

Focus on Rights
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DESPERATE PROBLEMS OF THE INTERNALLY DISPLACED IN SRI LANKA

It is quite astonishing that, decades after an equitable language policy was adopted in order to strike a reasonable balance between the needs of the majority and the rights of the minority, callous insensitivity continues to be officially manifested in respect of its observance.

For instance, swift outrage is only natural when Tamil speaking owners of houses that are being rented out (mostly for unconscionably meagre amounts) to the Army in the North, are issued receipts for their occupation in the Sinhalese language? They need to then, travel out of their way to show these documents to others, to fully comprehend their contents. These are not theoretical imaginings but actual problems still faced by ordinary people living in those areas.

One could, of course, say that perhaps this is better than no receipts being issued at all which is, reportedly most often the case in regard to compulsory occupation of houses in the designated so called High Security Zones in the North. But this would be a flippancy ill suited to the gravity of the problem.

These issues arise within a larger context of deprivation of land, housing and property rights of the displaced in the conflict affected areas as well as the tsunami affected areas in the South. Many of these problems are a consequence of applicable laws that are far too rigid to deal with the humane problem of displacement but yet, are not amended for that purpose.

For example, the majority of persons displaced are those who have either been occupying state land illegally, occupation having passed as it were from generation to generation or those who have been given permits conferring some sort of ownership to the lands. In the case of the former, they have, of course, no rights to the land at all despite the fact that they may have been in occupation for decades.

Lawyers and activists working with the displaced who fall into this category often profess the most complete frustration at their inability to convince them of the fact that they have no entitlement to the land. One provincial lawyer told me as to how it was impossible to tell someone whose family had been living for generations on particular state lands and had been displaced as a result of the conflict or the tsunami, that no rights had accrued therein. "Often, a tremendous sense of injustice festers within that person and contributes to general anger against the authorities. These are the people who become ripe for any subversive influence," he said.

Then, there is the second category of those who had been occupying by virtue of permits. In some cases, where displacement has occurred as a result of the occupier being forced to leave the land and not through choice, they live in refugee camps for years and then return to the land to find that their permits have been given to other persons, at times even without a formal cancellation of the permit itself.

The arbitrary use of powers by state functionaries in the issuance of permits is also a sore point as for example, reported refusals to issue permits where the applicant is over sixty years of age, even though such a limitation is not sanctioned by law. In many instances, authority is traced, when questioned in such contents to this circular or that regulation despite the fact that the circulars or regulations are not available to the public and even if issued, would be contrary to the law from which they purportedly trace their legitimacy.

Reportedly, there is also a large black market whereby (state) land is sold illegally and many bogus title deeds to land are in circulation, leading to competing title claims. Despite the fact that, theoretically, state land cannot be alienated, this black market is nurtured by many individuals, including even, in some cases, corrupt government officials. No deterrent action is taken against those responsible and the uncertain security situation is often used as a convenient cover.

In ordinary instances, such bogus deeds could be challenged in the District Court. Where breaching of statutory duties of state functionaries are in issue, the legality of such actions could be put before the Court of Appeal through a writ application. A possible challenge in the Supreme Court under the equality provision can also be contemplated. But, in the perilously unstable North and East, the law has proved to be close to useless and the few instances where the courts have actually intervened have had no effect on the existing reality.

From yet another perspective, many displaced persons are compelled to face situations where, their lands abandoned through involuntary displacement, have been occupied by others over the period of ten years adverse and uninterrupted possession stipulated by the Prescription Ordinance.

It has been suggested through interviews held with displaced persons that the Ordinance be amended to include that its protection be extended to persons labouring under disabilities to include those who have been compelled to abandon their properties due to circumstances beyond their control. Currently, though such protection is extended in terms of the Tsunami (Special Provisions) Act, No 16 of 2005 to tsunami displaced person, a concurrent protection is not extended to persons displaced as a result of the conflict.

As a result, in areas in the East where both categories of the displaced may exist in close proximity to each other, grave resentment has been manifested due to this differential treatment which is also evidenced in other respects such as provision of financial assistance and basic shelter and housing. This is, by itself, a clear violation of the equality principle.

Insofar as the tsunami displaced is concerned, initial circulars issued after the tsunami stated that where the displaced persons had lost documents relating to land ownership or permits in their custody, they could obtain certified copies of such documents from the Divisional Secretariat or the District Land Registry. Where the Divisional Secretariat itself was destroyed, they needed to appear to the Provincial Commissioners of Land in their respective areas to prepare fresh documents and issue copies. Divisional Secretariats were also required to re-open files following this method.

This procedure was applicable to the loss or destruction of all documents relating to land, including title deeds and grants made under the Land Grants (Special Provisions) Act or the Land Development Ordinance. However, numerous problems have arisen in the implementation of these procedures. In many cases, requests by displaced persons for fresh documentation had not been heeded or had been complied with after the soliciting of bribes.

This is aggravated by the confusion which continues to prevail in regard to the reduced buffer zones which were announced recently, ranging from 25 - 55 metres in the Southern Districts and 50 metres in the districts of Amapara, Batticaloa and Jaffna. Activists working in those areas are besieged by complaints that despite the revision, local authorities were not allowing displaced persons to relocate on their old properties and lands despite the fact that they fall outside the revised buffer zones.

In sum, basic issues of land, housing and property rights of the displaced in Sri Lanka still cry out to be remedied. Assuredly, verbal sparring in Geneva between historic antagonists who are both, in their own way, far removed from the problems of ordinary people will not suffice at all.

Instead, a comprehensive effort needs to be evidenced as a first step towards bringing about an atmosphere conducive to true reconciliation and therein, forging a sense of national identity. It is to our lasting shame that such initiatives yet need to be worked out.