

# Supporting Land Tenure Awareness

Phase 1: Lessons and Significance  
for Way Forward

LAW &  
GOVERNANCE

July 2014

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## Phase 1: Lessons and Significance for Way Forward

July 2014

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## Introduction

The recently concluded war in Sri Lanka is primarily responsible for the denial of secure land tenure and property rights in the North and East of the country. It resulted in the displacement of tens of thousands of people<sup>1</sup> and proliferate the breakdown of institutions responsible for protecting and promoting secure land tenure and property rights.

The persistent denial of these rights has resulted in the political, economic and social exclusion of communities in the North and East. In this context, the 'Supporting Land Tenure Awareness Project' was launched in 2013, with the aim to examine and address the specific vulnerabilities and challenges that have arisen with respect to land in the North and East.<sup>2</sup>

This Special Report presents the main findings and conclusions emerging from the completion of the first phase of the project. This report presents the main findings and conclusions emerging from the completion of the project's first phase. It is presented in three parts, respectively covering (1) the context of the study, (2) the scope of the study and (3) the findings of the study.

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<sup>1</sup> See the Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (November 2011) ['LLRC Report'], para.6.2. The Report estimates the displacement of 284,000 persons during the last phase of the war alone. According to the Internal Displacement Monitoring Centre, '[a]s of the end of September 2012, more than 115,000 internally displaced people (IDPs) were still living in camps, with host communities or in transit sites, or had been relocated, often against their will, to areas other than their places of origin.' See Internal Displacement Monitoring Centre, *Sri Lanka: A hidden displacement crisis* (October, 2012). According to the Office of the United Nations High Commissioner for Refugees (UNHCR), 93,482 displaced persons receive UNHCR protection and/or assistance within the country, as at January 2013.

<sup>2</sup> Verité Research supported this project in terms of data extraction and analysis. Primary data was extracted at workshops conducted by the Centre for Human Rights and Development.

## 1. Context of Study

### 1.1 Vulnerabilities

Two types of vulnerabilities have emerged within the post-war context in the North and East of Sri Lanka.

First, the population in the North and East in general is exposed to vulnerabilities linked to secure land tenure and property rights. These rights are critical to socio-economic stability and sustainable development. Without secure land tenure and property rights, communities are prevented from meeting their housing needs and securing sustainable livelihoods. Many fishing and farming communities in the North and East presently lack control over productive assets, mainly due to landlessness or lack of access to their lands. Many communities in the North are also deprived of safe and secure shelter, particularly since secure tenure is a prerequisite for accessing housing credit.

Second, within the affected communities, women are exposed to particular vulnerabilities. These vulnerabilities stem from the fact that women are excluded from land titling and compensation schemes that mostly recognise men as the 'heads of households'. Moreover, war-widows, female internally displaced persons (IDPs) and single mothers are often the most vulnerable to rights violations. The latter group in particular face unique challenges arising out of sole-breadwinner status and motherhood.

### 1.2 Problem analysis

The present crisis pertaining to secure land tenure and property rights appears to be three-fold.

First, communities face challenges that **cause** the denial of secure land tenure and property rights. Broadly classified as 'contributory challenges', these problems range from breakdown of institutions, loss of vital documentation and protracted and excessive militarisation.

Second, communities face challenges that **result** in the denial of secure land tenure and property rights. These challenges may be classified as 'consequential challenges', and include denial of livelihood and income generation opportunities, sustainable housing solutions, and access to basic services.

Third, communities face challenges in **accessing solutions** to their problems relating to secure land tenure and property rights. These challenges are broadly categorised as 'access challenges' and are subcategorised as 'administrative' and 'legal' challenges.

### 1.3 Governmental response

The government's response to this crisis is reflected in two policy initiatives. The first was contained in the Land Circular No. 2011/04, titled 'Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces' issued by the Land Commissioner General's Department. The Circular was subsequently withdrawn due to

challenges in the Court of Appeal and Supreme Court in October 2011 on grounds of unconstitutionality.<sup>3</sup>

Subsequently, the government issued Land Circular No.2013/01 titled 'Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces'. This Circular sought to solve state land issues relevant to the North and East and was launched in January 2013.

The programme introduced under the Circular takes place in two phases. The first phase, i.e. the **Problem Identification Phase** provides an opportunity to people - residing in or hoping to return to the Northern and Eastern Provinces - to present their problems relating to state land. The programme seeks to document problems that are reported by the communities to the divisional secretaries. The information is categorised under two areas:<sup>4</sup>

- Information about landless people or people who have lost lands
- Information on other problems people experience with reference to state lands

The Problem Identification Phase is followed by a **Problem Solving Phase**, wherein the government will seek to distribute lands to landless people or to the people who have lost lands, and solve various problems people experience with regard to state lands.<sup>5</sup>

The aim of the new circular is also to ensure the implementation of the Lessons Learnt and Reconciliation Commission's (LLRC) recommendations. Some of the key **substantive recommendations** applicable to secure land tenure and property rights include the following:

1. Ensure that any citizen of Sri Lanka has the right to acquire land in any part of the country, in accordance with its laws and regulations, and reside in any area of his/her choice without any restrictions or limitations.<sup>6</sup>
2. Ensure land policy of the government is not an instrument to effect unnatural changes in the demographic pattern of a given Province.<sup>7</sup>
3. Ensure distribution of State land continues as provided for in the Constitution.<sup>8</sup>
4. Issue a clear statement that private lands would not be utilised for settlements by any government agency.<sup>9</sup>
5. Review private land currently utilised for security purposes, with a view to release more land while keeping national security needs in perspective and complete the provision of alternate lands and or payment of compensation within a specific time frame.<sup>10</sup>
6. Develop a land use plan for each district in the North and East with the participation of district and national experts from various relevant disciplines.<sup>11</sup>

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<sup>3</sup> CA (Writ) Application No. 620/2011 and SC (F.R.) Application No. 494/2011.

<sup>4</sup> Land Circular No.2013/01, at clause 2.1.2.

<sup>5</sup> *Ibid.* at clause 2.2.

<sup>6</sup> LLRC Report, at para.9.124.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.* Annex 1.5: Interim Recommendations of the LLRC.

<sup>10</sup> *Ibid.* at para.9.142.

<sup>11</sup> *Ibid.* at para.9.151.

The LLRC also presented certain **programmatic recommendations** pertaining to the previous Land Circular No.2011/04. With the withdrawal of this Circular, these recommendations may be interpreted as being relevant to the new Circular No. 2013/01:

1. Assure people through a publicity effort that the Programme [under the Circular] seeks to make available land to all returning IDPs as expeditiously as possible and is not a substitute for recourse to the courts of law where people are in possession of valid legal proof of their claim to the land in question.<sup>12</sup>
2. Supervise civil administration officers tasked with the implementation of the Programme [under the Circular] by respective Government Agents and monitor implementation quality at the national level by the Land Commissioner General.<sup>13</sup>
3. Organise a media seminar on the Programme [under the Circular] to enable the Media to project an accurate and clear view of the Programme.<sup>14</sup>
4. Conduct well designed training programmes for all officers and community leaders selected for various Committees.<sup>15</sup>
5. Launch a well-designed, communication campaign in simple Tamil and Sinhala language to help displaced persons come forward to benefit from the Programme [under the Circular].<sup>16</sup>
6. Organise and hold a well-publicised 'Community Consultation Meeting' in each District Secretariat area and establish a mechanism to rapidly consider constructive suggestions made through this process.<sup>17</sup>
7. Apply strict controls to prevent any alienation of State land other than for IDPs until the proposed Programme [under the Circular] is implemented.<sup>18</sup>

These substantive and programmatic recommendations of the LLRC form the backdrop of the present programme under the Land Circular No.2013/01 to identify and solve problems pertaining to secure land tenure and property rights.

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<sup>12</sup> *Ibid.* at para.9.126.

<sup>13</sup> *Ibid.* at para.9.129.

<sup>14</sup> *Ibid.* at para.9.131.

<sup>15</sup> *Ibid.* at para.9.132.

<sup>16</sup> *Ibid.* at para.9.133.

<sup>17</sup> *Ibid.* at paras.9.135-36.

<sup>18</sup> *Ibid.* at para.9.140.

## 2. Scope of Study and Methodology

### 2.1 Scope

The present report seeks to analyse the various types of challenges relating to secure land tenure and property rights in the North and East i.e. 'contributory', 'consequential' and 'access' challenges. The analysis is based on the data and experience gathered from the project activities which included eight community training and Training of Trainer (ToT) workshops in the districts of Ampara, Batticaloa, Jaffna, Kilinochchi, Mannar and Vavuniya, with predominantly Tamil and Muslim participants.

This report does not seek to assess the implementation status of the government's programme under the Land Circular No.2013/01. The focus of this report is instead to present the findings and conclusions that emerge from the Supporting Land Tenure Awareness Project. This Project is similar to the Land Circular programme in identifying problems relating to secure land tenure and property rights and presenting solutions to vulnerable groups. The Project is important for two essential reasons. First, it builds on and verifies the positive features of the Land Circular programme. Second, it deals specifically with the gaps of the Land Circular programme. For example, the Land Circular focuses solely on state land while the Project deals with both state and private land disputes.

### 2.2 Methodology

This report is based on data gathered from two sources.

The Project involves a series of workshops and consultations at the community level in the districts of Ampara, Batticaloa, Jaffna, Kilinochchi, Mannar and Vavuniya. The workshops and consultations include community training workshops, ToT workshops and consultations with government officials. These workshops and consultations were the **primary sources** of data on problems and solutions pertaining to secure land tenure and property rights. An aggregate of over 160 persons participated in these workshops and consultations.

The report also relied on independent research on government policies and practices, and on the feedback and advice of veteran practitioners in land administration.<sup>19</sup> These **secondary sources** of data were crucial to understanding the broader policy context applicable to secure land tenure and property rights and the solutions best suited to the identified problems.

The methodology adopted in the preparation of this report entailed the following:

1. Developing a data extraction tool, which was regularly updated after each field-based initiative;
2. Attending workshops and consultations in the field to populate the extraction tool and to directly learn through participatory observations;
3. Debriefing by field researcher to senior analysts and think tank team including veteran practitioners in land administration;
4. Studying of data and brainstorming amongst think tank resources including veteran practitioners in land administration;

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<sup>19</sup> See the acknowledgements for the list of analysts and resource persons involved in brainstorming.



5. Research based on data and analysis to further assist brainstorming solutions;
6. Results of 4 and 5 adapted and regular inputs provided to resource persons responsible for delivering or facilitating field-based initiatives;
7. Sifting, categorising and analysing the data gathered through the data extraction tool and observations\*; and
8. Writing analytical report that explains the learning and need for further intervention.

\*The case study nature of much of the data in its final form suggested that coding and converting it to a statistical analysis might not be the most suitable method to understand its significance. Instead of an analysis in a statistical form, an alternative quantification analysis was done through magnitude assessments, sorting, and comparative rankings within categories.

The workshops and consultations used for primary data gathering were as follows:

<b>Community Training Programmes</b>		
<b>Location</b>	<b>Date</b>	<b>Demographic Details</b>
1. Akkaraipattu, Ampara	14 <sup>th</sup> March 2013	<b>36 persons</b> (34 Tamil, 2 Muslim)
2. Vavuniya	21 <sup>st</sup> March 2013	Not available.
3. Mannar	8 <sup>th</sup> April 2013	<b>27 persons</b>
<b>Training of Trainers Workshops (at which state land officers were consulted)</b>		
1. Mannar	30 <sup>th</sup> -31 <sup>st</sup> May 2013	<b>27 persons</b> (25 Tamil; 2 Muslim; 22 Male and 5 Female)
2. Akkaraipattu, Ampara	15 <sup>th</sup> -16 <sup>th</sup> June 2013	Day 1: <b>15 persons</b> (12 Tamil, 3 Muslim; 7 Male, 8 Female)  Day 2: <b>19 persons</b> including 3 state land officers (17 Tamil, 2 Muslim; 11 Male, 8 Female)
3. Batticaloa	27 <sup>th</sup> July 2013	Not available.
4. Jaffna	28 <sup>th</sup> July 2013	<b>26 persons</b> (5 Male, 21 Female)
5. Kilinochchi (held in Vavuniya)	29 <sup>th</sup> July 2013	<b>23 persons</b> (3 Male, 20 Female)

'Pre' and 'Post' evaluation forms were distributed amongst the participants of these workshops to assess their level of knowledge and awareness on secure land tenure and property rights. These forms, however, were prepared directly by the resource persons involved for the purpose of facilitating the discussion and assessing the perceived impact of the workshops. The forms were not used for empirical data gathering.

### 3. Findings and Conclusions

This section is presented in four parts. The first three parts respectively list ‘contributory’, ‘consequential’ and ‘access’ challenges identified through primary and secondary research. Each identified challenge is also analysed in terms of potential solutions identified through primary research and brainstorming. The fourth part contains certain perceptual maps of the identified problems and solutions and presents the analysts’ assessment of which problems and solutions ought to be prioritised.

#### 3.1 Contributory Challenges

These challenges directly and indirectly result in the denial of secure land tenure and property rights in the North and East.

##### 3.1.1 Property being uninhabitable

###### a. Demining

Participants in the community training programme in Akkaraipattu, Ampara<sup>20</sup> (36 persons) complained that many of their properties continue to be uninhabitable due to the presence of land mines. Land mines were also observed to inhibit livelihood activities centred on the cultivation of lands.

*Possible Solutions:* Maintain dialogue with Security Forces to ascertain progress and timelines with respect to the release of lands for resettlement.<sup>21</sup>

Take steps to build an independent verification system through which communities could directly make inquiries from de-mining agencies regarding progress and safe areas.

*Required Support:* Civil Society Organisations (CSOs) may need to intervene to function as a conduit between the Security Forces, de-mining agencies and affected parties.

###### b. Destruction of property

Participants in the community training programmes in Akkaraipattu, Ampara (36 persons) and Mannar (27 persons) stated that many houses and properties had been destroyed during the war and were therefore uninhabitable.

*Possible Solutions:* Engage the Rehabilitation of Persons, Properties and Industries Authority (REPIIA) to access compensation and restitution packages.<sup>22</sup>

<sup>20</sup> Participants in Akkaraipattu resided in the following divisions: Kannakipuram, Thuraivanthiyamadhu, Panangkadu, Olivul, Ashraf Nager, Navatkadu, Sinnakulam, Kolavil, Vachikuda, Vinayagapuram, Akkaraipattu/Alayadivembu.

<sup>21</sup> According to the 2012 Annual Report of the Ministry of Finance and Planning, ‘[l]andmines in a land area of 2,065,962,916 sqm., have been removed having spent around Rs.11,448 Million., by removing 768,097 devices.’ See Ministry of Finance and Planning, *2012 Annual Report* (March 2013), at 329.

*Required Support:* CSOs may need to intervene to assist affected parties to make applications to the REPPA. Applications are available at the Ministry of Rehabilitation and Prison Reforms website.<sup>23</sup> Applicants are required to submit the relevant application form with supporting documentation approved by the Grama Sevaka and Divisional Secretary.

### **3.1.2 Encroachment and acquisition**

#### *a. Encroachment and acquisition by Security Forces*

Participants in the community training programmes in Akkaraipattu, Ampara (36 persons) and Mannar (27 persons) complained that Security Forces had encroached on their properties. In some cases, properties were being occupied without any formal acquisition process. For example, in Pallimunai, Mannar, seven houses and nine empty lands amounting to 8,648 acres of non-agricultural land and 1,500 acres of agricultural land, were being occupied by Security Forces since 2007.

Also in Mannar, participants in the ToT workshop (27 persons) complained that the Army and Navy were encroaching on approximately 22,000 acres of land in Mannar. They referred to specific incidents in Mullikulam, where the Navy has encroached on land belonging to villagers, displacing 150 families. These participants also mentioned that six out of seven water tanks in Mullikulam were under the control of the Navy or Army, thereby depriving the people of access to water.

Meanwhile, participants in the Mannar community training programme (27 persons) complained that Security Forces have taken over permit lands in Silavathurai and Moonrampitti for the purpose of constructing training camps.

According to participants in the ToT workshop in Mannar (27 persons), land acquisitions took place in Kalliyadi, Mullankavil, Sannar and Vankallai without the specification of any 'public purpose', as required under section 2 of the Land Acquisition Act No.9 of 1950. The participants observed that the purpose of these acquisitions was the construction of training camps. For example, lands in Sannar were acquired for establishing a training facility. Participants in the ToT workshop in Akkaraipattu, Ampara (15 persons) also complained of similar incidents in Akkaraipattu.

*Possible Solutions:* Issue a letter to the relevant Divisional Secretary (DS) informing him or her of the unlawful occupation or irregular acquisition. The letter should contain all details of the land currently occupied and should be supported with available documentation. The letter should suggest a remedy, such as the return of the land, the provision of alternative land and/or compensation, or a combination of these remedies. A copy of the letter should also be sent to the area commander of the military (Army or Navy, depending on the unit occupying the land).

<sup>22</sup> Compensation has reportedly been paid to 677 persons under compensation schemes, while a further Rs. 238 Mn. has been granted to 1,853 persons under loan schemes. See Ministry of Finance and Planning, *2012 Annual Report* (March 2013), at 329.

<sup>23</sup> See <http://www.reprimin.gov.lk/index.php/en/downloads/other>.

Exhaust all administrative channels with respect to securing a remedy before considering litigation.

*Required Support:* CSOs may need to provide assistance in the drafting of letters and in following up with the DS and military.

CSOs may also need to assist affected parties in the event that litigation is the only remaining and available option. In such an event, a network of lawyers and former land administrators may be consulted in order to develop effective and efficient litigation strategies.

#### *b. Acquisitions for development*

Participants in the community training programme in Mannar (27 persons) referred to the spate of development projects that threaten to cause new displacements due to fresh land acquisitions. Such projects were reported in Nallathannipuddi and Mullikandal.

Moreover, participants in the community training programmes in Vavuniya observed that no compensation was being paid to the private landowners whose lands were acquired for the expansion of the A9 road. Additionally, participants in the ToT programme in Kilinochchi (23 persons) complained of an acquisition of land in Paranthan by the Electricity Board where the boundary lines have been wired with high voltage electricity. The displaced landowners are still to be paid compensation.

It was also intimated that the project sites were being used for purposes other than ‘public purposes’ including cultivation by Security Forces and colonisation. For example, participants in the community training programme in Mannar (27 persons) complained of the establishment of Sinhala villages in acquired land in Iraddaikkulam. Participants in the ToT programme in Kilinochchi (23 persons) also complained of such colonisation projects.

*Possible Solutions:* Investigate the funding sources of the development project and make constructive appeals to all parties concerned, i.e. the project executing agencies of the state and the development funding agencies.

Lobby for rights and benefits provided under the National Involuntary Resettlement Policy (NIRP). This policy provides a useful framework for affected parties to lobby for better compensation and resettlement packages. This policy was approved by the Cabinet of Ministers and is currently applicable to all development-induced displacement—particularly projects funded by the Asian Development Bank.

Approach the DS (who is usually the Acquiring Officer) and obtain information on the current status of the acquisition.

Where it is found that the project is not for a ‘public purpose’, seek a divestiture of the property under the Land Acquisition Act No. 9 of 1950. Make a direct request to the Ministry of Lands and Land Development.

*Required Support:* CSOs may need to assist affected parties in obtaining information on the development project affecting them, on the applicability of the NIRP and on the current status of the acquisition process.

In some cases, CSOs may need to assist affected parties in drafting appeals to the Ministry of Lands and Land Development seeking divestiture of the land concerned.

*c. Government encroachment on religious grounds*

Participants in the ToT workshop in Akkaraipattu (15 persons) complained of encroachment by the government on the basis that the land is 'sacred land'. Incidents of this nature were reported in Pothuvil, Attalachenai, Theekavaavi and Aalim Nagar. Participants in the ToT workshop in Jaffna (26 persons) also referred to wide scale evictions of civilians from lands in Jaffna described as 'temple' land.

*Possible Solutions:* In the case of illegal encroachment, prepare documentary evidence and present to relevant DS requesting the release of the lands. Take measures to create awareness on the encroachment through political representatives and the media.

In the case of acquisitions, present objections as provided for under the Land Acquisition Act No.9 of 1950. Seek divestiture order from the Minister of Lands and Land Development on the grounds that the acquisition is not for a public purpose.

*Required Support:* CSOs may need to support affected parties in gathering information and documenting incidents of illegal encroachment.

CSO support may also be needed in terms of obtaining legal advice through a network of lawyers.

*d. Civilian encroachment:*

Participants in both the community training programme (27 persons) and ToT workshop (27 persons) in Mannar complained of encroachment of lands by other civilians. The participants also mentioned the building of unauthorised boundary walls by other civilians. Incidents of encroachment took place in Murungan, Madu Road, Mullikulam and Cajuwaththai and the lands often belonged to people living overseas.

Participants in the ToT workshop in Akkaraipattu (15 persons) mentioned that civilians were encroaching on a dried up water reservoir. This encroachment has led to the destruction of the reservoir and has presented an environmental risk to those settled in nearby areas.

It was also observed in both Mannar and Akkaraipattu that - in many instances - local politicians supported the civilian encroachment.

*Possible Solutions:* Inform the relevant DS of the encroachment. Exhaust all options to reach a negotiated settlement before considering litigation.

In the event that negotiations fail, a Notice to Quit may be sent to the civilian encroacher within 30 days. If the land is not released even after being served with the notice, a possessory action may be instituted in a civil court of law.

*Required Support:* CSOs may need to assist complainants in preparing documentation in support of their claim where local politicians are concerned. While direct involvement in private land disputes will usually fall outside the mandates of CSOs, these organisations will have a role to play in countering politicisation. Hence CSOs may need to help civilians constructively engage local politicians in order to reach negotiated settlements. Where no constructive engagement is possible, CSOs may need to assist complainants in accessing legal advice and representation.

### 3.1.3 Unlawful practices

Case studies carried out in Ampara, Mannar and Vavuniya revealed certain unlawful practices that have emerged as a result of poor knowledge and awareness. These practices have directly resulted in unsecure land tenure, as those benefiting from these practices do not acquire good title to the lands concerned.

Two specific case studies carried out in Mannar reflect such practices. In the first case, the participant occupied land on a valid permit, but sought to gift the land to his youngest son prior to death. In the second case study, the participant sought to transfer state land to his daughter as 'dowry'. In this instance, the participant occupied the state land without a permit.

*Possible Solutions:* Follow the procedures applicable to obtaining land permits and to succession upon the permit holder's death. Alienation of state land is prohibited under all circumstances. Hence any gift of permit land is invalid.

In all cases, the intended occupier's eligibility to be granted a permit under the Land Development Ordinance No.19 of 1935 needs to be considered carefully. Where a successor is not named on the permit, succession will take place according to the hierarchy determined under the Land Development Ordinance.

*Required Support:* CSOs may need to facilitate legal advice through a network of lawyers and former land administrators, particular in complicated cases where the ordinary application of the law would not produce the outcome preferred by the current permit holders.

For example, the participant in the first case study cannot ensure that his youngest son receives the permit land if he relies on the ordinary succession hierarchy under the Land Development Ordinance No.19 of 1935. Under the succession hierarchy, apart from spouses, sons get priority over daughters, and older children get priority over younger

children.<sup>24</sup> Hence the participant would need to request the relevant DS to hold an inquiry at which the youngest son will have to make a claim and others above him on the succession hierarchy renounce their claim.

### 3.2 Consequential Challenges

The denial of secure land tenure and property rights result in a number of consequential challenges.

#### 3.2.1 Denial of livelihood opportunities

The consistent denial of livelihood opportunities remains one of the most egregious consequences of unsecure land tenure and the loss of property rights.

Participants in the ToT workshop in Mannar (27 persons) complained that those displaced were often provided with alternate lands that were unsuitable for livelihood activities. For example, in Mullikulam, displaced families traditionally engaged in fishing were provided lands that were not proximate to fishing sites, thereby making fishing virtually impossible.

Participants in the ToT workshop in Jaffna (25 persons) also referred to the significant impact of unsecure land tenure on livelihood activities.

These participants also pointed out that illegal occupation and control of water tanks in Mullikulam by the Army and Navy has denied water resources to farming communities nearby.

*Possible Solutions:* Lobby government officials through direct engagement and through political representatives and media to obtain alternative lands better suited to livelihood activities. Carry out similar initiatives to secure release of water resources. Devise alternate livelihood solutions in the interim.

*Required Support:* CSOs may need to support affected parties by linking them to human rights and media networks for the purpose of advocacy and lobbying activities.

CSOs and non-governmental organisations (NGOs) specialising in livelihood development may need to support affected parties in terms of devising alternate livelihood solutions in the interim.

#### 3.2.2 Destruction of natural resources and environment

Participants in the ToT workshop in Mannar (27 persons) pointed to incidents in Vallapaadu and Kiranchi where local politicians were destroying or misappropriating natural resources. These participants also referred to unlawful destruction of forests in Sillavathurai and Mullikulam.

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<sup>24</sup> See Rule 1 of the Third Schedule to the Land Development Ordinance No.19 of 1935.

Participants in the ToT workshop in Akkaraipattu (15 persons) mentioned that ordinary civilians were occupying a dried up reservoir. The participants speculated that these activities could cause the permanent destruction of the water resource.

The incidents involving destruction of natural resources and the environment have serious long-term implications on living standards, access to water and livelihood activities.

*Possible Solutions:* Lobby appropriate government institutions, including the Central Environmental Authority to intervene and provide conservation solutions. Depending on the type of issue, the following institutions may also be engaged:

1. The Ministry of Fisheries and Aquatic Resources
2. The Ministry of Environment and Natural Resources
3. National Aquatic Resources Research and Development Agency
4. Geological Survey and Mines Bureau
5. Coast Conservation Department

*Required Support:* CSOs may need to assist affected parties in engaging with these institutions and structuring complaints. Collective appeals are generally more effective than individual complaints. Hence CSO support may be needed to organise affected parties into lobby groups.

### 3.3 Challenges relating to Accessing Solutions

These challenges inhibit affected communities from accessing available solutions pertaining to identified contributory and consequential challenges. Two access-related challenges were identified in the research: administrative challenges and legal challenges.

#### 3.3.1 Administrative challenges

##### a. Problems in identifying and accessing officials

Participants in Akkaraipattu, Ampara (36 persons) stated that there was a general lack of awareness and clarity with regard to which officials are responsible for solving their land issues. Moreover, it was observed that, even if the right officials were identified, the community faced difficulties in accessing these officials. It was also observed that the community faced a particular challenge in obtaining information on land permits.

*Possible Solutions:* Map the specific powers, responsibilities and jurisdictions of specific officials responsible for land administration.

In the case of land permits under the Land Development Ordinance No.19 of 1935 the DS's office is the first point of reference. The DS's office will generally maintain a land ledger with the extent, survey plan, plan number and the alienee's (i.e. the recipient of the land permit) details. A copy of the permit may be obtained from the DS's office.



If a permit is arbitrarily cancelled, the affected party may complain to the Provincial Land Commissioner within 42 days under section 110 of the Land Development Ordinance.

In the case of permits and long leases issued under the State Land Ordinance No.8 of 1947, the Land Commissioner General's Department is the first point of reference, as this Department maintains records of such documents.

*Required Support:* Verité Research has published a *Guide for Decision-makers* which maps the institutional and administrative structures pertaining to land devolution. Extracts of the resource could be used by CSOs to understand institutional and administrative structures, particularly in respect of the Land Development Ordinance No.19 of 1935 and State Land Ordinance No. 8 of 1947.

#### *b. Official bias*

Participants in the community training programmes in Mannar and Vavuniya complained of official bias in the resolution of disputes and the general administration of land. These participants specifically referred to Government Agents and the Police being amongst the most partial towards political actors. They also complained of favouritism in granting land permits. For instance, participants in Mannar (27 persons), intimated that preference was given to those affiliated to certain local politicians.

However, since the introduction of the Land Circular No.2013/01, all alienation in the Northern and Eastern Provinces to landless people has been suspended until 'the land problems of the affected people in the conflict affected Divisional Secretariats are solved.'<sup>25</sup>

Participants in the ToT programme in Kilinochchi (23 persons) complained that officials responsible for land administration were often incapable of performing their functions effectively.

*Possible Solutions:* Complain to the Land Commissioner General or the Provincial Land Commissioner about the specific instance of official bias or incompetence in land administration. Also, inform political representatives of ongoing partiality and bias towards particular groups.

*Required Support:* Official bias is often a political issue. Hence CSOs may need to secure the involvement of sympathetic political representatives to counteract bias. CSOs may also need to source legal representation for affected parties when making complaints to the Police in order to mitigate official bias within that institution. Obtaining the advice and securing the presence of civil lawyers may at times be more effective, as such lawyers are less incentivised to accommodate Police bias.<sup>26</sup>

<sup>25</sup> See Land Circular No.2013/01, clause 2.1.1.1.

<sup>26</sup> Consultations with experienced legal practitioners revealed that lawyers in the field of criminal law are compelled to work closely with the Police in criminal proceedings. Securing Police cooperation is critical to

*c. Documentation problems*

Participants in every single workshop held in Ampara, Mannar and Vavuniya (over 110 persons) referred to the serious problem in respect of documentation. The problems consistently referred to include:

- The non-availability or loss of vital documents proving title or legal interest in the land; and
- The illegibility of vital records of information in government registries

The recurring problem has remained one of the most significant administrative barriers to secure land tenure and property rights in the North and East.

Participants in the ToT workshop in Akkaraipattu (15 persons) complained that there were some instances where more than one permit had been issued for the same land. These instances have led to disputes between competing claimants. These participants also observed that civilians were submitting false documents for both state and private lands. Such incidents were witnessed particularly in Attalachenai, Ampara.

*Possible Solutions:* Obtain or renew documents by taking into consideration the following:

- a. Copies of all deeds are available under the notary's name in the relevant Land Registry.
- b. The registration folio relevant to the land concerned in the Land Registry contains details on the land.
- c. The Notary Public maintains a copy of the protocol pertaining to the land, which contains information on the land.
- d. The DS's office maintains copies of all permits pertaining to lands located within its jurisdiction.
- e. In the case of permit lands, the Grama Niladhari maintains a register of permit lands located within his jurisdiction.

Where a registry is destroyed, there is a process for reconstruction of folios pertaining to private land. In such an event, Land Registrars will conduct an inquiry and initiate the process through the Land Registrar General.

There is no known process for the reconstruction of government documents. In such an event, a Land Kachcheri process may have to be initiated to gather evidence from neighbours and Grama Niladharis to establish the claim of the affected party. Such a process is also needed in the event that more than one permit has been issued for the same land or when competing claimants have submitted false documents.

*Required Support:* CSOs need to support affected parties in initiating a process of reconstruction of lost or destroyed records in the Land Registries. Organising as a group of affected persons may be a more effective and

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these lawyers in terms of their effectiveness within the profession. In this context, criminal law practitioners are less likely to directly confront the Police on accusations of bias.

efficient method through which a process could be initiated, as the same reconstruction process could be used to address the grievances of the entire group.

### 3.3.2 Legal challenges

#### a. Cost

Participants in all workshops in Ampara, Mannar and Vavuniya (over 110 persons) complained of the high costs in litigation. The cost prohibitive nature of litigation, coupled with the failure to exhaust all available administrative remedies, often compels affected parties to abandon their claims.

*Possible Solutions:* Consider alternative dispute resolution options, such as Mediation Boards under the Agrarian Development Act.

Where litigation is the last and only available resort, approach institutions such as the Legal Aid Commission for legal assistance.

*Required Support:* Mediation Boards may require training on land issues. Though Mediation Boards come under the Ministry of Justice, inter-ministerial coordination with the Ministry of Land may be necessary to sensitise Mediation Board members on the peculiarities of land disputes and the contextual factors impacting disputes in the North and East.

Moreover, international donor funding alongside government spending may be necessary to design and implement such a programme. In this context, alternative land settlement mechanisms in other countries such as India, Bangladesh, and Indonesia need to be studied and appropriate components should be introduced into the Sri Lankan model.

#### b. Delay

Participants in all workshops also complained of the long delays inherent in the courts system. Land cases were reported as being notoriously prolonged, and this feature has remained a critical disincentive to seeking litigation-based remedies.

Under ordinary circumstances, in the case of state land, participating in the Land Circular programme may establish new avenues of dispute resolution. According to the Legal Aid Commission, a substantial portion of land problems get resolved through the Division Day programmes held at the DS level.

For example, 30 cases were reportedly settled during the Division Day held in the Maniyanthoddam area (J/89, Nallur Divisional Secretariat) 2<sup>nd</sup> May 2013.<sup>27</sup>

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<sup>27</sup> Source: Legal Aid Commission, Presentation on Land disputes in the Northern Province at the Panel Discussion: Post-war Land Issues and displacement: Current trends, National Legal Framework and Good Practice organised by the Norwegian Refugee Council and the International Centre for Ethnic Studies, 12 June 2013.

However, according to a participant in the Kilinochchi ToT programme, officials implementing the Land Circular programme often act partially and disregard even legitimate claims. The participant reported that he had participated in the Division Day programme and had submitted a permit as proof of his claim to a particular piece of land. However, instead of considering the veracity of the document, the officials proceeded to confiscate it.




*Possible Solutions:* Delays in litigation is a systemic problem that may not be solved in the short or mid-term. In this context, exhausting all available administrative remedies before pursuing litigation may be the only means of avoiding long delays by the courts.

However, any legally prescribed time limits - by virtue of any statute(s) of limitations on the filing of cases and the laws relating to acquisition of title on the basis of prescription - should be kept in view from the outset. Affected parties should thereby ensure that the availability of legal remedies in an appropriate court of law is not unwittingly negated while administrative remedies are sought.

*Required Support:* CSOs may need to assist affected parties in pursuing alternate dispute resolution mechanisms. For instance, the Legal Aid Commission has been instrumental in facilitating community-level awareness on alternate dispute resolution mechanisms and observing the Land Circular programme.

### 3.4 Perceptual Mapping of Data

The research and analysis that has emerged from the field work, literature and brainstorming is captured succinctly below in three perceptual maps. In the maps, the category of the challenge is identified by the following:

-  Contributory Challenges (solid filled circle)
-  Consequential Challenges (chequered pattern)
-  Access Challenges (brick pattern)

Every issue was ranked and graded by the analysts to estimate from the data and studies several elements of the problems they posed, and qualities of the solutions available.

With regard to the problem posed, the issues were graded separately on 'urgency' (i.e. the need for resolving quickly) and 'significance' (i.e. impact on lives). The solutions were graded in terms of their estimated 'effectiveness' (i.e. the extent to which they might solve the problem) and their 'practicability' (i.e. the possibility of being carried out successfully).

**Perceptual Map 1:** analyses the problem in terms of its **urgency** and **significance**. The sizes of the circles are graded to indicate the effectiveness of the known available solutions. Hence, the larger the circle, the more effective the known available solution is.

**Perceptual Map 2:** analyses the solutions in terms of their **effectiveness** and **practicability**. The sizes of the circles are graded to indicate the urgency of the problem. Hence, the larger the circle, the more urgent the problem is.

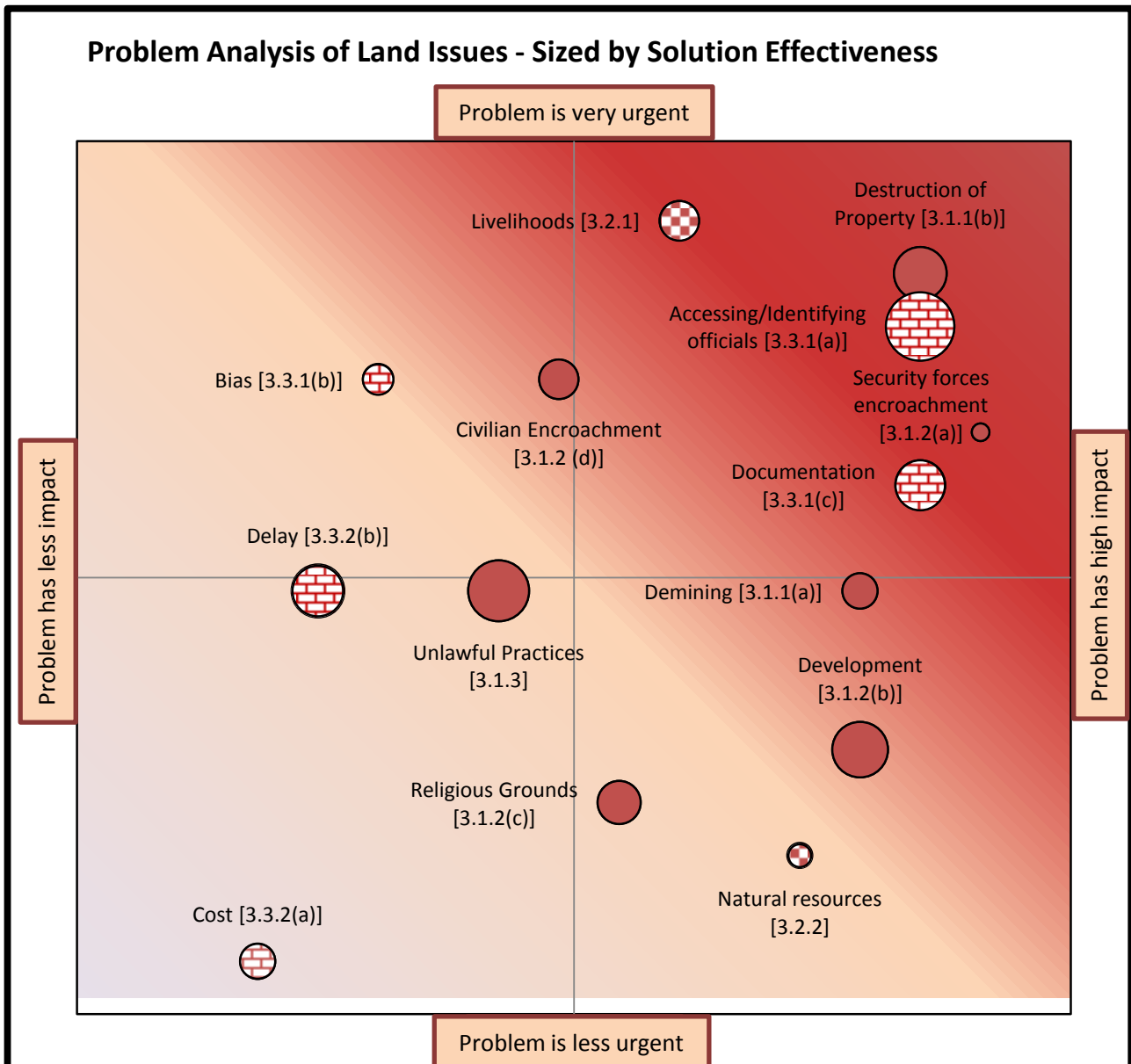
**Perceptual Map 3:** puts together the problem and solution analysis to differentiate those that are highly problematic and highly solvable, from those that are less problematic and less solvable. Here the sizes of the circles are graded to capture the analysts' assessment of high, moderate and low priority interventions.

All perceptual maps reflect only the **relative** variations on the assessed scales. They are not judgements of absolute importance. That is, even those sited as less problematic are only *relatively* less problematic. All the problems identified are serious and warrant intervention.

A perceptual map analysis helps to prioritise resources based on relative acuteness of the problem and relative opportunity for an effective solution. Those issues that emerge towards the right hand side of the map and the upper half of the map are those with relatively higher priority. Therefore, the issues that emerge on the upper right quadrant will be the highest priority.

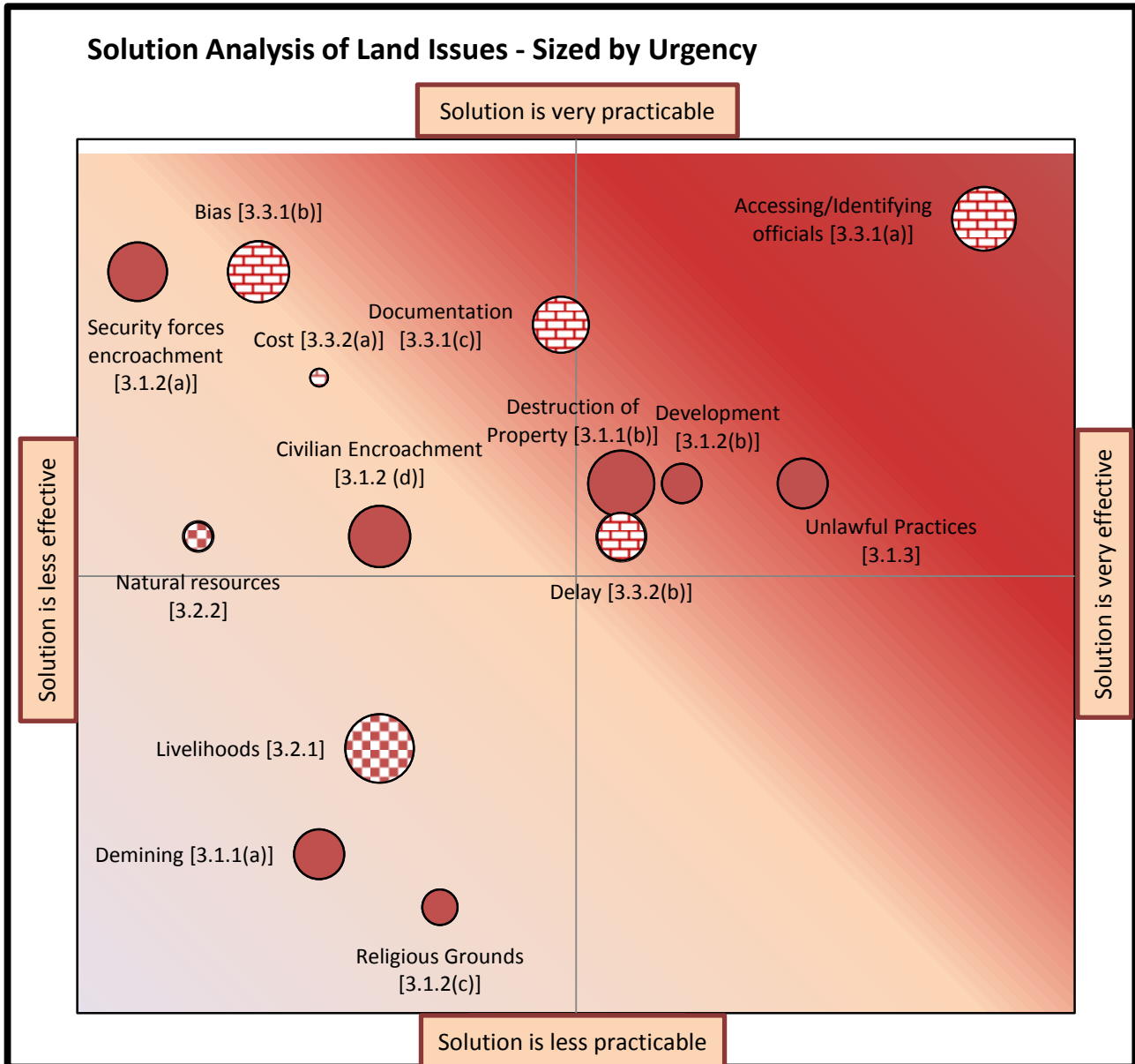
The **numbering of the issues in the perceptual maps** is connected to the numbering in the detailed analysis so that the reader could **cross reference** the positioning in the perceptual maps with the detailed analysis of any issue.

Map 1

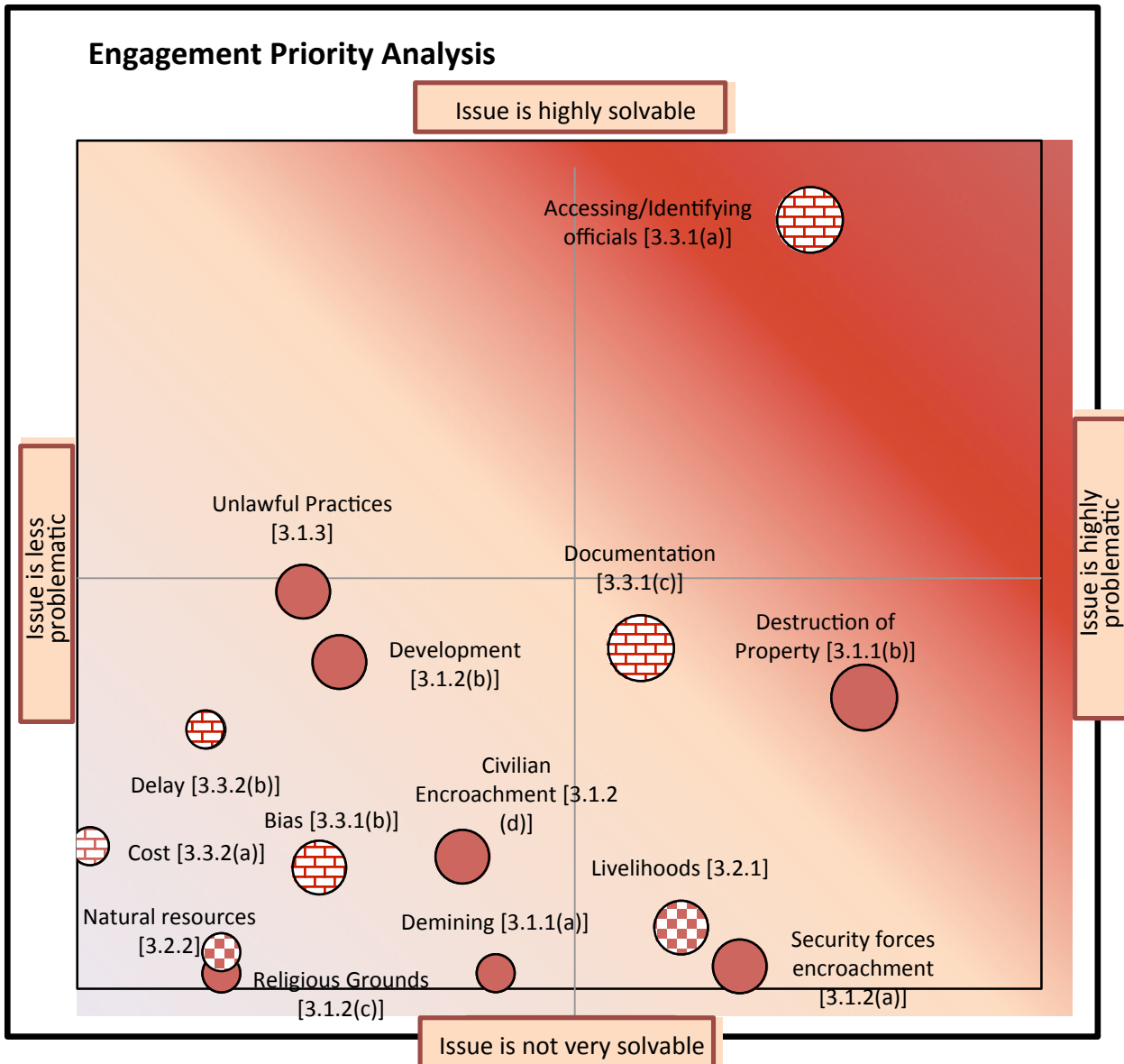


According to this perceptual map, accessing/identifying officials (3.3.1(a)) and the destruction of property (3.1.1(b)) are two problems that are relatively more urgent and have higher impact. These problems have corresponding solutions that are relatively more effective. Hence they are placed within the upper right quadrant and represented by larger circles. By contrast, the problem of encroachment by security forces (3.1.2(a)) is relatively more urgent and has higher impact, but has a corresponding solution that is relatively ineffective. Hence, though the problem is placed within the upper right quadrant, it is represented by a smaller circle. At the other end of the spectrum, the problem of cost of litigation (3.3.2(a)) is less urgent and has less impact and also has a corresponding solution that is less effective. Hence it is placed within the lower left quadrant and is represented by a smaller circle.

Map 2



According to this perceptual map, the problems of accessing/identifying officials (3.3.1(a)) and the destruction of property (3.1.1(b)) have solutions that are relatively more effective and practicable. These problems are also relatively more urgent. Hence they are placed within the upper right quadrant and represented by larger circles. By contrast, the problem of development projects leading to or perpetuating displacement (3.1.2(b)) has a solution that is relatively more effective and practicable. Yet this problem is relatively less urgent. Hence, though the problem is placed within the upper right quadrant, it is represented by a smaller circle. At the other end of the spectrum, the problem of encroachment on religious grounds (3.1.2(c)) has a corresponding solution that is relatively less effective and practicable. Moreover, this problem is relatively less urgent. Hence it is placed within the lower left quadrant and is represented by a smaller circle.

**Map 3**


According to this perception map, interventions pertaining to accessing/identifying officials (3.3.1(a)) should be prioritised. In relative terms, interventions pertaining to documentation (3.3.1(c)) and destruction of property (3.1.1(b)) should be prioritised next. Interventions pertaining to cost of litigation (3.3.2(a)), destruction of natural resources (3.2.2) and encroachment on religious grounds (3.1.2(c)) should be least prioritised.



## Conclusion

The foregoing analysis maps the problems, possible solutions and required support in terms of secure land tenure and property rights in the North and East. The identified challenges are essentially classified according to their relationship to secure land tenure and property rights. Accordingly, three types of challenges were discussed: 'contributory' challenges, 'consequential' challenges and 'access' challenges. The contextual specifics of these challenges are based on the observations of participants in workshops and consultations organised under the Supporting Land Tenure Awareness Project in the districts of Ampara, Batticaloa, Jaffna, Kilinochchi, Mannar and Vavuniya. Hence this report is largely based on empirical evidence gathered from the field and, often, directly from affected parties. Three major conclusions may be drawn from the data:

1. According to affected parties, a significant portion of the 'contributory' challenges in respect of secure land tenure and property rights emanate from 'official' sources. In the opinion of affected parties, Security Forces are chiefly responsible for perpetuating displacement through ongoing illegal occupation and acquisitions. Meanwhile, political actors appear to be significant contributors to issues of institutional politicisation and interference with justice. These challenges are often unsolvable at the grassroots level due to the fact that power structures operate against affected parties. In this context, there appears to be **a critical need to engage the government at the policy level**. The aim of such engagement is overcoming macro-scale 'contributory' challenges such as militarisation, and 'access' challenges such as bias and politicisation.
2. The state is, however, at the centre of problem-solving. For instance, the Land Circular No.2013/01 is a programme that has the potential to solve some key challenges relating to secure land tenure and property rights. An initial assessment of the programme indicates that some problems have in fact been solved through the community consultation programmes (i.e. the Division Day programmes) implemented under the Circular. Hence **further awareness on the Land Circular and what it may have to offer is critical to problem solving**.
3. CSOs have a critical role to play in problem solving. They occupy an important space in terms of bridging the communication gap between the community and the government. Yet this overall role contains the risk of community overdependence on external organisations. Hence efforts should be taken to **create sustainable solutions and facilitate the growth of community-based organisations**.

In the long term, interventions to promote secure land tenure and property rights need to be community-driven. In the interim, this report establishes a strong case for strategic intervention at the policy level and the grassroots level.

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