

Settlement, Resettlement and Displacement: Some Comparative Lessons from Sri Lanka

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Kenya urgently needs an alternative approach to overseeing settlement schemes and the resettlement of the internally displaced. The aim of this article is to briefly examine dynamics of settlement, displacement and resettlement in the case of Sri Lanka. The aim is to draw some comparative lessons to feed into an informed public policy dialogue in Kenya around settlement and resettlement and the related issue of internal displacement.

Sri Lanka: Settlement Schemes and Violence

Sri Lanka is a small country of around 20 million people off the Southern coast of India. Like Kenya, it is a former British colony that faces problematic institutional legacies. These legacies and their consequences continue to shape identity and politics. Sri Lankan politicians played narrow ethnic nationalist agendas, translated these into problematic policies and fueled divisions between the different communities, roughly categorized as Sinhalese, Tamil and Muslims. While the world hopes that the long civil war in Sri Lanka is coming to an end and the needs and rights of the approximately 600, 000 displaced will be addressed, it is helpful to consider the lessons of a country that faced and continues to face massive settlement and resettlement issues.

One of the first most critical insights is that the mishandling of past settlement schemes fed into the civil war.² To understand how this happened, it is critical to take a brief look at Sri Lankan history. During the colonial period (1805-1945), the British divided Sri Lanka into administrative units that reinforced ethnic notions of territory. The colonial regime also encouraged large-scale plantations and imposed a centralized system of land law that undermined various forms of traditional rights. They introduced a Crown Land Ordinance (1840) that placed “un-used and unoccupied” land in the hands of the crown, which in turn could lease it out to plantations.³ This helped create landlessness that produced plantation labor and also created deep-seated anger around the loss of traditional rights. This institutional set-up became liable to local political manipulation especially within the decolonization process.

As Sri Lanka moved towards independence in the 1930s, land became increasingly politicized. The post-colonial law, which emerged out of the Crown Land Ordinance, gave enormous powers of allocation to the Minister of Lands. These powers facilitated irregular land allocation and the use of land for patronage.

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² I am relying on the superb book by Robert Muggah 2008, *Relocation Failures in Sri Lanka*. London: Zed Books.

³ Kamarasiri “The Creation of a Land Market in Sri Lanka” available at www.mekonginfo.org/mrc/landworkshop/Kumarasiri.pdf

At independence some Sinhalese politicians, under the guise of agricultural development and assistance for the poor, pushed for a settlement process in the dry Eastern region where Tamils were a majority. A strong bias in settlement and resettlement policy (ethnic allocations followed national ethnic ratios, rather than district ethnic ratios) meant Tamil peasants were typically shut out of schemes in areas that they saw as traditional homelands.⁴ Some scholars suggest that these settlement schemes actually worked as a reduce Tamils numbers in their own “homelands” and hence push a kind of ethnic and electoral dominance. This politicization of resettlement schemes was one important factor in triggering Tamil insurgencies, which eventually led to a complex and protracted civil war, the loss of at least 150,000 lives and displacement of about 1million to 600,000 people at various times.⁵

Sri Lanka’s pattern of recurring displacements has in turn deepened numerous land-related problems and tensions at a local level. A recent report by the International Crisis Group notes:

“Displacement has also meant that in numerous cases people from different ethnic groups have competing claims to the same land. Many deeds and titles have been lost and destroyed. Much land has been handed down informally without clear deeds or titles...”⁶

To aggravate the situation further “land grabbing” is folded into this already complex situation. An Amnesty International mission observed:

“It is clear that land grabbing is taking place. For example, Amnesty International delegates visited a community of Tamil conflict-displaced people... which had built homes on land ear-marked for the relocation of Muslim tsunami-displaced people... While the local government had sought to resolve the situation by asking the Tamil IDPs to accept smaller plots of land in return for being allowed to stay... Tamil IDPs were refusing claiming that the government has allowed Muslims to encroach Tamil land in the past and that a long history of injustice against Tamils justifies their encroachment... *Such situations are permitted and exacerbated by the governmental failure to develop and implement equitable, timely, independent, transparent and non-discriminatory procedures, institutions, and mechanisms to enforce housing, land and property restitution claims.*”⁷

Over the years, the Sri Lankan Human Rights Commission, an independent government body tasked with monitoring and ensuring the implementation of human rights law in Sri Lanka, had been documenting numerous complaints and the treatment of the displaced more generally. However, it was impossible for the Commission with its limited

⁴ Muggah, pg 79-80, Pfeffenberger, Bryan. 1990, “The Harsh Facts of Hydraulics: Technology and Society in Sri Lanka’s Colonization Schemes” *Technology and Culture* 31 (3) pg 391.

⁵ There was also discriminatory language legislation and “riots” against Tamils. See Stanley Tambiah. 1986. *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* Chicago and London: University of Chicago Press for an excellent discussion of some of the complex dynamics that led to civil war.

⁶ International Crisis Group 2008 “Sri Lanka’s Eastern Province: Land Development and Conflict” 15 October, pg 18.

⁷ Amnesty International, 2005. “Waiting to Go Home; the Plight of the Internally Displaced” pg 18

resources to oversee all these complex problems and complaints.⁸ In 2001, The Human Rights Commission asked the Consortium of Humanitarian Agencies, Centre for Policy Alternatives and the Law and Society Trust to do a study on Internally Displaced Persons and offer advice. The study recommended that the government set up a central body on internal displacement. This body should have authority over all other actors involved in IDP welfare and have the following responsibilities:

- 1) Frame a comprehensive policy on IDPs modeled on the UN Guiding Principles on Internal Displacement and the Sphere Standards
- 2) Monitor the implementation of such policy by the different ministries responsible for the welfare of IDPs.
- 3) Monitor all other practices and policies that impact the IDPs
- 4) Receive, forward and act upon complaints from IDPs.⁹

The same year UNHCR noted that the government efforts over the years were failing. The internally displaced were in overcrowded “welfare centers” living in appalling conditions. The report noted “poverty is everywhere”.¹⁰

In response to widespread concern about the lack of a coherent policy on resettlement for the displaced, parliament passed The Resettlement Authority Act (2007).¹¹ The aim of the Act was to create a central authority, which in turn would develop and implement a national resettlement policy. This policy would guide a number of important tasks including “assisting the internally displaced obtain lost documents, facilitating the resolution of disputes relating to ownership and possession of movable and immovable assets, facilitating community between the internally displaced and host communities and providing reasonable access to information.”

The National Commission still felt that the displaced were falling through the cracks and in 2008 created a “Draft Bill of Protection of Internally Displaced Persons” which proposed an *IDP* Authority.¹² This authority would specifically coordinate key actors, including the resettlement authority, involved in displacement issues. The authority for displaced persons would specifically deal with orderly registration of displaced people, replacement of lost documents, temporary ID cards, discrimination, and access to services.

While these look like steps in the right direction, currently no national IDP policy, legal framework or resettlement strategy is yet in place, even though recent UNHRC figures suggest at least 600,000 people require resettlement and those who have been resettled still face complex land and restorative justice problems. Critics argue further that the

⁸ In 2004, the Commission was receiving around 500 per month and had a backlog of 5000. The Commission has a special project on IDPs. See <http://www.idpsrilanka.lk/>.

⁹ Joe William. 2005. “Sri Lanka: A Profile of Vulnerability” in *Internal Displacement in South Asia*. Paula Banerjee, S B Ray Chaudry, and Samir Das New Delhi: Sage Publications p 274-275.

¹⁰ UNHCR. 2001. “IDPs: the Role of the United Nations High Commissioner for Refugees Colombo cited in Muggah pg. 153.

¹¹ The Bill is available at <http://www.resettlementmin.gov.lk/publications-acts-ministry.html>.

¹² The Draft Bill is available at <http://www.idpsrilanka.lk/>.

proliferation of institutions will not lead to change, and further a clear legal framework is needed that sets out in law the rights of the displaced. In the words of Andres Angel:

There is no single piece of legislation that addresses IDPs specifically let alone any comprehensive legislation. Existing provisions for protection are scattered in no systematic or orderly manner, with little cohesion, and without addressing critical concerns....

By neglecting IDP-specific legislation, the Government of Sri Lanka fails to tackle the needs of a portion of the population that lives under circumstances distinct from the rest of the citizens....

A national legal framework for IDPs establishes the rights of IDPs, decrees a government's responsibility to uphold them, and establishes the basis of reference for a national policy while reflecting national commitment towards internal displacement. Closely related to the national legal framework is a national policy which stipulates the specific course taken by a government in its attempt to end displacement. National policies delineate the course of action in a non-binding plan that corresponds to the adoption of binding national legislation. For the national policies to stand the test of time, they must be based on a preconceived set of rights delineated in a legal framework.¹³

Consensus seems to exist that Sri Lanka's failure to develop a strategy and plan for coping with needs and rights of the displaced and the complex land and community problems brought by successive waves of displacement is a major problem in moving forward towards "durable" solutions. The failure to tackle displacement and its problems in a fair and just manner fed into the ferocious 20 year civil war and if not dealt with carefully may yet lead to renewed violence in future.

What are the Lessons for Kenya?

Kenya, like Sri Lanka, has serious and worsening problems of internal displacement, which are linked in part to a history of poor settlement and resettlement policies. Colonial re-organization and centralization of control over land rights favored white settlements, and plantations, eventually provoking the Mau Mau insurgency, violence and further dislocations. In part the landlessness linked to these serial displacements pushed post-independence governments in Kenya to continue the policy of promoting settlement schemes, many ostensibly for the landless. However, irregular and political allocation of land in these schemes along with failure to recognize neither historical injustice around land nor local land claims provided fertile ground for greater politicization of land issues, especially within a context of more political competition in the 1990s. Currently, we continue to see deep problems in Kenya linked to past settlement schemes. Some examples include Mt. Elgon (Chebeyuk settlement scheme)¹⁴ and Mau Forest (Mauche

¹³ See Andres Angel 2008. "The Need for a national Legal Framework in Sri Lanka", Institute of Peace and Conflict Studies. http://www.ipcs.org/seminar_details.php?recNo=627.

¹⁴ Kenya National Assembly, "Report of the Joint Visit to Mt Elgon Region by the Committees on Defence and Foreign Relations, and Administration, National Security and Local Authorities" November 2008, Human Rights Watch, "All the Men Have Gone: War Crimes in Kenya's Mt Elgon Conflict" (2008),

settlement scheme)¹⁵ and more recently the resettlement of those displaced from post-election violence through “Operation Rudi Nyumbani”.¹⁶

In general, ceding of settlement and resettlement processes to an opaque political process rather than to a more transparent, fair and inclusive policy and legal process is one deep and enduring cause of cycles of violence and displacement in Sri Lanka and Kenya. Fortunately, these problems in settlement and (re) settlement schemes are amenable to policy intervention and dialogue. We can derive a number of key lessons from Sri Lanka’s experience:

Lesson One

If Kenya is to avoid even more violence in the future, members of parliament must push for implementation of the National Land Policy recently approved by Cabinet. This includes the formation of a National Land Commission with local land committees, a Land Titles Tribunal and a Task Force.¹⁷

This would have a preventative function by generating more public input and scrutiny over future allocations and creating an avenue for existing grievances to be heard. In addition the Land titles tribunals and local land committees would create ways to discuss land grievances and historical injustices and negotiate and develop local solutions. The International Crisis Group is arguing that Sri Lanka must similarly set up a land task force to clarify rights and resolve ongoing disputes as well as set up a National Land Commission.¹⁸ In line with this approach and as part of the peace-building process in the country *members of parliament should encourage an open and inclusive dialogue around grievances and negotiate solutions. Local government should also be encouraged and assisted to form sustainable land-use plans to regulate and guide a public process over how land will be used. These land-use plans should address local concerns and be guided by the principles of fairness, equity, and environmental sustainability.*

Lesson Two

Kenya National Commission on Human Rights, “The Mountain of Terror: A Report on the Investigations of Torture by the Military at Mt Elgon”, May 2008.

¹⁵ Amnesty International 2007. ‘Kenya: Nowhere to go: Forced Evictions in Mau Forest - Briefing Paper’. <http://www.amnesty.org/en/library/info/AFR32/006/2007> and Nairobi Chronicle, July 30, 2009, “Mau Forest Politics: A detailed explanation”. <http://nairobichronicle.wordpress.com/2009/07/30/mau-forest-politics-a-detailed-explanation/>

¹⁶ Kenya Human Rights Commission, 2008, “A Tale of Threats, Lies and Deception” Operation Rudi Nyumbani in Perspective, the Kenya National Dialogue and Reconciliation Monitoring Project Status of Implementation of Agenda Items 1-4 <http://www.dialoguekenya.org/eport.aspx> and IDMC, 2006 “I am a Refugee in My Own Country: Conflict-Induced Internal Displacement in Kenya” 19 December.

¹⁷ See “The Efficacy of Establishing a National Land Commission for Land Administration in Kenya” Kenya Land Alliance 2005 available at <http://www.kenyalandalliance.or.ke/issues/?flag>. See also the recent report “Mission Impossible? Implementing the Ndung’u Report” 2009. Africa Centre for Open Governance available at <http://www.africog.org/index.php>.

¹⁸ International Crisis Group. 2008. p. 32.

Like Sri Lanka, Kenya has faced cumulative displacements and increasing violence and then land-related grievances linked to these multiple waves of displacements. Like Sri Lanka, Kenya has failed to properly monitor resettlement processes and develop a National Resettlement and IDP Policy to guide actions on the ground. This is the case even though, unlike Sri Lanka, Kenya is bound through the International Conference on the Great Lakes Region to protocols on internal displacement which include the International Guiding Principles.¹⁹

It is an important task to develop a National IDP Policy and explicitly make the Guiding Principles law. Parliament should pass a motion to this effect and start a working group or public commission to draft both the policy and the laws in wide consultation with the Ministry of State for Special Programmes, the Kenya National Commission on Human Rights, the IDPs themselves, civil society, universities and the private sector.

This would encourage a national debate and discussion on the critically important issue of internal displacement, help parliament learn about the issues and get more involved in a constructive way. In the end such a policy and accompanying legal framework would also create a broader architecture for accountability in resettlement programs like “Operation Rudi Nyumbani.” It would also create internally formulated and debated benchmarks with which to measure the success of resettlement processes.

It is important to note that Uganda has an official National IDP Policy. This policy serves as a useful example to study and could be adapted and also improved for a Kenyan context. While experience in Uganda suggests that implementation issues continue to be a concern²⁰, a number of government officials, NGOs and the displaced generally see it as a step forward and are leveraging it to tackle resettlement issues.²¹

Lesson Three

Institutional structures should be explored to enhance cooperation between the Kenya National Commission on Human Rights, Ministry of State for Special Programmes and other key ministries such as Lands and Justice, local authorities, civil society, the

¹⁹ See Prisca Kamungi and Jacqueline Klopp, The Challenges of Protecting the Internally Displaced through IC/GLR *Journal of African Conflicts and Peace Studies*, forthcoming. A Draft is available at http://74.125.93.132/search?q=cache:AYBrBxa02xYJ:www.hackenya.org/index.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D383%26Itemid%3D99999999+klopp+and+kamungi&cd=8&hl=en&ct=clnk&gl=us.

²⁰ See Lucy Hovil & Moses Chrispus Okello “Only Peace Can Restore the Confidence of the Displaced” Report commissioned by Norwegian Refugee Council (NRC) Internal Displacement Monitoring Centre (IDMC) and “Invisibly Displaced Persons in Adjumani District” 2006, Refugee Law Project Working Paper. No.19. Both are available at http://www.refugeelawproject.org/other_reports.php.

²¹ See for example, the notes of a meeting with Mr. Norbert Mao chairman of the local council in Gulu on displacement issues there. Available at [http://74.125.93.132/search?q=cache:IQ1wMi3ac9YJ:www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/D4C5BEDE57A0BA96C125759E004055A7/%24file/NFF_Meeting%2Bwith%2BLCV%2BGulu%2Bon%2Bcamp%2Bclosure.doc+Gulu+Norbert+Mao&cd=5&hl=en&ct=clnk&gl=us](http://74.125.93.132/search?q=cache:IQ1wMi3ac9YJ:www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/D4C5BEDE57A0BA96C125759E004055A7/%24file/NFF_Meeting%2Bwith%2BLCV%2BGulu%2Bon%2Bcamp%2Bclosure.doc+Gulu+Norbert+Mao&cd=5&hl=en&ct=clnk&gl=us)

private sector, the universities and IDPs. An institutionalized resettlement research, support and monitoring system needs to be in place.

Currently local authorities, courts and the provincial administration are left to deal with land disputes, lost documents, missing people, public health threats, the many crimes committed and restorative justice. South Consulting, the Kenya Human Rights Commission and the Internal Monitoring Displacement Center have done monitoring reports.²² A more centralized institutionalized accumulation of knowledge and policy dialogue on displacement and resettlement issues needs to occur. In Uganda, the Refugee Law project at Makerere University produces high quality research on displacement and the Sri Lanka Human Rights Commission is trying to do the same through its IDP project. Kenya might learn from these experiences to fashion its own internal independent research, support and monitoring system, which can assist the Ministries and parliament to develop better policies. The Ministry of State for Special Programmes with UNHCR is starting its own independent review of the resettlement process which suggests an opening for more critical input and engagement by a monitoring network.

Every country is unique and its policy solutions must be tailor made to fit local context. Still, it would be wise for Kenya to learn lessons from the experiences of Sri Lanka and Uganda. This will serve to help avoid mistakes and learn from other attempts to grapple with seemingly intractable problems around settlement, displacement and resettlement. Like Sri Lanka, Kenya might now use the current pause in cycles of violence to put the country on a firmer policy and political trajectory, address the needs and rights of the displaced, and prevent large-scale conflict-induced displacement once and for all.

²² See footnote 16.