

Brief Commentary

Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces

Land Circular: 2013/01

Centre for Policy Alternatives

March 2013

In January 2013 the Government issued a new circular titled Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces- Land Circular 2013/01 (herein referred to as the Circular), which is the most recent effort by the Government to address land problems in the North and East. The Circular sets out a process to be implemented over two years in order to identify and address problems relating to State land in these two provinces. The Centre for Policy Alternatives (CPA) has prepared this short note to highlight key issues and concerns relating to this Circular and its implications if implemented.

Nearly four years after the end of the war, there is an urgent need to address the root causes of the war and the grievances of the affected communities. Land is a key issue requiring attention through a variety of measures which should pay due attention to individual's land rights and claims, and the history of the land. CPA has engaged in research and advocacy on land rights and related issues for over a decade, documenting developments and providing recommendations on land and related issues both in terms of the war and the tsunami.¹ A key focus area of CPA's work has been on land issues in the North and East, as the war resulted in and exacerbated a variety of problems including access to land and displacement, occupation by state and non-state actors, competing claims, loss of documents and land records, which in turn has impacted individuals, families and communities in multiple ways. In the post-war context, CPA has critiqued and advocated for reform in the existing legal, policy and administrative structures so that problems on the ground and grievances of affected communities are addressed and a genuine effort is made by the Government to introduce and implement a programme that facilitates normalcy and reconciliation. This has also entailed advocacy on other initiatives in the post war period including the previous Land Circular (2011/4) and the

¹ Centre for Policy Alternatives (CPA), "Informal Dispute Resolution in the North East and Puttalam", (2003), available at http://www.cpalanka.org/wp-content/uploads/2007/8/Informal_Dispute_Resolution.pdf; CPA, "Land and Property Rights of Internally Displaced Persons", (2003); CPA, "Memorandum on Land Issues arising from the ethnic conflict and the tsunami disaster", (2005); Bhavani Fonseka & Mirak Raheem, "Trincomalee High Security Zone and Special Economic Zone", CPA, (2009); Bhavani Fonseka & Mirak Raheem, "Land in the Eastern Province: Politics, Policy and Conflict", CPA, (2010); Bhavani Fonseka & Mirak Raheem, "Land in the Northern Province Post-War Politics, Policy and Practices", CPA, (2011).

need for an improved mechanism.²

At the outset, CPA welcomes some of the constructive steps taken by the Government at the policy level in the post-war context to address land issues in the North and East including recognising the problems with the previous Land Circular (2011/4), withdrawing it and introducing the present Circular which is an improved version of the previous one. Problematic aspects in the previous Circular that were highlighted by CPA including the Land Commissioner General issuing a circular relating to both state and private land and military involvement in civilian administrative duties have been omitted in the new Circular. The Circular does respond to some of the complexities of the ground, including the difficulties in proving ownership and the need to recognise the competing claims of original claimants and those who have encroached or are occupying someone else's land and have developed these lands. The Circular however, needs to be supplemented by other processes, some of which are detailed below.

Although the Circular is an improvement from the previous one, there are provisions which lack clarity and are ambiguous. The Circular states at the outset that it is to apply only to state land and is to be implemented in 2013 and 2014, ensuring a narrow focus and application. What has been kept out of the Circular is the time period available for applications to be made, time to be taken to decide a matter and whether there will be an appeal process, in the event an individual feels unfair treatment with the process provided in the Circular. Furthermore, while the Circular explicitly states that it deals with issues related to state land, there is reference to private land under 2.2.1.2 which deals with *'lost lands.'* The Circular points to a number of scenarios through which land can be *'lost'* such as lands being vacated or the occupants chased away during the conflict; being used for *'development activities under government institutions and armed forces'* and *'where other people have permanently settled on those lands.'* The Circular instructs that alternate lands should be provided with consent of those who have *'lost lands.'* There is also specific reference to private lands or lands distributed under state grants where the Circular provides for alternative land in accordance with *'compensation assessment carried during the acquisition process of those lands.'*

According to the Land Acquisition Act No 9 of 1950 as amended, private land can be acquired for *'public purposes'* with the Act providing a process for such acquisition and the Minister identifying land that is to be acquired. The Circular seems to indicate that if private land or lands distributed under state grants are *'lost'* for *'development activities'* or when *'other people have permanently settled'*, then an acquisition process is to commence. Is the Circular implying that the reasons given above are to be now considered a *'public purposes'*? Is the Land Commissioner General and/or other Government officials assuming powers provided to the Minister in accordance with the Land Acquisition Act

² Bhavani Fonseka & Mirak Raheem, "A Short Guide to 'Regulating the activities regarding management of lands in the Northern and Eastern Provinces' Circular : Issues & Implications" , CPA, September 2011, available at http://www.scribd.com/fullscreen/65756001?access_key=key-2n9juixwucpeaun7qe09.

who is to identify land for a 'public purpose'? If the language provided in the Circular is to be taken at face value, this particular issue goes beyond the powers provided to the Land Commissioner General whose mandate is solely on state land.

The Circular needs improvement in several areas, as highlighted in the following table. In particular, there needs to be greater clarity with regard to some terms that are used in the Circular such as '*lost land*' and '*development activities*'. This is especially relevant given the concerns relating to state occupation, including by the military, the lack of information on whether land will continue to be occupied or released by the State, and the lack of acquisition and compensation processes so far. It is also paramount that the Government articulates its position on land in the post-war context, particularly in terms of the individual land rights of those who may be affected by such acquisitions. The present Circular implies that the Government's preference is towards '*development activities*' and that individual land rights including those of landless people are to be treated as a secondary consideration. While CPA notes that development is important in the transition towards a post-conflict context, there should also be consideration for people's rights and grievances. CPA reiterates that while the Land Circular is meant to assist in resolving land issues in the North and East in post-war Sri Lanka, it should not be used as a tool to interfere with the existing constitutional and legal framework and any amendments that are proposed should be done in adherence to the established process and done in a transparent and inclusive manner.

The Circular also provides broad powers to the Divisional Secretary (DS) to decide on state land issues. While it is important to use the knowledge of those who are closest to the people and aware of the history of the land, it is also important that clear guidance is provided to ensure consistency, uniformity and prevent the abuse of power. The use of land katcheris is a positive aspect but there is a need for an appeals process for those affected by problematic outcomes. It is also crucially important that the Government recognises the complex ethnic relations in the areas and resulting dynamics on land issues. This will not only provide for a more sustainable solution but will also provide public confidence in the process. As such there has to be some effort to strengthen community participation in the process, including through the involvement of community leaders when mediating complex disputes, which may be ethnicised and politicised.

The Circular is however, fundamental to addressing and resolving land issues in the North and East, thereby facilitating other processes such as the return and resettlement of displaced persons, the reconstruction of houses, restoration of livelihoods and the consolidation of peace and development. While the Circular sets out the framework for issues surrounding state land, there is no indication by the Government regarding plans pertaining to private land. While noting that the Land Commissioner General retains his purview of state land in the present Circular, there is a need to recognise that land issues in the North and East are much more complex than a simple distinction between what is "state" and "private". Therefore, there needs to be a parallel process to address problems relating to private lands, especially in a context where there are numerous disputes and confusion over whether individual plots of land are state or privately owned.

A recurrent dual problem documented by CPA is the lack of transparency and the confusion related to current policies and the framework governing land on the one hand, and the ignorance among affected communities pertaining to their rights and how to secure these rights on the other. Therefore a vital step by the Government and all stakeholders is to raise awareness on land rights, the documents and the legal framework pertaining to land so that answers are provided to basic questions including what constitutes a legally valid document and as to how documentation to one's land can be obtained. There is also a need to raise awareness of this Circular and the process that it attempts to set in place.

While the Circular has a positive feature in that it does not restrict anyone in the country who has a problem pertaining to state land in the North and East from registering their problem, it is also extremely important that the Government addresses the needs of all those who maybe affected by the Circular, including those who are refugees and others who are overseas. This is particularly pertinent in a context where there is confusion as to what is state and private land -contestation of ownership and control of land being a key issue in the post-war context.

There is a need for a larger policy agenda to deal with land, including though not restricted to revisiting the existing legal and policy framework, amending arbitrary and archaic laws and making public the circulars and regulations that affect people's right to own, control and access their land. More needs to be done if peace and reconciliation are to be achieved, including through the full implementation of the Thirteenth Amendment to the Constitution which would involve devolving land powers to the Provincial Councils and the establishment of the National Land Commission.

Circular 2013/01	Comment
Scope of Circular	
<p>To identify and solve post conflict issues relating to state land through providing opportunity for individuals to submit problems relating to state land to Divisional Secretaries (DSs) and initiating a problem solving programme.</p> <p>To be implemented over two years in 2013-2014</p>	<p>The Circular states it is to only deal with state lands. Does not refer to issues related to private land nor does it provide a mechanism to examine any disputes relating to private land.</p> <p>The Circular does not state how it will deal with situations when there is lack of clarity whether a particular land is state or private land.</p>
Identifying Problems	
<p>The following persons can submit information relating to problems to the DS(2.1.1);</p> <ul style="list-style-type: none"> - people residing in the Northern and Eastern Province - people who have abandoned the area - people who have resettled or who are expecting to settle again after being displaced - people who have problems relating to state land <p>Information is to be divided in to two categories and be recorded separately by DS (2.1.2) and (2.1.4). The categories are;</p> <ul style="list-style-type: none"> -Information about landless people or people who have lost lands. - Information on other problems regarding state land. 	<p>This is a positive feature in that there does not seem to be a restriction for people from across the country submitting problems relating to their land claims in the North and East.</p> <p>There are a number of unaddressed issues:</p> <p>Can persons not living in Sri Lanka but who still have a claim to state land make a claim?</p> <p>What is the time period in which claims are to be made? Will there be a deadline for applications? If so, such information needs to be shared with the public.</p> <p>How would those who register as landless during this process be treated in future when lands are allocated to the landless?</p>
Distribution of State Land	
<p>State land will not be alienated to landless persons until the land problem of those affected by the conflict are solved (2.2.1.1).</p>	<p>Given the complexities on the ground, it makes sense that land distribution is delayed until land disputes and loss of documentation are addressed.</p> <p>The process provides for persons to register as landless,</p>

<p>But there is no barrier to alienate lands for government approved development projects.</p> <p>Land to be distributed to people who have “Lost Land” for reasons such as; (2.2.1.2)</p> <ul style="list-style-type: none"> - The land is been used for development activities under government institutions and armed forces and where the land cannot be practically claimed again. - Other people have permanently settled on the land and where the land cannot be practically claimed again. <p>Even if people have lost their encroached state lands and they are qualified to get lands they should be considered when alternative lands are given.</p>	<p>however this is a complicated problem especially given that there continues to be IDPs and refugees who originate from the North, persons whose land is currently occupied by others or who are occupying someone else’s land. Hence, it may not be apparent who is landless until the process is over.</p> <p>The term ‘Lost Lands’ is problematic and lacks a legal definition. It is used vaguely suggesting that land may be ‘lost’ through state occupation. The State needs to provide clear information as to when it will seek to use state land for development or other purposes, so that affected civilians will be informed.</p> <p>There is no explanation as to what is meant by ‘development activities’ but implies that anything that comes within ‘government institutions and armed forces’ can be considered for such purposes. This can lead to arbitrariness as there is no clear rationale for this and many could be affected as large areas of land are presently used by government actors and the military for various purposes and can be in the future categorised as ‘development activities’ which will put a stop to individuals claiming back their land.</p> <p>The Government gives preference to approved development projects over people who are landless. There is no time period given to address the issue of the landless, leaving the problem in limbo and continuing the existing problems of many not being able to obtain assistance, particularly relating to permanent housing, due to not having land.</p> <p>In the absence of a process to register problems relating to private lands and problems relating to documentation with the government structure there are concerns that it will be difficult for the DS to identify if there are private claims on certain portions of land.</p> <p>What are the qualifications which need to be fulfilled in order for an encroacher to be eligible for alternative land?</p> <p>What is the process if land cannot be found from the</p>
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<p>When providing alternative land;</p> <ul style="list-style-type: none"> - It should be suitable land from the area land which was “lost” is located in. - The consent of the person who has “lost” the land is needed. - If alternative land is given for “private lands” or for lands distributed under state grants, the alternative land should be given according to the compensation assessment carried out during the acquisition process. - The DS should be satisfied that lands selected to be distributed are not under any person’s legal ownership. <p>Land must only be alienated by holding “land kachcheris” and before alienation the DS should take actions to forward the land kachcheri proposal to the authorized officer for approval.</p> <p>Circular 2008/4 (dated 20.08.2008), other circulars relevant to land distribution, instructions of Provincial Land Commissioner and relevant land orders should be referred for instructions on unit of land distribution and other information.</p>	<p>area where the “lost” land was located?</p> <p>How will land problems including competing claims regarding state land be resolved?</p> <p>Do people have the option of claiming compensation where they do not consent to the alternative land proposed?</p> <p>What is the criteria used to assess compensation? Is the process provided under the Land Acquisition Act to be followed?</p> <p>The public should be made aware of the process pertaining to “land kachcheris” and more importantly they should be provided with basic understanding of the provisions of applicable laws, circulars and other regulation.</p> <p>What would happen to land where there are questions remaining regarding ownership and there is an issue of contestation? Is there a mechanism that can decide on such issues?</p>
<p>Public awareness of circular and related processes</p>	
<p>The Land Commissioner General’s Department will give publicity to this process at the National level. DS will publicity at divisional level (2.1.1)</p> <p>DS should also take action to raise public awareness about submitting problems using the format in Annex 1. (2.1.3)</p>	<p>Publicity regarding this process should be done in all three languages and information disseminated widely.</p> <p>No provision has been made to raise awareness about this programme amongst refugees and others who are living outside Sri Lanka and may have claims to state lands or lands perceived to be state lands.</p> <p>Sufficient notice has to be given before process is implemented to ensure all those with a claim to state land should be aware of the process and if interested make an application.</p> <p>A fundamental problem on the ground is the lack of</p>

	<p>awareness among civilians relating to documentation including what is a permit, grant or deed so there may be confusion as to a) whether they need to apply b) what type of document they possess/lost/require. There has to be a clear information provided through the process to address this.</p> <p>There are multiple circulars and laws which are applicable in relation to state land. Individual citizens should be made aware of these and have information regarding the different processes and their implications.</p>
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Special programmes to solve problems relating to State land

<p>Organize Divisional day programmes at Grama Niladari Division level or as one programme for several divisions. (2.2.2.2)</p> <p>The DS, Assistant DS, Land officer, Colonization officer, Field officer, Public Management Assistant (Land), Grama Niladari (GN) officer should participate.</p> <p>Officers of the Provincial Land Administration Department and Land Commissioner General's Department, divisional level officers of relevant departments such as the Department of Surveys, Department of Archaeology and Department of Forest Conservation should be involved as needed.</p> <p>Information relevant for the problem should be collected from within the DS office as well as through field investigations (where necessary)</p> <p>Whenever approval is needed from the Provincial Land Commissioner or the Land Commissioner General for a particular action, it should be forwarded immediately for same.</p> <p>Where DS is unable to provide solutions to problem through Divisional Day Programme such problems should be forwarded to Mobile Services Programme to be held at DS level (2.2.2.3)</p> <p>All relevant officers and all parties should participate with the relevant information.</p>	<p>The process by which disputes are to be solved (in relation to both the Divisional day programme and the Mobile Services Programme) is not clear. It gives the DS wide discretion. Whilst this might be useful considering the complex problems on the ground, basic guidelines are necessary in order to guide the DS and prevent abuse of power and arbitrary decision making.</p> <p>This wide discretion is especially problematic in situations such as in the Eastern province where there are tensions between ethnic groups. In the absence of clear guidelines and community participation through community leaders the activities of the DS could be perceived as favouring one ethnic group over the other.</p>
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<p>Officers of the Provincial Land Commissioner's department and other government officers related to land matters should participate.</p>	
<p>Missing or destroyed documents</p>	
<p>When original permits in DS office are destroyed or misplaced, such problems should be forwarded to Provincial Land Commissioner for instructions. In order to update such documents actions should be taken to reselect it through the land kachcheri method and issue permits. (2.2.2.4)</p> <p>When a copy of the permit, ledger etc... is available at DS office and if the permit holder or the legal heirs are residing in that land without any dispute the DScan issue a copy of the permit upon the request of the permit holder or the heir .</p> <p>It is expected that the Registrar General's Department will implement a suitable programme to provide solutions for problems relating to misplacement/destroy of grants. (3.5)</p>	<p>The process provides for the provision of lost documents. It would be a positive feature if there are initiatives such as mobile clinics so as to make the process easier for civilians.</p>
<p>Lands which Annual Permits had been issued</p>	
<p>"Annual permits should not be renewed, if only there is an uninterrupted residence in the lands, annual permit has been issued and if it has been continuously renewed annually up to date. Such lands should be forwarded to be selected by land kachcheris if the original permit holders of those annual permits issued lands claim ownership and are enjoying the undisturbed possession." (2.2.2.5)</p>	<p>While the Circular lays out some condition for renewing annual permits the wording is confusing as it does not clearly state the position of those who had annual permits and what should be done. Is there a preference for those who resided in lands with an annual permit with no interruptions as opposed to those who may have been displaced due to the war?</p>