and development process in conflict and tsunami affected areas in the North and East.

This report does not provide blue print solutions, but rather aims at contributing to the overall debate distinguishing issues that are possible to address through administrative and operational decisions from those which are ethnically and/or politically sensitive and will be part of negotiations between the conflict parties in the peace process. In this context, some policy implications have been identified as described in the section below.

Tenure Security:

First, there is a need for an effective land administration system that responds to the particular context of a conflict and reconstruction situation. This will certainly entail a greater inter and intra-institutional coordination and strengthening the existing administrative and operational capacities that were established for normal times and standard situations. A core one is related to the ability for dealing with competing claims over land and other land-related disputes. It is imperative for the state to provide public guarantee of tenure security by establishing, among others, alternative means for effective conflict resolution at the local level (e.g. inter-communal mechanisms).

While the overriding principle for dispute resolution should be subsidiarity, i.e. disputes should be solved on the lowest institutional level possible, it is advisable that existing national administrative and judicial bodies enhance their capacity for monitoring and tackling pending cases (i.e. huge land-related backlog at the national level). Another area for improvement is related to the need for fast-track mechanisms that could, for example, deal with minor land disputes surrounding residential land, boundary disputes etc.(pls see Annex 2, table 8 for details). The principle of subsidiarity has, however, the potential risk that dominant local elites capture the decision making power surrounding land-related matters. This would have to be mitigated early in the process by establishing the necessary checks and balances.

Another key element for tenure security is the formal recognition of land-related rights by the state and third parties. Thus, land title registration plays an important role as part of a sound land administration system. In this context, some policy implications are identified. First, higher priority needs to be given to land title registration and the Government's current efforts to prepare for a national program for title registration. Areas that require improvement are the legislative basis for registration, institutional arrangements for conducting this work, and greater public outreach to inform the population of the benefits of the program and to obtain feedback from intended beneficiaries. Second, given the conflict and post Tsunami situations, the title registration system may be more adequate to such circumstances. International experience points to the advantages of administrative

mechanisms as part of the process of adjudication of rights where disputes or situations of unclear rights can be reviewed and resolved in a transparent manner with community involvement. Experience with piloting the title registration system has shown that significant amendments to the Registration of Title Act of 1998 will be needed if the system is going to be capable of dealing with anything other than the most clear cut cases of land tenure rights. An additional challenge will be to implement it in the conflict affected areas.

Third, and as needed corollary to the first point, well defined, fully equipped and capable land-related institutions should be put in place, in order to effectively enforce property and land use rights. These are required at the national and local levels and, as we can see in Annex 1 and Table 8, within and outside the governmental machinery. Most of such institutions need to see their actions as services to be provided at low cost in order to guarantee a sustainable land administration system. Leading edge experience internationally points up the potential advantages offered by information technology in bringing greater transparency and increased efficiencies in the provision of land administration services.

Land Access:

Land-related inequities should be addressed as early as possible. There is ample evidence that initial land endowment or subsequent redistribution failures that are not root causes for conflict could easily aggravate or trigger it. In Sri Lanka, as we have analyzed, initial failures, the very strong state-dominant land holding structure in some areas, and the subsequent politicization of related issues are determinant for the existing power relations and distortionary policies.

As is the case with tenure security issues, the particular Sri Lankan conflict context calls for differentiated and innovative approaches to guarantee access to land, in particular for the most vulnerable population. Whatever the approach may be, the ethnic balance should be a primary criterion.

Issues related to access include addressing (and further preventing) conflicts arising from displacement and returnees, land mines, female headed households (usually widows), and biased state-driven land allocation processes on the one hand. On the other, land conflict is usually detrimental to equity and Sri Lanka is not an exception. Competing claims for land (e.g. among different ethnic communities), land scarcity, in particular in the conflict affected areas and consequent landlessness contribute to exacerbate social tensions and the overall conflict situation. An unambiguous policy framework for state land distribution, land allocation to returnees, tsunami affected and displaced population, and overall access to land is essential.

46. Governance is a cross-cutting issue for land tenure security and land access. A number of legal reforms are currently discussed to make land rights and land use policies more effective. These reforms in policy need to trickle down to the practice of land administration, especially with regard to land allocation and land rights. The challenges in relocation and setback area policies after the tsunami have illustrated the crucial importance of establishing rules-in-practice and finding enforcement mechanisms for such good governance practices, which are perceived as fair, accountable and effective by all involved stakeholders. It is unrealistic to expect immediate improvements in

administrative practices, but development agencies, government departments and non-governmental organizations working on reconstruction and development in the North and East need to urge administrators involved in land issues relevant for reconstruction and development to follow transparent planning procedures, encourage beneficiary involvement and criteria-based decision-making. They may also consider how they can strengthen the administrative capacities of governmental agencies involved in land allocation and land administration.

As part of good governance, limiting discretionary bureaucratic behavior is a must. The following policy principles could support the Government efforts in the area of land administration.

- i. *Inclusiveness and fair treatment*: all citizens should be treated based on the same technical criteria regardless of ethnicity, caste or class.
- ii. *Transparency*: decisions relating to land rights need to be transparent to all affected stakeholders. This requires a change in processes of land allocation and in some land administration mechanisms; and a change in administrative culture (relationship between government officer and citizens).
- iii. *Accountability*: administrators are to be held accountable for their decisions by the affected stakeholders and the state should enforce an effective accountability framework.
- iv. *Participatory and consultative*: the process of land allocation and land administration should involve the affected and concerned stakeholders in a participatory and consultative process.
- v. *Locality-specific and criteria based*: it is crucial to acknowledge and understand the complexities of a particular socioeconomic and political context. The framework planning of land allocation and land use in the Province and on lower levels of administration need to base their decisions on local dynamics as well as on scientific and technically sound criteria. This applies, for example, for the implementation of the buffer zone policy in the tsunami affected areas.
- vi. *Comprehensive*: A sound land administration system will aim at alleviating inequities and inefficiencies in the allocation of land resources and in the provision of land tenure security. In a post- or semi post conflict setting, this can only be achieved if both the root and causes and consequences of conflict are taken into account. Addressing land and conflict issues demands an integrated and comprehensive approach.

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ANNEX 1: THREE TYPES OF LAND DISPUTES IN THE NORTH AND EAST OF SRI LANKA

This Annex scrutinizes and provides evidence for the different land issues listed and categorized in Table 4 of the main report. The main report has differentiated three types or levels of land issues:

- iv. Level 1: *Inter-individual* land disputes and property rights issues (individual-individual, individual-state) which remain *intra*-ethnic and where there is no inter-ethnic dimension involved.
- v. Level 2: *Inter-communal* and inter-individual land disputes and property rights issues (individual-individual, individual-communal, communal-communal) with an *inter*-ethnic dimension involved.
- vi. Level 3: Inter-individual and inter-communal land disputes and property rights issues (individual-state, communal-communal, communal-state, conflict parties) where the inter-ethnic dimension has become dominant. These issues are highly politicized and considered as core fundamental grievances of one or more of the conflict parties.

Within each of these three levels, the Annex specifies issues relating to land tenure and property rights, issues relating to (physical, spatial) land access and governance issues relating to land alienation and land administration (see para 27f. in the main report). For each type of conflict, different issues are listed and examples given with respective sources of evidence documented in footnotes (see reference list of main report for full details of the sources).

INTER-INDIVIDUAL (PREDOMINANTLY INTRA-ETHNIC) LAND DISPUTES (LEVEL 1)

This section reviews inter-individual disputes relating to residential and agricultural land. Such disputes are normally resolved by the existing legal and administrative system, such as courts in the case of privately owned land and the respective land administrative bodies in the case of alienated state land. Issues listed in this section can, in principle, be sorted out without political involvement and prior to a final solution to the conflict on the national level.

Inter-individual disputes over land and property may emerge along a variety of issues related to the return of internally displaced persons and of refugees to their original place.³² Issues relating to tenure security, land access and land disputes on an inter-individual basis can be classified as follows.

³² Sources: UNHCR 2003, CPA 2003, 2005a; NEHRP 2004a, 2004b.

Land tenure and property rights:

1. *Disputed occupation of land (secondary occupants, encroachment of land):* The massive destruction of housing and the reduction in usable land have forced many displaced or landless people to occupy vacant lands, houses and properties.³³ Because the war has been so lengthy, IDPs and refugees may have abandoned their properties for periods of up to 10-15 years and secondary occupants could have been using this land, property for a similar period.³⁴ In some cases, secondary occupants cannot go back to their original homes, since these are located in inaccessible locations (HSZ, LTTE areas). But there is also evidence that illegal occupation, especially in Jaffna, is used by some to earn money or settle old scores.³⁵ Secondary occupants have often significantly invested in these lands and properties. In some instances, these secondary occupants use these areas as if these were their property. Some secondary occupants possess declaratory deeds in their favor, which would give them a prescriptive title of ownership. The lawful property owner (private property) can bring such case to the court. Court cases, however, are time-consuming and expected to take 5-10 years, and this time gap may substantially increase if a significant number of returnees filed their case in the courts.
2. *Disputed titles, false titles, illegal alienation of land (“Japan” deed): transfers under duress or forcible and fraudulent transfers:*³⁶ In some places, only part of a community was forced to flee or some people decided to move away and sold their property and land to those who remained for a price far below market values because they felt under duress. In some instances, people were allowed to leave an area only after surrendering their properties to those who restricted their movements. In some cases, these transfers were sought to be formalized with forged deeds or written declaratory deeds in relation to private and State land. Such “deeds” were then transferred to third parties who purchased this land bona fide and feel now in possession of this land. These persons have no remedies as they have purchased land or property for which the vendor did not have a title. The problem is that without resorting to a protracted legal procedure, the deed cannot be declared void.³⁷ Such false deeds, commonly called “Japan deeds” are

³³ Such occupation can be differentiated in three types: (1) Occupants and owner, right holder are of the same ethnic group, (2) occupants and right holder are of different ethnic groups (occasionally, this includes politically encouraged encroachment of lands of the “ethnic other”), and (3) the occupant is one of the conflict parties (army or LTTE). This sub-section deals only with issues relating to (1). Issues relating to (2) and (3) will be dealt with in para 60 and 65 respectively.

³⁴ The Prescription Ordinance permits a person to acquire the property of another through uninterrupted and undisturbed possession for ten or more years. (Source: CPA 2003, 16)

³⁵ Source: CPA 2003.

³⁶ Source: UNHCR 2003, 19. See Rösel (1997) for reports on such transfers in Trincomalee in the 1990s and various reports of the UTHR (J).

³⁷ Note that these issues become even more protracted if returnee and secondary occupant belong to different ethnic groups.

- in circulation in large quantities in Mannar, Vavuniya and Puttalam districts³⁸ and many displaced persons have fallen victim to these fraudulent transactions.³⁹
3. *Temple lands:* Many Hindu temples have received large tracts of land as donations from devotees, in particular in Jaffna and in Trincomalee. Many of these temple lands are currently used for residential lands without proper agreements or documented tenancy. Some temples have lost their records and administration of remaining records has been poor. Some of the temples are located in South India. There may also be boundary disputes and illegal sales and transfers affected over a period of time.⁴⁰
 4. *Boundary disputes:*⁴¹ Boundary disputes between neighboring land rights holders are difficult to resolve at present, because physical boundary structures are often dilapidated, overgrown or destroyed and documentation is often incomplete (title documents without survey maps), which make an exact identification of property boundaries difficult. Returnees may also face the situation that neighboring returnees arriving prior to them have created “facts on the ground” marking boundaries by erecting fences. Such disputes are particularly prominent in urban and semi-urban settlements, such as Jaffna.
 5. *Loss, destruction of title documents:*⁴² Many displaced persons have lost their title documents during the armed conflict. Persons who have lost their deed (private property) may apply for a certified copy at the District Land Registry. In the case of alienated state land, persons who have lost their permits or grants can apply for certified copies at the Divisional Secretariats (Table 5). However, documentation held by the state in land registries and the Kachcheries have partially been damaged or destroyed as an effect of armed confrontation (Table 6). The loss of title documentation creates immense problems in identifying land parcels and land boundaries, encumbrances and the owner or right holder of the land.
 6. *Gender issues:*⁴³ The current legislative framework discriminates against women, especially titles of alienated state land. At present, when state land is granted under the LDO, the grant is made to the head of household and does not recognize joint ownership of land. Thus the female spouse has not legal control over such land. This has implications for situations in which a woman’s spouse has been killed or disappeared. If women are the heads of household (as widows), but are not recognized as such, they will not be able to legally uphold the title to the property. This is a serious concern for cases where the husband’s death is not documented, the man is missing or where the husband’s death is not recognized by state authorities. Furthermore, since women are often not aware about their

³⁸ Puttalam: Illegal alienation of land has affected relocated IDPs who wish to remain in their area of displacement. It is estimated that 60% of the land in Puttalam on which IDPs relocated is state land, which was fragmented and illegally sold by local Permit and Grant holders to IDPs. Source: CPA 2003, 8.

³⁹ Source: NEHRP 2004a

⁴⁰ Source: CPA 2005a; NEHRP 2004a, 2004b.

⁴¹ Sources: CPA 2005a, UNHCR 2003.

⁴² Source: CPA 2003, 2005a; NEHRP 2004a, 2004b; UNHCR 2003.

⁴³ Source: CPA 2003, 2005a.

entitlements to land under resettlement schemes or other government welfare, they do not apply for such state benefits they are entitled for.

Table 5: Types of Property Documents

Type of land	Document	Copies kept by
Private	Deed	Owner
		Notary Public
		District Land Registry
State	Annual Permit, LDO Permit	Owner
		Divisional Secretariat
	LDO Grants	Owner
		District Land Registry
		District <i>or</i> Divisional Secretariat
	Leases & other grants under the State Lands Ordinance	Owner
		District Land Registry
		District <i>or</i> Divisional Secretariat
		Land Commissioner's Office, Colombo

Source: CPA 2003

Table 6: Damaged/lost documents at the District Land Registries in the North and East

District	Assessment of damage to land registries
Jaffna	Post-1940 documents of the Jaffna District were shifted to private premises eight times after 1986. On one of these occasions, the house where the documents were stored had been used by the LTTE and was captured by the Indian Peacekeeping Forces (IPKF). The IPKF reportedly used the register as fuel during the rainy season. Of the post-1940 documents, 1,325 volumes have been lost. All pre-1940 documents have been lost.
Kilinochchi	Prior to the opening of the Land Registry in 1990, registers for the Kilinochcho District were kept in Jaffna. All deeds registered before 1990 are still being kept in Jaffna; all those registered after 1990 are kept in Kilinochchi. Civil servants from the Registry removed the registers to Shantapuram in 1995 as a precaution. The registers were shifted anew due to displacement in 1996. Most post-1990 documents are still intact. Kilinochchi volumes which were kept in Jaffna were destroyed by the IPKF in 1987.
Mullaitivu	The Mullaitivu Land Registry was opened in 1984. Following heavy fighting in 1990, the Registry was destroyed and, according to the Jaffna and Vavuniya Land Registrars, all Mullaitivu registers were destroyed.
Vavuniya	Approximately 30 volumes from the pre-1940s have been damaged due to poor quality of paper.
Mannar	Approximately 30 volumes have been destroyed due to poor quality of paper.
Batticaloa	No land documents have been lost by the Land Registry, though a number of volumes were damaged following the 1978 flood.
Trincomalee	No documents have been lost by the Land Registry as a result of the conflict. However, a number of volumes stored before 1970 have been damaged due to the poor quality of the paper and storage, and following the 1964 cyclone. In addition, a small number of documents which were located at the Court were destroyed when the building was burnt down on two occasions.

Source: CPA 2003, UNHCR 2003.

Land access:

7. *Landlessness among IDPs and refugees:*⁴⁴ Many IDPs and refugees have been landless laborers or tenant cultivators prior to displacement, among them many Upcountry Tamils who settled in the North and worked as tenant farmers or laborers or Upcountry Tamils who became displaced during the 1977 and 1983 unrest who had encroached on state land in the North and East. It also includes the second generation of displaced persons who reached adulthood during the period of displacement, temporarily relocated or illegally relocated landless persons and settlers without documentation or encroachers (without political backing). Current resettlement and relocation policies⁴⁵ advise that IDPs cannot be relocated on State land in any District other than that of their origin.⁴⁶ However, many landless IDPs expressed the wish to be granted land in the area where they are currently residing. This applies particularly for IDPs in Vavuniya and Mannar.⁴⁷
8. *Land access is severely restricted in some specific locations and areas due to landmines and Unexploded Ordinances:* Landmines and Unexploded Ordinances (UXO) are lying in agricultural fields and paddy lands, the vicinities of residential homes, common places and shrub jungles. These mines pose serious threats to spontaneous returnees and prevent return of IDPs and refugees. Landmines and UXOs render large tracts of land unusable for agricultural cultivation and cattle grazing. It is estimated that approx. 900,000 mines are located in the North and East, especially concentrated in areas where military operations took place and along the lines of control demarcated by the conflict parties. Since mine clearance only proceeds slowly, right holders may be unable to access their property and land for a significant time into the future. For these cases, temporary and transitional accommodation needs to be provided until it is safe for them to repossess these locations.⁴⁸
9. *Access problems and informal property rights relating to common-pool resources:* Customary, informal use rights to common-pool resources, such as forests, lagoons, which are used for firewood collection, hunting, gathering and as grazing resources. These use rights often provide important livelihood sources for asset-poor households. These rights are in most cases not documented. At present, large parts of these areas are still inaccessible, partly inaccessible or civilians are reluctant to access these due to the pertinent mine problem, still pending security situation and increasing inter-communal tensions (in some areas of the East). Since it is mostly the marginal segments of a population who rely on such informal use rights, access restrictions may severely hamper their livelihood

⁴⁴ Source: CPA 2003, 3.

⁴⁵ In the Sri Lankan context, “resettlement” refers to return to the original place, “relocation” means settling in a place different than the original home place.

⁴⁶ This is so due to fear of changing ethnic population ratios in the new district, which could become an issue of political concern in inter-ethnic relations.

⁴⁷ Source: CPA 2003, 3.

⁴⁸ Source: CPA 2003, UNHCR 2003.

prospects.⁴⁹ However, very little research is conducted on this and no reliable data available at present.

Governance issues:

10. *Existing laws in Sri Lanka create serious impediments in obtaining re-possession from long-term occupiers and may discriminate against those who had to flee and leave their property.*⁵⁰ In the case of disputes over private land, the Prescription Ordinance and the Primary Courts Procedure Act provide that if a person was in occupation of a property for more than two months and a dispute occurred in relation to possession of the property, the person who was in possession will be permitted by courts to continue in possession until they were ejected by an order of a District court by a regular action. Such Court rule may take 5-10 years. Prescription Ordinance states that obtaining a prescriptive title requires proof of undisturbed and uninterrupted possession for 10 years by title adverse to that of a claimant. Since many secondary occupants also do not have a place to go back (for example, if their land is located in a HSZ), an extra-legal mediated solution to the dispute may be difficult to obtain.⁵¹
11. *There has been concern that Permit title holders may lose their use right to land due to displacement.* State land alienated under the Land Development Ordinance (LDO) as permit or grant which can be reverted back to the State if conditions stated in the permit or grant document are not met by the title holders. In particular, a grant can be cancelled if the Permit holder has not developed the land or for breach of stipulated conditions. Land converted into a grant title can only be taken back by the state under the Land Acquisition Act. Vulnerable under this legislature are Permit holders who were displaced before they could convert their title into a grant, landless who were in the process of Permit application or encroachment regularization when displaced and people living on leased out land. For the latter, it may be difficult to prove their occupancy of such land now because of lack of title and the difficulty to obtain other forms of proof. A Government Circular was issued in 2002 that forbids the cancellation of the Permits of displaced persons.⁵²
12. *Encroachment on state land has been common in the North and East (as it has in other places of Sri Lanka):* A Government Circular issued by the National Land Commissioner requests relevant authorities not to regularize any encroachments that took place after the 15 June 1995. Part of the encroachment, often labeled “genuine” encroachment arises from the need of growing families to give land to their children or from displaced persons to find some place to stay. In other cases, encroachment has been politically supported by often unidentified forces, with the

⁴⁹ Source: Korf et al. 2001; Korf 2003.

⁵⁰ Source: UNHCR 2003, CPA 2003.

⁵¹ There are reports that lawyers in Jaffna appear to have informally agreed not to use the Prescription Ordinance if the original owner was absent as a result of war. (Source: CPA 2005a, 46).

⁵² Source: CPA 2003, 51.

help or silent consent of Army and Police or the LTTE.⁵³ Or militant groups have illegally alienated land to IDPs, for example in Vavuniya. If such encroachment raises issues of inter-ethnic concern, they are to be classified under Level (3) types of issues, since their resolution needs to be incorporated into a broad political settlement (see below).

13. *The LTTE has established an own administrative, legal and court system in the areas coming under its control.* Land and property come under the purview of both the Government and the LTTE. In the LTTE controlled Vanni, land occupation is an issue resolved by the Government administrative structures along with the Tamil Eelam Police Force. Reportedly, IDPs occupying property are permitted to remain until the owners make claims for the property. Claimants first have to approach the Village Committees which operate in LTTE controlled areas. The Tamil Eelam police also attempts to resolve property disputes, failing which cases are filed in Tamil Eelam Courts.⁵⁴ In the uncleared areas of the East, both, the courts administered by the government and the courts administered by the LTTE operate.⁵⁵ This dual system of courts can create confusion amongst civilians regarding the effectiveness and jurisdiction of both. In some cases, a party that feels unhappy about the ruling of one system may resort to a ruling of the other system. Furthermore, some people have sought to receive property titles from both administrations.⁵⁶ To some extent, LTTE courts are also approached by Tamils living in the cleared areas (which have been partially under control of LTTE during the night).⁵⁷

A number of additional issues relating to land can create disputes over land, affect tenure insecurity or provide access problems, but these issues are common to all places in Sri Lanka and are not confined to the conflict-affected North and East. Among those issues are land fragmentation (subdivision of grants below stipulated limits), surveying costs, customary laws (e.g. Tessawalami Law for Northern Tamils, Muslim law) governing inheritance issues etc. Since these issues are not caused by or directly related to the armed conflict, they are not dealt with here.⁵⁸ However, it is important to note that some of these issues may await resolution because the overall administrative management capacity to deal with these issues is weakened by the conflict, which may delay resolution of such minor disputes significantly, causing further resentment.

INTER-ETHNIC LAND DISPUTES (LEVEL 2 AND LEVEL 3 DISPUTES)

When land disputes entail an inter-ethnic dimension, they easily become more protracted, because local disputes are often linked with broader inter-ethnic grievances relating to land colonization, armed conflict and suffering caused by the “ethnic other”. It is important to distinguish two different types of inter-ethnic conflicts:

⁵³ Source: UNHCR 2003.

⁵⁴ Source: CPA 2003, 57.

⁵⁵ Sources: CPA 2003, 2005a.

⁵⁶ Source: Korf et al. 2001.

⁵⁷ Source: Korf et al. 2001.

⁵⁸ See, for example, CPA 2005a, NEHRP 2004a,b.

- i. Level (2) types of conflict relate to inter-ethnic conflicts on a community or inter-community level, which may be solvable on a local or regional level through some form of negotiation between local or regional community representatives.
- ii. *Level (3) types of conflict* can be categorized as highly politicized issues relating to broader territorial claims. Level (3) conflicts can only be solved through high-level negotiations between the conflict parties.

Some issues elaborated as Level (2) type conflicts may become politicized to an extent that they need to be categorized as Level (3) type conflicts. This may be the case if they are not appropriately handled on an inter-communal level and become a source of inter-ethnic grievances, which go out of hand or which are used by political spoilers to steer inter-ethnic resentment. Examples could be Sinhalese grievances about inaccessible land controlled by the LTTE or Tamil-Muslim grievances over land access, or disputes over religious structures.

LEVEL (2) TYPE LAND DISPUTES

Level (2) type land conflicts largely relate to agricultural land and related use rights. Such conflicts involve persons from different ethnic groups and often relate to different user rights, such as the right to cultivation, the right to irrigation water, the right to by-pass land in order to access own land etc. Since agriculture is still the backbone of the economy in the North and East, such disputes, if remaining unresolved, can unduly delay economic recovery of the North and East and make many people unable to undertake their livelihood activities. Many, though not all of these, inter-ethnic disputes are located in the East. Often, such disputes continued to aggrieve the communities throughout the period of armed conflict, but only after the ceasefire agreement did they come to the open and some of them turned violent.

The overall picture of these inter-ethnic conflicts relating to land is very complex and place-specific. Most of these Level (2) type conflicts go beyond inter-individual conflicts and involve whole communities or groups of people. Still, there is no comprehensive assessment of all such inter-ethnic disputes throughout the North and East. The following schematic description of typical land conflicts is therefore not comprehensive for the whole North and East.

Land tenure and property rights:

1. *Inter-ethnic disputes over water allocation in irrigation schemes:* Disputes over water resource allocation is a common feature in many irrigation schemes. These disputes largely occur between upstream farmers and so-called tail enders (downstream farmers). Upstream farmers can partially or completely negate downstream farmers their entitlements to water by allocating more water to their own fields as agreed in the water distribution regulations or by completely blocking the flow of water to downstream farmers. If such water blockade is executed during crucial periods of the cultivation cycle, this can seriously harm the yields of downstream farmers. In most major irrigation schemes in the East (Kantalai, Allai, Gal Oya), it is usually the Sinhalese settlers who were colonized

- upstream and Tamil and Muslim settlers were settled downstream. Thus, Sinhalese settlers control the flow of water in these schemes. There have been reported disputes in most irrigation schemes of the East, because upstream Sinhalese farmers have denied appropriate water allocation to downstream Tamil and Muslim farmers.⁵⁹ In Muttur area, Trincomalee district, after the ceasefire agreement, when Tamil-Muslim tensions increased, Tamil farmers threatened to interrupt the flow of water to downstream Muslim fields.⁶⁰
2. *Inter-ethnic disputes over competing land uses:* these disputes often occur due to competing land use claims between land users of different ethnic origin. Often user rights over land are informal. For example, there is a prominent conflict in Amparai district around Wattamadu tank between cattle owners and paddy cultivators over the use of land either as grazing land or as cultivation land. In this case, the majority of cattle owners are Tamils and most cultivators are Muslims. After the ceasefire agreement, this conflict has emerged into the open and has been relabeled as an inter-ethnic conflict.⁶¹ There are also inter-ethnic land disputes between Tamil and Sinhalese and Sinhalese and Muslims.⁶² Often, such disputes arise because one party has encroached on land with the silent consent of one of the conflict parties. Increasing land scarcity along the coastal zone in the East makes such disputes over competing land claims more likely to arise. For example, there are some conflicting claims on land due to alternating use of land by Sinhalese and Tamil residents during periods of ethnic disturbances, where one group occupied or utilized land previously held by the other group. Such grievances are particularly prominent in highly disputed areas.
 3. *Fishing landing rights:* These disputes are between fisher folk of different villages and between local and migrant Sinhalese fishermen, particularly in Mannar, but there are also issues on migrant Sinhalese fishermen in the East. In Trincomalee, migrant fishermen received preferential treatment by the navy for fishing rights during the ongoing armed conflict. In Mannar, Sinhalese fishermen have returned after the ceasefire agreement and this has increased the pressure on fisheries resources.⁶³
 4. *Inter-ethnic land transfers:* inter-ethnic land transfers in the last years have played an important role to increase inter-ethnic tensions, in particular between Tamils and Muslims along the East coast. Often, such land is sold when a particular ethnic group faces economic hardship or feels insecure in a particular location. Tamils in the East, particularly in Batticaloa and Amparai districts have voiced concern about Muslims buying land in this manner. Many Muslims have invested profits in fixed property and have managed to acquire large tracts of lands from Tamils adjacent to or enmeshed in larger Muslim settlements.⁶⁴ Tamil tenant

⁵⁹ Sources: FCE 2003; Hasbullah et al. 2005; Korf et al. 2001; Korf 2005.

⁶⁰ Source: Korf 2005.

⁶¹ Source: Hasbullah et al. 2005.

⁶² Sources: Hasbullah et al. 2005; Korf et al. 2001; Korf 2005.

⁶³ Source: Hasbullah et al. 2005.

⁶⁴ Source: Hasbullah et al. 2005; FCE 2003.

cultivators in Muttur have tried to intimidate Muslim land owners with the threat of involving the LTTE.⁶⁵

5. *Land disputes between returnee and secondary occupants being from different ethnic groups:* This returnee problem is particularly acute in Mannar, where still many Tamil IDPs occupy land left by Muslims who fled to other locations.⁶⁶ Such disputing claims easily get linked with broader inter-ethnic grievances and stereotypes of the “ethnic other” and are breeding grounds for ethnic tensions.

Land access:

6. *Land access in inter-ethnic areas:*⁶⁷ In the agro-economic system of the East, the place of residence and the place of agricultural land use (farming, cattle grazing) are often located in different locations. This is particularly the case for Muslims who are often residing in market towns, but possess land in areas adjacent to Tamil settlements. In times of inter-ethnic tension, Muslims are reluctant or unable to access their fields. Many have abandoned these fields or sold them for a low price to Tamil farmers, for example in Muttur area.⁶⁸

Governance:

7. *Disputes over religious symbols:* Some inter-ethnic disputes have also arisen around religious symbols. In 2002, Tamil-Muslim riots emerged in Muttur after 14 Christian crosses erected on a hill top in the vicinity of Tamil and Muslim villages.⁶⁹ In Uoosimookanthural (Mannar Island), disputes between Tamils and Muslims erupted over a permanent structure erected for a church.⁷⁰ More recently, there has been concern among Tamils and Muslims over Buddha statues being built on public grounds in Trincomalee town and in Pottuvil, Amparai.
8. *Resentment towards increasing power and influence of Muslim politicians in allocation of state land (Amparai):* Both Sinhalese and Tamil politicians have expressed growing concern about the influence of Muslim politicians in alienating state land and allocating state welfare resources to Muslims at the expense of Tamils and Sinhalese.⁷¹ Sinhalese politicians are expressing concern about organized efforts of local Muslim politicians in the Amparai area to acquire state lands.⁷²

⁶⁵ Sources: FCE 2003; Korf 2005.

⁶⁶ Source: Hasbullah 2001; Hasbullah et al. 2005.

⁶⁷ Source: Hasbullah et al. 2005.

⁶⁸ Source: Korf 2005.

⁶⁹ Source: Liyanage + Hasbullah 2004.

⁷⁰ Source: Hasbullah et al. 2005.

⁷¹ Source: Hasbullah et al. 2005; Korf 2005. Amparai has always been a partial stronghold of Muslim politicians. At the same time, there is evidence to believe that the powers of Muslim politicians and administrators may have become weaker after the ceasefire agreement.

⁷² Source: Hasbullah et al. 2005.

9. *Biased or ineffective administrative rulings on inter-ethnic land rights disputes:* Whenever there is an inter-ethnic dimension to a land dispute, the local administration is largely unable to implement current land laws, for example against illegal encroachers or farmers diverting water illegally in irrigation schemes. This is particularly so when these farmers are backed by powerful groups, such as Buddhist monks, military and police in the case of Sinhalese or LTTE in the case of Tamils. Overall, Muslims are in a comparatively weaker position; however, Muslims also had some administrative strongholds in the Amparai district and have used this partly in favor of their community. Lack of transparency and accountability nourishes suspicion between the ethnic groups when state land is alienated to landless of one ethnic group. This is particular of concern in multi-ethnic areas, such as Mannar, Batticaloa, Amparai and Muttur.

LEVEL (3) TYPE LAND DISPUTES

Level (3) type conflicts relate to broader territorial claims of the different conflict parties and ethnic groups and are of such scale that their resolution or containment requires high-level negotiations. Some of these negotiations may be possible prior to a final peace agreement; others will only be part of a final settlement between the conflict parties. Although Level (3) type conflicts are linked with broader territorial claims, they relate to land resources, which are fundamentally required for civilians to pursue their livelihoods.

Land tenure and property rights:

1. *Inter-ethnic land transfers of land and property, particularly in and around Trincomalee:* There are reports about encroachment of residential land in Trincomalee, where Sinhalese took over property left by Tamil owners during the armed conflict, often being encouraged by unidentified segments of the security forces.⁷³ There are also concerns among Tamils about encroachment of Sinhalese farmers on abandoned Tamil land and paddy fields, for example in Pankulam, where land abandoned by Tamils is cultivated by Sinhalese farmers with the consent of the security forces.⁷⁴ Trincomalee district is of particular concern due to its strategic location at the transition between North and East, the harbor and Trincomalee being the provincial capital. A major concern of Tamil representatives is their fear that some nationalist segments of the Sinhalese political constituency may attempt to use such encroachments for gradual changes in ethnic composition, especially in Trincomalee town.
2. *Sinhalese encroachment close to military camps:*⁷⁵ There is increasing concern among Tamils about Sinhalese unofficially settling, with help or consent of security forces, along army camps. Especially unofficial settlements of Sinhalese along the main road from Habarana to Trincomalee and in the fish market area in Trincomalee have created resentment among Tamils, because they are seen as

⁷³ Sources: Rösel 1997; UTHR (J) – Report No. 11 (UTHR (J) (1993a).

⁷⁴ Sources: Balasundarampillai 2002; Rösel 1997; UTHR (J) (1993a).

⁷⁵ Sources: UNHCR 2003; UTHR (J) 1993a, 1993b.

calculated attempts to disturb the ethnic ratio or demography of the region.⁷⁶ There are also reports that agencies, such as the Mahaweli Authority, have given lands in the East to people with no reference to previous ownership or occupancy.⁷⁷

Land access:

3. *Land inaccessible for Tamil farmers located in high security zones and land or property occupied by military:* Tamil grievances are particularly high regarding the High Security Zone (HSZ) in Jaffna, which occupies large tracts of fertile land, religious grounds and residential lands.⁷⁸ In addition, there are other places in the North and East, where the Sri Lankan security forces occupy land and property for buildings, fortifications and bunkers. While the army has vacated some buildings and lands since the ceasefire agreement, there are still a lot of places and properties occupied by the security forces. This issue is politically highly charged, in particular in Jaffna due to the large extent of land occupied by the security forces. One report notes that in some cases, the army in Jaffna has been conciliatory and has allowed owners to check properties, but the policy appears to be ad hoc, not based on clear, transparent criteria.⁷⁹ Army occupation of land is a serious impediment to resettlement and return of displaced persons, particularly in Jaffna and Mannar.⁸⁰
4. *Land inaccessible for Muslims in LTTE controlled areas:*⁸¹ In the area under its control in the North and East, the LTTE has taken over large tracts of abandoned land, mostly belonging to Muslims. The land has been subsequently given to families of LTTE cadres, been rented or used by LTTE to host administrative structures. Partly, it appears that some abandoned land is also occupied by LTTE camps. The LTTE also seems to have allowed displaced persons living in uncleared area to settle on other people's land. In Batticaloa, land belonging to Muslims is being farmed by the LTTE or by local farmers with the consent of the LTTE. This issue has become a high-level source of contention between the Muslim and LTTE leaders and high-level negotiations have been carried out in 2002 and 2003. Although some agreements have been signed between LTTE and Muslim representatives, it appears that up to present, there has not been a retransfer of lands to Muslims on a larger scale in the East.⁸²

⁷⁶ Source: UNHCR 2003, 18. It needs to be noted that unofficial land occupation by Sinhalese encroacher, mostly from outside Trincomalee district, on the Habarana-Trincomalee road has continued to take place even after the ceasefire agreement.

⁷⁷ Sources: UNHCR 2003.

⁷⁸ Sources: CPA 2003, 2005a; Hasbullah et al. 2005; UNHCR 2003.

⁷⁹ Source: CPA 2003, 47.

⁸⁰ Source: CPA 2003, Hasbullah et al. 2005; UNHCR 2003.

⁸¹ Sources: CPA 2003, 2005a; FCE 2003; Hasbullah et al. 2005; Rupesinghe 2002.

⁸² The Muslim Rights Organisation (MRO) and the Foundation for Co-existence (FCE) have established a Land Register that systematically enumerates the land claims of the Muslims in the North and East. The investigation collected information about the date of acquisition of land, the manner in which it was acquired, the extent of the land, the deeds (or titles) to the land, the extent of property and livestock kept in the land. Subsequently, Land Committees were established in some all three districts of the East (Source:

5. *Land inaccessible for Sinhalese located in or close to LTTE controlled areas (border villages):*⁸³ Some Sinhalese border villages are located close to LTTE camps. Therefore, Sinhalese farmers are reluctant to return to their villages or to cultivate fields located at remote places.⁸⁴ There are also some conflicting claims on land due to alternating use of land by Sinhalese and Tamil residents during periods of communal disturbances.⁸⁵ Overall, Sinhalese farmers are increasingly concerned about their future under an LTTE dominated administrative structure of the North and East. Also, there are complaints from Sinhalese farmers that the provincial land administration would delay distribution of land titles to farmers in Sinhalese border villages, because the provincial administration is dominated by Tamil bureaucrats.

Governance:

6. *The central government has alienated large tracts of land to government corporative bodies:*⁸⁶ In Trincomalee, large tracts of land have been alienated to the Sri Lanka Ports Authority. Such land lies outside of the administrative powers of the provincial administration. On some of these lands, for example along the Trincomalee-Batticaloa road⁸⁷, Sinhalese mostly from outside the district have unofficially and illegally settled with the support of unknown forces. This encroachment continues since the provincial administration is unable to take action against encroachment, which is silently consented by the security forces.
7. *Devolution and administrative powers over land administration:* The distribution of administrative powers over state land has been an important issue in all negotiations between Tamil and Sinhalese representatives since the 1950s. As it is currently ruled according to Annexure 2 of the 13th amendment, the provincial council is in charge of state land administration, but there are some, important, exceptions: Land coming under inter-provincial colonization schemes are governed by the Central government, which is economically most important land, since most major irrigation schemes are inter-provincial. The President retains the overriding powers for land alienation (Article 33(d) of the constitution).⁸⁸ In addition, the Annexure suggests policies regarding ethnicity distribution in land colonization schemes. The disputes between the conflict parties is about who has *effective* administrative power over state land alienation.

FCE 2003). With increasing intra-Tamil tensions in violence in 2004, most of these committees are now defunct.

⁸³ Sources: Chmela 2004; FCE 2003; Hasbullah et al. 2005; Korf et al. 2001.

⁸⁴ Depending on the situation and the gravity of the grievance, such conflicts could also be categorized as Level (3) type conflict, because informal inter-communal negotiation between community leaders is more unlikely to happen than in case of Tamil-Muslim land disputes.

⁸⁵ Source: Hasbullah et al. 2005.

⁸⁶ Source: UTHR (J) 1993a.

⁸⁷ Source: UNHCR 2003.

⁸⁸ Appendix II of the 13th Amendment states: "alienation or disposition of State land within a province to any citizen or to any organization *shall be by the President*, on the advice of the relevant Provincial Council in accordance with the laws governing that matter." (emphasis added)

8. *Boundary redrawing of districts and divisional secretariats:* District boundaries and delineation of divisional secretariat divisions have been changed several times in the past. In most cases, such redrawing carved out an ethnically homogenous area from a larger administrative entity into a new one. The founding of Amparai district out of Batticaloa district in the 1960s is the most prominent one, but there have been a number of other administrative boundary reforms, especially on divisional secretariat level. In recent years, such changes have mainly been done in Amparai district to create ethnically homogenous divisional secretariats. Boundary changes have caused serious concerns among representatives from different ethnic constituencies. However, it is important to note that especially in the Amparai district, it is difficult to construct ethnically homogenous divisional secretariat divisions due to the mixed settlement patterns.⁸⁹
9. *Militarization of administration in some parts of the North and East:* In the highly disputed areas, e.g. under Weli Oya schemes, and through the establishment of home guards in Sinhalese border villages, there has been a militarization of Sinhalese civil society in these locations and of the administrative powers. Similarly, the growing power of the LTTE as administrator in uncleared areas has given special weight to military organizational structures. There have also been signs of increasing militarization of Muslim youth in the East. Such militarization contravenes transparent and accountable governance of land administration matters.
10. *Strategic (militarized) settlements in the North and East established during the mid 1980s:*⁹⁰ With the escalation of the conflict, strategic settlements were implemented in the Eastern Province under the Allai, Kanthalai and Mahaweli irrigation schemes. Most prominent is the Weli Oya scheme, as part of Mahaweli L System. This scheme covers parts of Trincomalee, Mullaitivu, Vavuniya and Anuradapura districts, but the area allocated to this scheme was declared a special zone governed by the Anuradapura District authorities. Tamil representatives have perceived these Sinhalese settlements as a strategic move to disrupt the settlement pattern from North to East through an establishment of a militarized Sinhalese settlement corridor.⁹¹ In part, there has been displacement of Tamil villages for the inception of these settlements.⁹² These settlements will be high on the agenda in any political settlement between the conflict parties.⁹³ Sinhalese settlers from these border villages and settlements often complain about lack of security due to threats from LTTE, partial inaccessibility of their fields etc.⁹⁴

⁸⁹ Source: Korf 2005; Rajasingam-Senanayake 2003.

⁹⁰ Sources: Bastian 1995; Balasundarampillai 2002; UNHCR 2003, UTHR (J) (1993a, 1993b).

⁹¹ Source: UNHCR 2003.

⁹² Source: UTHR (J) (1993b).

⁹³ Source: Bastian 1995.

⁹⁴ Source: Hasbullah et al. 2005.

ANNEX 2: MECHANISMS FOR ADDRESSING LAND AND CONFLICT IN THE NORTH AND EAST OF SRI LANKA

In this annex (Table 8), different strategies for addressing land issues on the three levels of conflict (Table 4, Table 7 and Annex 1) are suggested. These suggestions are based on the following premises:

- i. Level 1 type conflicts about inter-individually disputed land rights claims (e.g. boundary conflicts, no action policies against illegal encroachments, secondary occupants) are expressions of the volatile security situation and the dynamics of the post-conflict situation, which overextend existing governance structures and administrative as well as judiciary capacities.
- ii. Level 2 type conflicts (e.g. local conflicts over land, which become communal, e.g. Tamil-Muslim tensions in the East, land disputes between Sinhalese and Tamil farmers, ethnically biased water distribution in irrigation schemes) have the potential to instigate local and regional inter-ethnic tensions and thus disturb the peace process. They often arise from local mismanagement and biased governance of land allocation and restricted land access.
- iii. Level 3 type conflicts (e.g. encouraged encroachment on Trincomalee-Colombo road, take over of abandoned Tamil land by Sinhalese, Muslim land by LTTE or Tamil farmers, administrative responsibilities between centre and province) are considered to be highly politicized, of a significant geographical scale and have become part of the political stakes and “emotional” core issues in the conflict. Such land issues require a political settlement and will have to be resolved through high-level negotiations between the LTTE and the Sri Lankan government.

Furthermore, we have distinguished issues relating to three categories: land tenure and property rights, land access and governance (see para 27f.).

Table 8: Mechanisms for Addressing Land and Conflict in the North and East

Level 1 type	Level 2 type	Level 3 type
<p><i>Land tenure and property rights:</i></p> <p>Fast track mechanisms to resolve inter-individual land disputes and to relieve existing administrative and judicial bodies from burdens created by the post-conflict situation.</p> <p>Fast-track mechanisms may include:</p> <ul style="list-style-type: none"> • provincial land task force as established under the NEHRP, which documents and deals with minor land issues, 	<p><i>Land tenure and property rights:</i></p> <p>Inter-communal mechanisms of mediation and communication. Sometimes, such mechanisms, e.g. peace committees, have been established, but are often defunct, especially after a period of non-violence.</p> <p>Important stakeholders include:</p> <ul style="list-style-type: none"> • influential and accepted actors, such as religious leaders, in negotiations, 	<p><i>Land tenure and property rights:</i></p> <p>High-level negotiations between the LTTE and the Sri Lankan government.</p>

<ul style="list-style-type: none"> • temporary extra-judicial mechanisms to complement court system in resolution of land issues pertaining to post-conflict or post-tsunami issues, especially relating to IDP return or relocation (see UNHCR proposals on this, UNHCR 2003, 2005). • Mediation Boards, which have been established by the government. However, in the North and East, these are only working in a few areas and there are questions about their political credibility. <p>Note: Such fast-track mechanisms are temporary and do not solve deeper rooted structural causes of conflict or governance failures.</p> <p>Note: Establishment of fast-track mechanisms would require a consensus of major stakeholders, including the parties to the conflict, the provincial administration, the central government to gain legitimacy in its decisions.</p> <p>Note: Establishment of fast-track mechanism, if substituting the judicial system, would need to be enacted through legislation and it would need to be clarified how such fast-track mechanisms relate to the existing judicial system (would aggrieved parties still have the right to bring their case to court?).</p> <p>Note: To gain credibility, fast-track mechanisms need to be transparent about criteria and processes of dispute resolution. This will counterbalance the current culture of clientelism and ethnicism.</p>	<ul style="list-style-type: none"> • combatant parties and police, which should be consulted, but not get directly involved in negotiations, • a neutral facilitator (e.g. international ombudsperson?) may be helpful if accepted by all parties to the conflict. <p>Note: Such mechanisms to be effective need to be able to establish legitimacy for their decisions and to be considered as representing the different parties to the conflict.</p> <p>Note: Existing committees and mechanisms need to be analyzed for potential political or ethnic biases before they can be strengthened and capacitated for conflict mediation.</p> <p>Note: In case of unequal power relations between different ethnic groups, an outside ombudsman may be needed to level the playing field and allow fair negotiations.</p> <p>Note: Combatant parties and politicians should be incorporated beforehand to grant their support, but they should not become involved in the actual negotiation processes, which should remain confined to local leaders and representatives.</p> <p>Note: It needs to be established how binding agreements found through such committees are for all involved stakeholders, including government authorities in charge of land administration.</p>	
<p><i>Land access:</i></p> <p>Gathering more comprehensive data on the exact scope, the location and the effects of land access issues, such as second generation landlessness, land mines problems and access problems to common-pool resources. Incorporate these concerns in overall local, regional planning frames.</p> <p>Note: Mapping out major access problems, in particular informal user rights, for each district may be important data for district</p>	<p><i>Land access:</i></p> <p>Ensuring continuation of those inter-communal mediation mechanisms may help establish more trust on inter-ethnic relations so that access to their land is ensured for all ethnic groups continuously.</p> <p>Note: Peace committees would need to get more pro-actively involved in improving inter-ethnic relations in order to deal with access problems to land and resources.</p>	<p><i>Land access:</i></p> <p>In general highly sensitive and neither LTTE nor Sri Lankan armed forces have shown willingness to address the core issues, but localized negotiation with persons-in-command may allow some low-profile pragmatic solutions.</p>

<p><i>framework planning and coordination of agencies' projects.</i></p>	<p>Note: <i>Most of these access problems require political stability to become redundant, because they require rebuilding of inter-ethnic trust on community-level.</i></p>	
<p><i>Governance</i></p> <p>Encourage the government to clarify the regulations concerning secondary occupancy (see UNHCR proposals), and improve the enforcement of such regulations vis-à-vis political interference, militants etc.</p> <p>Investigate the establishment of regional, ethnically neutral clearance mechanism (e.g. boards of appeal) for aggrieved parties to address and clarify the enforcement mechanisms of such boards vis-à-vis respective government agencies.</p>	<p><i>Governance issues</i></p> <p>Strengthen the operative capacities of these inter-communal mechanisms to substantiate their legitimacy, credibility and leverage power vis-à-vis spoilers, local politicians and biased administrators.</p>	<p><i>Governance</i></p> <p>High-level negotiations between the LTTE and the Sri Lankan government.</p>
<p><i>Tsunami-specific issues:</i></p> <p>Ensure transparency and accountability in</p> <ul style="list-style-type: none"> • beneficiary selection in land and housing allocation, • framework planning of relocation (who is located where and according to which criteria?). <p>Establish independent boards of appeal for aggrieved parties and clarify their enforcement mechanism vis-à-vis other governmental agencies.</p>	<p><i>Tsunami-specific issues:</i></p> <p>Ensure transparency and accountability in</p> <ul style="list-style-type: none"> • beneficiary selection in land and housing allocation, • survey conflict-affected and tsunami-affected IDPs and apply the same eligibility criteria to both, • framework planning of relocation (who is located where and according to which criteria?). <p>Establish independent boards of appeal for aggrieved parties and clarify their enforcement mechanism vis-à-vis other governmental agencies.</p>	<p><i>Tsunami-specific issues:</i></p> <p>n.a.</p>

For Level 1 type land issues, the core challenge is the dramatic increase in land disputes due to population return, which is likely to overburden existing administrative and judicial bodies. The latter therefore need support in their capacities to tackle pending cases through an acceptable fast-track mechanism. Such fast-track mechanisms could, for example, deal with minor land disputes surrounding residential land and/or boundary disputes.

For Level 2 type conflicts, inter-ethnic conflict resolution mechanisms on community level need to be encouraged and strengthened. The challenge for community-based inter-ethnic dispute resolution mechanisms is that in the context of the conflict-affected areas,

they will need to involve the two combatant parties in the ethnic conflict at some point in the resolution process. If the support from the involved communities for these mechanisms and the involved actors is strong, their leverage power vis-à-vis the combatant parties and political interference will be more pronounced. One may also consider establishing neutral ombudspersons as facilitators if such an involvement is considered appropriate and helpful by the concerned dispute parties. Since Level 2 type conflicts can easily become more politicized, it is advisable to search for mechanisms, which keep out political spoilers and which are based on pragmatic resolution of disputes rather than political bargaining.

To establish and strengthen their authority, such alternative mechanisms of dispute resolution need to be appropriately legitimized and capacitated for their responsibilities. In the case of fast-track mechanisms for minor dispute resolution (Level 1 type conflicts), the Sri Lankan government would need to pass appropriate legislation to grant special conditions for these particular dispute cases and define the exact powers and responsibilities of such a fast-track mechanism. Further, it would need to be clarified whether or not decisions from such fast-track mechanisms are substituting the right of dispute parties to file their case to the courts afterwards. Such legislation would need to be based on a consensus among the major political stakeholders, including the LTTE and Tamil parliamentary parties, to gain effective credibility. These fast-track mechanisms could entail district-wide committees with representatives of different ethnic (and political groups) and a technical support team, which would map out the different cases, gather the evidence and make suggestions for their resolution. This procedure would allow transparency and accountability in the process and ensure political backing of decisions.

For Level 2 type conflicts, there often exist some informal mechanisms of inter-ethnic dispute resolution on the ground. However, many of these committees and mechanisms are either defunct, lack enforcement capacity or are politically biased and therefore, prior to any engagement with existing mechanisms, such biases need to be carefully investigated. On local or regional level, there are often a number of respected “leaders”, often religious clergy or influential business persons, who have gained the confidence of a particular community. Establishing independent committees for dispute resolution will require the consent from all important stakeholders, including combatants, politicians and government officials, but the latter should be discouraged to stand on such committees, because this is likely to polarize the dispute resolution process.