

Estate Workers in Sri Lanka: An Account of the Legal and Policy Framework



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International Centre for Ethnic Studies

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2020

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2, Kynsey Terrace, Colombo 8, Sri Lanka

E-mail: admin@ices.lk

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ISBN: 978-955-580-246-8

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Acknowledgments

I am grateful to all those who participated in interviews for this study, including Dr. R. Ramesh, Mr. P. Muthulingam, Dr. A. Sarveswaran and Mr. T. Jananthan, as well as to the four reviewers who helped me with the editing process. I also wish to express my infinite gratitude to Dr. M. Gomez and to the ICES staff both in Colombo and Kandy for their guidance and support while conducting this study.

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Abbreviations

BMI	–	Body Mass Index
C110	–	Plantations Convention of 1958 (No. 110)
CA	–	Collective Agreement
CEDAW	–	Convention on the Elimination of All Forms of Discrimination against Women
CEPA	–	Centre for Poverty Analysis
EFC	–	Employers' Federation of Ceylon
GDP	–	Gross Domestic Product
HIES	–	Household Income and Expenditure Survey
ICESCR	–	International Covenant on Economic, Social and Cultural Rights
ICCPR	–	International Covenant on Civil and Political Rights
ILO	–	International Labour Organization
ISD	–	Institute of Social Development
JEDB	–	Janatha Estate Development Board
NGO	–	Non-Governmental Organization
P110	–	Protocol of 1982 to the Plantation Convention of 1958 (No. 110)
PHDT	–	Plantation Human Development Trust
PHSWT	–	Plantation Housing and Social Welfare Trust
PS	–	Pradeshiya Sabha
PS Act	–	Pradeshiya Sabha Act, No. 15 of 1987
PSS	–	Price Share Supplement
R110	–	Plantations Recommendation of 1958 (No. 110)
RPC	–	Regional Plantation Companies
SPC	–	State Plantations Corporation
UDHR	–	Universal Declaration of Human Rights

Introduction

Estate workers in Sri Lanka are governed by a complex set of laws, largely distinct from those that cover other wage labourers. In light of recent legislative amendments and a new collective agreement, this paper seeks to provide an overview of the evolution of the legal and policy framework surrounding plantation workers in Sri Lanka. The focus will be on tea estate workers engaging in manual labour, a demographic which has been subjected to the highest levels of poverty in the country due to insufficient wages and institutional discrimination in the provision of social services and property rights. This paper will argue that persisting legal barriers, gaps, and violations continue to contribute to the systemic challenges faced by this population today. It also serves as an opportunity to clarify a complex and incoherent set of domestic and international laws, by-laws and policies, many of which date back to colonial times, as to enable all stakeholders to better understand their legal rights and obligations.

Organization

Chapter 1 will serve to provide background on Sri Lankan plantations and plantation workers. Section 1.1 explains the economic importance of tea plantations and the shift from colonization, to nationalization, to privatization. Section 1.2 summarizes the precarious situation faced by plantation workers and discusses the gendered and ethnic makeup of this labour force, largely consisting of up-country Tamil women.

Chapter 2 provides an overview of the legal framework surrounding plantation workers in Sri Lanka. Section 2.1 focuses on domestic laws, by-laws and policies, and summarizes the relevant provisions in citizenship and election laws, the Pradeshiya Sabha Act, the Labour Code of Sri Lanka, Collective Agreements, the Constitution of Sri Lanka, and national policies. Section 2.1 looks at relevant international laws, focusing on the IDHR, the ICECSR, and the ILO Plantations Convention.

Chapter 3 provides an overview of the systemic challenges faced by plantation workers as a result of legal barriers, gaps and violations. This will allow the reader to gain a better understanding of how various legal sources fit together. Challenges related to the following spheres will be explored: governance and

management; wages, allowances and social insurance; time; health and safety; maternity and childcare; housing and land rights; education; language rights; and regulation and enforcement.

Chapter 4 examines the politics underlying the plantation sector in Sri Lanka, which have contributed to a largely inadequate and unenforced legal framework. In other words, this chapter seeks to answer the following questions: Why are the laws as they are? Why have some laws changed while others remain stagnant? Why do many laws remain unimplemented and unenforced? In order to do this, diverse stakeholders will be discussed, including colonial powers, the Sri Lankan Government, Regional Plantation Companies (RPCs), Trade Unions, NGOs, local government bodies, and estate workers.

Finally, Chapter 5 focuses on recommendations for the future. Section 5.1 explores the need for legal reform. Section 5.2 recommends certain mechanisms to better implement and enforce the laws in place. Section 5.3 presents various extra-legal requirements, emphasizing the limitations of legal solutions to enlist change without the will and the means of various stakeholders.

Methodology

The research for this paper was gathered through an analysis of a host of legislation, statistics and literature on the subject, as well as through a series of six freeform interviews conducted in June and July of 2019. Consequently, this paper does not account for any legislative changes or new policies introduced after this time. The majority of my research was conducted in Colombo and Kandy in order to interview diverse actors, including activists, professors, and NGO directors and staff members. This paper will therefore serve to relay certain information communicated to me by people who either work with plantation workers, have written on the subject, or are experts in labour law. I was however unable to meet with plantation workers themselves, as their seclusion on private tea estates made access nearly impossible in a mere three-month period, especially as I am not a Union leader, a member of an NGO specializing on plantation workers, or a government official. Moreover, although I reached out to several plantation owners by phone and email, none agreed to be interviewed.

This paper further relies on primary sources, such as domestic and international legislation, by-laws and policies relevant to Sri Lankan estate workers. The domestic legislation and by-laws directly cited in this paper include citizenship

and election Laws, the Pradeshiya Sabha Act, No. 15 of 1987 and its amendment, the Labour Code of Sri Lanka, Collective Agreements, the Education Ordinance No. 31 of 1939, and the Constitution of Sri Lanka. This paper also refers to diverse sources of international law binding upon Sri Lanka by way of customary law or accession, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Discrimination Against Women (CEDAW), and the International Labour Organization's Plantations Convention (C110). Unfortunately, the inaccessibility of case law meant that I was unable to engage in a direct analysis of relevant jurisprudence. Nevertheless, I believe that this paper fills a deep gap in the available literature on plantation workers, as there is no other existing literature which attempts to provide an overview of all of the national and international laws and policies relevant to Sri Lankan plantation workers.

Chapter 1

Background

1.1 Plantations in Sri Lanka

Economic Importance

The plantation sector has been the bedrock of the colonial and post-colonial economy of Sri Lanka, providing the foundation for the welfare system well into the post-colonial era. Though waning in importance, the plantation sector continues to be one of the key generators of foreign exchange and a vital source of employment in the country. Plantations in Sri Lanka, spread throughout the central (also referred to as the up-country or hill country) and south-western parts of the country, are home to more than two million people.¹

The key plantation crops today are tea, rubber and coconut, with tea being of greatest importance to the economy. According to the Central Bank of Sri Lanka, while the tea Export Value in 2017 was Rs. 233,338, the rubber Export Value was only Rs. 5,920.² In fact, tea accounted for 10 percent of the country's total GDP in 2017.³ Comparatively, coconut production amounted to 0.6 percent of the total GDP.⁴ Despite Sri Lankan tea plantations' recent struggle with falling productivity and a dwindling labour supply, Sri Lanka remains the fourth largest tea producer in the world (after China, India and Kenya).⁵ The primary focus of this paper will therefore be on the tea plantations. Coconut plantations, on the other hand, will be entirely excluded from this paper, as its labour related issues have little in common with those of tea and rubber.

Sri Lankan plantations fall into two central categories: 'smallholdings' and 'estates.' Plantations of 10-50 acres – largely concentrated in the south-western region of Sri Lanka – are considered 'smallholdings,' while larger-scale

1 International Labour Organization Country Office for Sri Lanka and the Maldives, *Future of Work for Tea Smallholders in Sri Lanka* (Colombo: ILO, 2018), 8.

This number includes people living on both large estates and tea smallholdings.

2 Central Bank of Sri Lanka, *Economic and Social Statistics of Sri Lanka* (Colombo: Central Bank of Sri Lanka Statistics Department, 2018), 41-42.

3 *Ibid.*

4 *Ibid.*, 43.

5 Janaka Wijayasiri, Nisha Arunatilake, and Saman Kelegama, eds, *Sri Lanka Tea Industry in Transition: 150 Years and Beyond* (Colombo: Institute of Policy Studies of Sri Lanka (IPS), 2018), 27.

plantations – principally located in the up-country – are referred to as ‘estates.’⁶ The smallholding sector represent nearly 60% of the total extent of tea land and account for more than 70% of total tea production.⁷ The number of workers hired by tea smallholders is relatively small however, as smallholders mostly rely on family members for plucking green leaves from their garden.⁸ The use of family labour in smallholdings often involves unfair practices of unpaid and in-kind work, which especially affects the overall recognition of women’s work. According to one survey, almost 60% of smallholders hired less than two workers in the month prior to the survey, and 25% engaged two to four workers.⁹ While smallholdings are characterized by temporary and casual (unregistered) labour, estates employ large numbers of workers on a permanent and formal basis.¹⁰ This paper will principally focus on the 0.9 million people living in large scale tea estates, who are subject to different rights from other Sri Lankan citizens.¹¹

Colonialism, Nationalization and Privatization

Sri Lanka’s tea and rubber industries began under British colonial rule, dating back to 1867 and 1876 respectively.¹² Tea plantations proved particularly prosperous. As discovered by James Taylor, a Scottish planter in the 1800s, Sri Lanka’s climate was ideal for the production of high-quality tea on a commercial scale.¹³ In the face of the collapse of the coffee plantations brought on by a fungal disease in the early 1870s, tea quickly became the cash crop of choice in Sri Lanka’s hill country region.¹⁴ By the end of the 19th century, the tea industry had become central to the country’s economy and Sri Lanka had secured its position as one of the world’s leading tea producers.¹⁵

Under the colonial administration, foreign companies and local companies had ownership of immovable property while the task of managing the plantations fell

6 Wijayasiri et al., *150 Years*, 63.

These are the categories as defined by the Sri Lanka Tea Board. The Tea Control Act No. 51 of 1957, on the other hand, states that tea lands which are less than 10 acres are considered as tea smallholdings.

7 ILO, *Tea Smallholders*, 1; Wijayasiri et al., *150 Years*, 63.

8 IPS, *150 Years*, 71.

9 *Ibid.*

10 ILO, *Tea Smallholders*, 15.

11 Department of Census and Statistics, *Household Income and Expenditure Survey 2016: Final Report* (Colombo: Department of Census and Statistics, 2018), vi.

Note that the number of people actually working in the plantations is much smaller than this number.

12 IPS, *150 Years*, 1.

13 *Ibid.*; Christopher Neubert, “Power, Everyday Control, and Emerging Resistance in Sri Lanka’s Plantations,” *Contemporary South Asia*, Vol. 24, No. 4 (2016): 363.

14 IPS, *150 years*, 1; Neubert, “Power,” 363.

15 IPS, *150 Years*, 2.

in the hands of British agency houses.¹⁶ The British made large amounts of land available through the enactment of Crown Lands (Encroachment) Ordinance of 1840 and subsequently the Waste Lands Ordinance – No. 1 of 1897. This ordinance declared that all forest and unoccupied land was crown land, which was sold cheaply to the planters.¹⁷ Although Sri Lanka gained independence in 1948, British agency houses were not phased out until the late 1960s.¹⁸

In the mid-1970s, privately-owned estates were nationalized as prescribed by the Land Reform Law No. 39 of 1975.¹⁹ In accordance with this law, all estate lands were transferred to state agencies.²⁰ The government established the Janatha Estates Development Board (JEDB) and the State Plantations Corporation (SPC) in 1976 to manage the plantations.²¹ In the hands of these two agencies, the plantations quickly became unprofitable, running at a financial loss for years due to gross mismanagement and politicization.²²

In an effort to upstage the commercial viability of this vital sector, a new set of policies was adopted in the 1990s to privatize the plantations. First, in 1992, 450 state-owned estates were amalgamated into 23 clusters and handed over to 23 state-owned Regional Plantation Companies (RPCs).²³ While the state therefore continued to own the estates, the management of the estates was transferred to the private sector via competitive bidding on a five-year lease, later extended to up to 53 years in 1995.²⁴

Second, beginning in 1996, the majority of RPCs were privatized, and stocks sold through the Colombo Stock Exchange. By 1997, the government had sold 51% of its shares to private managing companies, 20% to the public, and gifted 10% to employees (although it is unclear how many employees actually received and retained their shares).²⁵ While ownership of the plantation companies was therefore largely handed over to the private sector, the government retained

16 Centre for Poverty Analysis (CEPA), *Moving Out of Poverty in the Estate Sector in Sri Lanka: Understanding Growth and Freedom from the Bottom Up* (Colombo: CEPA, December 2005), 27.

17 Valli Kanapathipillai, *A Decade of Change in the Plantations: The Implications for Women Workers*, (Colombo: ICES, 1992), 2-3.

18 CEPA, *Moving Out of Poverty*, 26.

19 IPS, *150 Years*, 2.

20 CEPA, *Moving Out of Poverty*, 26.

21 IPS, *150 Years*, 2.

22 National Plantation Industry Policy (NPPI) Framework, 2006, 2, <http://plantationindustries.gov.lk/web/images/pdf/publications/npip.pdf>.

23 *Ibid*; IPS, *150 Years*, 14-15.

24 *Ibid*.

25 *Ibid*; W D Lakshman, ed, *Dilemmas of Development: Fifty Years of Economic Change in Sri Lanka* (Colombo: Sri Lankan Association of Economists, 1997), 484.

ownership of 50 (of the original 450) estates.²⁶ Given that foreign companies were excluded from the bidding (1992-1997), plantations in Sri Lanka are locally owned.²⁷

The legal framework governing the estates following the privatization policies of 1992, dictates that RPCs have legal rights to estate lands which extend to any and all human modifications on that land – including roads, homes, schools, gardens, and whatever else may lie within the confines of the plantation boundaries.²⁸ Estates, including human settlements within estates, are therefore viewed as the private property of RPCs. Given that the overwhelming majority of estate workers and their families live on estate land, this has had severe implications for estate workers’ attainment of meaningful citizenship.

1.2 Plantation Workers

The situation for plantation workers in Sri Lanka is a rather precarious one. Plantation workers in Sri Lanka are subject to higher levels of poverty than the rest of the country.²⁹ Between 1990 and 2002, while urban poverty halved and rural poverty declined by nearly 5 percent, poverty in the estates increased by about 50 percent.³⁰ By 2002, the estates sector was the poorest in the country.³¹ Although the poverty head count ratio in the estate sector dropped between 2006 and 2009, it continues to surpass that of the rural and urban sectors.³²

According to the latest Household Income and Expenditure Survey (HIES) conducted in 2016, estate workers receive a mean per capita income half the size of the national per capita income, and estate sector households are among the poorest 40 percent nation-wide.³³ Despite a slight increase in the minimum wage since 2016, plantation workers are not yet entitled a living wage.³⁴ This

26 A.S. Chandrabose and P.P. Sivapragasam, *Red Colour of Tea: Central Issues that Impact the Tea Plantation Community in Sri Lanka* (Kandy: Human Development Organization, 2011), 23-24.

27 IPS, *150 years*, 43.

28 Neubert, “Power,” 366.

29 Civil Society Collective in Sri Lanka, “Factsheet UPR 2017 Sri Lanka: Plantations and Up-Country Tamils,” 3rd Cycle Universal Periodic Review” (2017), online (pdf): *UPR Info* <www.upr-info.org/sites/default/files/general-document/pdf/plantation_and_up-country_tamils_factsheet_2017.pdf>.

30 Household Income and Expenditure Surveys for different years, using DCS official poverty lines for Sri Lanka.

31 *Ibid.*

32 Mythri Jegathesan, “Deficient realities: expertise and uncertainty among tea plantation workers in Sri Lanka,” *Dialectical Anthropology* Vol. 39 (2015): 258.

33 HIES 2016, 9.

34 M. Sinnathamby & S. Vijesandiran, *Living Wage for the Sri Lankan Tea Estate Workers*, (Kandy: Institute of Social Development, 2018).

translates into high levels of food insecurity and malnutrition in the plantation sector, with women in the estates having the lowest Body-Mass-Index (BMI) in the country and 40 percent of children being stunted and underweight.³⁵ The welfare of plantation workers is aggravated by inadequate access to land, housing, water, healthcare, and education.

It is important to note that there are different types of workers employed on estates, covered by different laws. For example, office workers, unlike tea pluckers, are covered by the Shop and Office Employees Act.³⁶ When discussing plantation workers throughout this paper, I will mean to refer to estate labourers working 'in a manual capacity.'³⁷ This category of workers is disproportionately comprised of up-country Tamils, most of whom are women.

Up-Country Tamils

The majority of estate workers in Sri Lanka are part of an ethno-linguistic minority commonly known as up-country Tamils. Up-country Tamils – otherwise referred to as Malayaha Tamils, hill country Tamils, plantation Tamils, or Indian Origin Tamils – are the descendants of indentured labourers brought down from South India by British colonial rulers in the late-19th and early 20th century to work in coffee, tea, and rubber plantations.³⁸ Plantation owners used a form of labour recruitment known as the Kangani system, which involved the use of Kanganies (labour contractors) responsible for both the importation of labour from India to the plantations and for the supervision of these workers once in the plantations.³⁹

Given that tea requires yearlong maintenance (unlike coffee), the transition from coffee to tea coincided with the transition of up-country Tamils in Sri Lanka from a migrant labour force to a permanent community in Sri Lanka's hill

35 Universal Periodic Review: Sri Lanka. Joint Submission by Organizations and Individuals, 2017, 23; Submission for the Second Universal Periodical Review (UPR) May 2008, Sri Lanka Submitted by IMADR Asia Committee, Human Development Organization and UPR, 3.

36 Interview of Dr. A. Sarveswaran, labour law professor at Colombo University, on July 4, 2019 in Colombo, Sri Lanka.

37 Preamble of Collective Agreement No. 3 of 2019, Plantation Workers Wages Collective Agreement 2019-2021, in Part I: Sec. (I) of the Gazette Extraordinary of The Democratic Socialist Republic of Sri Lanka - 18.03.2019.

38 Sarvananthan, "Elusive Economic Peace Dividend in Sri Lanka: All the Glitter is Not Gold," *GeoJournal* No. 81 (2016): 571.

39 Dharmapriya Wesumperuma, *Indian Immigrant Plantation Workers in Sri Lanka: A Historical Perspective* (Kelaniya: Vidyalandara Press, 1986) 22-41; Ramani Hettiarachchi, "Colonialism and Health Policy Affecting Workers in Sri Lanka's Plantation Sector," *Anthropology of Work Review* 27, no. 3 (December 2006): 14.

country.⁴⁰ Up-country Tamils were subjected to a long history of statelessness and disenfranchisement, allowing for their continued exploitation as a labor force post-independence. While the majority of up-country Tamils have since acquired citizenship, the denial of full citizenship rights, such as welfare benefits and housing rights, is an ongoing struggle for this community.

According to the latest government census on population and housing, which dates back to 2012, up-country Tamils make up 4.2% of the total Sri Lankan population, the Sinhalese 74.9%, Northern and Eastern Tamils 11.2%, and Moors 9.2%.⁴¹ The highest concentration of the then 842,323 up-country Tamils can still be found in and around the tea-producing region of Sri Lanka, in the districts of Nuwara Eliya (53.2%), Badulla (18.4%), Kandy (6.1%), Ratnapura (5.8%) and Kegalle (5.0%).⁴² Since the majority of smallholdings are located in the South, predominantly inhabited by the Sinhalese, the up-country Tamil community has not benefited from the smallholdings system, and instead continues to face exploitation in large-scale tea estates. Tea plantations today therefore remain central to a contemporary understanding of up-country Tamil identity.⁴³ Though many up-country Tamils no longer work on tea estates, the estates continue to be the single largest source of employment for this community.⁴⁴ Consequently, up-country Tamils face discrimination as an ethno-linguistic minority and as an exploited class of wage labourers.

Women

The vast majority workers in the tea plantations are women.⁴⁵ In fact, the plantation sector (both in terms of tea and rubber) is one of the largest employers of women in Sri Lanka.⁴⁶ The working conditions for men and women in the estates are very different because of the type of work done by men (pruning, clearing, supervising, etc.) and by women (tea plucking and rubber tapping).⁴⁷

40 Neubert, "Power," 363.

41 Department of Census and Statistics, *Sri Lanka Census of Population and Housing 2012* (Colombo: Department of Census and Statistics, 2012), 1.

42 *Ibid.*

43 Daniel Bass, *Landscapes of Malaiyaha Tamil Identity* (Colombo: Marga Institute, 2001), 1-4.

44 *Ibid.*, 3; Neubert, "Power," 361.

45 International Labour Organization, *Future of Work for Tea Smallholders in Sri Lanka*, (Colombo: ILO Publications, 2018), iii.

46 Muttukrishna Sarvananthan, "Impediments to Women in Post-civil War Economic Growth in Sri Lanka," *South Asian Journal of Human Resources Management* Vol. 2 No. 1 (2015): 24.

47 Fr. S. Guy de Fontgalland, *The Impact of Globalization on the Plantation Sector in Sri Lanka*, (Bandarawela: Plantation Sector Social Forum, 2004), 26.
Even in Section 4 of Collective Agreement No. 3 of 2019 and the 2016 Collective Agreement, it is written "for females in the case of plucking tea and men in the case of tasks."

One popular explanation for this reality is that these tasks, being minute, intensive, and repetitive, were historically regarded as being better suited for the ‘nimble fingers’ and sex-stereotyped qualities of patience and dexterity that women supposedly possess.⁴⁸ The objectification and commodification of women’s bodies within the plantation economy dating back to colonial times remains well alive today.

Despite representing the majority of plantation workers, women continue to be largely under-represented in trade unions, government, and RPC management.⁴⁹ This is especially problematic given the particular issues faced by women in plantations, such as sexual harassment and abuse from male supervisors, the lack of facilities to feed infants on the job, and the lack of relief for pregnant women.⁵⁰ Moreover, women pluckers work longer hours than men, only to come home and shoulder the domestic work (cooking, cleaning, etc.) and care work (taking care of the children and aging or ill family members).⁵¹ Women therefore face a lack of control over their time both inside and outside of their home, exploited in every aspect of their lives. Moreover, the cumulative oppressions of gender, ethnicity, and daily-wage labour hinder women’s access to legally mandated public services.⁵² Proportional representation in trade union leadership, government and RPC management is therefore key if these gendered issues are to be properly addressed.

48 Kanapathipillai, *A Decade of Change*, 5.

49 Chandrabose and Sivapragasam, *Red Colour of Tea*, 42.

50 Neubert, “Power,” 367; Fr. S. Guy de Fontgalland, *The Impact of Globalization*, 27.

51 Guy de Fontgalland, *The Impact of Globalization*, 26.

52 R. Ramesh, “Incomplete Citizenship of the Plantation Community,” in *Up-Country Tamils: Charting a New Future in Sri Lanka*, ed. Daniel Bass and B. Skanthakumar (Colombo: International Centre for Ethnic Studies, 2019), 42-43.

Chapter 2

The Legal and Policy Framework

2.1 Domestic Laws, By-Laws and Policies

The legal and policy framework surrounding plantation workers in Sri Lanka is complex and requires a comprehensive analysis of diverse sources and areas of law. Citizenship and election laws have contributed to the historical statelessness and disenfranchisement of up-country Tamils, and the Pradeshiya Sabha Act No. 15 of 1987 to their exclusion from local governance and public services delivery. Labour laws and by-laws, such as Collective Agreements and various Ordinances and Acts contained in the Labour Code of Sri Lanka, provide for the minimum wages and social welfare rights of plantation workers. While plantation workers are also subject to constitutional protections, the Constitution itself does not allow for judicial review of legislation that is inconsistent with the Constitution. Finally, while the Sri Lankan government has put forth various policies intended to better living conditions on estates, such policies have yet to be implemented. Although plantation workers are affected by other laws and policies, such as those regulating land deeds or education, these will be discussed in the next chapter. While this chapter will attempt to summarize the various laws in question, chapter 3 will explain how these laws fit together.

Citizenship and Election Laws

A host of laws have served to ensure that plantation workers continue to be governed by RPCs rather than the state. Upon independence, the passing of three laws – the Ceylon Citizenship Act No. 18 of 1948, the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949 and the Ceylon (Parliamentary Elections) Amendment Act No. 48 of 1949 – resulted in the exclusion of the majority of upcountry Tamils from citizenship and in their subsequent disenfranchisement.⁵³ Those who were not repatriated to India or provided Sri Lankan citizenship as part of the 1964 Sirima-Shastri Pact were effectively rendered stateless and erased from political representation.⁵⁴ While the parliament of 1947 (prior to independence) had eight MPs representing the up-country Tamils, it would

⁵³ Valli Kanapathipillai, *Citizenship and Statelessness in Sri Lanka: The Case of the Tamil Estate Workers* (London: Anthem Press, 2009), 187.

⁵⁴ *Ibid.*

not be until 1977 that another up-country Tamil candidate would get elected to parliament.⁵⁵ Meanwhile, politicians ceased to concern themselves with the housing, health and educational needs of Tamil plantation workers, resulting in their marginalization from the development process.⁵⁶ The effect of these laws continue to reverberate today.

The latest Act attempting to provide up-country Tamils with Sri Lankan citizenship is the Grant of Citizenship to Persons of Indian Origin Act, No 35 of 2003.⁵⁷ Although this was a massive step forward insofar as it ultimately allowed more than 90,000 stateless persons to obtain citizenship, the terms of this Act remain somewhat problematic.⁵⁸ According to Act No 35, those who were forced to register as Indian Citizens and others who had not received citizenship under earlier Acts were now required to apply for citizenship.⁵⁹ Given that no other group of people born to parents in Sri Lanka are required to prove that they are Sri Lankan citizens, the demand and process of filling forms as prescribed under Act No. 35 is discriminatory.⁶⁰

The people who were registered citizens under this Act and those who were granted citizenship under other Acts must produce citizenship certificates issued by the Commissioner of Immigration and Emigration in order to have their names registered in the voters list.⁶¹ This has proven to be an issue for many, as certificates of citizenship were not outright granted under Act No 35, and many of those who were registered under the previous Acts lost their citizenship certificates during the 1983 ethnic riot.⁶² Moreover, those born on estates were not always automatically registered at birth, as estate superintendents did not necessarily pass on that information, and the responsible authority may not have taken the effort to seek out information of new births.⁶³ The absence of a proper mechanism in the plantation to register births therefore further complicated plantation workers' ability to obtain citizenship certificates.⁶⁴ Finally, while the government asserts that the issue of statelessness has been resolved through the

55 A. Lawrence, *Malayaha Tamils: Power Sharing and Local Democracy in Sri Lanka*, (Colombo: Social Scientists' Association, 2011), 4.

56 Kanapathipillai, *Citizenship and Statelessness*, 187.

57 UPR 2018, 3.

58 Institute of Statelessness and Inclusion (ISI) and Verite Research, *Hill Country Tamils of Sri Lanka: Towards Meaningful Citizenship*, 3.

59 Guy de Fontgalland, *The Impact of Globalization*, 10-11.

60 *Ibid.*

61 UPR 2008, 2.

62 *Ibid.*

63 *Ibid.*

64 *Ibid.*

enactment of the Grant of Citizenship to Persons of Indian Origin Act, No 35 of 2003, the discriminatory Citizenship Act No. 18 of 1948 has not been amended or repealed.⁶⁵

The Pradeshiya Sabha Act

Although the citizenship issue of the up-country Tamil people has been, for the most part, legally resolved since 2003, up-country Tamils have yet to be provided with full citizenship in the political and social spheres.⁶⁶ This is in part due to the exclusion of the estates from the public services provided for under the Pradeshiya Sabha Act, No. 15 of 1987, which was only amended in late 2018.

The Pradeshiya Sabha (PS) Act provides for the establishment of local government units known as Pradeshiya Sabhas (Divisional Councils), which mostly operate at the village level.⁶⁷ According to section 3 of the PS Act, the purpose of the PSs is to regulate, control and administer all matters relating to “public health, public utility services and public thoroughfares and generally with protection and promotion of the comfort, convenience, and welfare of the people and all amenities within such area.” These public services include, but are not limited to, public health services, road maintenance and construction, drinking water, sanitation, electricity, garbage disposal, maternity care, pre-school and child welfare services.⁶⁸ Moreover, as expressed in the preamble of the PS Act, the PSs are meant to “provide greater opportunities for people to participate effectively in decision making process relating to administrative and development activities at a local level.”

The PS Act was enacted as an extension to the amended Village Committees Ordinance of 1937, the Village Councils Law No. 6 of 1964 and the District Development Councils Act of 1980.⁶⁹ The Village Committees Ordinance was the first to explicitly exclude “the persons who live in the houses provided by the plantation management” from local government service delivery.⁷⁰ Consequently,

65 “Plantation Sector Forum,” OCHR, accessed June 25, 2020, 1, https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/LKA/INT_CESCR_NGO_LKA_45_9507_E.pdf.

66 A. Lawrence, *Malayaha Tamils*, 5. This point was also emphasized by Dr. Ramesh during an interview.

67 S. Vijesandiran, and R. Ramesh, “Local Government Services and Social Margins: The Case of Plantation Community in Sri Lanka,” *Journal of Politics and Law* Vol. 9 (2016): 70.

68 Ramasamy Ramesh, “Sri Lanka’s Plantation Communities: Public Service Delivery, Ethnic Minorities and Citizenship Rights,” *South Asia Research* Vol. 38 (2018): 8.

69 Vijesandiran and Ramesh, “Local Government Services,” 62-63.

70 N.S. Cooray and Sirimal Abeyratne, eds, *Decentralization and Development of Sri Lanka Within a Unitary State*, (Singapore: Springer, 2017), 23.

the absorption of the Village Committees Ordinance and the Village Councils Law into the District Development Act and later the PS Act has led to the continuation of discriminatory provisions against up-country Tamils.⁷¹ For example, section 225(2) of the PS Act stipulates that the by-laws made by a Development Council as per the Development Councils Act will “be deemed to be by-laws made by the Pradeshiya Sabha constituted for the Pradeshiya Sabha area within which such town or village area was situated.” Section 225(2) therefore serves to ensure that estates continue to fall outside of the administrative purview of local government authorities.⁷² This reality was further entrenched by Section 33 of the PS Act, prior to its amendment in 2018.

Section 33 of the PS Act originally stipulated that:

The Pradeshiya Sabha may, at the request of the owner or owners of anyone or more estates or industrial enterprises situated within its limits, in any case in which the Pradeshiya Sabha is of opinion that the public interest would not otherwise justify the construction or maintenance of a road in such a locality, contract with such owner or owners, for the construction or maintenance of a road for the service of the estate or estates, or the enterprise or enterprises in question, subject to the payment of such contribution towards the expenses of such construction or maintenance as may be approved by the Pradeshiya Sabha and subject to the Condition that by an appropriate instrument such road is constituted a public road and is vested in the Pradeshiya Sabha, and all such agreed contributions shall be deemed to be special rates imposed upon the lands benefited, and shall be recoverable in the same manner as a rate imposed under this Act, and all the provisions of this Act relating to rates shall apply thereto.

Section 33 of the PS Act thereby confirmed that estates – including the human settlements within them – were to be considered as the private property of the estate administration. Any activity undertaken in the estates by PSs had to be at the request of the owner or with the consent of the owner. In practice, this provision effectively prohibited service delivery to the plantations and prevented estates from being included in development projects.

⁷¹ Vijesandiran and Ramesh, “Local Government Services,” 62-63.

⁷² *Ibid.*

Subsections 19(1)(xiv) and 19(1)(xxii), as written prior to the 2018 amendment, are also worth noting. These subsections respectively stated that PSs had the powers:

to spend any part of the Pradeshiya Sabha Fund for the construction or alteration, improvement or maintenance of village works, and for the purpose of administering any property vested in or acquired by or otherwise transferred to the Pradeshiya Sabha, or of carrying out the provisions of this Act or any by-law made or deemed by virtue of any written law to have been made thereunder;⁷³

to spend any part of the Pradeshiya Sabha Fund, in promoting rural women’s development activities, integrated development of selected villages, community development projects, and in making grants to rural development projects, Gramodaya Mandalayas and rural development organizations qualified to be represented on Gramodaya Mandalayas.⁷⁴

In other words, these subsections ensured that the public finances of the PSs could only be allocated for village or rural development. As estates do not fall under the definition of ‘rural’ or of ‘village’, they were by omission precluded from benefiting from development projects financed by public funds.⁷⁵ While development projects – such as the construction of roads, footpaths and water supply – were nevertheless carried out by PSs in the plantations, they were financed by members of Parliament and provincial councils, not by the Pradeshiya Sabha Fund.⁷⁶

Following decades of advocacy and lobbying by civil society organizations, NGOs, political representatives and intellectuals, some of these provisions were finally amended. On the 28th of September 2018, the Pradeshiya Sabhas (Amendment) Act, No. 30 of 2018 was certified, thereby amending Section 33 and Section 19 of the PS Act. As per section 2 of the Amendment Act, the words “improvement or maintenance of village works” in paragraph (xiv) of Section 19(1) of the PS Act, were replaced with the words “improvement or maintenance of village works or

73 Pradeshiya Sabha Act, No. 15 of 1987, Section 19(1)(xiv).

74 Pradeshiya Sabha Act, No. 15 of 1987, Section 19(1)(xxii).

75 Vijesandiran and Ramesh, “Local Government Services,” 63.

76 R. Ramesh and A.R. Nanthakumar, “Including the Excluded: Local Government Services and the Plantation Community,” *LST Review*, Vol 29, Issue 345 (May 2018): 47.

estate settlements.” Similarly, the phrase “integrated development of selected villages,” in paragraph (xxii) of Section 19(1) of the PS Act, was substituted with “integrated development of selected villages, estate settlements, [etc.]”. Correspondingly, Section 33 of the PS Act was amended to read as follows:

- (1) The Pradeshiya Sabha may, at the request of the owner or owners of anyone or more estates or industrial enterprises situated within its limits, in any case in which the Pradeshiya Sabha is of opinion that the public interest would not otherwise justify the construction or maintenance of a road in such a locality, contract with such owner or owners, for the construction or maintenance of a road for the service of the estate or estates, or the enterprise or enterprises in question.
- (2) In the case of plantation regions, the Pradeshiya Sabhas may, upon adoption of a special resolution and in consultation with the administrative authority of the relevant estate, utilise the Pradeshiya Sabha fund to facilitate the residents of the respective plantation regions with roads, wells and other common amenities necessary for the welfare of such residents.
- (3) (a) The roads, wells and common amenities constructed, maintained or facilitated under subsection (1) or (2) shall be vested in the Pradeshiya Sabha by an appropriate instrument and shall be constituted public roads, wells and common amenities.

(b) The Pradeshiya Sabha shall require the owners of the estates or industrial enterprises, administrative authorities of the relevant estates or the residents of such plantation regions, as the case may be, to pay such contribution towards the expenses of construction, maintenance or facilitation of such roads, wells and common amenities, as may be approved by the Pradeshiya Sabha and all such contributions shall be deemed to be special rates imposed upon such lands and plantation regions benefited and shall be recoverable as a rate imposed under the provisions of this Act.
- (4) For the purpose of this section, “plantation regions” means the estates coming under the Divisional Secretary’s Divisions in the Districts in the Central, Uva, Sabaragamuwa, Southern, Western, North Central and

North Western Provinces, in which the resident labourers live and tea, rubber, coconut, cinnamon, pepper, clove or oil palm are cultivated.”⁷⁷

As a result of these amendments, PSs are now allowed to utilize the Pradeshiya Sabha Fund to finance development projects in the estates, as well as the construction and maintenance of estate settlements, roads, wells and other common amenities. It is however worth noting that unless the PS deems that the public interest justifies the building or maintenance of common amenities in an estate, it is still up to the owner of an estate to request it. Moreover, under the amended act, PSs can only fund developmental activities in the estates “in consultation with the administrative authority of the relevant estate.”⁷⁸ Consequently, RPCs are still able to exercise their authority over human settlements within the estates. Finally, in accordance with the Amendment Act, residents of such plantation regions may be required to make a contribution towards the expenses of construction.⁷⁹

Most importantly, the Amendment Act has not resulted in the absorption of the plantation people into the local government system, as it does not provide for the amendment of Section 225(2) of the PS Act. With Section 225(2) remaining unchanged, the PS’s geographical areas remain the same, and therefore continue to exclude estates. Although Section 2(1) of the PS Act states that the Minister may “declare any area to be a Pradeshiya Sabha area for the purposes of this Act and shall define the administrative limits of the area so declared,” the Minister has not declared that the settlements come under the administrative purview of the PS. Consequently, while PSs now *can* fund development projects in estates, they are not obliged to because they are not responsible for the estates. PSs have therefore done little to improve estate facilities.

⁷⁷ Pradeshiya Sabhas (Amendment) Act, No. 30 of 2018, Section 3.

While the first part of Section 33 of the (original) PS Act therefore remained untouched, the second part of Section 33 – which stated that any construction in the estates undertaken by PSs was “subject to the payment of such contribution towards the expenses of such construction or maintenance as may be approved by the Pradeshiya Sabha and subject to the Condition that by an appropriate instrument such road is constituted a public road and is vested in the Pradeshiya Sabha, and all such agreed contributions shall be deemed to be special rates imposed upon the lands benefited, and shall be recoverable in the same manner as a rate imposed under this Act, and all the provisions of this Act relating to rates shall apply thereto” – was replaced with paragraphs 2-4 above.

⁷⁸ Section 33(2) of the amended PS Act.

⁷⁹ Pradeshiya Sabhas (Amendment) Act, No. 30 of 2018, Section 3(2).

Labour Code of Sri Lanka

A multitude of labour laws, principally enacted under colonial rule, remain in force today. Chapter 7 of the Labour Code of Sri Lanka contains a series of such Acts and Ordinances relating to plantations and estate labour.⁸⁰ These include the following:

- Estate Labour (Indian) Ordinance, No. 13 of 1889
- Medical Wants Ordinance, No. 9 of 1912
- Indian Immigrant Labour Ordinance, No. 1 of 1923
- Minimum Wage (Indian Labour) Ordinance, No. 27 of 1927
- Trade Union Representatives (Entry in Estates) Act, No. 25 of 1970
- Estate Quarters (Special Provisions) Act, No. 2 of 1971
- Allowances to Plantation Workers Act, No. 72 of 1981
- Services Contracts Ordinance, No. 11 of 1865

Ordinances were written before independence, while Acts were enacted post-independence. The Estate Labour (Indian) Ordinance, incorporating all changes through to 1979, amends and consolidates the law relating to Indian labourers employed on Sri Lankan estates. This Ordinance covers, *inter alia*, contracts of employment, means of payment of wages, standing to sue in Primary Courts, immunity from arrest on civil process, and provision of housing units. There is therefore some overlap in subject matter between this Ordinance and the Estate Quarters (Special Provisions) Act, which contains provisions concerning housing of workers on Estates, as well as with the Minimum Wages (Indian Labour) Ordinance in as far as both mention wages.

The Minimum Wages (Indian Labour) Ordinance introduced the first minimum wage-system for Indian estate labourers. This Ordinance provides for the establishment of local Estate Wages Boards, tasked with fixing minimum wage-rates which must subsequently be approved by the national Board of Indian Immigrant Labour. The Estates Wages Boards, composed of both employers and labourers, have since been replaced by Collective Agreements, as discussed in greater detail in the sub-section below. The Minimum Wages Ordinance also contains provisions on criminal sanctions, monthly food allowances, inspection of records, and more.

⁸⁰ "Labour Code of Sri Lanka," Department of Labour, http://www.labourdept.gov.lk/index.php?option=com_content&id=65&Itemid=59&lang=en&limitstart=1.

Similarly, the Allowances to Plantation Workers Act also provides for the maintenance and inspection of records, and mandates that allowances be decided by the Wages Boards. According to Section 6 of this Act, “the provisions of this Act shall have force and effect notwithstanding anything in any other written law.” This Act also states that the Interim Devaluation Allowance of Employees Act, No 40 of 1968, the Special Allowance for Workers Law, No. 17 of 1978, the Budgetary Relief Allowance of Workers Law, No. 1 of 1978, the Budgetary Relief Allowance of Workers (No.2) Law, No. 18 of 1978, and the Supplementary Allowance of Workers Act, No. 65 of 1979, do not apply to plantation workers.

It is worth noting that not all of the labour Ordinances and Acts regulate wages or allowances. The Medical Wants Ordinance, for example, regulates the establishment of hospitals and dispensaries in a given medical district, specifies the duties and entitlements of superintendents, indicates the fees payable to district medical officers, and covers other related issues. There is also the Trade Union Representatives (Entry in Estates) Act, which as stated in the preamble, is “an act to secure authorized representatives of trade union the right to enter estates for the purpose of visiting members of such unions or of holding or addressing meetings of such members.”

Some of the Ordinances in the Labour Code appear more outdated than others. The Service Contracts Ordinance, which served to “amend and consolidate the law relating to servants, labourers, and journeymen artificers under contracts of hire and service,” provides such an example.⁸¹ As the oldest law in chapter 7 of the Labour Code, many of its provisions address certain topics covered by later Acts and Ordinances, giving rise to certain contradictions. These contradictions would appear to nullify such provisions in the Service Contracts Ordinance, thereby rendering it practically irrelevant.⁸² The Indian Immigrant Labour Ordinance is similarly outdated. Given that this Ordinance was enacted at a time wherein Tamil plantation workers were considered Indian immigrants, the Ordinance confers certain powers to India in overseeing its labour, which today would be considered a breach of sovereignty.⁸³

Other Ordinances and Acts, not specific to plantation workers, are also worth considering. The Maternity Benefits Ordinance, for example, not only applies to

81 Service Contracts Ordinance, No. 11 of 1965, Preamble.

82 Section 17 of the Service Contracts Ordinance, No. 11 of 1965, provides such an example.

83 Section 8 of the Indian Immigrant Labour Ordinance, No. 1 of 1923, provides such an example.

women working in the estates, but is the only domestic piece of legislation which stipulates the rights endowed to pregnant estate workers.⁸⁴ Other examples include the Wages Boards Ordinance in 1984, which provided for equal wages for equal work, and the Industrial Disputes Act, which regulates labour disputes.⁸⁵

As explained by Mr. Muthulingam, the Executive Director of the Institute of Social Development (ISD) in Kandy, Sri Lanka, trade unions and other organizations tend to overlook the acts and ordinances contained in the labour code because of collective agreements. In the words of Mr. Muthulingam, “trade unions are not fighting based on [the labour Ordinances and Acts contained in the labour code], they are not reading it,” as those trade union leaders who were aware of these provisions have passed away. This is not only because collective agreements are more recent, but also because they are seen as offering better terms. Nevertheless, this paper will serve to demonstrate that certain provisions in these aforementioned acts and ordinances are of great relevance to estate workers today.

Collective Agreements

Following the period of estate re-privatization in the early 1990s, the daily wage of the tea and rubber plantation workers became determined on the basis of Collective Agreements (CA), signed between three selected plantation Trade Unions and the Employers’ Federation of Ceylon (EFC). The state’s withdrawal from the process of wage determination in 1994 opened the gate to the signing of the first CA in 1996. These agreements are renewable every two years, allowing for the periodic modification of the wages as decided by representatives of the workers and employers of the estates. These CAs typically specify five components: the basic wage rate, the attendance incentive, the productivity incentive, the price share supplement, and the over kilo rate.

The Collective Agreement No.13 of 2003, on the other hand, is a separate CA which does not cover wages. Rather, this CA provides for social welfare rights such as sick leave, transport to hospitals, maternity leave, funeral expenses, and creche facilities. It is also worth considering aspects not covered by the agreement, such as the absence of provisions on sexual harassment in the workplace or on

84 Collective Agreement No. 13 of 2003 states that the Maternity Benefits Ordinance No. 32 of 1939, applies to estate workers.

85 Kanapathipillai, *A Decade of Change*, 17.

protection from wild animals.⁸⁶ In fact, the CAs covering plantations workers do not themselves provide for occupational health and safety. As explained by Dr. Sarveswaran, a labour law professor at the University of Colombo, this agreement therefore fails to protect workers from some of the realities of working on an estate.

According to Part 1 (Section 4) of Collective Agreement No.13 of 2003, this agreement will remain in force unless it is abrogated by either party.⁸⁷ As explained by Mr. Muthulingam, the executive director of the ISD, since neither party has abrogated it, the provisions of this CA continue to apply.⁸⁸ Meanwhile, trade unions have not taken any action to demand new social welfare rights since 2003, focusing entirely on wages instead. Mr. Muthulingam denounced this issue, along with the fact that plantation workers remain largely ignorant of their social welfare rights due to the lack of attention cast on such matters by the news media and trade unions.

The Constitution of Sri Lanka, 1978

The Sri Lankan Constitution provides for certain protections which are worth considering when discussing the rights of plantation workers. First and foremost, Article 12(1) of the Constitution states that “all persons are equal before the law and are entitled to the equal protection of the law.” Article 12(2) goes on to stipulate that “no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.” The Constitution also recognizes the right to access government administrative services in Tamil (Chapter IV), the right to form and join trade unions (Article 14(1)(d)), and the right to adequate standards of living, including housing (Article 27(2)(c)).

86 Interview with Dr. A. Sarveswaran, labour law professor at Colombo University, on July 4, 2019 in Colombo, Sri Lanka. Dr. Sarveswaran explained that the exclusion of sexual harassment policies in CAs was deeply problematic given that no other labour laws cover sexual harassment. Sexual harassment therefore remains solely a criminal act, and is not considered a form of workplace harassment. Dr. Sarveswaran explained that criminal law is insufficient because it only serves to punish after the act has been completed. Only workplace sexual harassment laws (as civil laws) can deter such acts in the first place as well as cover the acts leading up to the full blown criminal act. Dr. Sarveswaran further explained that the lack of provisions on protections from animal attacks has also proven to be an issue given the location of plantations in the middle of the jungle. There has been a host of issues with leopard attacks (killing workers) as well as wasp stings.

87 Collective Agreement No.13 of 2003, Section 4 (Part 1).

88 Interview with Mr. P. Muthulingam, Executive Director of the Institute of Social Development (ISD) in Kandy, on June 19, 2019, in Kandy, Sri Lanka.

Unfortunately, such constitutional safeguards bear little teeth in Sri Lanka as there is no requirement to repeal unconstitutional laws. In fact, Article 80(1) of the Constitution stipulates that “where a Bill becomes law upon the certificate of the President or the Speaker [...] no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever.” Moreover, Article 16(1) of the Constitution stipulates that all existing written law and unwritten law shall continue to be in force regardless of any contradictions with the fundamental rights listed in the Constitution. In other words, there is no room for judicial review in Sri Lanka, leaving Sri Lankan citizens vulnerable to unconstitutional laws. Consequently, as pointed out in Chapter 3 of this paper, some of the laws still in force today are unconstitutional.

National Policies

The government of Sri Lanka has undertaken certain national policies intended to better the plantation system. Such policies include the National Plantation Industry Policy (NPIP) Framework and the National Plan of Action for the Social Development of the Plantation Community, both of which were put forth in 2006.⁸⁹ While the NPIP largely focuses on increasing productivity, it also recommends increasing investment in human, financial, physical, natural and social capital in the plantation sector as to improve the livelihood of the plantation community.⁹⁰ Meanwhile, the National Plan of Action, prepared by the Ministry of Nation Building Estate Infrastructure and Livestock Development in collaboration with the United Nations Development Program (UNDP), focuses on the need to improve housing and education on Sri Lankan estates.⁹¹ For example, the National Plan of Action requires Rs. 10.4 billion for the development of education services on plantations.⁹² Unfortunately, the Sri Lankan Government has not taken any steps to implement either of these policies.⁹³ In fact the International Labour Organization Committee has repeatedly requested “the [Sri Lankan]

89 “Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020), Plantations Convention, 1958 (No. 110),” ILO, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4021764; “Direct Request (CEACR) - adopted 2013, published 103rd ILC session (2014), Plantations Convention, 1958 (No. 110),” ILO, https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3150988.

90 National Plantation Industry Policy (NPIP) Framework, 2006, 6, <http://plantationindustries.gov.lk/web/images/pdf/publications/npip.pdf>.

91 “Plantation Sector Forum,” OCHR, accessed June 25, 2020, 2, https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/LKA/INT_CESCR_NGO_LKA_45_9507_E.pdf.

92 *Ibid*, 5.

93 *Ibid*, 2-5.

Government to provide information on the implementation and outcome of specific programmes and activities undertaken under the National Plantation Industry Policy Framework 2006 and the National Plan of Action for the Social Development of the Plantation Community 2006.”⁹⁴

2.2 International Law

International Human Rights Laws

Sri Lanka is subject to comply to certain international human rights laws. The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are all worth considering within the local context. Although the UDHR was not seen as imposing legal obligations on states at the time of its adoption, it has since come to be considered by many as a source of customary international law, and thereby universally binding. The ICESCR, ICCPR and CEDAW are also binding given Sri Lanka’s accession to the covenants in 1980 and to the convention in 1981.⁹⁵

Certain UDHR provisions are particularly relevant to estate workers in Sri Lanka. Article 10 of the UDHR, for example, emphatically recognizes language rights of all citizens and Article 25 stipulates that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.” Meanwhile, Article 2 of the UDHR demands that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Similarly, Article 7 of the UDHR “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.”

94 “Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020), Plantations Convention, 1958 (No. 110),” ILO, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4021764; “Direct Request (CEACR) - adopted 2013, published 103rd ILC session (2014), Plantations Convention, 1958 (No. 110),” ILO, https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3150988.

95 “Status of Ratification Interactive Dashboard,” United Nations Human Rights Office of the High Commissioner, <https://indicators.ohchr.org/>.

The ICESCR provides for similar and further protections. The following ICESCR provisions are worth considering:

Article 2 (1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. (2). The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind; and (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant.

Article 9. The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 11 (1). The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Article 12 (2). The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for [...] (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13 (1). The States Parties to the present Covenant recognize the right of everyone to education. [...]

The ICESCR therefore stipulates that everyone has a right to non-discrimination, fair wages, social security, healthcare, education and an adequate standard of living.

Finally, the ICCPR provides for rights that are of a political or civil nature, while CEDAW focuses on women's rights, such as reproductive rights. As such, articles 2, 14 and 25 of the ICCPR together guarantee the right of everyone, without any distinction of any kind, to vote, to public services and to an effective remedy in the event that his or her rights have been violated. Meanwhile, articles 10 and 16 of CEDAW stipulates that women shall have access to the information, education and means necessary to exercise their reproductive rights. As will be discussed further in the paper, plantation workers have, in practice, been systematically denied these rights.

International Labour Laws

The International Labour Organization (ILO) has adopted numerous conventions and recommendations which serve to protect workers around the world.⁹⁶ ILO Conventions are international treaties which are legally binding upon ratifying member states. Representation and complaint procedures can therefore be initiated against countries for failing to apply a convention (which they have ratified) in national law and practice.⁹⁷ ILO recommendations, on the other hand, are non-binding guidelines.⁹⁸ Nevertheless, in accordance with Article 19 (6d) of the ILO Constitution, there is an obligation on member states to regularly report the position of the law and practice in their country in regard to the matters dealt with in ILO Recommendations. This is also the case for conventions.⁹⁹ However, as stated by the ILO's supervisory bodies, the ILO has not always received the government of Sri Lanka's reports in a timely fashion.¹⁰⁰

96 "Introduction to International Labour Standards: Conventions and Recommendations," International Labour Organization (ILO), <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

97 *Ibid.*

98 *Ibid.*

99 *Ibid.*

100 "Observation (CEACR) - adopted 2016, published 106th ILC session (2017), Labour Inspection Convention, 1947 (No. 81)," International Labour Organization (ILO), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3295522.

Various fundamental conventions signed by Sri Lanka are of relevance to plantation workers. These include, but are not limited to, the Forced Labour Convention of 1930 (Co29), the Freedom of Association and Protection of the Right to Organise Convention of 1948 (Co87), the Minimum Age Convention of 1973 (C138), the Equal Remuneration Convention of 1951 (C100), the Labour Inspection Convention of 1947 (Co81), and the Workmen's Compensation (Occupational Diseases) Convention of 1925 (No. 18). The most important ILO convention for plantation workers however is the Plantations Convention of 1958 (C110), hereinafter referred to in this document as the "Plantations Convention."

The Plantations Convention, which regulates conditions of employment of plantation workers, has been ratified by Sri Lanka, Cuba, Cote d'Ivoire, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Philippines, and Uruguay.¹⁰¹ Sri Lanka, however, is the only ratifying country which has made reservations pursuant to Article 3, paragraph 1(b) of the Convention.¹⁰² Consequently, although the Convention has been in force in Sri Lanka since its ratification in 1995, Sri Lanka is not legally bound by Parts II, III, V, VI, X and XII of the Convention.¹⁰³ In other words, all provisions in the Convention relating to migrant workers, contracts of employment, the abolition of penal sanctions, annual holidays with pay, weekly rest, freedom of association, and housing do not apply to Sri Lanka. Sri Lanka is however bound to the sections of the Convention regarding discrimination, wages, maternity protection, workmen's compensation, right to organize and collective bargaining, labour inspection, and medical care.

In accordance with Article 1 of the Plantations Convention, the Convention applies to "any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of (...) tea, (...) rubber, [etc.]." Article 1 goes on to stipulate that it does not apply to "family or small-scale holdings producing for local consumption and not regularly employing hired workers." However, since Sri Lanka did not ratify the Protocol of 1982 to the Plantation Convention (P110), the Convention does apply to Sri Lankan estates under 12.5 acres which employ 10 people or less. Smallholdings, for the most part, are therefore covered by the convention.

101 "Ratification of C110 – Plantations Convention, 1958 (No. 110)," ILO, https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312255

102 *Ibid.*

103 *Ibid.*

The Plantations Recommendation of 1958 (R110), though non-binding, provides further guidance in terms of welfare facilities, hours of work and overtime, workmen's compensation for occupational disease, etc. Moreover, there is a legal obligation on countries to report on recommendations, in accordance with Article 19(6d) of the ILO Constitution and Article 3 of R110.

Chapter 3

Systemic Challenges: Legal Barriers, Gaps and Violations

3.1 Governance and Management

A host of laws have served to ensure that plantation workers continue to be governed by companies rather than the state. First, a long history of discriminatory citizenship and voting laws, resulting in statelessness and disenfranchisement, meant that politicians historically were little preoccupied with the social, economic, or cultural needs of estate workers. Second, in accordance with the PS Act, PSs were historically forbidden from utilizing the Pradeshiya Sabha Fund to finance development projects and common amenities in the estates. While this was overturned by the Amendment Act in 2018, no reform arrangements were made to absorb the plantation people into the local government system. Since estates do not fall within the administrative purview of PSs in the same way that villages do, PSs are still not obliged to provide public services or finance development projects in the plantations, though they are now allowed to.¹⁰⁴

Apart from legal discrimination in terms of who is entitled to PS services, there is visible discrepancy in the availability of local government institutions in the plantations. In other words, even if there is the political will to finance development projects and common amenities in the estates, the respective size and population of the PSs in the hill country affect their capacity to provide such services. Although national policy for creating PSs instructs that for every 40,000 population one PS can be established, the practice is rather different in the plantations areas.¹⁰⁵ The Nuwara Eliya (Tamil majority) district provides such an example. While the total population is 736,236, only five Pradeshiya Sabhas are in operation.¹⁰⁶ Meanwhile, the total population in the district of Hambantota (located in Sinhala majority area) is 383,361 and it has 10 Pradeshiya Sabhas.¹⁰⁷ By that standard, Nuwara Eliya should have at least 15 Pradeshiya Sabhas.

¹⁰⁴ Interview with Mr. P. Muthulingam, Executive Director of the Institute of Social Development (ISD) in Kandy, on June 19, 2019, in Kandy, Sri Lanka.

¹⁰⁵ Vijesandiran and Ramesh, "Local Government Services," 65.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

The relatively lower number of PSs in plantation areas is problematic given that the government does not pay attention to the size of the population or the scale of development needs when making financial allocations to the PSs.¹⁰⁸ Consequently, the district is compelled to receive financial allocations far lower than what it is entitled to, thereby diminishing the quality of government and of public services in the area. This, in turn, affects the willingness of PSs to dispense what little money they have to a population which they are not technically responsible for.

Moreover, given that PSs in plantation areas control huge extents of land and have offices located in villages far away from the estate settlements, plantation workers find it difficult to access the PSs in order to address their needs. For example, the territorial areas of the Nuwara Eliya PS and the Ambagamuwa PS (in the Nuwara Eliya district) are 475 and 465.4 square kilometers respectively.¹⁰⁹ This is largely the result of discriminatory policies implemented when upcountry Tamils were stateless, carried through to the present day via Section 225 of the PS Act.

In light of the absence of state governance in the estates, estate management have been responsible for providing many of the services to the estate communities that the Sri Lankan government provides to the rest of the country. Since re-privatization, estates have been governed by 20-plus private companies and thereby viewed as private property. By extension, government authorities viewed that the social welfare of estate residents should be looked after by the plantation companies to which they are attached.

In 1992 the newly-formed RPCs established the Plantation Human Development Trust (PHDT), originally named the Plantation Housing and Social Welfare Trust, to provide welfare programmes for estate workers.¹¹⁰ The PHDT is a tripartite organization of employers, unions and the government, financed by RPCs with the help of the government which agreed to channel support as well as donor funding to the plantation sector through this Trust.¹¹¹ While unions and the government are therefore involved in the provision of welfare services to estates, it remains the primary responsibility of RPCs to finance these services by

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, 66.

¹¹⁰ CEPA, *Moving Out of Poverty*, 33.

¹¹¹ *Ibid.*

putting 10% of their profits towards this trust.¹¹² Nevertheless, it would appear that the PHDT is currently financed by state and donor funding with little to no financial contribution by RPCs. It should also be noted that no significant public or private investment has been made to improve estate social infrastructure.¹¹³ Even now that the PS Fund can be used to finance social projects in the estates, the PHDT remains in place as the central provider of welfare services on estates. RPCs are therefore able to exert further control over estate workers through their role as a non-democratic, quasi-governmental service provider.¹¹⁴

The current situation in terms of the governance and management of estates and estate workers is a violation of both local and international law regarding political participation, non-discrimination, and the provision of public services. Article 25 of the ICCPR, for example, states that “every citizen shall have the right and the opportunity [...] to take part in the conduct of public affairs, directly or through freely chosen representatives” and “to have access, on general terms of equality, to public service in his country.” Similarly, Article 25 of the UDHR mandates that everyone has the right to necessary social services.¹¹⁵ According to Article 2 of the ICCPR and Article 7 of the UDHR, these rights are to be applied without discrimination on the basis of, *inter alia*, birthplace or property. Finally, the exclusion of estate workers from local governance and thereby public services runs against Article 12 of the Sri Lankan Constitution, which states that all persons “are entitled to the equal protection of the law” and that “no citizen shall be discriminated against on the grounds of [...] place of birth.” Ultimately, the state’s abandonment of its role as service provider to estate workers fundamentally challenges the notion of an inclusive democratic state.¹¹⁶

3.2 Wages, Allowances, and Social Insurance

The laws surrounding plantation workers coming into the category of ‘wage labour,’ are distinctly different from those governing plantation workers and other categories of wage laborers in Sri Lanka.¹¹⁷ Plantation workers are explicitly

¹¹² Interview with Mr. P. Muthulingam, Executive Director of the Institute of Social Development (ISD) in Kandy, on June 19, 2019, in Kandy, Sri Lanka.

¹¹³ A. Lawrence, *Malayaha Tamils*, 8.

¹¹⁴ Neubert, “Power,” 369.

¹¹⁵ Chandrabose and Sivapragasam, *Red Colour of Tea*, xiv.

¹¹⁶ Vijesandiran and Ramesh, “Local Government Services,” 59.

¹¹⁷ Chandrabose and Sivapragasam, *Red Colour of Tea*, 55.

excluded from the National Minimum Wage Act No. 3 of 2016 and the Budgetary Relief Allowances of Workers Act No. 4 of 2016.¹¹⁸ As aforementioned, the wages of plantation workers are decided by CAs, which typically specify five components: the basic daily wage rate, the attendance incentive, the productivity incentive, the price share supplement, and the over kilo rate.¹¹⁹ A new CA is signed every two to three years.

Collective Agreement No. 3 of 2019 is the most recent CA. Although the agreement was applauded by many for augmenting the basic wage by 40%, it is crucial to assess all five components in order to properly evaluate how much a plantation worker's income has actually increased. While the basic daily wage did increase from Rs. 500 to Rs. 700, the newest agreement did away with both the productivity incentive of Rs. 140 per day and the attendance incentive (based on a worker's attendance of more than 75% of the days offered by management) of Rs. 60 per day stipulated in the 2016 agreement.¹²⁰ In other words, the money workers were once owed under the productivity incentive and the attendance incentive was merely transferred to the basic daily wage rate under the latest agreement. The only real rise in a worker's cumulated daily wage since 2016 can be accounted for by the increase in the fixed price share supplement (PSS) from Rs. 30 a day to Rs. 50 a day.

Assuming that a worker met the requirements of the attendance incentive and the productivity incentive, plantation workers' overall daily wage therefore increased from Rs. 730 per day in 2016 to Rs. 750 per day in 2019. Nevertheless, those previously unable to complete the daily work norms (e.g. plucking 16-18 kg of tea per day) or attend 75% of days offered by management, generally due to various commitments, unfavourable climatic conditions or exhaustion, are benefitting from a Rs. 220 increase in their daily wage under the current agreement.¹²¹ Workers also have the potential to earn more under this agreement via the over-kilo rate (which rose from Rs. 25 for tea and Rs. 35 for rubber in

118 Section 3(7) of the Budgetary Relief Allowances of Workers Act No. 4 of 2016; "Observation (CEACR) - adopted 2018, published 108th ILC session (2019), Equal Remuneration Convention, 1951 (No. 100)," ILO, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3959246.

119 This is in accordance with Article 24(1) of the ILO Convention on Plantation Workers (C110), which specifies that the fixing of the minimum wage by Collective Agreement freely negotiated between trade unions which are representative of the workers concerned and employers or employers' organizations shall be encouraged.

120 Collective Agreement No. 3 of 2019, 1 (A) ii; Collective Agreement No. 35 of 2016

121 Chandrabose and Sivapragasam, *Red Colour of Tea*, 58-59.

2016, to Rs. 40 for tea and Rs. 45 for rubber in 2019) or by attending work on Sundays and thereby earning 1½ times the basic wage and the fixed PSS.¹²² While plantation workers' wages therefore have in fact increased, the question remains as to whether the wages under the 2019 agreement are sufficient to be considered a 'living wage.'

The living wage concept is intended to ensure that workers and their families are able to cover their cost of living, which includes the cost of food, housing, other essential needs (e.g. health care, education, transport, clothing, household contents, etc.), and a small margin for unforeseen events.¹²³ According to a summary report by the ISD, the living costs for a tea estate family consisting of 4.5 persons amounts to an average of Rs. 44,711 a month (Rs. 20,508 for the cost of food, Rs. 7,178 for housing costs, Rs. 14,816 for non-food and non-housing costs, and Rs. 2,129 for unexpected events).¹²⁴ Given that the standard number of workers per family in a tea estate is estimated at 1.66, a plantation worker would have to earn Rs. 26,934 per month to make a living wage. Since the living wage is calculated solely on the basis of the wages earned during the normal working hours (without having to work overtime or going beyond the daily work norms), a plantation worker making a living wage should be able to earn Rs. 26,934 per month without taking into consideration extra kilos of tea/rubber gathered or Sundays spent working. By that standard, even if a plantation worker were to work 25 days a month, he or she would have to earn a minimum of Rs. 1,077 per day to make a living wage.

Assuming that a plantation worker was offered 25 days of work a month (as stipulated in Part I, Section 8(i) of Collective Agreement No. 13 of 2003) and fully attended, he or she would earn only Rs. 18,750 a month. This means that, at best, an estate family today must survive off of an average of Rs. 31,125 a month, a mere 70% of what is required to cover their basic needs. By that same

¹²² It should be noted that workers were also paid 1 ½ the basic wage and the fixed PSS under the 2016 agreement, however given the increase in the basic wage and the fixed PSS under the 2019 agreement, workers now have the opportunity to make considerably more by working on Sundays (Rs. 1,125/Sunday in 2019 vs. Rs. 795/Sunday in 2016).

¹²³ Sinnathamby and Vijesandiran, *Living Wage*, 5.

¹²⁴ Sinnathamby and Vijesandiran, *Living Wage*, 10. The ISD came to this conclusion using the comprehensive methodology developed by Anker and Anker (2017). As stated by in the ISD Report, "The Anker and Anker approach to living wage estimated methodology is commonly adopted and shared as a common approach by Fair Trade International, Forest Stewardship Council, GoodWeave, Sustainable Agricultural Network/Rainforest Alliance, Social Accountability International and UTZ Certified to estimate the living wage for global workers (GLWC, 2013). [...] This methodology is the most common approach currently used for estimating living wage in developing countries." The ISD's estimate accounts for the fact that tea estate work norms are heavy, and their food attitudes demand more calories than others.

standard, a plantation worker in 2016 would have earned Rs. 18,250 a month, and a family Rs. 30,295 a month, demonstrating that the rise in wages under the latest collective agreement may have been overstated.

While the above numbers do not account for extra kilos of tea or rubber gathered or Sundays spent working, the reality is that the average plantation worker does not work 25 days a month. The estimate provided above in regard to monthly income therefore remains generous. In fact, as stated in the table below, the average mean salary per month for plantation workers is a mere Rs 15,899. As explained by a tea plantation worker in Badulla, “during the year, the number of days of work available to us varies – in the high season for three months, we have 30 days of work a month, in the low season for three months we have only 12-15 days of work a month. During the rest of the time, we might have about 18-20 days a month.”¹²⁵ Consequently, the fact that plantation workers are paid a daily wage rather than a monthly wage places them in a situation of greater uncertainty and insecurity.¹²⁶ Plantation workers’ wages continue to be significantly lower than the wages paid to similar categories of workers in other industries in the country as well as in the region.¹²⁷

Indicators	National	Urban	Rural	Estate
Mean Salary per month (Rs)	-	39,195	30,439	15,899
Mean Household Income per month (Rs)	62,237	88,692	58,137	34,804

Source: R. Ramesh, “Incomplete Citizenship of the Plantation Community,” in *Up-Country Tamils: Charting a New Future in Sri Lanka*, ed. Daniel Bass and B. Skanthakumar (Colombo: International Centre for Ethnic Studies, 2019), 42-43.

This reality stands in conflict with international laws and recommendations. Articles 16 and 17 of the ILO Recommendations state that the following factors should be taken into consideration when fixing the minimum wage: “the necessity of enabling workers to maintain a suitable standard of living, [...] the cost of living, fair and reasonable value of services rendered, wages paid for similar or comparable work under collective bargaining agreements, and the general level of wages for work of a comparable skill in the area where the workers are sufficiently organized.”¹²⁸ The ICESCR, which is legally binding upon Sri

¹²⁵ CEPA, *Moving Out of Poverty*, 102.

¹²⁶ Interview with Dr. A. Sarveswaran, labour law professor at Colombo University, on July 4, 2019 in Colombo, Sri Lanka.

¹²⁷ Sinnathamby and Vijesandiran, *Living Wage*, 1.

¹²⁸ ILO Plantations Recommendation of 1958 (R110), Articles 16-17.

Lanka, also places certain obligations on states to ensure the fair remuneration of workers. According to Article 7(a) of the ICESCR, the States Parties to the Covenant recognize the right of workers to remuneration which provides them, as a minimum, with (i) fair wages and equal remuneration for work of equal value without distinction of any kind, and (ii) a decent living for themselves and their families. Neither of these obligations have been fulfilled.

Plantation workers' meagre financial situation has forced many to diversify their work. Households have been able to move out of poverty by increasing their earnings through diversification with non-estate work during the low season, as well as by working full time outside the estate.¹²⁹ Consequently, between 1996 and 2004, the percentage of estate workers engaged in self-employment increased from 3% to 10%, and participation in the informal private sector increased from 19% to 34%.¹³⁰

With 32% of plantation workers living in poverty, the wages they are provided can hardly be seen as sufficient to ensure a decent living. Nevertheless, only 13% of plantation workers are receiving state welfare assistance, thereby contravening Article 9 of the ICESCR which obliges States Parties to recognize the right of everyone to social security, including social insurance.¹³¹ Plantation workers are covered by the Employee's Provident Fund No 15 of 1958, which is a social security scheme meant to secure superannuation benefits for employees at old age who are not eligible to receive any other form of superannuation benefits.¹³² Unfortunately, some plantation workers are deprived of their pensions because the estate where they were born has no documentation of their birth.¹³³ This can in part be blamed on the poor management on the part of both RPCs and Trade Unions.

There also remains an issue of gender discrimination in terms of both wages and allowances. Although men and women have received an equal wage since 1984, women are given the same pay as men despite working longer hours.¹³⁴ This is largely due to the gendered segregation of work wherein women principally

129 CEPA, *Moving Out of Poverty*, 102.

130 *Ibid.*

131 Chandrabose and Sivapragasam, *Red Colour of Tea*, xiv.

132 R. Dheerasinghe, "Providing Social Security through Employees' Provident Fund," in *60th Anniversary Commemorative Volume of the Central Bank of Sri Lanka: 1950 – 2010* (Colombo, Central Bank of Sri Lanka, 2011), 189.

133 Neubert, "Power," 360.

134 Chandrabose and Sivapragasam, *Red Colour of Tea*, 37.

work as pluckers.¹³⁵ Consequently, the current wage situation can scarcely be considered ‘equal pay for equal work.’ Moreover, according to Section 11 (1) of the Minimum Wages (Indian Labour Ordinance), “on every estate an allowance of one-eighth of a bushel of unblended rice of good quality shall be issued, free of charge, each month by the employer (a) to every Indian male labourer age of sixteen years employed on the estate, and (b) to every Indian widow resident on the estate and having at least one child below the age of fourteen years dependent on her.” In other words, according to this provision, while any man is endowed to receive a monthly allowance of rice, only widowed women are provided the same benefit. While it remains uncertain whether this law is applied in practice, it is clear that legislated gender discrimination remains well alive.

Although the current wage model is clearly flawed, the alternative proposed by RPCs is equally problematic. Over the last decade, plantation companies have pushed for the wage model to be replaced by an “out-grower model,” wherein each worker would be allocated a plot of tea bushes for their own self-cultivation, with the RPC as the monopoly buyer of the outgrower’s produce. The RPC also has a monopoly over selling fertilizer and weedicide to outgrowers on their plantations. Within the scheme, outgrowers are supposedly given a share of the income (instead of a daily wage) after the company has deducted its input costs and profits. This scheme is highly criticized for shifting the ‘risk’ factor onto workers. Nevertheless, the 2016 and 2019 Collective Agreements both stipulate moving towards a productivity lined wage regime based on revenue share/ outgrower models within the following years.¹³⁶

3.3 Time

The regulation of plantation workers’ time presents yet another issue. According to the latest Collective Agreement, the length of working days are considered to be 8 hours per day.¹³⁷ However, it is stated in Collective Agreement No.13 of 2003 that workers shall perform reasonable overtime work upon being requested to do so by management. This is troublesome given that neither Collective Agreements appear to mention overtime pay, only an over-kilo rate.¹³⁸ In other words, even

¹³⁵ Guy de Fontgalland, *The Impact of Globalization*, 26.

¹³⁶ Collective Agreement No. 3 of 2019, Section 3.

¹³⁷ Sinnathamby and Vijesandiran, *Living Wage*, 8.

¹³⁸ The Collective Agreements do not appear to mention overtime pay, unless Section 11 (titled “extra rates”) of Collective Agreement No. 13 of 2003 is about overtime pay.

if tea pluckers and rubber tappers work overtime on a regular basis, if they are not able to tap or pluck an excessive amount, they will not be provided extra compensation.

Collective Agreement No. 13 of 2003 also regulates the amount of time-off a worker can take. According to Part I, Section 8(i) of the Agreement, an employer shall offer 300 days' work in a year including annual leave and statutory holidays. The CA does not specify exactly how many days this shall be however.¹³⁹ Although C110 contains provisions on annual holidays with pay and weekly rest, Sri Lanka made exceptions to these sections of the Convention, and is therefore not bound by them. Collective Agreement No. 13 of 2003 does however provide for sick leave, stating that:

any employee who has qualified for his/her annual leave in the previous year shall be eligible during the following year to paid medical leave if he/she has been hospitalized for 7 days or more at any one time. Such employees shall be entitled to half-pay for a period not exceeding 14 days including the first 7 days, provided that no worker shall be entitled to paid medical leave as herein specified, in excess of 14 days in any one year. An employee who has qualified for his/her full quota of annual holidays in the previous year, shall be eligible in the subsequent year if he/she has been hospitalized for 7 days or more at any one time, to a half pay for a period not exceeding 21 days including the first seven days, provided that no employee shall be entitled to paid medical leave in excess of 21 days in any one year.¹⁴⁰

The ILO has however criticized the current labour system in Sri Lankan plantations on the basis that “there is no uniformity in the annual leave entitlement of plantation workers with each wages board determining different conditions, and also because weekly rest in the plantation sector is not a paid holiday.”¹⁴¹

139 Collective Agreement No. 13 of 2003, Part I, 8(i).

140 Collective Agreement No. 13 of 2003, Part I, Section 13.

141 “Direct Request (CEACR) - adopted 2013, published 103rd ILC session (2014), Plantations Convention, 1958 (No. 110),” ILO, https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3150988.

Women are known to work longer hours than men while simultaneously taking on more of the household and care work. The following excerpt from a CEPA report provides a revealing account of a woman’s daily routine as a tea pluckers in Sri Lanka:

Many of the conversations I had about women’s work in the plantations would turn towards a discussion of the plucker’s lack of any control over her time. Priya’s mother would wake up every morning at 4:00 a.m. to prepare meals at home for her husband and children and then rush to muster at 7:30 for her work assignment. Some days she would walk long distances and up high mountains, leaving her exhausted even before lunch at 12:30. For her lunch break, if she needed to use the toilet she would rush home, again, some days a very long distance, and return to the fields by 1:30. Her workday usually ended around 5:00 or 6:00, when the kangannies would weigh the leaves collected by each plucker. She would then return home, cook again for her husband and children, eat her own meal after everyone had finished, clean the home, put the children to bed, and hopefully retire herself by 10:30, leaving about five and a half hours for sleep. There is seemingly little room in this daily schedule for personal or private time. Each part of the woman’s day is allocated towards her work in the estate, her work at home, and her work in the community.¹⁴²

This excerpt highlights multiple issues faced by women in the estates, including gendered division of labour and the lack of accessible toilet facilities (especially important to women’s menstrual hygiene), all of which impact women’s control over their time.

1.4 Health and Safety

Although the estate community has been partially served through a network of national health facilities since 1994, curative health services within most private estates continue to be provided by estate medical assistants under the management of RPCs.¹⁴³ This may help explain why privately-owned estates

¹⁴² Neubert, “Power,” 368.

¹⁴³ Nithershini Periyasamy, “Update on the Health Status of Plantation Community in Sri Lanka” *Journal of the College of Community Physicians in Sri Lanka* 23, no.4 (2017): 135; CEPA, *Moving Out of Poverty*, 33.

are the most poorly served in terms of health facilities.¹⁴⁴ In fact, according to a report by the Centre for Poverty Analysis (CEPA), none of the private estates in their sample had welfare officers, midwives or dispensaries.¹⁴⁵ One plantation worker interviewed by CEPA stated the following:

Before privatisation, the hospital was in good condition. There was a maternity ward. Now if we go there they will only give us aspirins. We have to take private medical treatment, which is very expensive. The estate doesn't have an ambulance and they give us a lorry only after finishing their work. There is only one doctor for five divisions.¹⁴⁶

The remote geographical location and difficult access and transport facility to both main and internal divisions of the estate, poor accommodations, language barriers and the lack of electricity and clean water, have made estates a difficult and unpopular station for health workers.¹⁴⁷ Lack of cooperation from RPCs in terms of their failure to upkeep the aforementioned facilities necessary for timely and effective service delivery has therefore created a barrier to the involvement of health care professionals, whether paid by the state or by RPCs.¹⁴⁸ Moreover, in the absence of acquisition of estate land by the state, government funds of the Ministry of Health cannot be utilized to renovate or newly construct buildings in estate health facilities.¹⁴⁹

The poor state of healthcare services on estates is especially problematic given the host of medical issues with which plantation workers are faced. According to one report, one third of female plantation workers in Sri Lanka experience chronic musculoskeletal pain in multiple sites of their body.¹⁵⁰ Years of plucking and carrying heavy bags of leaves suspended from their heads has left tea pluckers especially vulnerable to such pain. Women in tea fields commonly complain of neck strains, dry and cracking skin on their fingers, asthma, breast pains due to continuous friction against tea bushes, and skin rashes from fertilizers, pesticides, or insecticides.¹⁵¹ Moreover, studies have shown that oral cancer is a

144 CEPA, *Moving Out of Poverty*, 72.

145 *Ibid.*

146 *Ibid.*, 71.

147 Periyasamy, "Update on the Health Status," 141.

148 *Ibid.*

149 *Ibid.*

150 P.V. De Silva, "Chronic Multi-Site Pain and Quality of Life Among the Female Tea Factory Workers in Southern Sri Lanka," *Scientific Abstracts* (2012), 620.

151 Neubert, "Power," 367.

major health problem on Sri Lankan estates, leading researchers to argue that the problem ought to be better addressed by employers.¹⁵² Finally, poor nutrition and unsanitary living conditions are health hazards to the estate community.

Plantation workers are also affected by a host of other safety concerns. According to one report, “poor enforcement of environmental norms, weak regulation, and poor planning have caused significant loss of lives, livelihoods, and property through floods and landslides in the Estate areas.”¹⁵³ This issue is increasingly relevant given the rise in climate-change induced natural disasters affecting Sri Lankan plantations. Moreover, estate labourers working in the fields are vulnerable to wasp bites, snake bites, and leopard attacks.¹⁵⁴

The cumulation of health issues plaguing plantation workers, especially in light of the lack of adequate healthcare on estates, can have grave consequences for plantation workers’ economic situation. The long-term impact of a serious illness should not be underestimated. Chronic debilitating illness on estates has been proven to lead to a decrease in income earning capacity and a simultaneous increase on health expenditure, causing long term impacts from which the chances of recovery are slim.¹⁵⁵ The effects of a serious illness are aggravated if it affects the primary income earner, as it can trigger a cycle of indebtedness trapping entire households and even extended family members.¹⁵⁶

The government’s delegation of its responsibility for curative health services to RPCs, resulting in unequal and inadequate access to healthcare, is in violation of numerous domestic and international laws. Such international laws include Article 25 of the ICCPR and the UDHR, as well as Articles 2 and 12 of the ICESCR, which together guarantee the right of everyone to equal healthcare. International laws also mandate that certain medical standards be met. Article 25 of the UDHR, for example, requires that everyone be provided adequate medical care. Similarly, Articles 89 and 90 of the ILO Plantations Convention demand that plantation workers have access to adequate medical services, which shall be operated by a sufficient number of qualified personnel in proportion to the number of persons involved. The Plantations Convention also provides for the compensation of workers for personal injury by accident arising out of or in the course of their employment.¹⁵⁷

152 CEPA, *Moving out of Poverty*, 72-73.

153 UPR 2017, 7.

154 Neubert, “Power,” 367.

155 CEPA, *Moving out of Poverty*, 72-73.

156 *Ibid.*

157 ILO Plantations Convention of 1958 (C110), Article 51.

Domestic laws and by-laws place further obligations on the State and RPCs regarding the health of the estate community. Section 12 of the *Medical Wants Ordinance, No. 9 of 1912* requires employers to send any labourer to the hospital when so required by a medical officer and to supply nutritional supplements to children under the age of one year. Moreover, according to Section 2(1)(v) of *Collective Agreement No. 13 of 2003*, employers must continue to provide transport to patients (in keeping with existing practices) to government hospitals. This agreement also provides for annual sick leave, stating that:

Any employee who has qualified for his/her annual holiday in the previous year shall be eligible during the following year for paid medical leave if he/she has been hospitalized for 7 days or more at any one time. Such employee shall be entitled to half pay for a period not exceeding 14 days including the first 7 days, provided that no worker shall be entitled to paid medical leave as herein specified, in excess of 14 days in any one year. An employee who has qualified for his/her full quota of annual holidays in the previous year, shall be eligible the subsequent year if he/she has been hospitalized for 7 days or more at any one time, to half pay for a period not exceeding 21 days including the first seven days, provided that no employee shall be entitled to paid medical leave in excess of 21 days on any one year.¹⁵⁸

Unfortunately, it does not appear that psychological trauma and mental health are taken into consideration in providing for sick leave. This means that survivors of sexual assault are unlikely to benefit from this provision despite the fact that the emotional stress and trauma experienced by survivors of sexual assault has been known to affect their work.¹⁵⁹ Women plantation workers are left vulnerable to sexual harassment and rape from supervisors and other estate workers and residents.¹⁶⁰ Power dynamics often play a crucial role. According to Wijayatilleke and Zackaria, “[w]hen women don’t comply with the sexual advances or begin to protest, the offender takes revenge by resorting to various tactics ranging from deleting her name from the register, isolating her and sending her to a lonely block, giving extra unwanted work, making her hold the sack at the

158 Collective Agreement No. 13 of 2003, Part 1(13).

159 K. Wijayatilleke and Faizun Zackaria, *Sexual Harassment at Work Plantation Sector* (Colombo: ILO, 2001), iv, 16.

160 Carla Henry and Jaqueline Adams, *Spotlight on Sexual Violence and Harassment in Commercial Agriculture: Lower and Middle Income Countries* (ILO, 2018), 12.

weighing point, reducing on the weight plucked, to not granting leave.”¹⁶¹ The lack of provisions in CAs to address this issue is especially problematic given that women tea pluckers and rubber tappers live on the estates and therefore cannot easily escape their abusers.¹⁶² While sexual harassment constitutes a criminal offence, only approximately 0.003% of all rape complaints in Sri Lanka result in convictions according to a Universal Periodic Review report (2009-2015).¹⁶³

3.5 Maternity, Reproductive Rights and Childcare

Given that the majority of estate workers are women, issues surrounding maternity are of the utmost importance. According to Collective Agreement No. 13 of 2003, “full maternity benefits in terms of the Maternity Benefits Ordinance will be paid to women who qualify.”¹⁶⁴ The terms of the Maternity Benefits Ordinance are therefore worth looking into in greater detail.

Section 3(1) of the Maternity Benefits Ordinance stipulates that maternity leave shall last a total of twelve weeks (two weeks up to and including the day of the birth and ten weeks immediately following that day), during which time the woman shall be entitled to the payment of maternity benefits. However, up until its amendment in June of 2018, Section 3(1) went on to add that if a woman had, at the date of the birth, two or more children, then maternity leave would be reduced to six weeks.¹⁶⁵ This law was in violation of Article 47 of the Plantations Convention, which states that maternity leave must be at least 12 weeks. Nevertheless, according to the Maternity Benefits Ordinance (both pre- and post-amendment) if the pregnancy does not result “in the issue of a live child,” then a woman is entitled to only six weeks of maternity leave. The Maternity Benefits Ordinance forbids any employer from terminating the employment of a woman because of pregnancy, or from giving a woman a notice of dismissal whilst on maternity leave.

Women are also subject to legal protections once their child is born. For example, Section 12(b) of the Maternity Benefits Ordinance stipulates that:

¹⁶¹ Wijayatilake and Zackaria, *Sexual Harassment*, 17.

¹⁶² Neubert, *Power*, 367.

¹⁶³ UPR 2017, 7.

¹⁶⁴ Collective Agreement No. 13 of 2003, Part I (15).

¹⁶⁵ The amendment to Section 3(1) of the Maternity Benefits Ordinance No. 32 of 1939 – as per Section 2 of the Maternity Benefits (Amendment) Act No. 15 of 2018 – was first brought to my attention by Dr. Sarveswaran.

The employer of a woman worker in any trade shall, if she is nursing a child under one year of age, allow her, in any period of nine hours, two nursing intervals at such times as she may require. Each interval shall, where creche or other suitable place is provided by such employer to such worker for nursing such child, be not less than thirty minutes, and, where no creche or other suitable place is so provided, be not less than one hour, and shall be in addition to any interval provided to such worker for meals or rest under any written law and be regarded, for the purposes of her employment, as time during which she has worked in her employment.

This provision falls in line with Article 49 of the Plantations Convention, which states that a woman nursing her child shall be entitled to interrupt her work for this purpose, under conditions to be prescribed by national laws or regulations, and that interruptions are to be counted as paid working hours.

The Medical Wants Ordinance also contains certain provisions relevant to the protection of young children. According to Section 12(1) of the Medical Wants Ordinance, “it shall be the duty of every superintendent [...] to see that all children under the age of one year resident upon the estate receive proper care and nourishment, and to comply with all directions given by a medical officer.”¹⁶⁶ Section 12(1) goes on to specify that every superintendent must “supply at the cost of the estate every child under the age of one year resident upon the estate with such quantity of milk as may be recommended by a qualified medical officer.”¹⁶⁷ These provisions fall in line with Article 48 of the Plantations Convention. The latter provides that women are “entitled to receive cash and medical benefits when on maternity leave,” the rates of which shall be “fixed by national laws or regulations so as to ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living.”

Creche facilities are also mandated by law on estates. According to Collective Agreement No. 13 of 2003, Part II(1)(viii), creche facilities are to be “provided as a present for children of workers on estates.” Section 12(3) of the Maternity Benefits Ordinance further states that “regulations may be made for the purpose of securing the proper maintenance and administration of creches [...], and generally for securing the health, safety and proper care of the children in such creches.”

¹⁶⁶ Medical Wants Ordinance No. 9 of 1912, Section 12(1)(g).

¹⁶⁷ Medical Wants Ordinance No. 9 of 1912, Section 12(1)(h).

The reality on the ground demonstrates that a host of these laws have not been respected, however. Within the last two decades, some estates have halted the free provision of nutritional supplements to children, leaving many children underweight.¹⁶⁸ Moreover, according to one report, some estates – which used to provide women who recently gave birth with three breaks to nurse their child – have in recent years forbidden women workers from taking any breaks whatsoever for this purpose.¹⁶⁹ This is largely due to new productivity standards and other rules introduced by the privatized management.¹⁷⁰ The withdrawal of nutritional supplements and the prohibition of nursing breaks are in violation of Section 12 of the Medical Wants Ordinance. The lack of facilities to feed infants on the job and the lack of relief for pregnant women is a major issue on the plantations. It is also worth noting that according to one eyewitness, the creche facilities on some of the estates are neglected, falling behind health and safety standards, thereby violating Section 12(3) of the Maternity Benefits Ordinance.

Women’s reproductive rights are also being infringed upon in Sri Lankan estates. First, abortions remain illegal in Sri Lanka. Second, the PHDT has reportedly forced women on many plantations into compulsory family planning.¹⁷¹ Female plantation workers are taken to clinics in lorries to undergo tubal ligation and are brought back in lorries after surgery.¹⁷² The officers in question take advantage of plantation women’s low literacy rate to thwart the latter’s ability to choose between a safe, temporary method of contraception and permanent sterilization.¹⁷³

This stands in violation of international laws protecting women’s reproductive rights as a central element of women’s right to health, such as the ICESCR and CEDAW.¹⁷⁴ As a ratifying country to CEDAW, Sri Lanka is bound by Article 16 of the Convention, which guarantees women equal rights in deciding “freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”¹⁷⁵ Article 10 of CEDAW also specifies that women’s right to education includes “access to specific educational information to help to ensure the health and well-

168 CEPA, *Moving Out of Poverty*, 72.

169 *Ibid.*

170 *Ibid.*

171 Chandrabose and Sivapragasam, *Red Colour of Tea*, xiii.

172 *Ibid.*

173 *Ibid.*

174 “Sexual and Reproductive Health and Rights,” United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HealthRights.aspx>.

175 *Ibid.*

being of families, including information and advice on family planning.” These rights are not being properly met.

3.6 Housing and Land Rights

This sub-section will delve into two interrelated issues. The first is lack of proper housing facilities on estates. The second relates to property rights. Let us commence by delving into the first issue.

Estate workers continue to be subjected to poor levels of housing, both as a result of and in violation of national law. The majority of estate workers today still live in line rooms, originally constructed by the British and consisting of single rooms of about 100 square feet.¹⁷⁶ Following independence, Gazette No. 10168 of 1950 stipulated that line rooms constructed after the 1950s must consist of an open veranda or closed veranda, a living room, a back veranda and a kitchen.¹⁷⁷ Those who do not live in line rooms live in individual or twin units.¹⁷⁸ According to the most recent HIES Report, 72.8% of estate households are living in homes of 500 square feet or less.¹⁷⁹

These houses lack access to safe drinking water, toilets, and other sanitary facilities. According to the data from the 2016 HIES Final Report, only 77% of households in the Estate sector have a toilet exclusive to the household (compared to the national average of 91.7%).¹⁸⁰ Moreover, until recently, only 68.5% of estate sector households had a source of drinking water within the premises while the data for Urban and Rural sectors was 92.2% and 77.9% respectively.¹⁸¹ Though this figure has since risen to the national average of approximately 80% of households, it is worth noting that only 44% of the main sources of drinking water are considered safe in the estates (versus the national average of 88.8%).¹⁸²

The state of housing in the estates runs contrary to national and international law. While Sri Lanka made reservations to the provisions on housing contained

¹⁷⁶ Neubert, Power, 364; CEPA, *Moving out of Poverty*, 79.

Approximately 60% of estate workers live in line rooms, according to the CEPA report.

¹⁷⁷ Chandrabose and Sivapragasam, *Red Colour of Tea*, 22.

¹⁷⁸ CEPA, *Moving Out of Poverty*, 79.

¹⁷⁹ UPR 2017, 5; HIES 2016, 103.

This is problematic given that only 26.8% of households nationally live in homes of 500 square feet or less.

¹⁸⁰ HIES 2016, 108.

¹⁸¹ Department of Census and Statistics, Household Income and Expenditure Survey 2012/13: Final Report, (Colombo: Department of Census and Statistics, 2015), 104.

¹⁸² HIES 2016, 105-106.

in C110, Sri Lanka is bound by a host of other laws in this matter. The failure to provide estate workers with proper housing is a violation of the Estate Quarters (Special Provisions) Act, Article 27(2)(c) of the Constitution, and Article 11(1) of the ICESCR, all of which recognize the rights to an adequate standard of living, including housing. Moreover, the lack of sanitary facilities would appear to violate Section 12(1)(a) of the Medical Wants Ordinance, which states that it shall be the duty of every superintendent to “maintain the lines of his estate and their vicinity in a fair sanitary condition.” Similarly, Rule 10 of the Gazette No. 10168 of 1950 states that the vicinity must be clean or refuse and excreta and line drains must be cleaned regularly. The poor housing conditions on estates also suggest a failure on the part of the Plantation Human Development Trust (PHDT), given its self-defined mandate to enhance the quality of life of plantation workers.¹⁸³

There is also an issue of overcrowded line rooms. Although Section 24 of the Estate Labour (Indian) Ordinance states that each married couple living in the ‘lines’ of an estate must be provided with a separate room which they shall not be compelled to share with anyone other than a child, evidence shows that this is not always respected. In some estates, the shortage of housing has forced extended family members or even multiple families to share cramped and unsanitary line rooms. According to an estate worker who participated in a focus group discussion conducted by the Centre for Poverty Analysis (CEPA), it is not uncommon for about three or four families to live in one line room in an estate in Badulla.¹⁸⁴ Another report mentioned that multiple estate residents related extreme cases of families of up to eight people living together in a 100 square foot line room.¹⁸⁵ While this is not the norm and congestion has in fact reduced drastically over the years, such legal violations are sufficient to cause concern about overcrowding and less than adequate housing conditions.¹⁸⁶

The poor housing conditions on the estates must be understood in conjunction with the denial of property rights to plantation workers. The legal framework governing the estates following the privatization policies of 1992 dictates that RPCs

¹⁸³ Chandrabose and Sivapragasam, *Red Colour of Tea*, 24; “Our Organization,” Plantation Human Development Trust, <https://phdt.org/2017/index.php/our-organisation/>.

The Plantation Housing and Social Welfare Trust (PHSWT) was created in 1992 and incorporated under the Companies Act No 17 of 1982. It was later renamed as the Plantation Human Development Trust (PHDT), in 2002.

¹⁸⁴ CEPA, *Moving Out of Poverty*, 78.

¹⁸⁵ Neubert, “Power,” 365.

¹⁸⁶ *Ibid*; CEPA, *Moving Out of Poverty*, 78.

have legal rights to estate lands which extend to any and all human modifications on that land – including roads, homes, schools, gardens, and whatever else may lie within the confines of the plantation boundaries.¹⁸⁷ Although Sri Lankan law has a provision that grants a deed to anyone who continuously occupies a piece of land for a minimum of 10 years, this benefit is not provided to estate workers.¹⁸⁸

Estate workers have also been excluded from the government-initiated housing schemes for villagers, which provided villagers with grants and loans and allowed villagers to receive deeds to the homes once they repaid the loans.¹⁸⁹ According to Mr. Muthulingam, from 1987 and 2014, nearly 37 thousand houses were built in the plantations, but deeds were not given.¹⁹⁰ Moreover, according to Central Environmental Authority, if the government wants to give land for housing, they should follow their guidelines. The guidelines say that 15 perches of land should be provided in order to focus on infrastructure, such as roads, drainage system, garbage disposal, etc. Once again, this has not been implemented in the estates, unlike in the villages. These discriminatory practices continue despite statements from successive governments promising plantation workers the right to own homes.

While the New Villages Development Authority for Plantation Region Act, No. 32 of 2018 provides for the establishment of an Authority which seeks, *inter alia*, to “facilitate the issuance of title deeds for the legal occupants of the houses in the Estates within the designated areas to grant them ownership of such houses,” the effects of this Act remain to be seen.¹⁹¹ Moreover, according to this Act, deeds will only be provided for houses built from here on out in designated areas, not for the nearly 37 thousand houses built in the estates between 1987 and 2014.¹⁹² Despite such shortcomings, this Act represents a much-needed step in the right direction.

Estate workers are regularly obstructed in everyday interactions by the absence of deeds.¹⁹³ For example, plantation workers cannot receive personal bank loans

187 Neubert, *Power*, 366.

188 *Ibid.*

189 Interview with Mr. P. Muthulingam, Executive Director of the Institute of Social Development (ISD) in Kandy, on June 19, 2019, in Kandy, Sri Lanka.

190 *Ibid.*

191 New Villages Development Authority for Plantation Region Act, No. 32 of 2018, Section 6(d).

192 Interview with Mr. P. Muthulingam, Executive Director of the Institute of Social Development (ISD) in Kandy, on June 19, 2019, in Kandy, Sri Lanka.

193 M.Vamadevan and B.Skandakumar, *Gain the Ownership of Newly Built Estate Houses* (Kandy: Institute of Social Development, 2015), 12.

without a deed, cannot receive services from PSs, and cannot expand their home.¹⁹⁴ Moreover, estate workers cannot maintain ties to their ancestral home without being compelled to work in the tea industry.¹⁹⁵ When several retired estate workers filed a suit against the estate management for the deed to homes they had lived in for 20 years, the court dismissed the case, finding that workers had no legal claim against the rights of the estate.¹⁹⁶ In fact, estate workers are consistently denied the deed of title to their home despite having repaid their loans in full.¹⁹⁷

Similarly, people asking to build houses on the estates in order to be close to their families have encountered problems in enforcing their property rights.¹⁹⁸ In one case, a family, which had constructed a home on an estate at a cost of Rs. 800,000 with the management's permission, was evicted from their home by the estate management following a minor and unrelated disagreement.¹⁹⁹ The RPC was able to enforce their decision through the court system, without reimbursing the family's investment.²⁰⁰ Plantation workers who spend a lot of their own money on improving their line rooms also ultimately lose out on their investment due to the lack of deeds. The leases that grant RPCs exclusive rights to use all the land, resources, and buildings on the estates therefore function as an extension of plantation government, allowing the plantation management to exert further control over estate workers. The bond between estate housing and on-estate employment remains one of the RPCs greatest sources of power over estate workers.

3.7 Education

Despite the re-privatization of Sri Lankan estates, the state has retained responsibility for education within estate lands.²⁰¹ However, despite being part of the same national system, the education level in the estates fares considerably worse than in the rest of the country. According to a recent report by the Department of Census and Statistics, the literacy rate in the estates is 83%, while

194 Neubert, *Power*, 366.

195 *Ibid.*

196 *Ibid.*

197 Vamadevan and Skandakumar, *Gain the Ownership*, 17.

198 *Ibid.*, 12-16.

199 Neubert, *Power*, 366.

200 *Ibid.*

201 CEPA, *Moving Out of Poverty*, 33.

the urban and rural literacy rates are 94.7% and 92.7% respectively.²⁰² Moreover, only 2.2% of children living on estates have passed the Advanced Level (A/L) General Certificate of Education (GCE) – an entrance requirement for Sri Lankan universities – while the rates for children living in urban and rural sectors are 20.5% and 11.1% respectively.²⁰³

The poor state of the education system on estates can be traced back to two principal issues. The first is that students' ability to attend school is often thwarted by the high rates of poverty on estates and the consequent need for children to join the labour force from an early age.²⁰⁴ The second issue is the inter- and intra-regional disparity in school infrastructure, trained staff, choice of subjects, and transport, which have led to inequality in access and quality of education.²⁰⁵

The Education Ordinance No. 31 of 1939, as amended by Law No. 35 of 1973, remains the core law regulating the school system in Sri Lanka. Part VI of the Ordinance regulates estate schools. The provisions of the Education Ordinance can therefore help us better understand the second issue discussed above.

The under-resourcing of estate schools relative to the rest of the country can be traced to three factors, all of which are related to the consideration of estates, and thereby estate schools, as the private property of RPCs. First, although estate schools are government-run, RPCs remain responsible for the schools' infrastructure and maintenance. According to Section 40 of the Education Ordinance, the owner of an estate must set apart an area on the estate for the establishment of government schools for children residing on the estates. This includes a building which conforms to such standards as may be prescribed, a habitable house for a married head teacher, and an area of uncultivated land of at least one acre to be used partly as a school playground and partly as a school garden.²⁰⁶ If the owner of the estate fails to comply, the state will do so itself, but the owner will be indebted to the government. The relatively poorer infrastructure of estate schools can therefore largely be blamed on RPCs, along with poor government oversight.

202 Department of Census and Statistics. Sri Lanka Labour Force Survey: Annual Report – 2017 (Colombo: Department of Census and Statistics, 2017), 53.

203 UPR 2017, 22-23.

204 Ibid.; Selvanayagam Vansathakumary and Balakrishnan Arularasi, *The Unheard Voices of Plantation Children in Education: Lessons from the Plantation Sector in Matale District* (Kandy: Satyodaya Centre for Social Research and Encounter, 2015), 37-38.

205 UPR 2017, 4.

206 Education Ordinance No. 31 of 1939, Section 40.

Second, inadequate or inexistent transport facilities and roads in most estates have made estate schools an unpopular destination for most teachers, leaving a mere 1 to 3 teachers working per school in certain estates.²⁰⁷ This is largely the consequence of the exclusion of estates from the purview of PSs, as such exclusion has resulted in estates' sub-development compared to villages. Poor infrastructure on estates is therefore connected to a lack of access to quality education on estates.

Third, according to Sections 27 and 28 of the Education Ordinance No. 31 of 1939, PSs may borrow such sums of money necessary to secure "adequate educational facilities and industrial training," to supply "free meals and schoolbooks to the children of poor parents," and to enable the education of "blind, deaf, defective and epileptic children." However, Section 28 goes on to state that the power to borrow money for the aforementioned purposes "shall be subject always to any limitation imposed [...] by any written law relating to the constitution of [...] Village Councils, upon the powers of any such council to borrow money for the purposes of such other law." Consequently, up until the amendment of the PS Act last year, PSs were not allowed to borrow money to carry out works in estate schools for such purposes, placing estate schools at a disadvantage relative to urban and rural schools. As a result, while attending school is mandatory for all children of school-going age,²⁰⁸ whether on or off estates, estate children have not received the same quality of education or the same level of government aid as other Sri Lankan children. Unequal access to education impacts estate residents' ability to find jobs outside of the estates, thereby negatively affecting their mobility, economic prospects and bargaining power.

The inequality in access and quality of education in Sri Lanka, though a consequence of national law, is simultaneously a violation of both national and international law. Article 27(2)(h) of the Sri Lankan Constitution states that "the State is pledged to establish in Sri Lanka a Democratic Socialist Society, the objectives of which include [...] the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels." Moreover, Article 12 of the Constitution mandates that all rights apply equally to all citizens, without discrimination. Similarly, the ICESCR

²⁰⁷ Vansathakumary and Arularasi, *The Unheard Voices of Plantation Children*, 44.

²⁰⁸ According to Education Ordinance No. 31 of 1939, Section 43, "where the parent of a child not less than five and not more than fourteen years of age is resident on an estate, he shall cause the child to attend school."

demands that all state parties guarantee that the rights enunciated in the Covenant, including the right of everyone to education, are exercised without discrimination.²⁰⁹ Finally, unequal access to education in the estates goes against Article 25 of the ICCPR, which provides for the right to equal access to public services. In the face of the RPCs and the Government's failure to ensure adequate education to children living on estates, NGOs – such as the Satyodaya Centre for Social Research and Encounter – have been left to try and fill the gap by providing supplemental educational programmes.

3.8 Language

Local government bodies and public service delivery in the up-country principally operate in Sinhalese, despite the fact that the majority of plantation workers in the up-country are Tamil speakers. The discrepancy between the percentage of Tamil population and available Tamil officials is flagrant. For example, in Lunugala, where 69% of the population speaks Tamil, only 9% of public servants speak Tamil.²¹⁰ In fact, out of the 15 district administrative units through which the up-country Tamils are spread out, not a single one has Tamil as its language of administration.²¹¹ This is even the case in the Nuwara Eliya District, which has the second highest concentration of Tamil population next to Jaffna.²¹² Overall, PSs, District Secretariats, Divisional Secretariats, post offices, police stations, and other government institutions in up-country plantation areas do not have sufficient Tamil Officers.²¹³ There is a lack of willingness among public officials to undertake administrative transactions in Tamil at the local level, and there are no Tamils from the plantation sector in high ranking administrative posts of the local government institutions.²¹⁴

This reality translates into a major obstacle to accessing public services and local government institutions, ultimately leading to low trust in these institutions.²¹⁵ As a result of language barriers, plantation Tamils experience difficulty when submitting complaints to – or being interrogated by – the police, having their births, deaths, or marriages registered, obtaining certificates, or having any of

209 International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Articles 2 and 13.

210 Vijesandiran and Ramesh, "Local Government Services," 64.

211 A. Lawrence, *Malayaha Tamils*, 6.

212 *Ibid.*

213 UPR 2008, 2.

214 UPR 2017, 18.

215 Vijesandiran and Ramesh, "Local Government Services," 64.

their other day-to-day business transacted.²¹⁶ Officers who know only Sinhalese have trouble understanding Tamil names and often write them incorrectly, thereby making it difficult for people to apply for refunds of their EPF and ETF benefits.²¹⁷ Even their birth certificates are given in a language they cannot read or write.²¹⁸

While CAs must be exhibited on the estates in Sinhala, Tamil and English, it is unclear whether estates are actually complying with this.²¹⁹ According to one activist, he had only ever come across Collective Agreements written in English.²²⁰ Similarly, Section 17 of the Minimum Wages (Indian Labour) Ordinance mandates that translations in Tamil of the Service Contract Ordinance, the Estate Labour (Indian) Ordinance, the Tundu Prohibition Ordinance, the Indian Immigrant Labour Ordinance, and of this Ordinance, be exhibited on the estates so that they may be easily seen and read by labourers.²²¹

The overall situation faced by Plantation Tamils raises a serious question about respect to their language rights. Chapter IV of the Sri Lankan Constitution, the 13th Amendment of 1987, and the 16th Amendment of 1988, all unequivocally recognize the language rights of all citizens. The Sri Lankan Constitution and its amendments stipulate that all Sri Lankan citizens have a right to communicate with and receive information from government institutions in their mother tongue. For example, section 2 (b) of the 13th Amendment recognizes Tamil as an official language, while section 3 of the 16th Amendment specifies that Sinhala and Tamil shall be languages of administration of government institutions. Moreover, Article 27 of the Sri Lankan Constitution, inter alia, mandates that “the state shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of (...) language,” and “shall assist in the development of the culture and language of the people.”²²²

216 UPR 2008, 2.

217 *Ibid.*

218 Guy de Fontgalland, *The Impact of Globalization*, 12.

219 Industrial Disputes Act No. 43 of 1950, Section 10(b).

220 Interview with T. Jananthan, activist involved in the 1000 Rupees Movement, on July 7, 2019, in Colombo, Sri Lanka.

221 “Sri Lanka Migrant Workers,” International Labour Organization (ILO), https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=37394&p_classification=17.

According to the ILO, The Tundu Prohibition Ordinance prohibits the issuance and use of “Tundus,” which is “a written acceptance by a new employer to assume liability for travel expenses formerly imposed on Indian labourers.” Such an acceptance used to be a precondition for a change of employment.

222 Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Articles 27(6) and 27(10).

Given the robust constitutional laws surrounding language rights in Sri Lanka, the State's failure to provide services to plantation Tamils in Tamil is blatantly illegal, a fact which has been recognized by government institutions in the past. The Official Language Commission has previously stated that caution had to be taken to ensure the use of languages as specified in the Constitution, a recommendation which was passed into law by Act No. 18, certified on March 26, 1991.²²³ Moreover, while the President of Sri Lanka in 2001 declared that 14 Divisional Secretariats would be bilingual for administrative purposes, this was never implemented.²²⁴ The failure on the part of the government to respect the language rights of plantation Tamils is incidentally also in violation of Article 10 of the UDHR, which emphatically recognizes language rights of all citizens.

3.9 Inspection and Enforcement

The Labour Code of Sri Lanka contains various provisions concerning the inspection of wages and social services provided to plantation workers, so as to ensure compliance with the legal protections enumerated throughout this paper. In terms of wages, the Estate Labour (Indian) Ordinance requires employers to keep a complete register of labourers, to declare that labourers have been duly paid, and to maintain various other records.²²⁵ According to Section 13 of the Minimum Wage (Indian Labour) Ordinance, "the Commissioner shall have power at all reasonable times, with or without notice, to enter upon any premises on which labourers work and to inspect all records connected with the engagement, registration, payment, and discharge of such labourers, and to make all such inquiries as may be necessary to ascertain the rates at which wages have been paid to such labourers." This is reiterated by Section 8 of the Allowances to Plantation Workers Act.²²⁶

223 Guy de Fontgalland, *The Impact of Globalization*, 12.

224 *Ibid.*

225 Estate Labour (Indian) Ordinance No. 13 of 1889, Sections 21 and 22.

226 Allowances to Plantation Workers Act No. 72 of 1981, Section 8: "The competent authority shall have the power - (a) to enter and inspect at all reasonable hours of the day or night any place in which workers referred to in this Act are employed, for the purpose of examining any register or record of wages, or of ascertaining whether the provisions of this Act are being complied with; or (b) where any such record or register is not available of examination when he is inspecting such place, to require the production of such register or record on a specified later date for examination at such place or at his office; (c) to take copies of the whole or any part of any such register or record ; or (d) interrogate any person whom he finds in such place and whom he has reasonable cause to believe is an employer or a worker engaged or employed in any trade carried on in such place."

Certain labour ordinances also provide for the inspection of the living conditions and social services on the estates. Section 7 of the Indian Immigrant Labour Ordinance states that “the Commissioner or any Deputy Commissioner, medical officer, inspector, or assistant inspector may at all reasonable times, with or without notice, enter upon any premises on which Indian immigrant labourers may be employed and inspect the condition: (a) of such labourers, (b) of their housing accommodation; and (c) of the means provided for the medical treatment of such labourers.” This is reinforced by Section 44 of the Education Ordinance and Section 7 of the Medical Wants Ordinance.²²⁷

The ILO Plantations Convention also contains an entire section (Part XI) relating to labour inspection. The provisions contained in the Ordinances and Acts mentioned above are consistent with, and largely replicate, Article 78 of the Plantations Convention.²²⁸ There is, however, no national law in line with Article 81 of the Plantations Convention, which demands that “places of employment shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.” Moreover, there is no national legislation requiring the labour inspector to submit to the central inspection authority periodical reports (not less frequently than once a year) on the results of their inspection activities, as stipulated by Article 84 of the Plantations Convention and Article 20 of the Labour Inspection Convention (Co81). In fact,

²²⁷ Article 7 of the Medical Wants Ordinance No. 9 of 1912 states that: “It shall be the duty of every medical officer (being a duly qualified medical practitioner registered under the Medical Ordinance) for the purposes of this Ordinance from time to time - (a) to visit the estates within his district, or any other estate which he may be specially directed to visit, and to inspect the sanitary condition thereof; (b) to examine the labourers on such estates for the purpose of ascertaining their condition of health and whether they have been duly vaccinated; (c) to inspect all children under the age of one year resident upon such estates, and to give directions to the superintendent for their proper care and nourishment; (d) to direct the removal to hospital of any sick labourer whose removal he may consider necessary; (e) to draw the attention of the superintendent to any defect in the sanitary condition of his estate, and in the condition of health of the labourers; (f) if any estate has an estate hospital or dispensary, to inspect such hospital or dispensary; (g) to report to the Director-General of Health Services on all or any of the above matters.”

According to Article 44 of the Medical Wants Ordinance, the Director-General or any person authorized by the Director General has the right to enter the estates to inspect government schools.

²²⁸ Article 78 (1) of the ILO Plantations Convention of 1958 (C110) states that: “Labour inspectors provided with proper credentials shall be empowered – (a) to enter freely and without previous notice at any hour of the day or night any place of employment liable to inspection; (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and (c) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed and, in particular-- (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions; (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions and to copy such documents or make extracts from them; (iii) to enforce the posting of notices required by the legal provisions; (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.”

while the Acts and Ordinances mentioned above allow the relevant authorities to inspect the estates, it does not require them to. It should therefore come to no surprise that state intervention in the estates remains very low, which not only stands as a violation of ILO conventions, but more importantly also poses a major obstacle to upholding workers' rights.²²⁹

The ILO Committee notes that “while the 2016 annual report of the Department of Labour contains information on laws and regulations relevant to the work of the inspection service, as well as statistics on the number of labour inspectors and the number of inspection visits, it does not contain information on all the subjects listed under Article 21(a)–(g) of the Convention,” namely on: “statistics of workplaces liable to inspection and the number of workers employed therein (Article 21(c)); statistics of violations and penalties imposed (Article 21(e)); statistics of industrial accidents (Article 21(f)); and statistics of occupational diseases (Article 21(g)).”²³⁰ Moreover, according to the ILO Committee, the unions have claimed that occupational injuries are seriously under-reported.²³¹ While the Sri Lankan Government failed to comment in this respect, it did state that, “due to the scope of application of the Factories Ordinance, certain workplaces, such as estates in plantations, can only be inspected by general labour inspectors and not by [Occupational Safety and Health] inspectors.”²³² Consequently, the ILO Committee has requested that the Government “indicate the measures taken to ensure that there is effective cooperation between general labour inspectors and OSH inspectors, with a view to securing the effective enforcement of the legal provisions relating to OSH” within estates. Furthermore, “the Committee requests the Government to take the necessary measures to ensure that the labour inspectorate are notified of industrial accidents and cases of occupational disease, in accordance with Article 14 of the Convention, and to provide further information on the application in practice of this provision.”²³³

While the current system of inspection in the estates is clearly inadequate, CA No. 13 of 2003 does provide for another avenue wherein workers can broach their issues directly with the Estate Committee.²³⁴ Section 17 of this CA stipulates that

²²⁹ UPR 2008, 3.

²³⁰ “Observation (CEACR) - adopted 2019, published 109th ILC session (2020), Labour Inspection Convention, 1947 (No. 81),” ILO, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::N0::P13100_COMMENT_ID:4021924

²³¹ *Ibid.*

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ Collective Agreement No. 13 of 2003, Article 17.

“the Estate Committee shall record the day-to-day problems raised by employees and the estate superintendents shall respond to the minutes book entries with a view to redressing the employee’s grievances realistically and return the minutes book to the Estate Committee not later than 10 days of its submission with an appropriate Tamil translation.” Section 19 states that employee grievances may also be communicated to the Superintendent through the minutes book on the weekly Estate Labour Day. In this case, if the Superintendent fails to convey a decision within 7 days in response to an employee grievance, or if his decision is unacceptable, “the Union leader may report the matter to the Union Representative in the district who shall take it up with the management at the local or regional level.”²³⁵ Section 19 continues as follows:

Should no settlement materialize after discussion at the local or regional level within a period of 14 days, the matter in dispute may be reported to the Managing Company or its representative by the parent union concerned. If a matter of dispute is not settled at the Company level, the union may pursue its complaint with the Department of Labour in an attempt to bring about a settlement by conciliation. If the department of labour is unable to bring about a settlement, the parties agree that the outstanding dispute shall be referred to voluntary arbitration under Section 3 of the Industrial Disputes Act.

This avenue is problematic on numerous counts. First, the provision of the minutes book to the superintendent is an issue in cases where the superintendent is the cause of the grievance, as is common with sexual harassment cases. Second, every stage of referral of the employee’s grievances is entirely based on each actor’s discretion, as implied by the use of the term “may” throughout Section 19. An employee’s grievance may therefore be left unanswered at any stage. Finally, any outstanding dispute shall be referred to Arbitration, not a Court. Any decision therefore remains private, making it difficult to ensure consistently fair results. While the Minister may refer the dispute to an industrial court for settlement, this is entirely within his discretion.

Even if there was access to the courts or alternative dispute resolution mechanisms, there is little in place in terms of sanctions for failing to respect

²³⁵ Collective Agreement No. 13 of 2003, Article 19.

aforementioned laws. While Acts and Ordinances do provide certain guidelines, they are very minimal. For example, Section 7(3) of the Allowances to Plantation Workers Act states that “any employer who fails to maintain and keep such record as is required to be maintained and kept by him under subsection (1), shall be guilty of an offence and shall be liable on conviction before a magistrate, to a fine not exceeding 500 rupees, or to imprisonment of either description for a term not exceeding three months, or to both such fine and imprisonment.” What is worrisome is whether such rates would be adjusted for inflation, given that 500 Rupees today equates \$2.75 US. Since Section 6 of this Act stipulates that “the provisions of this Act shall have force and effect notwithstanding anything in any other written law,” it is uncertain whether any law stating that criminal fines are to be adjusted for inflation would be applicable. Unfortunately, Collective Agreements do not contain any provisions specifying fines to be paid in the case of violations, nor could I find anything in the Sri Lankan Penal Code (Ordinance No. 2 of 1883) or its subsequent amendments on this matter.

Inadequate access to justice runs counter to various international provisions. For example, the referral of outstanding disputes involving estate workers to arbitration runs counter to Article 14(1) of the ICCPR, which states that “all persons shall be equal before the courts and tribunals” and that “any judgement rendered in a suit at law shall be made public.” Similarly, the failure to provide for substantial sanctions and remedies is in violation of Article 2(3) of the ICCPR, which demands that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.”

Chapter 4

Stakeholders and Underlying Politics

The purpose of this chapter is to foster a better understanding of the politics which contribute to the inadequacy of laws and policies surrounding plantation workers in Sri Lanka, as well as to their development or sub-development. In other words, this chapter seeks to answer the following questions: Why are the laws as they are? Why have some laws changed? Why have other laws remained stagnant? In order to do this, the diverse stakeholders must be exposed, including colonial powers, the Sri Lankan Government, RPCs, Trade Unions, NGOs, local governments and estate workers.

4.1 Colonial Powers

The current situation faced by plantation workers must be contextualized within the larger history of colonialism. Given that tea plantations were originally started by the British, and that plantation workers were brought down from India as bonded labour under their rule, the British are the original stakeholders. The system set in place by the British has repercussions on the lives of plantation workers today. First, the five ordinances in Chapter 7 of the Labour Code of Sri Lanka, written under colonial rule, continue to be in force. While the ordinances in question provide plantation workers today with numerous protections, they contribute to a legal framework which is overly complex and outdated, thereby making life more difficult for those wishing to uphold these legal protections.

Second, there are remnants of the system of total control over labour, as bonded labour, set up by the British. Most obvious are the line rooms, built under British rule, in which so many plantation workers continue to live today. The British benefited from the use of lines in the coffee and tea periods, not only because it was an inexpensive way to house large numbers of people, but also because “it was believed that smaller lines instilled a sense of belonging and decreased both fighting and plotting against the planter.”²³⁶ As explained by Christopher Neubert, “from the very beginning, housing in the plantations has been used as a technology of discipline by the planter, extending his power and control over the bodies of the workers.”²³⁷

²³⁶ Neubert, “Power,” 365.

²³⁷ *Ibid.*

The use of land and architecture to manipulate the movement of workers went beyond the line rooms. Tea bushes were structured in neat rows, trimmed to follow the slope of the hillside, as to limit access to other facilities and outside communities.²³⁸ The goal was (a) to isolate the communities and (b) to keep them under surveillance.²³⁹ As explained by Christopher Neubert, “by manipulating the physical environment in order to control the worker, the British inserted disciplinary structures into the built environment that still thrive in the plantations today.”²⁴⁰ Moreover, the separation of estates from the rest of the country is a colonial legacy which has allowed for the continued characterization of estate workers as an alien community.²⁴¹

4.2 The Sri Lankan Government

The Sri Lankan Government, since independence, has been responsible for the laws and policies which continue to impact Sri Lankan plantation workers today. Upon independence, citizenship was denied to plantation workers as a postcolonial reaction to do away with British-brought migrants. The continued denial of citizenship by the Sri Lankan Government was then ethnically charged, as up-country Tamils became regarded as a way for India – or the Tamil Nadu – to infiltrate Sri Lanka.

Later on, the government’s policy to privatize previously nationalized estates in the 1990s, and to thereby voluntarily and unilaterally cede some of its sovereignty to privatized corporations, has allowed private actors to exert their control over estate workers. The PS Act, also enacted by the state, concretized this fact into a legal reality. In doing so, the Sri Lankan government withdrew itself from most of the plantations which were running at a loss under nationalization, and shed itself of all social responsibilities owed to estate workers, thereby saving itself a lot of money.²⁴² In a state which has limited wealth to re-distribute in light of an ongoing debt crisis – given that Sri Lanka is deeply indebted both to the International Monetary Fund (IMF) and China – this may, at first glance,

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ Daniel Bass, “Charting Uncertain Futures: Diaspora, Citizenship and Belonging among Up-Country Tamils,” in *Up-Country Tamils: Charting a New Future in Sri Lanka*, eds. Daniel Bass and B. Skanthakumar (Colombo: International Centre for Ethnic Studies, 2019), 6-7.

²⁴² Interview with Dr R. Ramesh, Political Science Professor at the University of Peradeniya, on June 18, 2019, at the University of Peradeniya, Sri Lanka.

seem beneficial.²⁴³ The will and means of national stakeholders are, after all, influenced and constrained by international actors and institutions, including the international economic system, international financial organizations, transnational corporations, and inter-governmental relations. Nevertheless, as demonstrated in this paper, the Sri Lankan Government's withdrawal from the estate community has clearly come at the detriment of estate workers and their families.

The process of re-privatization – dictated by the state – was discriminatory towards up-country Tamils. Private estates were predominantly established in the up-country, while land grants and smallholdings were overwhelmingly granted to Sinhalese farmers in the southern region. The state also endorsed a discriminatory land rights system, which essentially negates the possibility for estate workers to be granted deeds or to have any property rights to estate lands. While the Sri Lankan government has set up legal protections for plantation workers through the enactment of multiple labour Acts, low-level state intervention, regulation and enforcement remain an obstacle to upholding the rights of workers.²⁴⁴

This brings into question the government's reasons for treating estate workers discriminately. According to Thomas, a priest and community leader in Hatton, interviewed by Neubert, "the government doesn't want to treat the people equally in order to keep them as second class citizens."²⁴⁵ Many believe that "the Sinhala-dominated government continually seeks to maintain control by undermining and weakening the rights of minority populations."²⁴⁶ Government sanctioned marginalization must therefore be understood within a larger context of ethno-religious conflict in Sri Lanka that continues to play itself out in government affiliations. The 26-yearlong Sri Lankan civil war, which lasted from 1983 to 2009, is worth considering in this context. Dr. Ramesh explains the impact of the civil war on the estate community as follows:

²⁴³ Specialist in Asian Affairs, "Sri Lanka: Background, Reform, Reconciliation, and Geopolitical Context," *Congressional Research Service* (2017), 3; Shihar Aneez, "IMF Agrees \$1.5 Billion Bailout for Sri Lanka to Avert Balance of Payments Crisis," *Reuters*, April 28, 2016, <http://www.reuters.com/article/us-imf-sri-lanka/imf-agrees-1-5-billion-bailout-for-sri-lanka-to-avert-balance-of-payments-crisis-idUSKCN0XQ063>>.

²⁴⁴ UPR 2008, 3.

²⁴⁵ Neubert, "Power," 370.

²⁴⁶ *Ibid.*

[T]hree decades of protracted civil war also have had a negative impact on this community's social development, where successive governments did not pay much attention to the demands and aspirations of this community, as there was an intensive conflict with another minority. Therefore, governments concentrated largely on suppressing the conflict rather than addressing the demands of ethnic minorities. In fact, political demands of this community were seriously taken into policy and political forums only after the end of civil war. This becomes evident when we look at the social development of this community before and after 2009.²⁴⁷

It is also important to consider the impact of the civil war on language rights in Sri Lanka. The Sri Lankan Government's failure to respect the language rights of the up-country Tamil population can be contextualized within the government's systemic denial of language rights regarding Tamil-speaking Sri Lankans as a whole. This, in turn, can be connected to the ethnolinguistic discrimination that characterized the Sri Lankan civil war.

Despite the general consensus amongst up-country Tamils that the Sri Lankan government is to blame for many of the issues they face today, most simultaneously expressed a desire for an expanded role for government.²⁴⁸ In other words, the government is seen both as a cause of, and a solution to, the problems on the estates. This is largely due to RPCs' poor management.

4.3 Regional Plantation Companies (RPCs)

RPCs have failed to provide plantation workers with satisfactory wages and services, thereby subjecting workers to a poor quality of life. Why is this the case? RPCs have argued that they are not making sufficient profits to provide workers with higher wages, as the cost of production in Sri Lanka is already higher than in any other tea-producing country. According to a 2014 report and a 2018 report by the Department of Census and Statistics and the ISD respectively, the cost of production in Sri Lanka is USD3.11/kg compared to USD1.35 in Bangladesh, USD1.25 in India, USD1 in Kenya, and USD0.75 in Vietnam.²⁴⁹ This is largely

247 R. Ramesh, "Incomplete Citizenship," 30.

248 Neubert, "Power," 369.

249 Wijayasiri et al., *150 Years*, 27.

blamed on the following factors: low yields due to climate change and low labour productivity; the increase in wages due to unionized pressure; having hand-pluckers rather than automation; the high price of fuel electricity costs; and soil erosion and aging tea brushes.²⁵⁰

RPCs argue that they are further constrained by a decline in productivity, the proliferation of international standards, and the decline and volatility in prices.²⁵¹ The latter is largely the result of the auction system, wherein the producer is a ‘price taker’ with little to no bargaining power. While it is true that the international economy generates the conditions for a ‘race to the bottom,’ the average Colombo auction tea price and average FOB prices for tea have actually increased over the last couple of decades.²⁵² Moreover, according to certain reports, it would appear that productivity has in fact been increasing despite the fact that the number of labour employed in the tea estate sector is declining.²⁵³ These facts do not support RPC’s arguments that they are running at a loss. Nevertheless, the actions of RPCs should be understood in conjunction with the realities of the international economic system and transnational corporations, which have led to serious international competition in the tea market. India, Bangladesh, China, and Kenya are putting up a fight, and the price fluctuation have placed RPCs in a precarious situation.²⁵⁴ The global oversupply of tea and consumers’ failure to consider labour standards when purchasing tea have also served to somewhat limit RPCs ability to raise prices and thereby wages.²⁵⁵

Given the limited resources which RPCs can allocate toward wages and social services, the following question poses itself: Have RPCs put pressure on the government to provide more public services to estate workers, and if not, why? I posed this very question to Dr. Ramesh – a Political Science Professor at the University of Peradeniya who has written extensively on the topic of Plantation Workers in Sri Lanka – during an in-person interview. Dr. Ramesh answered that RPCs had not asked the government to re-take its role as provider of social services, and that they were not ready to do so. He explained that “They have a sense of fear... They think, still, that if the public services are re-delivered to the plantation community or if public institutions re-absorb the plantation

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*, 29.

²⁵² Sinnathamby and Vijesandiran, *Living Wage*, 19.

²⁵³ Chandrabose and Sivapragasam, *Red Colour of Tea*, 61-62.

²⁵⁴ Wijayasiri et al., *150 Years*, 27-28.

²⁵⁵ National Plantation Industry Policy (NPIP) Framework, 2006, 16, <http://plantationindustries.gov.lk/web/images/pdf/publications/npip.pdf>.

community into their administrative mechanisms, then they will lose their grip.” Mr. Muthulingam further explained that RPCs were worried that any projects funded by PSs might not come under the ownership of RPCs. Although allowing the government to take responsibility of social services would save RPCs a lot of money, maintaining control over the delivery of social services allows RPCs to exert complete control over workers.

This is also the case with land rights. Given that RPCs have exclusive rights to use all the land, resources, and buildings in the estates, they are responsible for housing the labour force and their families. The provision of housing within estate boundaries has given rise to a system of ‘resident labour’ which binds the workers to the estate not just as workers but also as residents, thereby blurring the boundaries between work and home. This in turn, has enabled RPCs to exercise a high level of control over every aspect of the residents’ lives, a benefit which they are unlikely to want to give up despite the added responsibility. Nevertheless, in light of the dwindling supply of labour due to labour out-migration from estates, RPCs might want to rethink their strategy, and consider investing in keeping their workforce happy through higher wages, better social services, and the provision of deeds.²⁵⁶

4.4 Trade Unions

Trade Unions and their leaders have been criticized for their self-serving nature, as well as for the lack of gendered representation. According to key community leaders, “trade unions have lost their clout and their bargaining power in the CA process, as some of them openly support liberal economic policy for their own political survival.”²⁵⁷ Union leaders closely associate with politicians in order to get advice and assistance when there is conflict between plantation workers and the management.²⁵⁸ Moreover, many plantation trade unionists have been known to shift their allegiance from the opposition to the ruling party, supposedly in pursuit of the overall welfare of plantation workers.²⁵⁹ Workers, however, contend that most union leaders use this linkage and political power to benefit themselves, and do not have their best interest at heart.²⁶⁰ There is

²⁵⁶ Interview with Dr. A. Sarveswaran, labour law professor at Colombo University, on July 4, 2019 in Colombo, Sri Lanka.

²⁵⁷ Chandrabose and Sivapragasam, *Red Colour of Tea*, xv.

²⁵⁸ *Ibid*, 40.

²⁵⁹ *Ibid*, 41.

²⁶⁰ *Ibid*.

also an issue with different trade unions competing with one another instead of engaging in collective action.

Union struggles for wages, work conditions, living conditions, benefits, and entitlements are therefore complicated by competing interests of politics and capital. Unions have been criticized for failing to push for sufficiently high wages, as well as for ignoring the need for better social services. The latter is reflected by the absence of any CA provisions on this matter over the last 15 years. Moreover, as stated in Section 3 of the 2019 CA, Unions have agreed to support companies in imposing the out-grower model. Given the unpopularity of the model amongst plantation workers, this is likely to deepen workers' opposition to the unions. Finally, the lack of transparency and fairness in trade union dealings with members has also been criticized.²⁶¹ This reality may help explain why, despite being the largest workforce in the country represented by trade unions, plantation workers continue to be one of the most under-privileged sectors of workers in the country.

Another key issue in regard to trade unions is the lack of gendered representation. While the majority of estate workers are women, plantation trade unions are overwhelmingly male dominated. In fact, all of the trade unions in the plantations, other than the Red Flag Women's Movement, are headed by men.²⁶² Given that female plantation workers, as women, face distinct issues related to maternity, childcare, menstrual hygiene, reproductive rights, sexual harassment, and sex-based division of labour, it is crucial that the interests of women be represented by women in trade unions. While more women are slowly entering trade union leadership positions, the lack of gender parity has been deafening in terms of the complete absence of provisions in collective agreements regarding sexual harassment or reproductive health. The purpose of this paper is not to diminish the importance played by trade unions, as massive strikes by trade unions have led to much-needed change in the past, such as the enactment of a government policy demanding equal pay for equal work.²⁶³ Nevertheless, if the role played by unions is truly to benefit workers in the future, issues of proportional representation and politicization must be addressed.

²⁶¹ CEPA, *Moving Out of Poverty*, 70.

²⁶² Letchumanan Kamaleswary, "Forgotten Experiences of Up-Country Tamil Women in Transitional Justice," in *Up-Country Tamils: Charting a New Future in Sri Lanka*, eds. Daniel Bass and B. Skanthakumar (Colombo: International Centre for Ethnic Studies, 2019), 56.

²⁶³ Kanapathipillai, *A Decade of Change*, 17.

4.5 Non-Governmental Organizations

In the face of the failings of trade unions, the state, and RPCs, NGOs have stepped up to the plate. For example, civil society organizations, NGOs, political representatives and intellectuals have advocated, since the mid-1990s, to amend the PS Act to allow plantation workers to benefit from public services since the mid-1990s.²⁶⁴ The ISD was a key player in instigating an advocacy campaign on this matter, the efforts of which included raising awareness amongst PS members and estate residential communities, discussing the subject with relevant government ministers, and studying the impacts of exclusion.²⁶⁵ Following decades of lobbying and advocacy, the PS Act was finally amended in late 2018, albeit falling short of the full inclusion of estates into the local government system. Meanwhile, NGOs have worked tirelessly to enhance the social services provided to estate residents. For example, a staff member at the Satyodaya Centre for Social Research and Encounter spoke to me about the NGOs efforts to supplement the education of children living on plantations by instituting educational programs. The issue, however, is that NGOs, unlike Trade Unions, do not have legal power, so their actions can be blocked by the government or any other stakeholder.

4.6 Local Governments

The role of PSs in elevating or failing estate workers is nuanced. Though most politically affiliated PSs have shown little interest in providing social services to estate workers, PSs run by independent groups (not supported by any of the major political parties) have shown greater interest in this regard, with some even attempting to use their funds to help estate workers.²⁶⁶ Under the advice of Mr. Muthulingam, the chairman of one such PS, in 2005 wrote a letter to the Assistant Commissioner of Local Government asking permission to use the PS Fund to implement activities in estate communities.²⁶⁷ The Assistant Commissioner of Local Government sent a letter back stating that, without violating the PS Act, any initiatives in the plantations required the permission and financing of the estate management.²⁶⁸ In other words, PSs were told that the PS Act made it illegal to use the PS Fund for projects in the estates.²⁶⁹

²⁶⁴ Ramesh and Nanthakumar, "Including the Excluded," 48.

²⁶⁵ *Ibid.*

²⁶⁶ Interview of Mr. P. Muthulingam, Executive Director of the Institute of Social Development (ISD) in Kandy, on June 19, 2019, in Kandy, Sri Lanka.

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

Mr. Muthulingam then advised the chairman of the PS in question to use the PS Fund regardless for small projects in the estates, such as building a water tank, footpaths, cementing line rooms, and building roads between estates. In response, the government brought charges for each of these acts and dissolved the PS in question. Mr. Muthulingam used this as an opportunity to summon all the politicians and intellectuals of the plantation community informing them of this issue. Mr. Muthulingam, who had attempted explaining this reality to PS officials for years, stated that this hurdle forced them to realize the extent to which estate workers were treated as second-class citizens and denied the public services which all Sri Lankans were supposedly entitled to. This cumulated into an advocacy campaign which ultimately resulted in the 2018 amendment to the PS Act.

While PSs can now use their funds to help estate workers, this is entirely within their discretion, as estates technically continue to fall outside of their administrative purview. Given this reality, the individual PS members in power matter, as do their political affiliations. Since the amendment of the PS Act, only one PS run by independent members in the Pangala area have used the fund to implement social projects in the estates.²⁷⁰ When asking Mr. Muthulingam if he was completely optimistic about the PS Amendment Act, he stated that “I am optimistic but that all depends on the elected members [to PSs]”.²⁷¹ He continued by saying that “people are not in a position to demand their rights [as they do not necessarily know their rights to use the PS Fund for the estates], that’s why we are now raising awareness amongst PS elected members.”²⁷²

4.7 Estate Workers

The agency of estate workers themselves is arguably the most crucial factor in engendering needed legislative reform, being that they are the primary stakeholders. Estate workers have gotten involved in various ways to demand respect of their rights, such as by participating in strikes. However, T. Jananthan, an activist who was involved in the 1000 Rupees Campaign in 2018, criticized the movement’s failure to adequately involve estate workers.²⁷³ The 1000 Rupees

²⁷⁰ *Ibid.*

²⁷¹ Interview with Mr. P. Muthulingam, Executive Director of the Institute of Social Development (ISD) in Kandy, on June 19, 2019, in Kandy, Sri Lanka.

²⁷² *Ibid.*

²⁷³ Interview with T. Jananthan, activist involved in the 1000 Rupees Movement, on July 7, 2019, in Colombo, Sri Lanka.

Campaign was a campaign for higher wages which spread in late 2018 and included mobilisation in Colombo. During an interview, T. Jananthan explained that this campaign was organized by people from the south, who are mostly Sinhalese and lack connection to actual workers, leading to an appropriation of the struggle. The marginalization of estate workers from mainstream society is a grave issue as it hinders their participation in societal struggles intending to better their situation.

Chapter 5

Recommendations

5.1 Legislative and Contractual Reform

This paper has served to identify various laws and by-laws which are in-part responsible for the derogation of estate residents' rights. Given the unconstitutionality of discriminatory laws, a constitutional amendment to Articles 80(1) and 16(1) of the Constitution is necessary to allow courts to review discriminatory laws and declare them void. Another option is to directly amend these laws, most obvious being the PS Act.

The PS Act should be further amended so as to grant the estate community the opportunity to participate in political decision-making processes at the local level. First, an amendment to Section 225(2) of the PS Act is needed if estates are to be considered to fall within the administrative purview of PSs. Second, Section 33(2) of the amended PS Act should be further amended so that PSs' ability to fund development activities in the estates is no longer premised on consultations with the RPC in question.²⁷⁴ Instead, PSs should be required to consult with estate residents to ensure the political participation and agency of this community, and thereby better address their needs.

Amending the PS Act to absorb estate residents into the local government system would also impact the estate community's access to social services, as the provision of public social services would no longer be left to the discretion of RPCs and PS officials. Further funding from PSs could, for example, allow for better transport facilities, which could in turn help draw more teachers and health professionals to estate schools and health facilities and would potentially allow better access to medical centres outside of the estates. However, given that the PS Act was amended only last year, another amendment so soon is unlikely. In any case, more PSs should be established, and new policies set in place to ensure that the distribution of money to PSs is proportional to the population (including the estate population in the area).²⁷⁵ PSs must be properly funded and staffed so as to meet the needs of the estate population.

²⁷⁴ Pradeshiya Sabhas (Amendment Act), No. 30 of 2018, Sri Lanka, s 3.

²⁷⁵ Interview of Dr R. Ramesh, Political Science Professor at the University of Peradeniya, on June 18, 2019, at the University of Peradeniya, Sri Lanka.

Nevertheless, given that estate health centres and schools are built on estate land owned by RPCs, RPCs would remain responsible for school and health infrastructure regardless of any further amendments to the PS Act. Various other legislative changes may therefore be required in order to allow the government to fund renovations to estate clinics and schools. The Education Act, for example, could be amended to allow for further government financial support in this matter. Alternatively, a general law providing for the transfer of ownership of clinic and school buildings within the estates to the state could be enacted. Such a law could also provide for the integration of curative health services in the estate sector into the national health system. Anything less constitutes a continuation of the historical denial of full citizenship rights to up-country Tamils.

Moreover, amendments to existing legislation and the enactment of a new collective agreement regulating wages are central to the fulfilment of estate residents' material well-being. The next collective agreement regulating wages must provide for a minimum daily wage of Rs. 1,077 or more (so as to constitute a living wage), as well as overtime pay. Another key issue, central to estate worker's material wellbeing, is the denial of land rights and deeds to estate workers. The replacement of the line rooms system – synonymous with resident labour – ought to be substituted for village style developments wherein workers own the houses they live in, as prescribed under the New Villages Development Authority for Plantation Region Act, No. 32 of 2018. However, the New Villages Development Authority for Plantation Region Act, No. 32 of 2018 ought to be amended to allow estate workers to acquire deeds for homes already built on estate lands. While promises were made by the new government in 2015 to allow workers to own homes built from 2015 onwards, this policy must also apply to the nearly 37 thousand homes built between 1987 and 2004.²⁷⁶ Workers who have repaid their loans or lived 10 years or more in a house or line room in the plantations should obtain a deed for that home. Finally, the government should follow the national environmental authority's guidelines regarding the provision of 15 perch lands.²⁷⁷

A shift to village-style developments along these lines has the potential to be transformative as it would upend the private/public dichotomy upon which the exclusion of estate workers from PSs is premised. Moreover, the provision of

²⁷⁶ Interview with Mr. P. Muthulingam, Executive Director of the Institute of Social Development (ISD) in Kandy, on June 19, 2019, in Kandy, Sri Lanka.

²⁷⁷ *Ibid.*

land rights and deeds to estate workers would overturn “the foundational spatial premise that the plantations are built on – the lack of any personal or communal space belonging to the workers in that system enforced both legally and through invisible technologies of power.”²⁷⁸ This, in turn, may increase estate residents’ bargaining power when demanding higher wages.

There is also a need for a new and updated CA governing conditions of employment, which would serve as a follow up to Collective Agreement No. 13 of 2003. This new collective agreement should provide for access to courts rather than arbitration, indicate fixed sanctions in cases of violations, and demand regular inspection of the estates by state officials to ensure abidance with the law. This new CA must also better address women’s concerns on the plantations, such as by including provisions on sexual harassment, the need for toilets to be more accessible when workers are in the fields, and other similar clauses. Moreover, in light of outdated labour laws (such as the numerous ordinances enacted under British colonial rule) which contribute to an incoherent legal framework, this new collective agreement ought to summarize all the relevant provisions contained within labour Ordinances.²⁷⁹ This would serve to facilitate awareness amongst all stakeholders of the rights to which estate workers are entitled.

Finally, in terms of citizenship rights, the Grant of Citizenship to Persons of Indian Origin Act, No. 35 of 2003, must also be amended as to allow all up-country Tamils born from parents living in Sri Lanka to be immediately provided citizenship, without the need for any further documentation. Furthermore, the Citizenship Act No. 18 of 1948 should be amended so as to no longer be discriminatory or repealed.

Although inadequate laws and legal gaps are certainly a cause of concern, it is crucial to recognize that there are also numerous laws in place to protect certain rights which are being violated. Various laws, both domestic and international, demand access to proper healthcare, adequate housing, service delivery in Tamil, and so forth. The issue is therefore not only the inadequacy of such laws, but rather their violation and lack of implementation.

²⁷⁸ Neubert, *Power*, 367.

²⁷⁹ Interview with Dr. A. Sarveswaran, labour law professor at Colombo University, on July 4, 2019 in Colombo, Sri Lanka.

Dr. Sarveswaran emphasized the need to reform colonial laws, which are largely outdated and contribute to an incoherent legal framework.

5.2 Implementing and Enforcing Laws

The systematic violation of existing laws protecting the rights of estate residents indicates that legislative reform in and of itself is insufficient. The proper implementation and enforcement of legislation and policies is crucial to any functioning legal system. For this to happen, we must first foster greater awareness amongst all stakeholders of the legal protections, rights and obligations currently in place. This is crucial if people are to know when their rights are being violated, thereby allowing them to try and hold parties accountable, whether it be by striking, going to court, bringing the matter to a government official, creating an advocacy campaign, etc.

To enable this, laws ought to be made more accessible. For example, the government must ensure that its Department of Government Printing website – which contains all of the Acts, Gazettes, Collective Agreements, and Bills – does not crash repeatedly when a user conducts a search.²⁸⁰ Additionally, the laws and by-laws relevant to estate workers should be physically accessible – in Tamil – to workers, such as by being posted up on RPC noticeboards, in PSs, community centres, etc. Finally, given the high illiteracy rates amongst the community, especially among women workers, verbal communication of the legal and policy framework surrounding plantation workers must take place. For example, in order to further educate workers on their rights, legal workshops should be set up as per Part II(1)(iii) of CA No. 13 of 2003.²⁸¹

Second, a better system of inspection must be put in place. This itself requires legal change, so that domestic laws meet the standards imposed internationally. While current domestic laws state that officials *may* inspect the estates anytime, legal provisions should specify how regularly inspections *must* happen. Inspectors must ensure the implementation and fulfilment of the laws, as to report the need for greater enforcement.

Third, this brings us to the issue of access to courts, as to ensure (a) repercussions for actors who fail to abide by their legal obligations, and (b) recognition of worker's rights. While courts are not always the best avenue, as they generally

²⁸⁰This is an issue I was faced with repeatedly during my research in July 2019.

²⁸¹ Part II(1)(iii) of Collective Agreement No. 13 of 2003 states that “the employer shall grant time off with pay to not more than two estate-level Union representatives selected by a Union for seminars and workshops conducted by the Union or the ILO or the Department of Labour on not more than two occasions in one year and for a period not exceeding five days.”

require lots of money and time, courts should nevertheless be one of the remedies available to workers who choose it. A worker's ability to take a matter to court should not be within the discretion of an official, as courts (unlike arbitration) are needed to create a public precedent which can help deter non-compliance in the future. For this to be effective, an easily accessible database containing all case law should be set in place.

Finally, harsh sanctions should be put in place for failing to respect the aforementioned laws. It is important to remember that access to justice involves both access to the means of judicial administration (the courts) as well as to a just end (a just decision). In order to effectively deter non-compliance, sanctions ought to outweigh the benefits of non-compliance with one's legal obligations. New laws should be put in place specifying the available sanctions to be imposed in the event of a given legal obligation being violated. Reliance on laws written under colonial rule to regulate available sanctions is impractical at best. Having said this, given the propensity of companies to manoeuvre around compliance if the cost of compliance is too high, it is equally important to simultaneously create positive incentives for companies to abide by the laws set in place.

5.3 Extra-Legal Requirements

In order for legal reform, implementation, and enforcement to take place, stakeholders must have (a) the will, and (b) the means. History has already shown us examples of the need for collective will. For example, it was only after independent RPC officials had the will to finance welfare projects in the estates that the PS Act was amended. Even post-amendment, only those independent RPCs have made use of their funds for such projects.

The question then is how to create or instigate such 'will'. One option may be that people must give politicians, unions, and RPCs a reason to care by mobilizing, making noise, voting, etc. Consumer-advocacy campaigns could be extremely effective in this regard, as consumers continue to impact the global supply chain whether it be in search of cheap products or of ethically produced goods. This, in turn, requires the will of workers and civil society to get consumers, and thereby politicians and corporations, to care. Better cooperation between all stakeholders is required to ensure that the social services available to estate workers are on par with those provided to the rest of the Sri Lankan population.

Legal reform and enforcement are not solely enabled by the will of various stakeholders; the funds must also be available. The ‘means’ component is about feasibility. If estate workers are to be provided higher wages, gain equal access to social services, and have greater access to fair and independent enforcement mechanisms, RPCs must gain sufficient financial security, and the looming debt weighing the Sri Lankan government must be lifted. Unfortunately, such factors are largely out of the hands of national actors whose hands are tied by the international economic system and current geopolitical relations. Under present circumstances, providing services to estates would likely over-extend the capabilities of the state, as it would require greater devolution of funds to local governments. Any shift from corporate to state governance in the estates therefore requires incremental change with continued assistance from RPCs for the time being.

Ultimately however, any real change to the current situation faced by plantation workers is likely to be dependent upon global systemic change. For example, given that Sri Lanka is deeply indebted to both the IMF and China, restructuring existing debt, altering ancillary conditions, or even forgiving debt, may be necessary to ensure that Sri Lanka has the means to improve service delivery to estates. Other possible solutions may include increasing pressure from the international community regarding violations of international human rights laws in the estates via economic sanctions, increasing international aid, or securing new loans, however such solutions are not without their share of critiques. Another option could be to set a minimum threshold on the price of tea globally and to improve the labour standards in other tea producing countries so as to halt the race to the bottom. Such solutions are however likely to rely on a change to the international economic system as a whole.

Conclusion

Though waning in importance, the plantation sector continues to be one of the key generators of foreign exchange and a vital source of employment in the country. Originating under British rule, the process from colonialism, to nationalization to privatization has left most estates to be privately owned by RPCs. Today, nearly one million people live on private tea estates which fall outside of the administrative sphere of local government bodies. Consequently, the estate community is subject to a largely separate legal structure from other wage labourers and other Sri Lankan nationals. Estate labourers working ‘in a manual capacity’ – disproportionately comprised of up-country Tamil women – therefore continue to be underserved, underprivileged, and denied full citizenship rights. As demonstrated by this paper, historical discrimination against this demographic prevails despite certain legislative improvements.

An investigation into the various laws affecting estate workers is key to understanding why the estate community receives inadequate social services, poor public infrastructure, low wages, lack of proper housing and land rights, inadequate access to justice and political participation, and few opportunities to be served in their spoken language. This paper has sought to provide a better understanding of the evolution of the legal and policy framework surrounding estate workers. As explained in Chapter 2.1, citizenship and election laws have contributed to the historical statelessness and disenfranchisement of up-country Tamils, the effects of which continue to reverberate today. The Pradeshiya Sabha Act No. 15 of 1987 also remains an issue despite its amendment in 2018, as the estates still do not fall within the administrative purview of PSs, thereby failing to ensure the inclusion of estate workers in local governance and public services delivery. Other domestic laws and policies, such as those regulating land rights and education, are further addressed in Chapter 3.

Chapter 2.1 also covered labour laws, such as Collective Agreements and various Ordinances and Acts contained in the Labour Code of Sri Lanka, which provide for the minimum wages and social welfare rights of plantation workers. However, labour acts and ordinances are largely outdated, and the few provisions which remain relevant today are mostly ignored. Meanwhile, the Collective Agreements regulating wages still do not provide estate workers with a living wage despite increases in their daily minimum wage over the past decade. The most recent

provisions on the benefits and social services to be provided to estate workers is from 2003. While this CA contains provisions affording certain social welfare rights to estate workers – including sick leave, transport to hospitals, maternity leave, funeral expenses, and creche facilities – it fails to address a number of safety concerns relevant to estate workers, such as wild animal attacks, insect bites, landslides, and sexual harassment.

This paper also emphasized the need for better enforcement mechanisms. While some of the aforementioned laws directly violate a number of constitutional protections regarding equality and discrimination, unconstitutional laws cannot be struck down on this basis, as the constitution itself does not allow for judicial review. Moreover, domestic laws which afford estate workers certain social protections are regularly violated. The same is true with international laws. Although the UDHR, the ICESCR, CEDAW, and the ILO Plantations Convention – detailed in Chapter 2.2 – are all legally binding upon Sri Lanka, many of the provisions enclosed in these documents are violated without repercussion.

Chapter 3 sought to provide an overview of the systemic challenges – related to governance, wages, social insurance, time, health, safety, maternity, childcare, housing, land rights, education, language rights, regulation, and enforcement – faced by plantation workers as a result of legal barriers, gaps and violations. In terms of legal barriers, the PS Act ensures that plantation workers in Sri Lanka continue to be governed by corporations instead of the state. Other laws, such as the Education Ordinance No. 31 of 1939, compound this issue by stipulating that estate schools are to be financed by the plantation management rather than the state. Other legal barriers include the provision of a minimum wage which is insufficient to maintain a decent quality of life and the denial of land rights. As for violations of law, under-resourced healthcare and educational facilities and overcrowded estate housing do not meet legal requirements. Moreover, certain accounts point to the fact that the laws on maternity, reproductive rights, and childcare are also being violated in the estates, as are Tamil estate workers' language rights. Such violations point to sub-par inspection and enforcement mechanisms.

As discussed in Chapters 4 and 5 of this paper, stakeholders must be considered when addressing the evolution of the legal and policy framework, violations of law, and recommendations for the future. While no stakeholder – be it governments, corporations, or civil society – can be fully blamed or praised for the current

situation surrounding estate workers in Sri Lanka, all are partly responsible in various degrees. It is therefore crucial to ensure that all stakeholders have the means and the will to push for needed legislative and contractual change and better enforcement mechanisms.

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Estate Workers in Sri Lanka: An Account of the Legal and Policy Framework

Tessa Martin

The plantation sector continues to be an important source of foreign exchange and a vital source of employment. Today, nearly one million people live on private tea estates managed by the regional plantation companies and therefore fall outside the administrative sphere of local government bodies. The estate community is governed by a largely separate legal structure from other wage labourers and other Sri Lankan nationals.

This paper looks at the complex legal and policy framework that applies to estate workers. In light of recent legislative changes and a new collective agreement, the paper provides an overview of the evolution of the legal and policy framework of plantation workers in Sri Lanka, with a focus on tea estate workers.

An analysis of the laws and policies affecting estate workers is key to understanding why the estate community receives inadequate social services, poor public infrastructure, low wages, and has inadequate access to proper housing and land rights, inadequate access to justice, low levels of political participation, and few opportunities to be served in their preferred language. The paper argues that legal barriers, policy gaps and violations continue to contribute to the systemic challenges faced by this segment of the population.



INTERNATIONAL
CENTRE FOR
ETHNIC STUDIES

ISBN: 978-955-580-246-8

