



6th SESSION OF THE INTERNATIONAL TRIBUNAL ON EVICTIONS

Venice, Italy, 28-30 September 2017

Verdict and Recommendations:

Case of land grabbing and evictions for tourism development

Paanama Village, Sri Lanka

Verdict

The Jury of the 6th Session of the International Tribunal on Evictions (ITE), held in Venice, Italy, from 28 to 30 September 2017, listened to the testimonies and reports of inhabitants, communities and international networks about the case of Paanama village, Sri Lanka, where 1,400 people were violently evicted in 2010. On their lands, the Sri Lankan Navy built a hotel, the Malima Lagoone Cabanas, while the Air Force is building the International Relations Centre. The villagers, peasants and fishermen, who were evicted, are struggling to recover the confiscated land, but so far they have not obtained justice.

The Jury has proven the evidence that on this case the tourism development puts profits before local communities and their well-being, leading to violations of national laws and human rights legally recognized by the Democratic Socialist Republic of Sri Lanka, which has ratified the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights. The analysis of the case shows that the loss of local residents' shelter, housing and land, as well as loss of access to resources upon which their livelihood depends, triggers additional human right violations.

The case of Paanama Village highlights a clear lack of Free, Prior and Informed Consent and meaningful consultation of the local community with regards to tourism development and land right issues resulting in violations of national and international regulations.

Last but not least, the Jury draws the attention that threats, attacks and criminal prosecutions of which human rights advocates and defenders are victims, constitute violations of human rights legally recognized, since human rights defenders also contribute through their work to the fulfilment of Covenant rights.

In light of that, the 6th Session of International Tribunal on Evictions has issued specific Recommendations grounded on the legal regulations that establishes specific obligations that local and national Governments have to respect, to protect and to fulfil.

The ITE is committed to implementing these Recommendations, through the mobilisation of social organisations and international networks, involving the UN System, and carrying out monitoring in April and October 2018.

Recommendations to National and Local Authorities

General framework of legal reference to be respected, protected and fulfilled

1. We urge the national and local authorities to respect, to protect and to fulfil the Human Rights framework ratified by Sri Lanka, including the General Comments and Statement of UN Committee on Economic, Social and Cultural Rights:
- No. 4 (1991) (Art. 11.1 ICESCR on the right to adequate housing) and No. 7 (1997) (art. 11.1 ICESCR on forced evictions): The Committee has indicated that "forced evictions are a gross violation of human rights", therefore all authorities, including local authorities, are obliged to refrain from the practice of forced evictions, and to prevent third parties, including private companies, from carrying out forced evictions; the relocation can only be justified, under very exceptional circumstances, with the agreement and throughout meaningful consultation with all

those affected and adequate compensation for the loss of homes and land. With “due priority to those social groups living in unfavorable conditions,” the right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. The Committee also added that “the right to housing should be ensured to all persons irrespective of income or access to economic resources” (para. 7-8). The Committee also stressed (para. 6), that the enjoyment of the right to adequate housing must not be “subject to any form of discrimination”, in accordance with Article 2(2) of the Covenant.

- No. 24 (2017) (on State obligations in the context of business activities): The Committee (para. 12) stressed “The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered in the context of investment projects. Indigenous peoples’ cultural values and rights associated with their ancestral lands are particularly at risk. States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired.”
- Statement E/C.12/2016/2 (2016) (on Human rights defenders and economic, social and cultural rights) (para. 6): “The Committee reminds States parties of their responsibility to ensure that human rights defenders are effectively protected against any and all forms of abuse, violence and reprisal that they might experience while carrying out their work to promote the realization of those rights.” Therefore we urge the national and local authorities to take all measures necessary to protect human rights advocates and their work, refraining from resorting to criminal prosecution to hinder their work, or from otherwise obstructing their work.

Concrete measures to be implemented

1. We urge the national and local authorities to implement the UNHRC Resolution 30/1 on “Promoting reconciliation, accountability and human rights in Sri Lanka”.
2. We urge the national government to enshrine housing and land rights as fundamental rights in the new Constitution and to establish an independent land Commission with a people friendly land policy in Sri Lanka.
1. We urge the Divisional Secretariat of Lahugala, District Secretary of Ampara and the Land Commissioner General’s Department to implement the Cabinet decision of 11 February 2015 by releasing 340 out of 365 acres of land in Paanama (except 25 Acres in which buildings are constructed) and distribute the land among the landless people in the Paanama area and allow them unrestricted access to their land and marine resources. Furthermore we demand to fairly compensate the communities for the 25 acres that will not be given back to the community.
2. We urge the Government to follow the recommendation of the Sri Lanka Human Rights Commission (HRC) in complaint case number HRC/AM/105/10/b/OT] and order of the Magistrate’s Court of Pottuvil 8455/PC/09 by refraining from taking any steps to evict the people who have returned to their lands, refrain from preventing the people from returning to their land and to permit the people to return to their lands.
3. We urge the Government of Sri Lanka to compensate fairly the communities in Paanama for the losses they experienced through the destruction of their houses, belonging and crops, by being forcibly evicted and cut off from their sources of livelihood, income and food over the period of more than 7 years and should assist the displaced families in restoring their livelihoods upon their return to their lands. Following the Resolution 1993/77 of Commission on Human Rights, all Governments should provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups.
4. We urge the Government of Sri Lanka to reduce the military presence and order the military to cease violence against, surveillance, intimidation and harassment of the local population, human rights defenders and activists, civil society, and journalists and to order the military to cease all commercial activities by dismantling military-run hotels and tourism operations.
5. While the Sri Lanka Tourism Strategy 2017-2020 emphasises communities’ role as valuable workforce in tourism, the commitment to ensuring their free, prior and informed consent in tourism development, particularly when it affects their homes, land and resources, remains rather vague. It is high time to make sure that mechanisms for local community participation in tourism

planning are enshrined in laws, public policies and are effectively enforced from local to national level. Furthermore, the structural barriers, such as complicated licensing systems, unfavourable tax schemes, among other, for small and medium local tourism businesses as well as community-based tourism initiatives must be reduced.

6. National and local authorities must keep communities informed regarding regional development plans, such as tourism development zones, respecting their right to information and allow for their meaningful participation and consultation in the process of developing and implementation such regional strategies.
7. The Minister of Lands must ensure due process relating to the acquisition of private land by the state and by tourism businesses according to the Land Acquisitions Act. The Minister of Lands must also ensure that in utilizing state land for tourism/business development projects, such land is taken over from the occupants using the State Lands (Recovery of Possessions) Act.
8. As a general principle, independent and mandatory environmental impact assessment as well as social and human rights impact assessments should be carried out in a participatory manner prior to any decision to acquire private land, use state land and to implement development projects.
9. The involuntary relocation of communities must be kept to an absolute minimum. If communities are involuntarily relocated to pave way for tourism development projects, we urge the government to follow the principles laid down in the CESCR General Comments No. 4, No. 7, No. 24 and the National Involuntary Resettlement Policy. In any case, in full respect of all their human rights, at not more than 10 minutes walking distance, and / or in a way that ensures that there is no negative impact on the social and economic links in the area inhabited by the affected people. Their access to adequate, permanent and economically accessible housing (construction of homes, water supply, electricity, sanitation, schools, access to roads, among others) must be completed before the displaced persons are moved from their homes and places of residence.

Recommendations to Tourism Businesses and Investors

1. Malima Hospitality Services must compensate the evictees for land on which the hotel premises are built on and for the losses the community experienced since its eviction in 2010.
2. We expect national and international tourism businesses to take the necessary due diligence measures in order to avoid human rights violations through their direct and indirect business activity along the supply chain in line with the UN CESCR General comment N. 24 (2017) and UN Guiding Principles on Business and Human Rights.
3. Tour operators must be alert of the post-conflict situation in Sri Lanka, and pay special attention to the vulnerability of local communities and their land rights in their human right impact assessments. With regards to hotels and resorts they must ensure that the hotels and resorts they work with are not built on illegally acquired land and that the local population has access to resources, such as water, food etc., and respect human rights, including labour rights, throughout all business activities and the entire supply chain.
4. Investors must make sure that prior to the construction of hotels and tourism infrastructure the local population is consulted on an equal footing, has given its approval and that a binding agreement has been negotiated with the affected parties concerning mutual obligations.

Recommendations to the social organisations

1. Local organisations should continue to work together in solidarity to carrying out the follow-up:
 - to support the activities for the respect of human rights of affected community
 - to provide legal and social assistance to human rights defenders
 - to prepare two semi-annual reports on the implementation of Recommendations
 - to organize an activity, together with the International Tribunal on Evictions, on the occasion of the World Zero Evictions Days on October 2018.
2. International organizations should work together with local organizations to support in solidarity a specific Zero Eviction Campaign and bring the rights violations in Paanama to the international institutions and forums.

Mechanism

The International Tribunal on Evictions recall that the International Covenants, in particular the ICESCR of which Sri Lanka is a party, have predominant legal value over other regulations, and the General Comments are authoritative interpretations. Therefore, all institutions in Sri Lanka are obliged to respect, protect, promote and guarantee these rights for the entire population, especially for the affected people of Paanama, and to report periodically to international bodies on the measures adopted to guarantee compliance.

To this end, the International Tribunal of Evictions sends these Recommendations to the Local and National Government of Sri Lanka and the competent bodies of United Nations, in particular to the Special Rapporteur on the Right to Adequate Housing, in order to take action and to monitor the compliance with legal obligations recalled.

The International Tribunal of Evictions invites all interested parties:

1. To immediately implement these Recommendations by establishing a Roundtable with the participation of:
 - Organization for the Protection of Paanam Pattuwa
 - Peoples' Alliance for Right to Land
 - International Alliance of Inhabitants
 - President's Secretary
 - Land Commissioner – Sri Lanka
 - Government Agent for Ampara District
 - Minister of Lands and Parliamentary Reforms
 - Additional Secretary, Land Ministry
 - Divisional Secretariat – Lahugala
 - Minister of Tourism Development and Christian Affairs
2. To send two reports concerning their application, before the 30/04/2018 and 30/09/2018, in order to provide the elements necessary to monitor the relevant jurisdictions and ground all the actions needed.

The Jury of the International Tribunal of Evictions

Augustin Territoriale, lawyer and a specialist in housing, University of Buenos Aires, coordinates Public Defender's Office Argentina, Argentina

Cesare Ottolini, former member Advisory Group of Forced Evictions of UN-Habitat, global Coordinator of International Alliance of Inhabitants and Unione Inquilini Italy

Giulia Diletta Bertazzo, attorney at the Legal Office of the Unione Inquilini, Venice, Italy

Laura Jaeger, project officer for tourism and development at Bread for the World foundation and Tourism Watch, Germany

Medha Patkar, founder of Narmada Bachao Andolan (Save Narmada Campaign) and of the National Alliance of People's Movements (NAPM), India

Rose Bridger, co-founder and coordinator of the Global Anti-Aerotropolis Movement (GAAM), United Kingdom

Venice, December 21st 2017

Annex 1:

Legal Background supporting Evidences of Violations of Human Rights

VIOLATION OF HUMAN RIGHTS: UNIVERSAL DECLARATION OF HUMAN RIGHTS

- Art. 1,2 – Equal Rights
- Art. 3 – Right to life and security Violently evicted at gunpoint
- Art. 5 - Inhumane and degrading treatment Violently evicted at gunpoint
- Art. 7 – Discrimination
- Art. 8 – Effective remedy
- Art. 9,10,11 – Arbitrary arrest 26 people arrested from the affected. Unjust legal procedures legal support from other organisations still some unresolved cases in Court
- Art. 12 arbitrary interference with privacy, home lack of legal protection
- Art. 13 – right to freedom of movement and residence
- Art. 14 – right to property destruction of homes, belongings, crops, harvest
- Art. 18 – freedom of religion temples destroyed
- Art. 19,20 – freedom of opinion/expression and assembly & association arrests, intimidation
- Art. 25 - right to adequate living standard, incl. housing due to destruction of homes, harvest and displacement leading to no food/ bad health

VIOLATIONS OF RIGHTS OF THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- Art. 1 – Self-determination – lack of participation and consultation in tourism development
- Art. 11 – Right to an adequate standard of living/food/housing and the continuous improvement of living conditions
- Art. 17 – Arbitrary and unlawful interference with privacy/home

VIOLATION OF NATIONAL LAWS AND POLICIES

CONSTITUTION OF SRI LANKA

Article 12 (1) - *All persons are equal before the law and are entitled to equal protection of the law*
Sri Lankan Courts have held that all arbitrary actions of the executive and administrative arms of Government violate the right to equality.

The Government has committed a number of arbitrary actions in evicting the Paanama community from their lands. Arbitrary actions on the part of the Government include:

- The Military arbitrarily acted in forcefully evicting the people from their lands which they occupied for 40 years;
- In doing so, the Sri Lankan government arbitrarily refrained from resorting to legal procedures in acquiring land for government purposes;
- The Government arbitrarily continued to arbitrarily hold these lands without returning them to the community;
- Due to arbitrary actions of the Government, the community was prevented from returning to their lands for over 6 years and the community remain displaced;
- The Government arbitrarily delayed the returning of the lands – causing loss of livelihood and disruption to lives
- The Government arbitrarily refused to comply with the cabinet decision and have acted in contravention of the decisions of the Magistrate's Court and Human Rights Commission;

Article 12 (2) – *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*

Article 14 (1) (g) – *Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise*

Article 14A – *Every citizen shall have the right of access to any information as provided by law, being information that is required for the exercise or protection of a citizen's right.* (Enabling legislation is the **Right to Information Act No. 12 of 2016**)

<https://www.parliament.lk/files/pdf/constitution.pdf>

STATE LANDS (RECOVERY OF POSSESSION) ACT NO. 7 OF 1979

This Act provides for the recovery of possession of State lands to the government. Provisions of this law was not made use of in taking over the Paanama lands to the military.

LAND ACQUISITION ACT NO. 9 OF 1950

Provides for the acquisition of private lands by the Government. The procedure laid down in this Act should be applied in taking over State lands in respect of which permits or land grants have been given.

However, this was not followed in taking over the lands in Paanama for which state land permits have been given.

http://www.hrsl.lk/PFF/LIbrary_Domestic_Laws/Legislation_related_to_Environment/Land%20Acquisition%20Act%20No%209%20of%201950.pdf

NATIONAL INVOLUNTARY RESETTLEMENT POLICY (APPROVED BY THE CABINET IN 2001)

Scope: Policy applies to all development induced land acquisitions or recovery of possession by the State. Requires a comprehensive Resettlement Action Plan where 20 or more families are affected.

Key principles: involuntary resettlement should be avoided or reduced as much as possible by reviewing alternatives to the project and alternatives within the project; if involuntary resettlement is unavoidable, affected people should be assisted to re-establish themselves, affected persons to be fully involved in the selection of relocation sites, livelihood compensation and development options; replacement land to be an option for compensation in case of loss of land; compensation for loss of land and other assets and income.

https://docs.google.com/document/d/1oVPrUvH4jbNfdnH9Wv_y3GF7sd9RHwtLqQg9i7bkLmM/edit

JUDICIAL PRONOUNCEMENTS BY NATIONAL JUDICIAL AND QUASI-JUDICIAL BODIES

COURT OF APPEAL CASE No. CA 352/2016

Even after the Cabinet decision was taken to return the lands to the community, Government served Quit Notices on the community and filed action in the Magistrate's Court to evict them. This case was filed by the community members seeking Writs of Certiorari to quash the decision of the Government to serve Quit Notices and file action to evict them. The Petitioners also sought a Writ of Mandamus compelling the Government to take steps to implement the Cabinet decision. Court of Appeal issued notices on the Government authorities and fixed the case for argument. Considering this step of the Court of Appeal, the Magistrate's Court case was laid by until the final determination of the Court of Appeal case.

MAGISTRATE'S COURT OF POTTUVIL CASE No. 8455/PC/09

Consequent to an application filed by the Police to prevent the community from entering their lands, the Pottuvil Magistrate's Court initially made an interim order prohibiting the community from entering their lands. However, after hearing the submissions made on behalf of the community members, the Magistrate's Court held that the right to life is one of the important rights and that no law will permit the refusal of this right. Court refused to extend the interim order and permitted the community to enter the lands.

HUMAN RIGHTS COMMISSION COMPLAINT No. HRC/AM/105/10/B/OT

The Human Rights Commission arrived at the conclusion officers of the Sri Lanka Police attached to the Pottuvil Police Station wrongfully and unlawfully, without any legal authority had prevented the villagers from returning to their homes which were destroyed by the unidentified armed gang in October 2010. The Human Rights Commission recommended that the Complainants be given land for cultivation or be granted compensation.

ADMINISTRATIVE DECISIONS

CABINET DECISION OF 11.02.2015

Cabinet of Ministers decided to release the lands under the control of the Air Force in Paanma to landless people in the area except the land in extent of 25 acres in which buildings are constructed.

<https://www.news.lk/cabinet-decisions/item/6160-decisions-taken-at-the-cabinet-meeting-held-on-11th-february-2015>