

CONCEPTUALIZATION AND IMPLEMENTATION
SPECIAL MEDIATION BOARDS PROGRAM FOR THE SETTLEMENT OF
LAND AND PROPERTY DISPUTES
NORTH AND EAST

STATUS REPORT

The Special Mediation Program

Due to the limitations of the Community Mediation¹ Program, the Mediation (Special Categories of Disputes) Act No. 21 of 2003 was enacted and give effect to establish Special Mediation Boards to mediate social and economic issues. Though this act was passed in 2003 it was not utilized until tsunami hit Sri Lanka. Tsunami has created lot of legal and administrative issues, which were much more complex in nature, and it was learnt that the community mediation boards can not handle these disputes due to the inherent limitations imposed by the Act 1988. According to the Section 6(2) (a) of this act specifically note that, an application cannot be entertained by the Community Mediation Board, if one of the disputant is the state. But, in relation to Tsunami issues, most of legal and administrative issues have arisen out of tsunami were against public officials, which there is no restriction provided under the 2003 Act. There were 09 Special Mediation Boards (SMB) were established to deal with Tsunami issues.

The Special Mediation Program and Land and Property Disputes

The protracted violent civil conflict which afflicted Sri Lanka for over thirty years has created innumerable problems for the people in the Northern and Eastern provinces of the country. Some of the most serious issues being disputes and problems relating to land ownership, possession, and use by the people in the conflict affected provinces. These disputes have, in turn, generated other and further disputes amongst people and these continue to disturb the peace and be a hindrance to normalcy in those areas. These disputes and issues warrant urgent, efficient and effective handling to ensure sustainable peace and harmony amongst the people in the country.

The rationale behind the establishment of Special Mediation (Land) Boards:

- Complex nature of Disputes and which are Special Categories of Disputes.
- Large number of Disputes
- Vulnerability of Victims of war
- Need for an Alternative Dispute Resolution Mechanism
- Complex nature of laws dealing with State Lands and Private Lands
- Complexity of the state lands and private land disputes prevailing in the North and East

¹ Mediation Boards Act, No. 72 of 1988 (as amended)

Why Special Mediation (Land) Boards could be a better Dispute Resolution Mechanism in settling the land and property disputes?

- Government Intervention [Ministry of Justice, (MOJ), Mediation Boards Commission (MBC), Ministry of Land (MOL) and the Government Institutions dealing with Lands]
- Easy Access
- Timely Resolution
- Confidential
- Voluntary Process
- Amicable Settlements
- Cost Effective
- Restoring Relationships and Reconciliation
- Empowering parties to the disputes

The Process for the establishment of Special Mediation (Land) Boards

The discussion with regards to the establishment of Special Mediation Boards (Land) [SMB (L)] for resolving land and property issues goes back to 2010/11. The Report of the Lessons Learnt and Reconciliation Commission (LLRC) which affirms that *“problems concerning land were a key issue that was brought to the Commission’s attention by a large number of persons of all communities who appeared before it; particularly during the Commission’s visit to the affected areas in the North and East. The Commission believes that measures and policies ensuring legitimate land rights, especially among the returning IDPs, would contribute significantly to restoring normalcy and promoting reconciliation”*.

Recommendations:

LLRC recommendations:

- paras : 9.125 - 9.141
- Design and implement a fair mechanism to settle land ownership disputes and other problems related to land

National Action Plan for the Protection and Promotion of Human Rights:

- Rights of Internally Displaced Persons
Focus Area 3; issue 3.2b - *Resolution of issues due to squatting on IDP’s vacated lands or encroachment by IDPs on land owned by others*
- Activity is identified as mechanisms to be established to resolve disputes regarding legal ownership

A Rapid Assessment of Community Level Land Disputes in the Northern and Eastern Provinces of Sri Lanka – TAF/MOJ (March – September, 2014)

Objectives:

- To understand the nature & characteristics of post war land related disputes & difficulties faced by people at village level;
- To seek views of the directly affected people to find out how these disputes could be best resolved in terms of their best interests; and
- To explore the use of mediation for resolving these disputes at community level.

Key Findings:

- Macro Level Land Issues
- Issues and Disputes regarding State Lands
- Issues and Disputes regarding Private Lands
- Other Issues – Policy

Key Recommendations:

- Establishment of Special Mediation Boards (Land)
- Apex Body/Committee
- Land Tribunal

Please visit <https://asiafoundation.org/resources/pdfs/LandReportSL.pdf> for the full Rapid Assessment Report

Cabinet Approval:

- The Ministry of Justice and Ministry of Land jointly adopted a Cabinet Paper for the resolution of Land and Property Disputes through SMBs (Land) and was approved.

Training Materials and Resources:

- Preparation of required Training Manual and Materials and conduct of TOT on Land Mediation, Laws relating to Land and Property and Management of a Special Mediation Board by TAF/MOJ/MOL.

Administrative measures taken by the MOJ and MBC for the Establishment of SMBs (Land):

Gazette Notifications - Mediation (Special Categories of Disputes) Act - No. 21 of 2003

(1) Categories should be determined - s2 (1)

Need to consider Disputes relating to Social and Economic Issues - s2 (2)

Gazette Notification No. 1901/8 dated 10th February 2015

Disputes relating to the Possession or Ownership of Land

(2) Special Mediation Boards Area – s3

Gazette Notification No. 1904/41 dated 04th March 2015 – Schedule

Administrative District of Jaffna, Kilinochchi, Trincomalee, Batticaloa and Anuradhapura

Gazette Notification No. 2058/26 dated 14th February 2018 – Schedule

Administrative District of Mullaitivu, Vavuniya, Mannar, and Ampara

(3) Monetary value of the Dispute – s8(1)

Gazette Notification No. 1907/10 dated 23rd March 2015

RS 2 Million

(4) Appointment of Mediators – s4(2)

Gazette Notification No. 1907/10 dated 23rd March 2015

Between 35-70 years of age

Has any professional qualification obtained from a recognised professional body established by or under any written law or

Has been or is Public Officer

(5) Calling for Nominations – s5(1)

Gazette Notification No. 1914/39 and dated 23rd March 2015 as amended by 1918/24 and dated 12th June 2015

Administrative Districts of Jaffna, Kilinochchi, Trincomalee, Batticaloa and Anuradhapura

Gazette Notification No. 2063/15 and dated 19th March 2018

Administrative Districts of Mullaitivu, Vavuniya, Mannar and Ampara

- **District and Divisional Level Stakeholders Meetings**
 - A series of Stakeholders Meetings were conducted by the Ministry of Justice in collaboration with the Ministry of Land and Provincial Land Commissioners' Department with the support of The Asia Foundation (TAF) and the United Nations Development Programme (UNDP). These meetings were aimed at creating awareness and support of collaboration from the Senior Public Officers dealing with land such as District Secretary, Provincial Land Commissioner, Divisional Secretaries etc. at the District Level and Land Officers, Colonization Officers and Grama Niladharis etc. at the Divisional Level particularly in getting appropriate nominations for mediators.
- **General procedure for the establishment of Special Mediation Boards (Land) as follows:**



The Present Status – Activities as of December 2020

No	Steps	DRL				GG				
		Trincomalee	Vavuniya	Mannar	Ampara	Jaffna	Kilinochchi	Mullaitivu	Batticaloa	Anuradhapura
1	Gazette Notifications, Stakeholder Meetings Call for Nominations	All the relevant gazettes have been published, startup stakeholder meetings held in district and divisional level and the Nominations are received, interviews conducted, and the mediator trainees were for the establishment of Special Mediation Boards in the selected districts as a Pilot Phase.								
2	Special Manual for Trainings	A manual entitled “Resolving Land Disputes: Effective Procedures and Strategies” was prepared and printed in all three languages with the support of The Asia Foundation								
3	Initial 6 Day Trainings for selected Mediator Trainees	Completed	Completed	Completed	Completed	Completed	Completed	Completed	Completed	Completed
4	Appointments	Appointed	Appointed	Appointed	Appointed	Appointed	Appointed	Appointed	Appointed	Appointed
5	Additional 3 day training on “Legal aspects relating Land and Property”	Completed	Completed	Completed	Completed	Completed	Completed	Completed	Completed	Completed
6	Refresher Program	Completed	Completed	Completed	To be Completed	Completed	Completed	To be Completed	Completed	To be Completed
7	Appointments of Expert Panel	Appointed	Appointed	Appointed	To be appointed	Appointed	N/A	To be appointed	Appointed	To be appointed
8	Stakeholder meetings on awareness raising and receiving of complaints	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing
9	Forms and Reports	Documentations such as Specific Settlement Forms, Non Settlement Forms, and Reporting Back Formats etc. were prepared, approved by MBC and distributed to Jaffna Land Mediation Board.								
10	Mediation Process	Started in December 2017 & Ongoing	Started in January 2019 & Ongoing	Started in January 2019 & Ongoing	To be started	Started in February 2017 & Ongoing	Started February 2017 & Ongoing	To be started	Started in March 2018 & Ongoing	To be Started in September 2019

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