

Sri Lanka: LLRC Implementation Monitor

Abbreviated Summary

Land Dispute Resolution

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The Legal Research team at Verité Research is responsible for preparing this report.

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Background

In response to post-war demands for a framework for national reconciliation, President Mahinda Rajapaksa appointed the Lessons Learnt and Reconciliation Commission (LLRC) on 15 May 2010. The final report of the LLRC was published in December 2011. On 26 July 2012 the government released a National Plan of Action to Implement the Recommendations of the LLRC (NPA), which contained timeframes, Key Performance Indicators (KPI) and responsible agencies through which recommendations of the LLRC could be implemented.

In November 2012 Verité Research published 'Sri Lanka: LLRC Implementation Monitor – Statistical and Analytical Review No. 1'. The report contained an analytical counting and categorisation of the LLRC recommendations, and an analytical assessment of the NPA. The report specifically examined the overlap and differences between the recommendations of the LLRC and the actions envisaged by the NPA.

The research series titled 'Sri Lanka: LLRC Implementation Monitor – Status of Implementation' is a follow up to the first report.

The objectives of this research series are:

1. To assess the status of implementation of each LLRC recommendation in terms of the degree to which performance indicators have been met; and
2. To evaluate the implementation plans pertaining to recommendations that are yet to be fully implemented.

This research series is presented thematically, in order to provide a thematic evaluation of the implementation of LLRC recommendations. The present volume deals with **Land Dispute Resolution**.

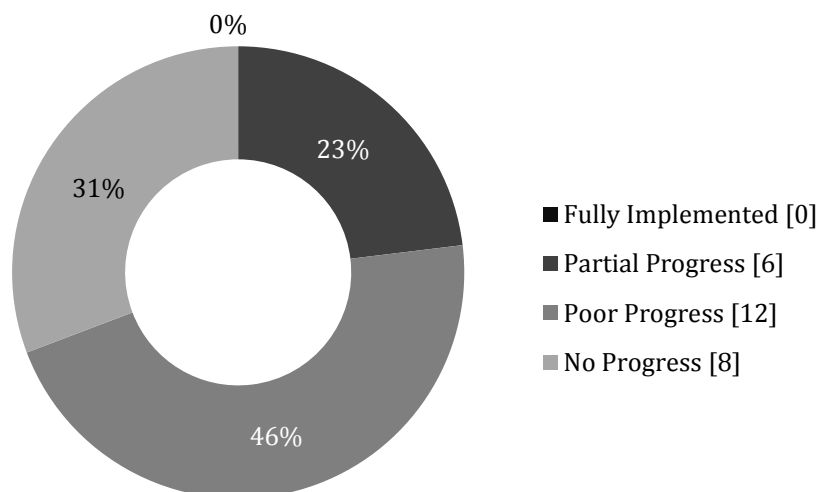
1. Overview

1.1 Overall Status of Implementation

The LLRC made **twenty-seven** recommendations on the subject of land dispute resolution, of which **twenty-six** are now assessed to be actionable. The previous LLRC Monitor, 'Sri Lanka: LLRC Implementation Monitor – Statistical and Analytical Review No. 1 (November 2012), included only fourteen recommendations as actionable. It was concluded that thirteen recommendations were not actionable in their current form, as 'they directly relate to the

Land Circular No.2011/04, which was subsequently withdrawn.¹ However, the new Land Circular No.2013/01 has now replaced the previous Circular. As such, twelve of these thirteen recommendations are once again actionable.² In order to reasonably assess the implementation status of these twelve recommendations, we replace all references to 'Land Circular No. 2011/04' with 'Land Circular No.2013/01'.

Chart 1 : Overall Status of Implementation

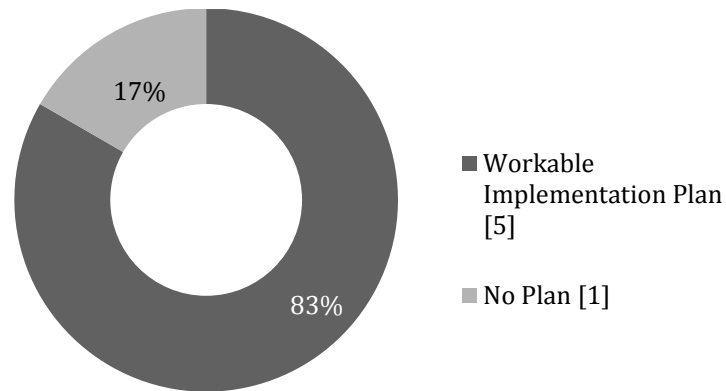


1.2 Partial Progress

Six recommendations have seen 'partial progress' in implementation, as performance indicators in respect of these recommendations have been substantially met. Five of these Partial Progress recommendations have 'workable implementation plans'. One recommendation has 'no implementation plan' and is therefore at risk of not being fully implemented.

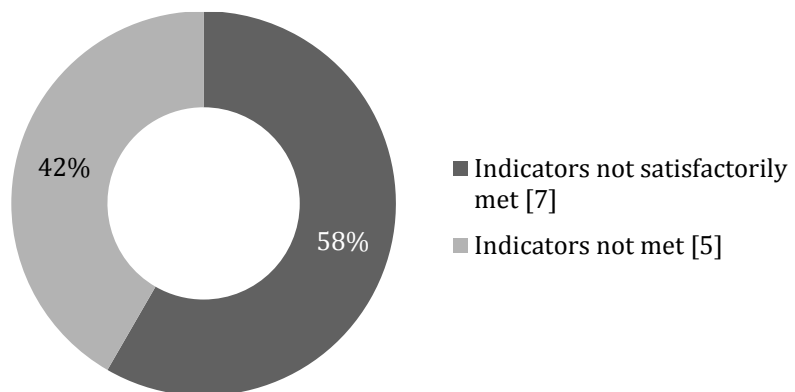
¹ Gehan Gunatilleke & Nishan de Mel, Sri Lanka: LLRC Implementation Monitor - Statistical and Analytical Review No. 1 (November 2012) ['LLRC Monitor 1'], at p.3. Also see S.S. Selvanayagam, "State withdraws impugned land circular on management of land in north east", *Financial Times*, 13 May 2012, available at www.ft.lk.

² The recommendation contained in paragraph 9.139 of the LLRC Report remains un-actionable. The recommendation calls on the government to give all families who have been secondary occupants, whether at the behest of LTTE or not, land, if the lands they are currently in occupation are awarded to the genuine original permit holders on the results of the Investigating Committee [In terms of Land Circular 2011/04] decisions. This recommendation remains un-actionable, as the 'Investigating Committees' envisaged under the original Land Circular No. 2011/04 have been omitted in the new Land Circular No.2013/01.

Chart 2: Partial Progress

1.3 Poor Progress

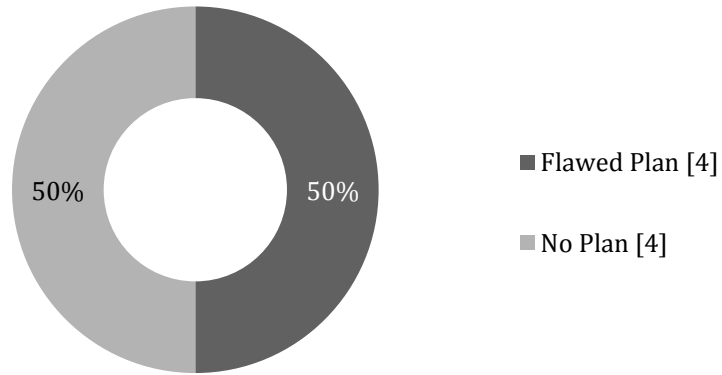
Twelve recommendations have seen ‘**poor progress**’ in implementation. **Seven** of these recommendations are classified as such due to the fact that performance indicators applicable to these recommendations have not been met to a satisfactory degree. Performance indicators in respect of the remaining **five** recommendations *have not been met to any degree*. Nonetheless, these recommendations are classified as having seen ‘poor progress’, as they possess ‘workable implementation plans’.

Chart 3 : Poor Progress

1.4 No Progress

Eight recommendations have seen ‘**no progress**’. These recommendations are classified as such due to the fact that the performance indicators applicable to these recommendations have not been met to any degree, *in addition to which* the recommendations lack ‘workable implementation plans’. **Four** of these recommendations have ‘flawed implementations plans’ and **four** have ‘no implementation plans’ whatsoever.

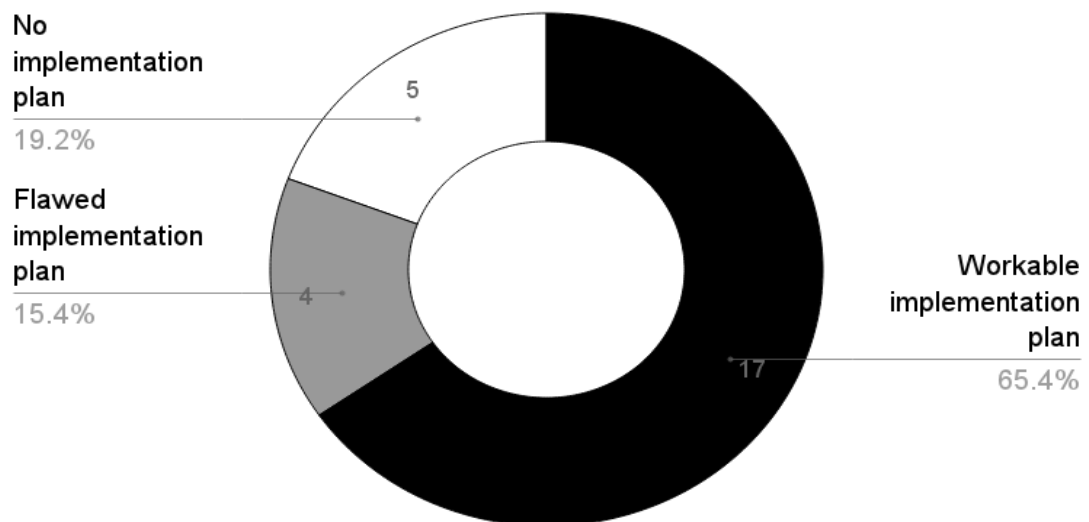
Chart 4 : No Progress



1.5 Overall Analysis of Implementation Plans

Seventeen of the actionable recommendations in the category of land dispute resolution have ‘workable implementation plans’. These recommendations therefore have a reasonable prospect of being fully implemented. However, the remaining nine recommendations lack ‘workable implementations plans’. **Four** such recommendations have flawed implementation plans owing to flawed performance indicators. These recommendations are therefore incapable of being fully implemented under their current implementation plans. **Five** recommendations have no implementation plans (i.e. these recommendations have not been included in the NPA) and are therefore at risk of not being fully implemented.

Chart 5 : Overall Analysis of Implementation Plans



2. Summary of Analysis of Implementation Status

| Recommendation | Paragraph No | Deadline | Status of Implementation | Implementation Plan |
|--|---------------------|-----------------|---------------------------------|----------------------------|
| 1. Grant legal ownership of land to those who have been resettled | 9.104 | Not Specified | Partial Progress | Workable |
| 2. Formulate clear policies on the areas available to be resettled; create more awareness about such policies and the options available to public | 9.106 | January 2013 | Poor Progress | Workable |
| 3. Facilitate and encourage the return and resettlement of displaced persons living in India; make essential facilities available if they choose to return | 9.108a | July 2014 | Poor Progress | Workable |
| 4. Protect the right of citizens to buy lands where they please | 9.124a | Irrelevant | No Progress | Flawed |
| 5. Ensure that land policy of the Government does not become an instrument to effect unnatural changes in the demographic pattern of a Province; distribution of State land should continue to be as provided for in the Constitution of Sri Lanka | 9.124b | Irrelevant | No Progress | Flawed |

| Recommendation | Paragraph No | Deadline | Status of Implementation | Implementation Plan |
|--|---------------------|-----------------|---------------------------------|----------------------------|
| 6. Assure people that the Land Circular programme is not a substitute to the courts where people possess legal proof of their claim | 9.126 | July 2014 | Partial Progress | Workable |
| 7. Adopt an apolitical approach to implementing the Land Circular; provide human and financial resources for successful implementation | 9.128 | July 2014 | Poor Progress | Workable |
| 8. Supervise effectively the civil administration officers tasked with implementing the Land Circular (via Government Agents) | 9.129a | July 2014 | Partial Progress | Workable |
| 9. Monitor the implementation quality of the Land Circular through the Land Commissioner | 9.129b | July 2014 | Partial Progress | Workable |
| 10. Organize, under the Land Commissioner General's Department, a media seminar on the Land Circular | 9.131 | July 2014 | Poor Progress | Workable |

| Recommendation | Paragraph No | Deadline | Status of Implementation | Implementation Plan |
|--|---------------------|-----------------|---------------------------------|----------------------------|
| 11. Conduct training programmes [on land dispute resolution] via Land Commissioner General's Department for officers and community leaders based on a simple training manual | 9.132 | July 2014 | Poor Progress | Workable |
| 12. Launch a settler - centered communication campaign (in Tamil and Sinhala) with information on services provided under the Land Circular | 9.133 | July 2014 | Partial Progress | Workable |
| 13. Organize and hold a well-publicized 'Community Consultation Meeting' prior to launch of the investigation process under the Land Circular | 9.135a | July 2014 | Poor Progress | Workable |
| 14. Direct the planning and conduct of Community Consultation Meetings to be based on the experiences of the traditional Land Kachcheri system | 9.135b | July 2014 | Poor Progress | Workable |

| Recommendation | Paragraph No | Deadline | Status of Implementation | Implementation Plan |
|--|---------------------|-----------------|---------------------------------|----------------------------|
| 15. Direct the Land Commissioner General to establish a mechanism to consider the constructive suggestions made at 'Community Consultation Meetings' | 9.136 | July 2014 | Poor Progress | Workable |
| 16. Make arrangements to strengthen human resource teams at all levels to implement alternate land dispute resolution mechanisms | 9.137 | Not Applicable | No Progress | Not included |
| 17. Apply strict controls to prevent any alienation of State land other than for IDPs, except where State land is required for other approved purposes | 9.140a | July 2014 | Poor Progress | Workable |
| 18. Make legal provision to enable investigation and prosecution of any public officer, Attorney-at-law, or Notary Public who commits or abets the alienation of State land through spurious deeds | 9.140b | Not Applicable | No Progress | Not included |

| Recommendation | Paragraph No | Deadline | Status of Implementation | Implementation Plan |
|---|---------------------|-----------------|---------------------------------|----------------------------|
| 19. Seek cooperation of a development partner to support the Land Circular Programme; with policy-making and implementation carried out by Government | 9.141 | October 2012 | Poor Progress | Workable |
| 20. Give, within a specific timeframe, alternative lands or compensation to families who have lost property due to HSZs or ad hoc security related needs | 9.142b | July 2015 | Poor Progress | Workable |
| 21. Return Sinhalese families who were evicted from the North, and who volunteer to go back, to their own land or resettle them in alternate land as expeditiously as possible | 9.145b | Not Applicable | Partial Progress | Not included |
| 22. Designate a focal agency to study problems and displacement of families in former Threatened Villages, with a view to designing a special mechanism to resolve their current problems expeditiously | 9.147 | Not Applicable | No Progress | Not included |

| Recommendation | Paragraph No | Deadline | Status of Implementation | Implementation Plan |
|---|---------------------|-----------------|---------------------------------|----------------------------|
| 23. Amend the law on prescription in its application to land transfers/ occupation during the conflict to prevent the legitimizing of forced eviction and secondary occupation of private lands in the North and East | 9.148 | Not Applicable | No Progress | Not included |
| 24. Expedite action to establish a NLC in order to propose appropriate future national land policy guidelines and ensure equitable distribution of State land | 9.150 | Irrelevant | No Progress | Flawed |
| 25. 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 | 9.151 | July 2015 | Poor Progress | Workable |
| 26. Arrive at a bipartisan understanding that restitution of land to displaced persons is a national issue and not a tool to gain political advantage | 9.152 | Irrelevant | No Progress | Flawed |

3. Methodology

The methodology pertaining to this study has been developed in an attempt to create, as far as possible, an objective basis. The methodology involves two assessments:

1. Assessment of performance indicators:

- **Step 1:** Quantitative and qualitative assessment of progress in terms of performance indicators. The assessment is carried out in terms of Key Performance Indicators (KPIs) contained in the NPA or independently devised reasonable performance indicators.
- **Step 2:** Classification of all recommendations into ‘fully implemented’, ‘partial progress’, ‘poor progress’ or ‘no progress’, based on the degree to which performance indicators have been met.*

*N.B. Even if performance indicators have not been met to any degree, the recommendation would be classified as ‘poor progress’ (as opposed to ‘no progress’) if it possesses a workable implementation plan. Hence the second assessment detailed below may retrospectively determine the final classification of a recommendation as ‘poor progress’ or ‘no progress’.

2. Assessment of implementation plans:

- **Step 1:** Determination of whether the recommendation has been included in the NPA or not based on previous study ‘Sri Lanka: LLRC Implementation Monitor – Statistical and Analytical Review No. 1.’
- **Step 2:** If the recommendation is included in the NPA, assessment of the Planning Framework contained in the NPA (i.e. Legalisation or policy; Responsible agency; Budgetary allocations).
- **Step 3:** If the recommendation is not included in the NPA, assessment (based on publicly available information) of steps taken towards the implementation of the recommendation.

The following matrix illustrates the manner in which the status of implementation of each individual recommendation is classified. It also illustrates the manner in which the implementation plan pertaining to a recommendation may determine its classification.

Matrix 1: Classification Matrix

| | | Performance Indicators | | | |
|---------------------|--------------|------------------------|------------------|---------------|---------------|
| | | Fully met | ½ Met | ¼ Met | Not met |
| Implementation plan | Workable | -----> | | | Poor Progress |
| | Flawed | Fully Implemented | Partial Progress | Poor Progress | No Progress |
| | Not included | | | | |

The reasonable timeframes mentioned in the analyses refer to the timeframes estimated in our previous report: Sri Lanka: LLRC Implementation Monitor – Statistical and Analytical Review No. 1.

Contents of the full report of 'Sri Lanka: LLRC Implementation Monitor - Volume 1: Land Dispute Resolution'

The main study offers a detailed assessment of the implementation status of each LLRC recommendation on the subject of 'land dispute resolution'. The study also critically examines the implementation plans pertaining to each of these recommendations.

Table of Contents***Background******Methodology******1. Overview******2. Analysis of Implementation Status******2.1 Partial progress******2.1.1 Workable implementation plan******2.1.2 No plan******2.2 Poor progress******2.2.1 Failure to satisfactorily meet performance indicators******2.2.2 Failure to meet performance indicators******2.3 No progress******2.3.1 Flawed plan******2.3.2 No plan******3. Conclusion******Annex 1: Methodology Explained***

To purchase a copy of the full report of 'Sri Lanka: LLRC Implementation Monitor - Volume 1: Land Dispute Resolution', please send in your request to publications@veriteresearch.org

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