

HILL COUNTRY TAMILS OF SRI LANKA:

ANALYSIS OF LEGAL AND POLICY ISSUES
AFFECTING LABOUR AND GOVERNANCE
STRUCTURE

February 2022

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List of Abbreviations

C110	Plantations Convention No.110, 1958
C155	Occupational Safety and Health Convention No. 155, 1981
C184	Safety and Health in Agriculture Convention No. 184, 2001
C98	Right to Organise and Collective Bargaining Convention No.98, 1949
CA	Collective Agreements
CEACR	Committee of Experts on the Application of Conventions and Recommendations, 1926
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women, 1979
CPA	Centre for Policy Alternatives
DMO	District Medical Officer
DOL	Department of Labour
DS	Divisional Secretariat
DSD	Divisional Secretariat Division
EMA	Estate Medical Assistant
EPF	Employee's Provident Fund
FCE	Foundation for Co-Existence
FGD	Focus Group Discussion
GN	Grama Niladhari
GND	Grama Niladhari Division
HCT	Hill Country Tamil
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination, 1965
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
IDA	Industrial Disputes Act No. 53, 1973
JEDB	Janatha Estates Development Board
KII	Key Informant Interview
MBO	Maternity Benefits Ordinance
MOH	Ministry of Health
MSC	Multipurpose Service Centre
NIOSH Manual	Guidance Manual for the Implementation of Occupational Safety and Health Practices in the Plantation Sector
OLP	Official Language Policy
PA Circular	Public Administration Circular
PC	Provincial Council
PHDT	Plantation Human Development Trust
R121	Employment Injury Benefits Recommendation No. 121, 1964
RPC	Regional Plantation Companies
RTI	Right to Information Act No. 12, 2016
SLSPC	Sri Lanka State Plantations Corporation
TU	Trade Unions
UDHR	Universal Declaration of Human Rights, 1948
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
WCO	Workmen's Compensation Ordinance

1 Introduction

The Hill Country Tamil (HCT) (MalaiyahaThamilar)¹ community originally consisted of immigrant workers who were brought from India between 1837 and 1939 to work on Sri Lanka's coffee, tea, and rubber plantations. The community is primarily located around the central hills of Sri Lanka, specifically in administrative districts of Nuwara Eliya,² Badulla, and Kandy.³ The majority of the HCT community is centred in the tea estate sector, which continues to consist of at least 80 per cent of the HCT community.⁴ 57.9 per cent of the total HCT community resides within the Central Province of Sri Lanka. This province covers the hill country areas with ideal weather conditions which facilitates tea plantations in Nuwara Eliya and Hatton. According to the Census of Population and Housing data published in 2012, the Uva Province covers 18.5 per cent of the total HCT community. The Nuwara Eliya district within the Central province has the highest population with 377,637 community members. The Badulla District within the Uva province has the second-highest population with 150,484 community members.⁵ While, the Nuwara Eliya district within the Central province has the highest HCT population with 377,637 community members. As such, they are identified with various names such as 'Indian Tamils', 'Indian Origin Tamils', or 'plantation Tamils'.

These community members generally live in the tea estate quarters provided by the Regional Plantation Companies (RPCs), who act as their employers. Of the entire Nuwara Eliya district population, 380,580 individuals live in the estates and 340,247 are from the HCT community.⁶

As a result of the significant number of tea estates in the Badulla District (Uva Province), a population of 153,898 people live in the estates. The statistics indicate that the HCT community has a higher presence in the estates.⁷

The marginalisation of the HCT community can be traced back to the pre-independence era when the majority of the community worked as the plantation labour force.⁸ The Citizenship Act, No. 18 of 1948 provided that citizenship could only be acquired by: (i) descent⁹ or (ii) registration subject to conditions.¹⁰ Subsequently, regulations issued under the Act outlined other rigid requirements for registration.¹¹ In effect, these conditions made it almost virtually impossible for the HCTs to obtain Sri Lankan citizenship. Moreover, the Ceylon Parliamentary Elections (Amendment) Act, No. 48 of 1949 made citizenship a mandatory pre-requisite to vote. Hence, the disenfranchisement of the HCT community and deprivation of their citizenship in 1948 when Sri Lanka gained independence was a malevolent influence that led to the formal recognition of their discrimination which they had suffered for more than a century. Their deprivation of citizenship further formalised their discrimination in access to state services and recognition of their status in Sri Lanka.

Subsequently, several laws attempted to grant citizenship to HCT community groups.¹² Almost 55 years later, the Grant of Citizenship to Persons of Indian Origin Act, No. 35 of 2003 granted formal citizenship to the HCT community.¹³ However, despite 'formal citizenship', the

previously stateless HCT community continues to be one of the most socio-economically and politically marginalised communities in Sri Lanka.¹⁴ This is because as a community that was previously stateless, the granting of citizenship has not been able to eliminate the structural disadvantages and discriminations that were intrinsic to statelessness.¹⁵ As such, their former stateless status has led to systematic marginalisation to the present day.¹⁶

Since the HCT community is primarily engaged in the tea plantation sector, the lives of the HCT community are primarily impacted by three stakeholders. They are the state, the RPCs and the trade unions (TUs) representing plantation workers. These stakeholders are key in understanding the structural drivers of disadvantage that have led to the marginalisation of the HCT community, including providing access to state services and major human rights guarantees.¹⁷ The first driver of disadvantage is the distancing of the state owing to the decades of disenfranchisement. The second driver is the increased dependency on the RPCs by the tea estate workers as they occupy a 'quasi-governmental' role in providing welfare. The third driver of disadvantage is the brokerage by TUs that represent the HCT 'voice' compounded by the heavy politicisation of TUs. These three drivers of disadvantage have paved the way to perpetuating some

of the long-standing issues of discrimination in access to state services and major human rights guarantees faced by the HCT communities in this sector.¹⁸

Using a legislative lens, this report specifically focuses on issues in the tea sector such as lack of access to public administration, absence of labour rights of workers and the absence of land and housing rights. To address further marginalisation of the HCT community, it is paramount to reduce the distancing of the state to overcome the legal and policy issues faced by the sector. As such, the report is formulated with the broader objective of making appropriate suggestions to increase the state's participation in service delivery and upholding the state's responsibility to respect, promote and guarantee the rights of the HCT community.

The report first briefly discusses the socio-economic background of the HCT community with a focus on health, education, labour and the tea industry. Thereafter, the report explains the three drivers of disadvantage in an attempt to demonstrate the effects of state distancing. The report will then discuss in detail key legal issues faced by the HCT community. The final section provides legal and policy recommendations for the issues identified.

2

Methodology

This report is primarily based on desk-based qualitative research. A limited number of primary research was obtained through key informant interviews (KIIs). The team conducted approximately 34 KIIs from November 2021 to January 2022. The interviews were conducted with multiple stakeholders including estate superintendents, TU representatives, teachers and grama niladharis (GNs). Most interviews were conducted using virtual platforms and telephones, but some were conducted in person.

As the HCT community is largely concentrated in the Badulla, Nuwara Eliya and Matale Districts, the research team focused on these areas when sourcing primary research. The team also used primary research gathered by Verité Research through interviews conducted in the Nuwara Eliya and Badulla Districts in 2018 and 2019. In addition, the team conducted interviews in the Matale district in February 2022. The team chose the Matale district to specifically identify if there were any differences in the working practices, geographical difficulties and other issues specific to Matale compared to the Nuwara Eliya and Badulla Districts.¹⁹

The interviews were conducted in person and as focus group discussions (FGDs). The FGDs were carried out separately for men and women. During the field visit to Matale, the team met with 20 persons (in individual interviews and FGDs). This sample included: (i) members of the HCT community living and working on tea plantations; (ii) members of civil society organisations based in Matale; and (iii) persons involved in service delivery within the community. In addition, interviews were also conducted through the phone and virtually with several key stakeholders in the sector, separately, including academics, professionals, and administrative officers.

The team has identified the following limitations of the study. The study has only focused on large-scale tea estates, i.e., estates typically with an area of more than 50 acres. As such, the study does not cover tea small holdings and other plantations like rubber and cinnamon. The study focused on large-scale tea plantations as these plantations are where the HCTs mostly reside/work²⁰, therefore, these plantations are more influential in shaping socio-economic aspects of their lives.

3

Socio-economic context

Many of the socio-economic issues faced by the HCT community, some of which are discussed below, are largely owing to the inadequate involvement of the state within the tea estate sector. Although the HCT community was granted citizenship through the enactment of laws, the distancing of the community by the state and the discriminatory societal attitude towards the community continued even after they were formally granted citizenship.²¹ As such, the tea sector and the HCT community associated with it are currently on unequal footing in terms of access to state services and guarantees of basic human rights such as housing, access to land, and workers' rights when compared to other parts of the country. Several such key socio-economic issues underscoring the HCT community are discussed below.

a. Labour

Sri Lankan estate plantation sector's economically active population is 404,002, of which 167,156 are women.²² In the tea sector, the plucking of tea leaves is mainly carried out by women workers while men in the plantation sector carry out other labour work, and low to middle-range supervisory and managerial work.²³ As such, gender segregation has somewhat constrained women workers' pathways to better employment opportunities in terms of holding managerial positions and access to increased pay. Moreover, it is reported that the average labour opportunities in the plantation sector have shrunk due to the dwindling number of tea estates in the country.²⁴ It is also reported that the size of the tea estates

has decreased by 43% by 2018, since the handover of the plantation estates by the Government of Sri Lanka to private plantation companies in the early 1990s.²⁵ As a consequence of the shrinking economic opportunities in the sector, there is heavy labour migration from the estate sector, especially the youth, to Colombo and suburban areas in search of work.²⁶ The shrinking wages have also been identified as contributing to increasing labour migration in the plantation sector.²⁷

b. Health

After the privatisation of the estates in 1992, the plantation community partially receives national health services through the Ministry of Health (MOH) offices and curative health services through the estate management²⁸ through the Estate Medical Assistants (EMA).²⁹ At present, preventive health services including child and maternal care services within the family health context are provided on estates by the MOH office staff. Maternal care is provided both at home and in clinics similar to the other parts of the country. Further, all the estates are demarcated under 88 MOH areas.³⁰

This hybrid healthcare system, i.e., the collaboration between the MOH offices and the estate management, limits the preventive health programmes of the ministry fully reaching the estate community regularly.³¹ The health indicators for this community demonstrate that the living standards of the HCT community are at a significantly lower rate in comparison to the rest of the country.³²

Moreover, it is reported that curative healthcare within the estate boundaries is limited to outpatient services provided through dispensaries by EMAs. Curative care is available as in-patient and out-patient services in the nearest government hospital located in the area.³³ However, KIs identified that the long commute from the estate line houses to government hospitals discourages the HCT population from seeking government medical care.³⁴

c. Education

The quality of education in the plantation sector has been dwindling over the past few decades. Schools in the plantation sector were brought within the purview of the Education Ordinance, No. 37 of 1958. However, there are still significant disparities in resource distribution to schools in the estate sector compared to other parts of the country.³⁵ COVID-19 has exacerbated the existing inequalities in providing access to quality education among HCT children. With the sudden closure of schools to contain the pandemic, teachers in the HCT community had limited access to technology to facilitate online education. This, in turn, thwarted children's access to education.³⁶ The school teachers and the plantation community intimated in their KIs that children did not receive proper education for over one and half years throughout the pandemic due to a lack of mobile reception in the areas and technological apparatuses to provide online education. They also noted an increased amount of school dropouts after the pandemic.³⁷ UNICEF, along with UNESCO, presented a situation analysis on the effects of and the responses to COVID-19 on the education sector in Sri Lanka. This case study has identified that children who live on 'estate farms' are a key vulnerable group impacted by the COVID-19 pandemic. According to the report, the tea estate sector recorded a 23 per cent decrease in household income.³⁸ This economic status created an adverse impact that affected the children and their education. Consequently, they faced the risk of dropping out of school and being pushed into child labour.³⁹

While the absence of technological apparatuses to pursue online education is not limited to the HCT sector, their situation has been made more burdensome with other sociological aspects that affect a child's learning environment. The KIs revealed that, since the line houses are closely attached, the houses rarely have a conducive environment to study. As such, the persisting socio-economic issues have weakened children's learning capacity and mental health.⁴⁰ The KIs noted that most children in the sector lack a suitable learning environment in the household as the line houses where they live are overcrowded with dwindling economic resources to survive. As the families struggle to earn a daily wage the children often lack adequate parental care and motivation to pursue education.⁴¹ The struggles faced by children are also not gender-neutral. The surging economic struggles of plantation workers, post-pandemic era, have increased the risk of girl children being forced to carry out domestic work such as taking care of younger siblings, cooking and cleaning while the parents are engaged in estate work.⁴²

d. Tea industry of Sri Lanka

The Sri Lankan tea sector has been grappling with increasing wage and fertiliser costs in recent years.⁴³ The increasing production costs have been exacerbated by external factors such as climate change and the COVID-19 pandemic, which has the potential to further reduce tea production in the country.⁴⁴ The tea industry has also faced fierce competition in quality and quantity of products from global mass producers such as China, India and Kenya.⁴⁵ It is reported that maintaining healthy production levels can be further challenging due to the absence of critical measures to fill some of the long overdue gaps in the industry, such as developing physical infrastructure, and policies to maintain and develop human capital in the industry.⁴⁶ Furthermore, the industry has also been experiencing low crop yield, due to poorly managed plantations and a lack of efficiency-enhancing interventions with regard to the workforce.⁴⁷ Low land productivity has been identified as the result of low rates of replanting,

plant stock ageing and degradation of soil fertility. This low production of tea, i.e., the plucking average, which is significantly lower than in India and Kenya, has also been reflected in the declining labour productivity.⁴⁸ The tea yields reportedly suffered a quality loss due to the recent

ban on using chemical fertiliser and the sudden shift to organic fertiliser imposed by the government.⁴⁹ However, this ban on chemical fertiliser was later overturned by the government due to several reasons including the drop in the quality of tea.⁵⁰

4

The effects of prolonged statelessness of the HCT community

As previously stated in the introduction, a study conducted by Verité Research in 2019 identified three key reasons that have led to inequalities experienced by the HCT community when compared to the rest of the country's population with regards to access to basic rights.⁵¹ These reasons are termed as the 'structural drivers of disadvantage' geared by three actors. These structural drivers of disadvantage are: (i) the distancing of the state, (ii) dependency on the plantation companies, and (iii) brokerage of the TUs.⁵² These will be discussed briefly below to provide an overall context before going into the legal analysis.

i. The distancing of the state: Due to the unique placement of the plantation workers under the control of the plantation companies, the community has been distanced from governance structures, welfare institutions and public services.⁵³ Although the community was granted citizenship through the Citizenship Act, the state's participation in the governance of the sector and the estate areas is limited. This distancing of HCT communities from the state in terms of public administration functions can be identified in two forms. One is in relation to the barriers hindering direct access of the community to local government authorities. The inadequacy of the number of GN divisions and Divisional Secretariat (DS) divisions around the estates that provide estate workers access to state authorities further

push the community away from public administration services. The second is the problematic lack of government officials who can effectively communicate in the Tamil language with the HCT community. The absence of government administrators who speak Tamil contributes to the further distancing of the Tamil community from state services. Language access as a barrier to accessing state services is further discussed below in Section 5.

ii. Dependency on Regional Plantation Companies: Since tea estate workers were historically housed within the estates, companies are uniquely positioned - unlike the conventional 'employer' - to control the lives of the workers. Most plantation companies fund primary healthcare facilities, sanitation services and housing facilities for the community residing within the estate.⁵⁴ The estate manager provides services that are typically considered state-managed functions such as issuing birth and death registrations of people within the estate. In other parts of the country, these administrative functions are carried out by the GN or the state institutions.⁵⁵ Therefore, the assumption of a quasi-government role by the estate manager, who represents a privately managed company, has reinforced the distancing of the state from the HCT community.

iii. Brokerage of the Trade unions: TUs represent the community's voice and mediate between the community and plantation management.⁵⁶ They have also been identified as 'service organisations' as they focus on the plantation workers' welfare such as, requests for 'securing leave, resolving disputes and improving line rooms'.⁵⁷ However, a majority of TUs have been observed to be 'politically affiliated' and only provide political representation for the HCT.⁵⁸ Based on interviews with the community, a study by Verité Research in 2019 noted that the HCT have viewed unions with 'cynicism and frustration' and see unions as being of limited use in representing workers' issues.⁵⁹ It was revealed during the KII that unions hardly listen to workers' grievances or their issues. Therefore, the brokerage role played by the union as a negotiator of problems between the plantation management and the workers has driven the workers to be dependent on unions.⁶⁰ Given that TUs are the only accepted mediator by RPCs, workers have no other option than to depend on unions.

As such, the above three actors in the plantation sector have created a cycle of structural disadvantage for the HCT community despite the HCTs having formal citizenship. The distancing of the HCTs from the state can be seen to be linked to the pre-colonial administrative structures, which place the plantation management as an unconventional employer with control of both labour and livelihood. On the other hand, the absence of effective access to state services by the HCTs reinforces the community's reliance on TUs with political motivations. As such, the three drivers have formed a vicious cycle of exploitation.

Against this backdrop, this report attempts to analyse how the inadequacies in the law have contributed to the issues faced by the HCT community. As such, the report focuses on four pressing legal and policy issues in the sector relating to: (i) lack of access to administrative units, (ii) absence of land rights to housing, (iii) ineffective implementation of language policy, and (iv) labour rights of workers. The report also provides recommendations to alleviate the above-identified issues.

5

Legal and policy issues

The following section will discuss in detail four legal and policy issues, namely: (i) disproportionate delimitation of administrative units, (ii) inadequate access to

housing and property ownership, (iii) poor implementation of language policy, and lastly, (iv) deficiencies in the law.

5.1. Disproportionate delimitation of administrative units

In Sri Lanka, the delimitation of geographical boundaries of electoral and administrative areas is carried out by two entities, the Delimitation Commission and the Delimitation Committee. Firstly, the Delimitation Commission - appointed by the president following the observations of the parliamentary council as per Article 41B of the Constitution - carries out the delimitation of electoral districts for electoral purposes.⁶¹ Secondly, the Delimitation Committees are formed to delimit and demarcate geographical boundaries for various purposes, including demarcating boundaries for administrative purposes.⁶² According to KILs, the Delimitation Committees are generally appointed to carry out specific tasks assigned by the minister and cease to exist when they have tabled their final reports. For example, under Section 3A of the Provincial Councils Elections Act, No. 2 of 1988, as amended in 2017, the president appointed a Delimitation Committee to demarcate electorates in each administrative district to enable the election of 50 per cent of members from the districts on a simple majority system to the provincial councils (PCs).⁶³ In terms of delimitation of administrative units, according to the Transfer of Powers (Divisional Secretaries) Act, No. 58 of 1992, the minister by order published in the Gazette establishes

the number of Divisional Secretaries Divisions for each administrative district and the limits thereof.⁶⁴ However, in Sri Lanka, the number of Divisional Secretariat Divisions (DSDs) and the Grama Niladhari Divisions (GNDs) is significantly disproportional compared to the population and the geographical areas of such administrative units. This will be further discussed in detail in later paragraphs in this section.

Grama Niladhari Divisions and Divisional Secretariat Divisions

The smallest administrative unit of Sri Lanka is the GN unit, which is managed by GNs. GNs generally perform functions such as issuing character or resident certificates, certifications of identity and recommendations for income certificates.⁶⁵ GNs are then grouped into Divisional Secretariats (DSs) that are then formed into districts, which are the largest administrative units.⁶⁶ The DS's functions include issuing income certificates, birth/death and marriage certificates, countersigning residency certificates and approving public donations.⁶⁷ The power to set up geographical boundaries of GNDs and

DSDs stems from the Delimitation Committees appointed by the minister in charge of the subject of Home Affairs.⁶⁸

As revealed in the KIIs, the current demarcations of boundaries of GNDs and DSDs do not equitably facilitate service provision to residents of the administrative units. In other words, the current demarcations have made it difficult for GNs and divisional secretaries to manage the administrative functions within their given area due to multiple reasons including the size and topography of the area that make access challenging.⁶⁹ Ideally, an effective national administration system must have administrative units that are manageable by its administrative officers, to enable effective communication of information and efficient delivery of public services.⁷⁰ As such, there are several factors to consider when dividing administrative units. One factor is the size of the land unit. The size should be proportional to the population distribution. Other characteristics of the land such as the terrain/ mountains, road access and forest cover should also be considered in dividing boundaries for administrative units.⁷¹

In Sri Lanka, currently, there are 14,022, GNDs and 331 DSDs.⁷² However, the area covered by a single GN and the population within a single GN division vary significantly among districts. Similarly, the number of GNDs, and the land area and population within a single DSD vary among districts. For example, when the geographical area of one GND in Hambantota is as large as 516 km², a GND in Ampara has less than 0.04 km². Similarly, in terms of population, when a GND in Colombo has 28,003 people in one GND, some GNDs in Batticaloa have less than 100 people. More examples of the range of geographical and population differences among districts are depicted in the following tables.

GNDs⁷³

Geographical area

Hambantota	516 km ²
Ampara, Batticaloa	> 0.04 km ²

Population

Colombo	28,003
Batticaloa, Jaffna, Polonnaruwa	< 100

DSDs⁷⁴

Geographical area

Monaragala	1,066 km ²
Ampara	> 2.48 km ²

Population

Colombo	323,257
Jaffna	< 3,824

Due to the existing disproportionalities between the number of GNDs and DSDs in the population and geography in that area, as depicted above, it has become difficult for one GN officer or DSD to manage. In relation to hill country areas, the GNs mentioned that the commute to some areas is too treacherous, and accessibility is difficult due to geographical difficulties and can be especially problematic in emergencies. The KIIs with the community revealed that people find it difficult to reach DSDs that are located too far away without incurring high transportation costs. They also said that workers will have to forego a day's work or request half a day's leave to carry out the administrative tasks at faraway GNDs or DSDs. The KIIs with HCT community members revealed that the current demarcations have defeated the purpose

of facilitating access to government services effectively. The problematic demarcations also means that residents in the HCT areas are also deprived of benefits which are

provided by the DSDs. (See Box Item 1). These issues are further described in detail below.

BOX ITEM 1-

NOTES FROM KIIS

Ramanadan and Nimal are two GNs. They say the estates with a population exceeding 2,000 residents are also considered a single GN division. They also noted that estate residents are typically hesitant to approach them since the GN office is usually located in a remote village from where they reside. Nimal said that it is difficult to effectively utilise the funds that are allocated to their divisions since the allocations are disproportionate to the population of the residents within the division. Ramanadan said that the estate workers often misunderstand that the benefits allocated to the workers are being misused by the officials. He says that even though he is from the Tamil community, born and brought up in an estate, the residents are still hesitant to approach him. He adds that the residents within the division have lost faith in the state entities and officials.

Table 1 below depicts that the Hanguranketha DSD - with an area of 229 km² (86 per cent Sinhala populace) - has 131 GNDS for 88,528 people. In contrast, Ambagamuwa

DSD - with an area of 489 km² (71 per cent HCT community and only 21 per cent Sinhala population) - has only 67 GNDS to service a population of more than 200,000.

Table 1: Population by Divisional Secretariat Division. Statistics based on area, population and the number of GN Divisions - 2012⁷⁵

Divisional Secretariat	Population	Area (km ²)	Sinhala %	SL Tamil %	HCTs %	Muslims %	Other %	GNDS
Hanguranketha	88,528	229	86.4	3.5	10.0	0.2	0.0	131
Walapane	104,119	320	63.0	2.4	33.8	0.7	0.1	125
Kotmale	101,180	225	52.6	4.0	36.4	6.8	0.3	96
Nuwara Eliya	212,094	478	20.0	6.5	70.5	2.5	0.5	72
Ambagamuwa	205,723	489	21.6	4.4	71.6	2.23	0.2	67

Table 2 below depicts the distance people have to travel to access services at the DSD office when those services are not available within their GND.

Table 2: Minimum distance between the DS Offices and GN Divisions⁷⁶

DSD	Minimum distance between the DS office and the GND (km)			No. of GNDs within the DSD	Percentage		
	No. of GNDs				Less than 2 km	2-5 km	More than 5 km
	Less than 2km	2-5 km	More than 5 km				
Ambagamuwa	3	9	54	66	4.6	13.6	81.8
Nuwara Eliya	6	8	57	71	8.4	11.3	80.3
Walapane	2	12	110	124	1.6	9.7	88.7
Hanguranketha	8	4	117	129	6.2	3.1	90.7
Kothmale	2	4	89	95	2.1	4.2	93.7
Total	21	37	427	485	4.4	7.6	88.0

There is an urgent need to reform the boundaries of administrative units through the delimitation process to effectively allocate resources and government services, and provide justice and protection to the HCT community.

Interviewees expressed the view that the allocation of the lower number of GNDs to estate areas is perhaps due to various historical factors that existed during the initial demarcation of the areas. Because most of the administrative tasks in the estates were managed by the plantation companies, after privatisation in 1992, the motivation to allocate more administrative divisions could have been low.⁷⁷

Statistics of GNDs demonstrate serious disproportionalities between the divisions. These disproportionalities embedded in delimiting administrative units raise two main concerns in relation to the provision of administrative services to residents. (A detailed comparison looking at population and terrain comparing the Nuwara Eliya District with six other chosen districts can be found in [Annexure 02](#)).

First, it is difficult for one GN to fulfil the administrative demands and provide services to the people when the division is densely populated. GNs, when issuing residence certificates, are required to visit the residences of the area.⁷⁸ Therefore, GNs who have a larger population to provide services to face challenges in equitably carrying out their duties. For instance, the Nuwara Eliya District has 333 GNDs that have less than 1,500 population per division. Nuwara Eliya also has 27 divisions with more than 4,000 population per division (see table 3 below). Urban areas with a high population within a smaller geography would provide easy access for GNs to reach out to people. However, in large geographical areas with difficult terrain, typically in areas like Badulla and Matale, the GN may find it difficult to access the full population.⁷⁹ KIIs with GNs in these areas indicated that the fund allocations provided to GNs are also insufficient to cover transportation expenses arising from travelling long distances. As mentioned above, ideally, a GN should be in a position to deliver services according to their official capacity for purposes such as education, health, security, judicial and water and sanitation.⁸⁰

Second, due to the large geographical area, the workers and the villagers have to travel a long distance to meet the GN and Divisional Secretary.⁸¹ This often costs them a half or full day's wage.⁸² As such, some workers tend to rely on informal intermediaries such as brokers - to whom the workers have to allocate a small percentage of money as commission - to deal with administrative tasks.⁸³ The tasks are typically in the nature of obtaining the signature of the GN or Divisional Secretary on various official documents.⁸⁴ Some of the intermediaries retained by the workers help them out of good faith, free of charge.⁸⁵ However, the KIIs revealed that some of the brokers retained by the community to help them with administrative tasks charge the workers a small percentage of the EPF/ETF amount as a fee.

Currently, there are 14,022 GNDs in Sri Lanka.⁸⁶ GNs from other areas have also faced similar administration difficulties and have called to further reform the boundaries and increase the number of GNDs considering these administration difficulties.⁸⁷ However, the current government policy is not to further increase the number of GNDs.⁸⁸ According to KIIs, one significant reason to not increase the number of GNDs is to limit the funding allocations. As such, the recommendation of the government is to reduce the number of GNDs. One way to reduce the number of divisions is to amalgamate the GNDs that are comparatively smaller in area. The other way is by splitting the GNDs that oversee larger geographical areas because a larger area is difficult to manage.⁸⁹ For example, in the Nuwara Eliya District, 100 GNDs have a population of less than 500 while 180 GNDs have a population between 500 and 1,000. See Table 3 below.

Table 3: Population distribution among GNDs (District wise)⁹⁰

District	Population									
	0-500	501 - 1,000	1,001 - 1,500	1,501 - 2,000	2,001 - 2,500	4,000 - 4,500	4,501 - 5,000	6,000 - 6,500	8,500 - 9,000	Over 9,000
Nuwara Eliya	100	180	53	34	17	18	6	2	0	1
Badulla	28	136	139	115	77	6	2	0	0	0

Therefore, according to the KIIs, one suggestion made by the Delimitation Committee has been to amalgamate the smaller divisions and split the larger divisions into two or three divisions to reduce the administrative hassle. However, this delimitation process also has to overcome the challenge of carefully balancing the demands and needs of residents. For example, some residents in the Northern and Eastern Provinces have resisted the idea of delimitation by the amalgamation of one or two divisions together, owing to various racial and ethnic differences.

Similar disparities can be identified in terms of the declaration of DSDs. In relation to geographical differences, for instance, the "largest district, Anuradhapura, at 7,179

km², is 10 times that of Colombo at 699 km². The population density in highly urban Colombo with flat terrain and easy access, at 3,333 persons/km², is more than 40 times the population density in remote, forested Moneragala at 80/km².⁹¹ In relation to population, it appears that the population ratio of the DSDs is relatively higher in predominantly HCT-populated areas in comparison to other districts. The Nuwara Eliya District - with a population of 756,259, of which 57% is HCTs - has only 5 DSDs.⁹² In comparison, the neighbouring Badulla District consists of 15 DSD serving a total population of 880,3409, which is only a slightly larger population than the Nuwara Eliya District.⁹³

As a solution, the Delimitation Committee restructured demarcations to form new DSDs in several districts that have similar disproportionalities. Consequently, a cabinet decision was taken to establish new DSDs in the Nuwara Eliya and Galle Districts in 2019.⁹⁴ Accordingly, a Gazette notification was issued in 2019 by the Minister of Internal & Home Affairs under Section 2 of the Transfer of powers (Divisional Secretaries) Act, No. 58 of 1992 to establish new DSDs in several areas, including Nuwara Eliya.⁹⁵

This included the establishment of several divisions such as Hikkaduwa, Baddegama and Mathurata DSDs in the Galle District, and Nildandahinna, Talawakale, Kotmale West, Kotmale East and Norwood in the Nuwara Eliya District.⁹⁶ The cabinet proposal was presented by the then Minister of Internal & Home Affairs and Provincial Councils & Local Government, Hon. Vajira Abeywardena in 2019. Although the three DSDs in the Galle District were established in March 2021 as per the Cabinet decision, the DSDs for Nuwara Eliya have not yet been set up.⁹⁷ Interviewees state that the delay or refusal to implement could be due to ethno-political aspirations of political parties rather than a legal or policy issue.

One reason that may have led to the aforesaid disparities is the lack of uniform delimitation criteria set by law. Delimitation processes for administrative purposes

can be based on several factors such as representativeness, impartiality, equality, non-discrimination and transparency.⁹⁸ However, the KIIs revealed that, in Sri Lanka, the delimitation process is largely dependent on geographical factors, ethnicity, transport facilities and, more importantly, the interests of the political parties.⁹⁹

In addition, the discretion vested with the minister in determining the number of administrative units is vulnerable to politicisation. The minister can use this discretion to better serve his political motives by making favourable adjustments in terms of allocating more administrative units to areas where most of his/her political allegiants reside. Section 2 of the Transfer of powers (Divisional Secretaries) Act, No. 58 of 1992 vests the power to determine the number of DSDs for each administrative district with the minister in charge of the subject matter. The KIIs indicated that this authority vested with the minister by the Act paves the way for the latter to adjust the number of DSDs as per the demands of the public in that area. This indicates that the ministers can exercise their discretionary power to serve constituencies that will help them gain political advantage.

As such, the lack of a legislative or regulatory process, and the ministerial powers in determining the number of DSDs are contributing factors that further increasing disproportionalities in the delimitation process.

5.2. Inadequate access to housing and property ownership

In terms of housing in the plantation sector, the Plantation Convention in Part IX provides that the authorities, after consultation with employers, must encourage the provision of “adequate housing” to workers. While the convention does not define what ‘adequate housing’ is, it has allowed public authorities to prescribe minimum standards. These minimum standards include construction material to be used, the minimum size of the accommodation, water supply and sanitary facilities. The Global Shelter Strategy, introduced by the UNHCR, UN Refugee Agency provides a holistic approach to improving the living conditions of the refugees; it defines adequate

housing to encompass adequate privacy, space, security, lighting and ventilation, basic infrastructure and location with regard to work and basic facilities – all at a reasonable cost.¹⁰⁰

Housing facilities of the HCT community, also known as ‘line rooms’, are given to workers to reside in but with no title to the property.¹⁰¹ Most of these line houses were made originally during the British colonial era to occupy workers who were brought in from India. The houses have been passed down through several generations where extended families are also within the same house

with limited space.¹⁰² For example, the houses that were constructed in the British Colonial era, are approximately 12 feet by 10 feet by 9 feet opening onto a long veranda. A survey conducted by the Technical Assistants Team of the Social Welfare Programme in 1994 revealed that 45 per cent of the housing units were 50 Sq. Ft. per occupant and 25 per cent have 50 to 75 Sq. Ft. per occupant.¹⁰³ The same study reveals that only 2 per cent, which was about 3,600 of the houses, is in habitable condition, and

18 per cent is rehabilitated with minor repairs.¹⁰⁴ Overall, 45 per cent of the housing units were found to be overcrowded, 64 per cent had inadequate lighting and little ventilation and 62 per cent were without latrines.¹⁰⁵ Table 4 below shows that the housing conditions of the estate sector have improved over the years, but the figures indicate that even, currently, the housing conditions in the estate sector continue to be lower than in rural and urban areas.

HOUSING CONDITIONS AND OWNERSHIP OF DURABLE GOODS BY SECTOR (2009/10, 2012/13 and 2016)

Table 4: Housing conditions and ownership of durable goods by sector as a percentage.¹⁰⁶

	2009/10				2012/13				2016			
	Urban	Rural	Estate	All island	Urban	Rural	Estate	All island	Urban	Rural	Estate	All island
Wall type												
Permanent	94.1	91.5	89.1	91.7	96	92.8	95	93.5	97.3	95.1	96.2	95.5
Semi-permanent	5.9	8.5	10.9	8.3	4	7.2	5.0	6.5	2.7	4.9	3.8	4.5
Floor type												
Permanent	97.1	87.6	83.1	88.7	98.4	91.6	84.9	92.4	98.9	95.2	89.1	95.6
Semi-permanent	2.9	12.4	16.9	11.3	1.6	8.4	15.1	7.6	1.1	4.8	10.9	4.4
Roof type												
Permanent	91.1	88.9	23	86	95.5	91.5	32.3	89.6	96.1	94.2	33	91.9
Semi-permanent	8.9	11.1	77	14	4.5	8.5	67.7	10.4	3.9	5.8	67	8.1
Main source of drinking water												
Safe	97.4	87.6	60.3	87.7	98.8	90	46.3	89.7	97.8	89.3	44.7	88.8
Not safe	2.6	12.4	39.7	12.3	1.2	10	53.7	10.3	2.2	10.7	55.3	11.2

	2009/10				2012/13				2016			
	Urban	Rural	Estate	All island	Urban	Rural	Estate	All island	Urban	Rural	Estate	All island
Toilet facilities												
Exclusive for the household	86.4	90.9	74	89.5	90	90.7	76.2	89.9	91.9	92.4	77.3	91.7
Sharing with another household	7.1	6.2	13.1	6.6	7.3	7.8	21.1	8.4	6.6	7	19.8	7.5
Public toilet facilities	5.1	0.4	7.2	1.4	2.7	0.2	2.1	0.7	1.6	0.1	2.6	0.4
No toilet facilities	1.3	2.5	5.6	2.5	0	1.2	0.7	0.9	-	0.5	0.4	0.4
Lighting												
Electricity	95.6	84.1	76.9	85.3	98	88.8	83	90.2	98.9	96.7	92.7	96.9

The estate workers residing in the line houses have been relegated to mere occupants of the land with limited property rights. The plantation companies require at least one member from the house to be sent for work in the estate as a way of forcing them to continue to work for the companies to retain their homes.¹⁰⁷

Tea plantations are currently managed by private plantation companies. The government, after the privatisation of the estates in the early 1990s, leased out the estate lands to plantation companies through long-term lease agreements. The secretary to the treasury, as the sole representative of the government, has held one nominal share of these plantation companies and is named the 'Golden Shareholder'.¹⁰⁸ The state has thereby retained powers over the companies to supervise, oversee, and monitor performance. As such, the plantation companies cannot unilaterally assign their rights over the estate property. In other words, they are required to seek approval of the Golden Shareholder before any sub-lease, assignment or ceding of its rights over the property.¹⁰⁹

The workers of the estates have been given their housing as workers' quarters. According to the Estate Quarters (Special Provisions) Act, No. 2 of 1971, where the services of an employee are terminated, notwithstanding such termination of such services, the employee has the right to occupy such quarters together with his dependants until he is ejected by a decree of court.¹¹⁰ The workers are also entitled to have all the facilities continue that s/he had before the termination of his/her services.¹¹¹

As such, the workers have no legal right to the ownership or title to the houses they occupy and the workers do not possess any documentation that declares entitlement to the house. The socio-economic consequence of this is that workers have been occupying these quarters for generations and the houses are now overcrowded.¹¹²

Since they have no legal title over their own house or the property on which it stands, the workers are compelled to seek permission from the estate manager or the superintendent before making any changes to their residences. For example, during the KIIIs, the workers

noted that the superintendent had to approve things such as adding a water line, a toilet, an electricity connection, and even things such as setting up a home garden in the backyard. The relationship between the estate manager and the workers has, therefore, now converted into a landlord-tenant relationship, rather than an employer-employee relationship.

The estate lands that were initially held by private companies were nationalised in 1972. As a result, the Land Reform (Amendment) Law in 1975 vested all company-held plantation lands in state-managed organisations such as the “Sri Lanka State Plantations Corporation” (SLSPC), “Janatha Estates Development Board” (JEDB) and a new organisation named “Usawasama” (Up-country Co-operative Estates Development Board).¹¹³ In 1977, the government vested all property rights of the estates held by the Usawasama to the JEDB and SLSPC.¹¹⁴ In 1992, however, due to the inefficient management of the estates by the state-managed organisations, the government decided to divest a majority of the properties held by the abovementioned organisations back to regional plantation companies. Accordingly, as a consequence of privatisation, about 457 tea estates that span approximately 94 hectares were vested upon 20 RPCs on leasehold rights in 1992.¹¹⁵ Currently, there are about 23 plantation companies holding estate lands on long-term leases.¹¹⁶

The RPCs are bound by the covenants in the long-term lease agreements they have entered into with the government of Sri Lanka. As the Golden Shareholder, the secretary to the treasury holds the ultimate authority over the estate lands, and these conditions are usually included within the Articles of Association of the RPCs. For example, the Articles of Hatton Plantation Company state that the company should seek the written permission of the Golden Shareholder before subleasing, ceding or assigning its rights in part or all of the lands.

This implies that the estate lands are held by the RPCs under the direct supervision of the state. Plantation companies cannot assign their land rights to the workers as they only have a leasehold right in the estate. As the workers occupy the line houses only in the capacity of worker’s quarters, they also do not have the property rights and title over houses given to them. Moreover, these lease agreements are also not available in the public domain for perusal. As such, the stakeholders – including workers and the community – have no access to information on the terms and conditions that govern the lease arrangement.

At the time of compiling this report – February 2022 – there were various housing projects launched by the government with support from various foreign countries to build houses for the HCT community.¹¹⁷ The Plantation Human Development Trust (PHDT), which is established for the benefit of the plantation community, is also collaborating with various stakeholders within the plantation sector to carry out various infrastructure projects including housing.¹¹⁸ According to KILs, these housing projects are known for prioritising the supporters of the incumbent government when allocating new houses.¹¹⁹ These programmes are also known for excluding people who reside on the estate but do not work for the RPCs.¹²⁰ Moreover, Sri Lanka has made reservations in terms of Part IX of the Plantation Convention. Hence, Sri Lanka does not have a mandatory obligation under the Convention to ensure the workers’ housing meets the minimum enumerated within it.

The housing and land issue faced by the HCT community is a convoluted issue that is deeply rooted within the administrative systems in Sri Lanka. The combined impact of the decisions and contractual arrangements made by various governments in the past with other stakeholders in the sector have ultimately deprived this community of their basic right to adequate housing.¹²¹

5.3. Poor implementation of the language policy

Article 12 (2) of the Constitution states that “no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds”.¹²² The Article also provides that it shall be lawful to require language competency as a qualification for employment related to public service.¹²³ The Article further provides that it is lawful to require a person to have sufficient knowledge of any language as a qualification for any employment where no function of that employment can be discharged without a knowledge of that language.¹²⁴ Chapter IV of the Constitution initially recognised the Sinhala language as the official language and, subsequently, the 13th Amendment to the Constitution recognised Tamil as an official language. The 16th Amendment further introduced the languages of administration, maintenance of public records, and transactions of all other business of public institutions.¹²⁵ As such, the Official Language Policy (OLP) reflects the culmination of all these constitutional provisions, i.e., Sinhala and Tamil are both official national languages.¹²⁶ It also recognises that public institutions are required to function in both languages.¹²⁷ Article 22(1), as amended by the 16th Amendment to the Constitution, recognised Sinhala and Tamil as administrative languages that can be used to maintain public records and transactions of all business by public institutions of all provinces other than the Northern and Eastern Provinces.¹²⁸

To improve the implementation of the OLP, three Gazette notifications in 1999, 2001 and 2003, were issued covering 29 divisional secretariats within six districts. These Gazettes designated these divisions as bilingual administrative divisions, with both Sinhala and Tamil recognised as administrative languages.¹²⁹ By 2014, 41 DSDs have been declared bilingual under the presidential decree.¹³⁰ Further, in 2007, Public Administration Circulars (PA Circulars Nos. 3 & 7 of 2007) were issued directing public officers to gain competence in an official language other than the language in which they entered the public service.¹³¹ The Public Administration Circular No. 03/2007, introduced payment of an incentive allowance to public officers who acquire proficiency in more than one official language. These circulars were further modified

by the Public Administration Circular: 18/2020 dated October 16, 2020. The procedure introduced to obtain language competence is by following a language course during a specific period depending on the job category.¹³² This has replaced the previous system that compelled public officers to sit for the official language exam and demonstrate their language proficiency. The new policy that came into effect on October 16, 2020, has included courses that have both written and oral sections to be learnt in the language. Moreover, the circular requires that the competence level should be completed within three years from the date of the circular.¹³³ The salary increments of the officers are also connected to whether or not the required level of competency has been attained in another official language.¹³⁴ However, one glaring weakness of these circulars is that the circulars do not impose effective sanctions or consequences for officers who do not comply with the requirements therein, such as impacting promotions/rank etc.¹³⁵

Although the language policy of Sri Lanka has been in effect since 2007, the integration of administrative officers conversant in the Tamil language in the HCT community areas has been very poor according to participants in this study.¹³⁶ The lack of language proficiency of a public official impacts the effectiveness of public service provided. Several criticisms exist about the implementation of the language policy in Sri Lanka; one of which is in relation to the use of signboards in administrative authorities in all three languages. A survey conducted by the Centre for Policy Alternatives (CPA) in 2017 demonstrates that of the name boards surveyed in 49 ministries, 30 per cent were not in compliance with the OLP.¹³⁷ Another strong criticism that affirms the poor implementation of language policy in Sri Lanka is the unavailability of state services and official forms in all three languages.¹³⁸ It is reported that some official forms issued by DSDs are only issued in the Sinhala language.¹³⁹ Important forms for economically marginalised groups such as *Samurdhi* issuing forms, Housing Authority forms, EPF application forms, and the elderly identity card application issued by the Social Services Department are reported to have been issued only in Sinhala.¹⁴⁰

Access to public services in the HCT areas is specifically hampered because the public servants assigned to GNDs in these areas are generally not conversant in the Tamil language.¹⁴¹ As such, in relation to estates, most of the public officials in the hill country areas are usually conversant in the Sinhala language.¹⁴² A study conducted in 2014 in areas such as Ambagamuwa, Panvila and Haliela, where a majority of the population consisted of the HCT community, reports a serious dearth of public officers conversant in the Tamil language.¹⁴³ For example, 88.6 per cent of all offices in the Ambagamuwa DSD office were reported as Sinhalese, with only 6.6 per cent being Tamil staff and 3.7 per cent Muslim staff.¹⁴⁴ While the younger staff of these offices were reported to have a theoretical knowledge of the Tamil language to satisfy the job qualification, practically that knowledge did not seem to be adequate to successfully communicate with the community.¹⁴⁵ While all official communications through such DSDs were reportedly conducted in Tamil, there have been delays in sending out printed materials and document processing as the offices were heavily short-staffed in terms of Tamil language skills. Therefore, plantation workers experience serious difficulties in accessing public services, such as DSDs, GN services, post offices, police stations and public bank services due to the inability to converse effectively with the officials.¹⁴⁶ The residents in Ambagamuwa, Panvila and Haliela areas have indicated their frustration stating that the effectiveness is low even if the official forms were in the Tamil language, as documentation filled in Tamil created problems and long delays in processing.¹⁴⁷ For example, residents have pointed out errors/mistakes made by officers in filling out important information such as the name of the applicant, birth certificate forms, National ID or EPF applications that have caused problems.¹⁴⁸ The 2014 study further points out that the language difficulty is strongly felt by the women in the community, to whom the language barriers posed a greater threat due to their lack of exposure to government institutions and lower levels of literacy.¹⁴⁹

On the other hand, GNs also have indicated their share of grievances that hinder their access to learning the Tamil language.¹⁵⁰ GNs have indicated that they had to

undergo a long commute to attend a language course and that the teaching methods used in the courses were outdated.¹⁵¹ Moreover, the trainers of the language course have pointed out several loopholes in the course work, one of which is that two to three hours of training per week is inadequate to yield effective language skills.¹⁵²

The KIIs suggest that the absence of Tamil-speaking public officers in the HCT areas has had the effect of driving workers and villagers away from the regular public administration systems. KIIs revealed that workers tend to retain third parties, such as brokers, to fulfil their administrative or documentation requirements with GN or DSDs.¹⁵³ For this brokerage service, interviewees noted that workers pay a small percentage of money as a commission. For example, when claiming a worker's hard-earned Employee's Provident Fund (EPF) allocation, the workers have a practice of retaining a broker who will attend the DSD on behalf of the worker and complete the paperwork, for which the broker will charge a certain percentage of the EPF funds that the worker will be receiving. Practices of this nature demonstrate that a significant gap exists between the HCT community and the state services. Hence, the lack of officers to deliver public services in the Tamil language has made the HCT community further vulnerable. The KIIs revealed that the state's inability to effectively communicate using a language the community is conversant in has exacerbated the existing mistrust in the community of administrative authorities.¹⁵⁴

However, the interviewees indicated that although they seek out intermediaries such as brokers to access administrative services, language is only one factor in this decision. KIIs noted that other factors such as the long-distance commute to the administrative division and the time and economic cost of travel are also influential factors in retaining a third party to assist in accessing state administrative services.

Furthermore, the CPA survey conducted in 2017 reveals that in 47 out of 49 ministries surveyed, there were no language plans in place that considered factors such as conducting language skills development programmes,

deploying staff having bilingual skills to regional service points, maintaining records of staff receiving incentives on language skills and mobilising resources to implement language policy.¹⁵⁵ This indicates the poor implementation of the OLP in ministries, which are the apex authorities in the administrative hierarchy. While there can be several reasons for this poor implementation of the OLP, lack of adequate financial and other resources, lack of commitment to take adequate steps that amplify effective language use and lopsided recruitment and transfer patterns in public service may have had a significant impact over the years on effectively implementing the language policy.¹⁵⁶ The Foundation

for Co-Existence (FCE) commissioned a Language Audit in 2006, which revealed significant shortfalls in Tamil-speaking officials in handling administrative tasks.¹⁵⁷ The language audit was conducted focusing on seven public institutions such as hospitals and schools in areas that have a high Tamil-speaking population, such as the Nuwara Eliya, Badulla, Kandy and Rathnapura Districts. During the audit, it was indicated that over 46 per cent of the non-managerial staff interviewed stated that they face language difficulties when communicating with the Tamil-speaking public. Some of the relevant figures have been indicated in Table 5 below.

Table 5: Comparison of total staff members to Tamil literate staff in public authorities in 2006¹⁵⁸

Public institution	Total staff	No. of Tamil literate staff
Badulla Municipal Council	450	1
Hatton Police Station	250	10-20
Nuwara Eliya Base Hospital	450	85
Rathnapura High Court	60	0

The lack of motivation to effectively implement the language policy is also visible in the inadequate performance of authorities tasked with monitoring and supervising the language policy for its compliance with the constitution. The implementation of the OLP is spearheaded by the Official Language Commission by the Official Languages Commission Act No. 18 of 1991. In addition to powers such as reviewing regulations, directives or administrative practices that may affect the objectives of the commission, it is also empowered to investigate complaints received against acts and omissions by various public authorities.¹⁵⁹ However, there are several critiques regarding the Language Commission's performance.

One critique is the lack of attentiveness to investigating complaints received by the commission. A report issued by the Auditor General's Department after its survey of 40 complaints received by the commission between 2003 and 2006 has indicated the commission's ineffective investigation of complaints.¹⁶⁰ Out of the

complaints studied, the commission has ruled out 7 cases due to them not being filed within the mandatory filing period and 12 cases where the submissions requested from public authorities had not been received by the commission for periods ranging from 117 to 418 days. The report also indicated that the commission has not followed up with any of the authorities to confirm if their recommendations have been implemented by the public authority.¹⁶¹ The commission has reasoned stating a lack of funds and budgetary constraints for its lack of commitment to carrying out proper investigations into complaints.¹⁶² It is further reported that the commission has never referred a complaint to the High Court, nor has it prosecuted a public official for non-compliance stating the standard of proof required is high.¹⁶³

The above indicates the lack of commitment, lack of resources and, overall, the absence of a proper vision for active implementation of the language policy in Sri Lanka.

For minority communities, ineffective communication means a lack of engagement with public services. As such, this inaccessibility to public services has resulted

in the HCT community distancing themselves from the local administrative bodies and relying on the plantation companies for these services.¹⁶⁴

5.4. Deficiencies in the labour laws

This section briefly discusses the labour laws that specifically govern the estate sector. The section has three parts. Firstly, it will point out some of the legislation that has more relevance to operations pre-privatisation of the estates. Secondly, it will discuss the current issues the estate sector grapples with regarding collective bargaining of TUs. Then, the section draws a comparison of the existing laws with the international conventions Sri Lanka has ratified so far.

The issues pertaining to labour law can be categorised into three issues:

- i. Laws that have reference to Indian labour immigrants, operations and labour practices that are archaic and currently not applicable in the sector;
- ii. Dissolution of the Collective Agreement (CA) that challenges the collective bargaining power of workers;
- iii. Incompatibility with ILO Conventions raising ambiguities in terms of the applicability of laws.

5.4.1. Obsolete and inapplicable laws that reference “Indian labour immigrants”

Several laws were enacted before granting citizenship rights to the HCT workers in Sri Lanka through the Citizenship Acts. For instance, the Service Contract Ordinance, No. 1 of 1923. These laws largely reflect the traditional labour law concept of the master-servant relationship, with less focus on upholding and protecting employees’ rights. More importantly, most of these laws reference ‘Indian labour immigrants’ and have limited application to current labour practices. However, none of these laws is formally repealed by subsequent legislation. Several of such laws are as follows.

- i. Minimum Wages (Indian Labour) Ordinance, No. 27 of 1927
- ii. Indian Immigrant Labour Ordinance, No.1 of 1923
- iii. Medical Wants Ordinance, No.9 of 1912
- iv. Estate Labour (Indian) Ordinance, No.13 of 1889
- v. Service Contracts Ordinance, No 11 of 1865

Table 6: Obsolete and inapplicable laws that reference Indian Labour Immigrants

Act or Ordinance	Description
Minimum Wages (Indian Labour) Ordinance 1927	This Ordinance introduced a minimum wage system for Indian estate labourers. The Ordinance provides for the establishment of Estate Wages Boards for one or more districts combined, which are tasked with fixing minimum wage rates for time-work performed by the labourer. Such minimum rates must subsequently be approved by the <u>National Board of Indian Immigrant Labour</u> (emphasis added). The rates set by these Estate Wages Boards are now replaced, <i>de facto</i> , by the CAs signed between the trade unions and the plantation companies, which contain provisions that determine estate workers’ wages.

Act or Ordinance	Description
<p>Indian Immigrant Labour Ordinance, No.1 of 1923</p>	<p>The preamble of the Ordinance describes it as an Ordinance to amend the law relating to the Indian Immigrant Labourers. The provisions of the Ordinance include the appointment of Commissioners of Labour and officers to the Department of Indian Immigrant Labour; inspection of labourers by such officers; the establishment of an Immigration Fund that deals with costs relating to the recruitment of Indian immigrant labourers; and the provision of accommodation, transportation, subsistence allowances, repatriation. The Ordinance requires every employer to pay the commissioner such fees in respect of the recruitment or employment of Indian immigrant labourers.</p> <p>The Ordinance defines an ‘Indian immigrant labourer’ as: (a) any Indian immigrant who comes to Sri Lanka under an agreement to perform unskilled work for hire in Sri Lanka; or (b) any Indian immigrant who is assisted to come to Sri Lanka otherwise than by a relative if he comes to perform unskilled work for hire in Sri Lanka.</p>
<p>Medical Wants Ordinance, No.9 of 1912</p>	<p>This Ordinance regulates the establishment of government hospitals and dispensaries in a given medical district. It identifies the duties and entitlements of superintendents, the fees payable to district medical officers (DMOs), and other related issues in an estate (which is defined as four hectares of land).</p> <p>The Ordinance further provides for duties of a medical officer in relation to the inspection of estates (section 7). The estate is to be charged Rs. 5 per visit of a medical officer to the estate.</p> <p>The Ordinance also imposes several duties upon the superintendents such as maintaining the line rooms in a fair sanitary condition, sending labourers to hospitals when required, providing them maternity benefits, sending for the DMO in case of serious illness and informing the DMO of every birth and death in the estate within 48 hours.</p> <p>The Ordinance provides that every medical officer (who is a duly qualified practitioner registered under the Medical Ordinance) should visit the estates within his/her district and inspect sanitary conditions, examine labourers to ascertain their health conditions including vaccinations, direct the removal of the labourer to a hospital, inspect any estate hospital or dispensary if any and report to the Director of Health Services on all or any of the above matters.</p> <p>It is uncertain how many of these provisions within the Ordinance are currently in operation.</p>

Act or Ordinance	Description
<p>Estate Labour (Indian) Ordinance, No.13 of 1889</p>	<p>This Ordinance regulates labour aspects relating to Indian labourers employed in Sri Lankan estates. A labourer is defined as any labourer and 'Kangany' (also referred to as coolies in the Ordinance) whose name is included in an estate register and includes Muslims known as 'Tulicans'.</p> <p>The Ordinance also governs aspects such as verbal contracts, payment of wages under verbal contracts, deductions from wages and declaration of labourers' payments.</p> <p>The Ordinance also deals with instituting legal proceedings against the employer for non-payment of wages.</p> <p>This Ordinance in Section 24 provides for a 'separate room for each married couple living in the lines of an estate'.</p> <p>In Section 25, the Ordinance imposes the responsibility of the Emigration Commissioner (in India) to formally notify the employer in Sri Lanka when the labourers leave for Sri Lanka.</p>
<p>Service Contracts Ordinance, No 11 of 1865</p>	<p>This Ordinance deals with the creation and governance structure of employment contracts of any servants. The Ordinance covers verbal contracts entered into for one month and written contracts longer than one month. It is uncertain whether the provisions of this Ordinance are still valid, as every contract entered into under the Ordinance must be signed in the presence of a Magistrate, Justice of Peace or any other person authorised by the minister. The Ordinance also encapsulate provisions that relate to servants and journeymen hired in India for service in Sri Lanka. The Ordinance is the oldest legislature that is still included within the labour code pertaining to plantation workers.</p> <p>The terminology used in this Ordinance is noteworthy, as the Ordinance defines servants as including "menial, domestic, and other like servants, pioneers, kanganies, and other labourers, whether employed in agricultural, road, railway or other like work".</p> <p>The Ordinance also provides that "no contract entered into in Sri Lanka for the hire and service of any servant or journeyman artificer for any period of <u>time longer than 1 month</u> is valid unless such contract is in writing and shall clearly express the terms and conditions thereof, and shall be signed or acknowledged by the parties thereto in the presence of a Magistrate, or a Justice of the Peace or other person expressly authorised by the Minister of Justice."</p>

Given the provisions described above, there is ambiguity as to whether the provisions within the Acts and Ordinance are fully applicable in the current context of the tea industry operations. Reforms to these laws - by way of amendments to these enactments - are essential, specifically because Indian-origin estate workers were

granted Sri Lankan citizenship by the Grant of Citizenship Acts enacted in 1986, 1988 and, subsequently, in 2003.

A detailed legal gap analysis illustrating the gaps between the current legislation and international standards has been included in Table 7 below.

5.4.2. Dissolution of the Collective Agreements and issues pertaining to representativity of workers

The salient terms of employment, such as determination of wages, leave entitlements, overtime payments, social welfare and the contract of employment in relation to estate workers were earlier governed by labour legislation. However, most of the terms of employment have been inserted into the CAs that were later signed between the TUs and the estate managers (plantation companies). There are two main types of CAs: (1) Plantation Workers' Wages and (2) Maintenance and Support Staff. Employment terms for plantation workers' wages, leave and allowances were determined by the Plantation Workers' Wages Collective Agreement. Terms such as sick leave, working hours, increments, transport to hospitals, maternity leave, funeral expenses and crèche facilities for support and maintenance staff are stipulated in the Plantations Maintenance & Support Staff Collective Agreement, No. 33 of 2003.

However, at the time of compiling this report (February 2022) the latest Plantation Workers' Wages Collective Agreement that was operative until 2019 is being treated as inoperative.¹⁶⁵ The plantation companies have refused to uphold the provisions of the CA with the introduction of a minimum daily wage of Rs. 1,000/- to a tea estate worker in March 2021 by way of a Wages Board Decision.¹⁶⁶

Post-privatisation of the estate plantations in 1992, the Sri Lankan government has withdrawn from the process of wage determination of the workers.¹⁶⁷ It paved the way for TUs to form the first CA in 1996.¹⁶⁸ These agreements were renewed every two to three years, allowing for the periodic modification of the wages as decided by representatives of the workers and employers of the estates. CAs cover five components: the basic wage rate, attendance incentive, productivity incentive, price share supplement, and over-kilo rate.¹⁶⁹

Accordingly, before the imposition of a Rs. 1,000/- daily wage as a Wage Board decision in 2021, the wages were determined by the CAs. The CA were signed between the Employers Federation of Ceylon and the TUs representing

the workers in 2016 (renewed in 2019) and promised a daily wage of Rs. 700.¹⁷⁰ However, the decision of the Wages Boards in 2021 came into force amidst continued objections from the RPCs against the rising wage costs.¹⁷¹ Therefore, the minimum wage that came into effect by Gazette Notification No. 2217/37 on March 5, 2021, as a decision of the Wages Board for the Tea Growing and Manufacturing Trade was met with resistance from the RPCs. Currently, the issues surrounding the CA and the minimum wage are being litigated in the Court of Appeal of Sri Lanka, under Case No. CA/WRIT/143/2021. In the said case, twenty plantation companies have collectively filed a writ application in the Court of Appeal, seeking an order to quash the Gazette Notification issued by the Wages Board for the Tea Growing and Manufacturing Trade declaring Rs. 1,000 as the minimum daily wage of a tea estate worker. The plantation companies claimed in the writ petition that the Wages Board decision was taken by the Board without properly considering the objections presented by the said plantation companies against the minimum daily wage increase.

The KIIs with workers revealed instances where irregularities have occurred in the payment of the Rs. 1,000/- a day. Some workers indicated that in reality, Rs. 1,000/- were only paid if the workers could collect the full amount of kilos of tea leaves allocated for the day. In other instances, they are paid a per-kilo rate for the day's collection. KIIs with academics conversant with worker's issues also illustrated this position where the workers have been placed in a more disadvantageous position with the introduction of the Wages Board decision compared to the previous wage structure.¹⁷²

Collective bargaining

There are ancillary issues arising from the collapse of the CA. The dissolution of the Plantation Workers' Wages Collective Agreement 2019-2021 has had a serious impact on smaller TUs.¹⁷³ The financial sustenance of TUs is largely dependent on the subscription payment of the workers (subscription is also called the 'check-off').¹⁷⁴ Under the CA, the subscription payment was automatically deducted from the salary of the worker by the RPCs and passed on to the TU.¹⁷⁵ However, recently, as a result

of the dissolution of the CA, the TUs' regular flow of subscription fees from RPCs has been thwarted. Accordingly, KIIs indicated that the smaller TUs now lack the necessary funding to continue their work as the 'check-off' system is currently inoperative.¹⁷⁶ This has the potential of undermining workers' labour representation as the TUs with low financial capacity cannot advocate for workers' rights, nor can they carry out welfare initiatives for the benefit of their membership.

Threshold of representativity as a hindrance to collective bargaining¹⁷⁷

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which Sri Lanka has ratified, states rules for the freedom of unionisation and collective bargaining, principles that belong to the core values of the ILO.¹⁷⁸ The threshold of representativity can be described as the percentage of representation a certain TU must have to negotiate with the employer. The requirement of a percentage as high as almost half of the total number of workers (for example, 40 per cent) as the threshold of representativity may hamper the bargaining power of smaller TUs. Even a smaller percentage as the threshold could still be unfair, given the number of employees in the organisation. For example, if 15 per cent of workers in an organisation wish to form a trade union, although one could consider 15 per cent as a small percentage, if the organisation has 10,000 workers, 15 per cent would mean 1,500 workers. One would argue that 1,500 is a large crowd of workers worth giving sufficient access to negotiations with employers. Accordingly, imposing a threshold by law can undermine the promotion and development of free and voluntary collective bargaining within the meaning of Convention No.98.¹⁷⁹ The convention states that the 'representativity threshold must be assessed based on the characteristics of the industrial relations systems'.¹⁸⁰

In this backdrop, Section 32A(g) of the Industrial Disputes Act, No. 53 of 1973 (IDA) provides that no employer can refuse to bargain with a trade union that has in its membership 40 per cent of the workers on whose behalf such trade union seeks to bargain.

The role of the bargaining agents of a particular TU is imperative to convey the collective demands of workers to their employers. Therefore, imposing a threshold such as 40% by law to determine the representativity of TUs can be dangerous if larger TUs' main focus is to collect the votes of the community to gain seats during the parliamentary elections. In other words, setting a threshold may undermine the employees' rights, specifically if such TUs pay patronage to political parties. For example, when a higher threshold of 40 per cent is imposed, the bigger TUs can use that opportunity to form an arrangement with the employer, that may be politically beneficial due to their allegiance to political parties. However, these decisions may not be always so beneficial to the entire workforce if the demands of all workers are not adequately represented during negotiations with the employer.¹⁸¹ Therefore, imposing a threshold is indicative of a misuse of power by larger, well-established unions that are known to have political motives of party politics. Hence, a higher threshold not only infringes on the worker's rights but also leads to exploitation of the right to bargain with the employer by bigger unions. The poor representation of women workers' rights can be seen as an example of inadequate representation within trade unions, where many of the trade unions in Sri Lanka are male-dominated.¹⁸²

According to the KIIs, Sri Lanka's 40 per cent threshold is considered to be too high a percentage for representativity.¹⁸³ However, it can be argued that the threshold of 40 per cent was placed to prevent unfair labour practices as opposed to a legal restriction. In other words, there is no legal restriction for an employer to negotiate with a smaller union that has less than 40 per cent membership. It is rather a labour practice that gives the employer a choice to not consider the opinions of small unions. Therefore, upon a literal interpretation of the law, there appears to be no legal impediment that prevents an employer from bargaining with a TU that has a lower representation than 40 per cent.

Moreover, KIIs with small TUs revealed that the 40 per cent threshold is a hindrance as they cannot legally oblige the employers to listen to their demands. According to them, the struggle to present the worker's demands to

their employers is compounded by the fact that they have a lower representation than the 40 per cent.¹⁸⁴ The struggle for smaller TUs to increase membership is an uphill battle, especially in the plantation sector, as large TUs with political patronage have dominated the sector.¹⁸⁵ The HCTs seek union membership as a pre-emptive mechanism to ensure protection in the event they face a problem.¹⁸⁶ The affiliation to a TU that holds political power in the incumbent government has also proven to be beneficial as political parties prioritise their supporters when allocating new houses to workers.¹⁸⁷ The union leaders of plantation TUs, unlike in other work sectors, are not selected through their membership.¹⁸⁸ Therefore, the community often view TUs with dissatisfaction.¹⁸⁹ In this context, it is uncertain whether the existing TUs with a larger membership adequately represent and advocate on behalf of workers with the employers in the sector. Hence, during the KIIs, the smaller TUs suggested a 20 per cent threshold as Sri Lanka does not have a heavily unionised workforce across all sectors.

CEACR Observations

The above issue was also recognised by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in their observations in 2021.¹⁹⁰ The Committee, referring to the 40 per cent threshold imposed by the IDA, emphasised the need to take appropriate measures to increase workers' representativeness. The CEACR observations are discussed in detail in Section III below.

From a comparative perspective, in Mexico where there are multiple unions, the CA will be concluded with all the majority unions that represent workers in that profession. However, all unions must be in agreement with the terms.¹⁹¹

Art. 388 of the Mexican Federal Labour Law establishes the representation criterion. "If there are several unions within the same company, the following rules will be observed:

- a. If a company or industrial unions or both exist, the collective contract will be concluded with the one that obtains the greatest number of votes from the workers within the company;*
- b. If more unions are present, the collective agreement will be concluded with all the majority unions that represent the professions, provided they agree. Otherwise, each union will conclude a collective contract for their profession;*
- c. If union and company or industry unions exist, the former may enter into a collective contract for their profession, provided that the number of workers in their favour is greater than that of workers in the same profession who vote for the company union or industry."¹⁹²*

By contrast, in Bangladesh, there are no general representativity requirements set by legislation for a TU to have collective bargaining rights. However, "under section 202 of Labour Act, if a trade union is the sole union present in an enterprise, it will be granted exclusive bargaining agent status".¹⁹³ Also, in an enterprise with multiple unions, the TU voted to be the bargaining agent by the majority of workers will have exclusive rights to bargain in that enterprise.

5.4.3. Lack of compliance with international labour framework

Sri Lanka has ratified two ILO Conventions that are of particular importance to plantation workers. First, the ILO Convention (No.98)(C98) Right to Organise and Collective Bargaining Convention is important as the plantation sector largely consists of workers that have formed collective arrangements with their employers. Second, the ILO Convention No.110 - Plantations Convention sets out basic labour standards that need to be met in relation to plantation workers.

a. ILO Right to Organise and Collective Bargaining Convention - (C98)

Sri Lanka ratified C98 in December 1972. C98 covers workers' rights to organise and bargain collectively. Article 1 of C98 establishes such rights by ensuring that workers are given adequate protection in their employment against acts of anti-union discrimination by the employer.

Observations (CEACR) - adopted 2021, published 110th ILC session (2022)¹⁹⁴

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) in ILO has made the following observations in the report for 2022:

- Article 1: Article states that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. The committee emphasised the government's responsibility to take measures that make the country's labour standards fall in line with its international obligations.¹⁹⁵ In addition, the committee reiterated the inadequate provisions within the IDA that enable only the Department of Labour (DOL) to file actions against anti-union discrimination. As such, the committee urged the government to take necessary steps to amend the existing provisions of the IDA to establish TUs' right to bring anti-union discrimination cases before a court of law and seek redress.

- Article 4: The committee has taken cognisance of the limitation placed by the IDA Sec. 32(A)(g) that only obliges employers to negotiate with TUs if such unions have more than 40 per cent of the membership of workers. As such, the committee reiterated that the government should take appropriate measures to increase the participation of TUs that have less than 40 per cent membership. The committee also emphasised the effect of legislation, stating that representative requirements imposed by law can have a significant influence on the number of collective agreements concluded.¹⁹⁶ The committee also stated that the requirements should be designed in a manner that they "effectively promote the development of free and voluntary collective bargaining".¹⁹⁷

b. ILO Convention No.110 Plantations Convention - (C110)

The convention was introduced considering the conditions of employment of plantation workers and that exceptional measures that must be taken to expedite the application of the conventions.¹⁹⁸

Sri Lanka ratified the Plantation Convention in April 1995 and it remains in force. However, despite the ratification, Sri Lanka has made reservations to Parts II, III, V, VI, X and XII under Article 3, paragraph 1(b) of the convention. As such, all provisions in the convention relating to the following sections do not apply to Sri Lanka:

- Part II migrant workers: including recruitment of migrant workers, registration, medical examinations of migrant workers;
- Part III contracts of employment: including maximum periods of the contract of employment, the maximum period of employment if the family of the worker is away;
- Part V annual holidays with pay: including annual holidays with pay;

- Part VI weekly rest: including a period of rest in the seven-day week;
- Part X freedom of association: the worker's rights to establish and join a labour union;
- Part XII housing: provisions including encouraging authorities to set minimum standards for housing.

Sri Lanka is the only ratifying country to make reservations under the C110.¹⁹⁹ The effect of these reservations is that they limit the application of the convention, which will eventually stifle the exercise of rights of the workers. For instance, Sri Lanka has made reservations on Part XII pertaining to housing and establishing minimum standards for estate housing by public authorities. This aspect is crucial considering that some of the line houses where workers reside are of poor quality [see section 3(b)].

Direct Request (CEACR) - adopted 2019, published 109th ILC session (2021)²⁰⁰

In terms of Articles 1-4, the committee notes that although the weekly and annual leave entitlements are decided by Wages Board decisions, "a range of factors including the geographical area of the plantation and the nature of the cultivation" result in variations in deciding the number of days of annual leave entitlements.²⁰¹ The committee also notes, as per the government indications, that the weekly rest days constitute unpaid

holidays as well. The Plantation Convention, however, under Part V, states that the required minimum period of continuous service and the minimum duration of the annual holidays with pay should be decided by law or CAs. The convention also states, where applicable, favourable treatment for young workers should be provided considering their length of work.²⁰² As such, the committee emphasised the need for government to keep the ILO informed of any progress in accepting Parts V, VI and X of the convention for which Sri Lanka has made reservations.

Furthermore, in terms of Part IV (Wages), the committee had requested a copy of the relevant CA and updated information on the same. However, as stated above, the disagreement between the RPCs and the labour unions has led to the dissolution of the CA and the matters are now being litigated in court. Therefore, although the Wages Board decision of 2021 is the current applicable wage rate, the effectiveness of that decision and the problems associated with it will have to be assessed after representations are made by Sri Lanka to the committee.

Further discrepancies between the current legislation and the provisions of Conventions No. 98 and No. 110 have been laid out in detail in Table 7 below.

The analysis below in Tables 7 and 8 will illustrate the gaps between Sri Lanka's obligations under the conventions it has ratified and the existing law with regard to tea estate workers.

Gap analysis on ILO Convention No.98 (C98) Right to Organise and Collective Bargaining Convention

Table 7: Gap Analysis on C98

Article	Convention No.98	Sri Lankan law	Analysis
Article 2	<p>1. Workers’ and employers’ organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.</p> <p>2. In particular, acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations, or to support workers’ organisations by financial or other means, with the object of placing such organisations under the control of employers or employers’ organisations, shall be deemed to constitute acts of interference within the meaning of this Article.</p>	<p>Industrial Dispute Act (1973) Section 32A (a)-(f)</p> <p>prohibits an employer from engaging in acts of anti-union discrimination.²⁰³</p> <p>Sec 43 of the Act states that any person who fails to comply with these provisions will be liable, on conviction after a summary trial before a magistrate, to a fine not exceeding Rs. 100,000.</p> <p>Trade Union Representatives (Entry into Estates) Act</p> <p>The Act provides legal provisions related to the right of a TU representative to enter into the estates.</p> <p>According to sec 2(1) of the Act, TU representatives can visit their members in the estate or can hold members’ meetings of such TUs within the estate and they are awarded the right to enter the estate for these purposes, provided that they should provide their identity upon request.</p> <p>Further according to sec 02 (2) of the Act obstructing the entry of a union representative is an offence under the Act.</p>	<p>Section 32A of the IDA provides for safeguards against acts of anti-union discrimination.</p> <p>However, the provisions of the Act only protect against discriminatory termination.²⁰⁴</p> <p>There are no specific provisions for TUs to file actions against employers in case of alleged anti-union discriminatory practices.²⁰⁵</p>

Article	Convention No.98	Sri Lankan law	Analysis
<p>Article 4</p>	<p>Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment using collective agreements.</p>	<p>Industrial Dispute Amendment Act No 56 of 1999</p> <p>Sec 32A(g) provides that no employer can refuse to bargain with a TU that has in its membership not less than forty per centum of the workmen on whose behalf such trade unions seek to bargain.</p> <p>For this, the commissioner of labour or an officer authorised by him may conduct a poll at any workplace to ascertain whether at least 40 per cent of workmen on whose behalf the TU seeks to bargain with the employers are members of such TU. This is considered a threshold to decide the bargaining agent.</p> <p>Sec43 Any person who fails to comply with these will be guilty of an offence.</p>	<p>The Act recognises the rights granted to the "most representative TU" (the bargaining agent) but there is no regulation on conducting the poll of workers as mentioned in Sec 32A(g).²⁰⁶</p> <p>In the absence of regulations, the DOL has to go through difficulties²⁰⁷ when conducting the poll.²⁰⁸</p> <p>Further, there is no specific obligation on either party to enter into a collective agreement or to reach a conclusion in the bargaining process. As a result, this is considered an unattractive dispute resolution method by employers.²⁰⁹</p> <p>There is no legal provision on the procedure for the recognition of bargaining agents. The prevailing situation is that the CA that governs the wages of workers has been made defunct due to the refusal of RPCs to agree. In this context, the absence of a legal provision to enforce employers to negotiate has significantly affected the labour rights of the workers.</p>

Gap analysis on ILO Convention No.110 (C110) Plantation Convention

Table 8: Legal Gap analysis with C110

Plantation Convention	Legislation	Gap analysis
<p>Part V and Part VI Annual Holidays with Pay and weekly rest</p> <p>Article 36 Workers employed by plantations should be granted an annual holiday with pay after continuous service with the same employer.</p> <p>Article 38 Minimum period of continuous service and minimum duration of the annual holiday will be decided by the laws/ collective agreement/arbitration awards.</p> <p>Article 39 Stipulates that</p> <ul style="list-style-type: none"> a. More favourable treatment for young workers. b. Increase in annual holiday with the length of service. c. Providing holiday or payment in lieu of, in case of not qualifying sufficient duration but exceeding the minimum period required. d. excluding public holidays and weekly rest periods from the annual holiday. <p>Weekly rest</p> <p>Article 43 Plantation workers shall enjoy in every period of seven days a period of rest comprising at least 24 consecutive hours.</p>	<p>Wages Boards Ordinance</p> <p>Section 25 The section provides that the wages board established for the trade can decide the conditions and remuneration pertaining to annual leaves.</p> <p>Section 24 This section illustrates that the wages board may determine the working weeks, intervals, rest on a working day and weekly holiday.</p>	<p>Part I, Section 8(i) of the Collective Agreement No. 13 of 2003 awards 300 days of work including paid holidays, which includes annual leave and statutory holidays. The CA does not specifically mention the duration of the annual holidays. The conditions and annual holidays awarded by each wages board are different from one another due to the difference like cultivation and geographical area.</p> <p>However, there is no international obligation to abide by Part V and VI of the convention since the government had made reservations. The current system of annual leave and weekly rest are governed by the wages board decisions. Due to the reservation, there is no international obligation on the government to ensure that workers are granted annual leave/holidays/weekly rest periods. However, the Committee of Experts on the Application of Conventions in 2021 made a direct request to the government to “consider the possible acceptance of the obligations of the V, VI Parts of the Convention”²¹⁰</p> <p>The weekly holidays awarded to the workers are unpaid in the plantation sector since the wages are decided daily.</p> <p>However, the government of Sri Lanka had reserved the application of this Article. Accordingly, as mentioned above, there is no international obligation on the part of the government to abide by this Article.</p>

Plantation Convention	Legislation	Gap analysis
<p>Part VII- Maternity Protection</p> <p>Article 47(3) The minimum period of maternity leave should be 12 weeks.</p> <p>Article 47(4) Minimum period of compulsory leave after confinement – 6 weeks.</p> <p>Article 47(7) pregnant woman shall not be required to do work harmful to her in the period prior to her maternity leave.</p> <p>Article 49</p> <ol style="list-style-type: none"> 1. Nursing mothers can interrupt the working hours 2. Such hours would be considered paid hours. <p>Article 50(1) An employer cannot serve notice of dismissal within such period of absence or on a day that such notice would expire during such absence.</p> <p>Article 50(2) A worker cannot be terminated due to pregnancy or for nursing the child.</p> <p>Article-48(2) cash benefits</p> <p>Article-48(2) Medical benefits</p>	<p>Maternity Benefit Ordinance</p> <p>Section 3(a) 12 weeks in case of a live child.</p> <p>Section 3(b) 6 weeks in case of a deceased child.</p> <p>Section 10B An employer should not employ a pregnant woman in injurious work during pregnancy and after confinement.</p> <p>Section 12 B If the child is under one year in the period of nine hours of work, two nursing intervals are provided. It will be also considered a working hour.</p> <p>Section 10 Women workers are not to be given notice of dismissal during authorised absence from employment.</p> <p>Section 10 A Employment of a women worker cannot be terminated due to her pregnancy or confinement of illness in consequence of such pregnancy or confinement.</p> <p>Section 03 and 04 Paid leave provided.</p> <p>Family Health Bureau under the MOH provides ante-natal and post-natal care, free of charge.</p> <p>Medical Wants Ordinance This Ordinance was introduced to address the medical wants of labourers in plantation districts.</p>	<p>Sri Lankan law has provided sufficient legal coverage by implementing the Maternity Benefits Ordinance.</p> <p>The Medical Wants Ordinance, however, refers to the Maternity Benefits Ordinance (MBO) but it has failed to reflect the amendments to the MBO such as the repeal of alternative maternity benefits in 2018. Removal of this section provides a uniform law for all women workers, and it conforms with the required international standards.</p> <p>Further, the Medical Wants Ordinance terminologies are outdated. For example, the Medical Wants Ordinance refers to the position of Kangany, who has the duty of reporting any birth, death and any case of sickness or accident of his labourers.</p> <p>However, the role of a kangany no longer exists in the estate sector. Moreover, the tasks of registration of births and deaths are generally undertaken by the GN of the area, along with the DS.²¹¹</p> <p>The outdated terminology in the Medical Wants Ordinance such as Kangany should be removed. Furthermore, the tasks assigned to the Kangany according to the Medical Wants Ordinance should be amended to reflect the current administrative procedures.</p> <p>Alternative maternity benefits to help economically poor pregnant women are no longer issued as a practice. This is because the MBO was amended to remove alternative maternity benefits. Accordingly, this amendment in the MBO should be similarly reflected in Section 12 (h) of the Medical Wants Ordinance, and as such, alternative maternity benefits should be removed.</p>

Plantation Convention	Legislation	Gap analysis
	<p>Section 12 (f)</p> <p>The superintendent must provide rice, money, and lodging for one month after the childbirth of a female worker according to Sec 32 of the Act.</p> <p>Provision</p> <p>The superintendent will not be held liable if there are maternity benefits arrangements according to Sec 05 or alternative maternity benefits arranged as per sec 03 of the Act.</p>	
<p>Part - VIII Workmen's compensation.</p> <p>Article-52</p> <p>Laws and regulations to provide compensation for injuries arising out of or in course of employment</p>	<p>Workmen's Compensation Ordinance</p> <p>Section 3</p> <p>The employer is liable if personal injury is caused to a workman;</p> <ul style="list-style-type: none"> i. by accident arising out of and in the course of his/her employment; or ii. by an accident that takes place while coming from his/her residence to the workplace or while returning from work. <p>The employer shall be liable to pay compensation if personal injury is caused to a worker by accident arising out of and in the course of employment.</p> <p>The employer is not liable -</p> <ul style="list-style-type: none"> 1. If the injury(disablement)does not last more than three days 2. When the accident occurred, the worker was under the influence of drinks or drugs 	<p>The Workmen's Compensation Ordinance protects workers in case of injuries and diseases arising out of physical and mechanical hazards. The Schedule of the Act covers various injuries and diseases such as skin diseases,²¹² which are frequently reported by the estate workers due to their high exposure to chemicals.²¹³ However, the schedule of the Act is silent about the biological hazards encountered such as snake bites and wasp attacks often reported by the employees of the agriculture sector including estate workers.</p> <p>Further, Sec 57 of the WCO urges the employer to report where a worker has been injured due to an accident that has occurred during the employment. If the worker either dies within a period of seven consecutive days due to the accident or absents him or herself from work for that period, his/her employer has to report such an accident to the commissioner within 14 days from the date of the accident.</p> <p>It is recommended that the schedule of the act that lists injuries and diseases should be updated to include biological hazards as mentioned above.</p>

Plantation Convention	Legislation	Gap analysis
	<p>3. If the worker has been wilfully disobedient of safety rules.</p> <p>4. If the workman has wilfully removed safety gear or such other device.</p> <p>Section 04</p> <p>The employer is liable to pay compensation for certain diseases contracted by a workman in course of employment.</p> <p>National Institute Of Occupational Safety And Health Act</p> <p>Section 04(2)</p> <p>Assess and evaluate the standards that should be maintained in the workplace or work environment and advise the minister on legislative matters and advise occupants or workers.</p>	<p>Moreover, the Workmen’s Compensation Ordinance in Sec 3 covers the injuries and diseases arising out of the course of employment. This could be widely interpreted to include the injuries and diseases arising out of the course of employment or while travelling or within the business premises by insects or venomous creatures. Since these types of injuries often occur within the premise of business (agriculture) often there is a reluctance to identify them as employment injuries.</p> <p>However, ILO R121 – Employment Injury Benefits Recommendation, 1964 (No. 121) in Article 5 identifies accidents, regardless of their cause, sustained during working hours at or near the place of work or at any place where the worker would not have been except for his employment as industrial accidents.²¹⁴ Hence, unless the injured worker falls within the circumstances identified in the WCO that would diminish the liability of the employer such as the worker being under the influence of alcohol or having disobeyed safety rules, the employer will be liable. On the other hand, prevention of injuries and accidents is also a fundamental aspect of the right to just and favourable conditions of work, as identified by the Committee on Economic, Social and Cultural Rights under Article 7 of the International Covenant on Economic, Social and Cultural Rights.²¹⁵ The committee further identifies that state parties to this convention should adopt a national policy that encapsulates specific actions required by employers in areas of prevention and response to accidents, and stipulates the fundamental responsibility of employers to protect the health and safety of workers.²¹⁶</p>

Plantation Convention	Legislation	Gap analysis
		<p>In this regard, Sri Lanka has created guidelines that would specify necessary precautions to be followed in the plantation sector as protection against biological hazards such as wasp attacks and snake bites. This guideline has been published by the National Institution of Occupational Safety and Health. The guideline is known as the 'Guidance Manual for the implementation of Occupational Safety and Health practices in the plantation sector' ("NIOSH Manual"). This consists of precautions to be taken and first aid to be administered in the event of biological hazards such as bee stings or insect bites. (See Appendix 1 for the Cover page of the NIOSH Manual)</p> <p>Although the NIOSH Manual is not a legally binding document for employers, it identifies that the employer has a responsibility to assure a worker's safety in estate fields.</p> <p>However, since there is no particular way to limit the liability of the employer for workplace injuries suffered by workmen, it is recommended that employers be mandated by law to obtain insurance policies that cover workplace injuries. It is noteworthy that Sri Lanka does not currently impose a mandatory obligation on the employer to obtain insurance to cover workers' injuries.</p>
<p>Part IX – Right to organise and collective bargaining.</p> <p>Article 55</p> <p>Investigation of the dispute to reach a fair settlement.</p> <p>Article 58</p> <p>Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.</p>	<p>Industrial Dispute Act (IDA)</p> <p>Preamble: An Act to provide for the prevention, investigation and settlement of industrial disputes, and for matters connected therewith or incidental thereto.</p> <p>Section 3</p> <p>If the commissioner is satisfied with the existence of an industrial dispute, the commissioner</p>	<p>The tea industry is a heavily unionised sector in Sri Lanka. There are several major trade unions. According to Sec 32 (g) of the IDA, the employers cannot refuse to bargain with a TU that has a 40 per cent representation of the workers. But this does not prevent RPCs from collectively bargaining with TUs with a minor representation. Even though this labour practice ensures that TUs that represent most workers are involved in the bargaining process, the 40 per cent thresh</p>

Plantation Convention	Legislation	Gap analysis
	<p>may refer it to settlement through collective agreement or conciliation or arbitration.</p> <p>Section 3(3)</p> <p>In absence of a settlement from the above methods, the commissioner may, if he considers it expedient to do so, take action as often as he considers it necessary so to do, in respect of that dispute.</p> <p>IDA (1973) Section 32A (a)-(f)</p> <p>prohibits an employer from engaging in acts of anti-union discrimination.</p> <p>Sec 43 of the Act states that any person who fails to comply with these provisions will be liable on conviction after a summary trial before a magistrate to a fine not exceeding Rs. 100,000.</p>	<p>old hinders the involvement of minor TUs in the collective bargaining process. This is dealt with in detail in Section 5.4.</p> <p>The IDA from Section 05 to 10 B facilitates dispute resolution through a collective agreement. However, the latest collective agreement in relation to the tea plantations became inoperative as of 2019. Since then, wages are decided by the Wages Board decisions. The collective bargaining power of workers has been thwarted due to the absence of the CA.</p>
<p>Part X-Freedom of Association</p> <p>Article 62</p> <p>The employers and workers subject only to the rules of the organisation shall have the right to establish and join the organisation of their own choice.</p> <p>Article 63</p> <p>63 (1)</p> <p>Workers' and employers' organisations shall have the right to draw up their constitutions and rules and to elect their representatives in full freedom.</p>	<p>Trade Union Ordinance</p> <p>Section 2</p> <p>TUs, means any association or combination of workmen or employers, whether temporary or permanent and the Act also provides for the constitution, rights and responsibilities of Trade unions.</p> <p>IDA (1973)</p> <p>Section 32A (a)-(f)</p> <p>prohibits an employer from engaging in acts of anti-union discrimination.</p>	<p>The legal framework of Sri Lanka provides sufficient protection to the estate workers by ensuring their freedom of association. Trade Union Ordinance and IDA protects against acts of anti-union discrimination. Trade Union Representative Act ensures that TU members are given the freedom to access the estates to meet workers and conduct union meetings.</p> <p>However, it is worth noting that Sri Lanka has submitted a reservation on Part X of the Plantation Convention. Although Sri Lankan laws comply with the requirement of the Plantation Convention, the ILO Committee of Experts on the Application of Conventions (CEACR), in 2021 made a direct request to the Sri Lankan government to consider the possibility of accepting the obligations under freedom of association of the convention.²¹⁷</p>

Plantation Convention	Legislation	Gap analysis
<p>63 (2)</p> <p>The public authorities should refrain from interference.</p>	<p>Trade Union Representatives (Entry into Estates) Act</p> <p>The Act provides legal provisions related to the TU representative entry into the estates.</p> <p>Section 2(1)</p> <p>TU representatives can visit their members in the estate or can hold members’ meetings of such trade unions within the estate and they are awarded the right to enter the estate for these purposes, provided that they provide their identity upon request.</p> <p>Section 2 (2)</p> <p>Obstructing the entry of a union representative is an offence under the Act.</p>	
<p>Part XI – Labour Inspection</p> <p>Article- 71</p> <p>Maintain a system of labour inspection</p> <p>Article-74</p> <p>Secure enforcement of legal provisions related to the conditions of work and the protection of workers while engaged in their work.</p>	<p>Indian Immigrant Labour Ordinance</p> <p>Article 03</p> <p>Appointment of inspectors, assistant inspectors as may be necessary for carrying out the law.</p> <p>Section 07</p> <p>stipulates that the deputy commissioner, medical officer, inspector or assistant inspectors can at all reasonable time, with or without notice, inspect the condition of the labourers, their houses and the medical treatment provided to them.</p>	<p>The terminologies used in these acts and laws are outdated. For example, an Indian immigrant labour ordinance was introduced for the Indian immigrants and the Sec. 08 of the Act allows the agent of the Indian Government to Act as an inspection institute that carries functions under Sec 07 of the Act.</p> <p>The reference to Indian immigrants is no longer applicable as generations have passed since the settlement of Indian immigrants in Sri Lanka. Currently, almost all workers engaged in estates are recognised as citizens in Sri Lanka, making them fall outside the scope of the laws that refer to Indian Immigrants.</p>

Plantation Convention	Legislation	Gap analysis
	<p>Employees’ Provident Fund Act.</p> <p>Section -32</p> <p>Commissioner and other officers authorised in writing can inspect the premise at any time for the records related to the earning and inspect an employee or employer.</p> <p>Medical Wants Ordinance</p> <p>Section- 07</p> <p>Medical officers have the power to inspect the estates, examine the medical conditions of the labourers, inspect the hospital or dispensary and inspect the sanitary conditions of the estates.</p> <p>Employees’ Trust Fund</p> <p>Section -38</p> <p>Any board member or authorised officer can inspect at any time the premises or the register related to the earning.</p> <p>The member is also authorised to examine the employers and employees and examine the records or other documents relating to contribution to any provident fund.</p> <p>National Institute of Occupational Safety and Health Act</p> <p>Section -22</p> <p>Director general or an officer or agent authorised on behalf of the Director General can enter any workplace at all reasonable hours and perform the functions of the institute.</p>	<p>Hence, the outdated derogatory terms of the Act need to be updated according to the current context of the workers. The terms referring to the workers as “Indian immigrants” should be amended in line with other labour legislation in Sri Lanka, which commonly refers to the term “workman”.</p> <p>Regulations/guidelines that articulate the preventative methods should be followed by RPCs in estates to protect workers when working in the fields.</p> <p>Further, the factories ordinance provides for the provisions that stipulate the protective measures. These measures are only applicable to factories and not to the workers working in the fields. Therefore, the scope of the Factories Ordinance should be expanded to include plantation fields as well, to extend the protections offered by the ordinance to the estate workers.</p> <p>In relation to the National Institute of Occupational Safety and Health Act, the institute is only vested with advocacy powers in terms of advising the government on safety measurements, educating and providing necessary safety training.²¹⁸ Hence, the Act does not vest the institute with powers to enforce the law against the employers in case of non-compliance with any safety measurements other than to inspect the premises. As such, the National Institute of Occupational Safety and Health Act should also be amended to vest the Institute with powers to enforce or prosecute employers for non-compliance.</p>

Plantation Convention	Legislation	Gap analysis
	<p>Factories Ordinance</p> <p>Section 51- 58B</p> <p>The sections stipulate the safety measures and precautions that should be taken to avoid certain incidents.</p> <p>Section 58</p> <p>No person should be employed to lift, carry or move any load so heavy as to be likely to cause injury to him/her.</p> <p>Sec 58 (2)</p> <p>Minister may create regulations on maximum weight that could be carried and also the circumstances and class of workers attached.</p>	
<p>Part XII Housing</p> <p>Article 86</p> <p>1. The minimum standards and specifications of the accommodation to be provided by the preceding Article shall be laid down by the appropriate public authority. The latter shall wherever practicable, constitute advisory boards consisting of representatives of employers and workers for consultation regarding matters connected with housing.</p>	<p>Independence Gazette, No.10168 of 1950</p> <p>Stipulated that the line homes constructed after the 1950s must consist of an open veranda or closed veranda, a living room, a back veranda and a kitchen.²¹⁹</p> <p>Estate Labour Indian Ordinance- Section 24 states that separate rooms should be provided for each married couple.²²⁰</p> <p>Estate Quarters (Special Provisions) Act</p> <p>Section 02</p> <p>An employee of an estate who is provided with quarters has the right to live in the quarters with dependents after the termination of their services until they are ejected.²²¹</p>	<p>Sri Lanka filed a reservation with regards to the provisions on housing contained in C110.²²⁴ Therefore, Sri Lanka has no international obligation to comply with Article 86 of the convention. Sri Lanka should reverse the reservation and should consider accepting the possible obligations stipulated in the conventions with regard to housing.</p> <p>Further, article 25 of the UDHR and Article 11 of the ICESCR also recognise the right to a standard of living adequate for the health and well-being of a person and his/her family, including food, clothing, housing and medical care. As a country that has ratified the above convention, Sri Lanka must provide adequate housing under the convention.²²⁵</p>

Plantation Convention	Legislation	Gap analysis
<p>2. Such minimum standards shall include specifications concerning-</p> <ul style="list-style-type: none"> a. the construction materials to be used; b. the minimum size of the accommodation, its layout, ventilation, and floor and air space; c. veranda space, cooking, washing, storage, water supply and sanitary facilities. 	<p>During this period, employee has all the facilities that he had before the termination of his services.²²²</p> <p>If any person prevents or deprives or interferes with the occupation of such other person of such quarters, s/he shall be guilty of an offence.²²³</p>	
<p>Part XIII – Medical care Article-89 Provide adequate medical facilities.</p> <p>Article-90 provide adequate medical service – for all with the assistance of a qualified person.</p>	<p>Medical Wants Ordinance Section-03 Estate Medical District could be defined by the minister. The district borders would be defined by the estates.</p> <p>Section-04 In every medical district, a hospital and dispensary would be established to fit the medical wants of the estates within the district.</p> <p>Section- 05 There will be an appointment of district medical officers and apothecaries.</p> <p>Section- 02 “District medical officer” includes district medical assistant, visiting medical officer, and visiting apothecary.</p>	<p>In Sri Lanka, state medical services are provided free of charge through the MOH. The national legislation complies with the international standards required.</p> <p>C110 requires qualified personnel to be appointed to support the medical service.</p> <p>Estates have had the practice of appointing estate medical officers or EMAs to be in charge of hospitals and dispensaries. Some of these medical officers are also named apothecaries. Section 5 of the Medical Wants Ordinance states that the appointment of apothecaries is limited to estate medical districts. To qualify as an EMA/apothecary, an officer needs to pass the exam devised by the Sri Lanka Medical Council. Therefore, for apothecaries, the entry qualifications require only the successful completion of the pharmacist’s examination along with the stipulated years of training.²²⁶ Moreover, Sec 41 of the Medical Ordinance states that estate apothecaries are allowed to practice medicine and surgery if they have eight years of practice and registration.</p>

Plantation Convention	Legislation	Gap analysis
	<p>Medical Ordinance</p> <p>Section-41</p> <p>Estate apothecaries and estate dispensers are permitted to practise medicine and surgery if they had registered according to Sec 41 (2A) of the Act.</p> <p>Section 41 (2A)</p> <p>The apothecary should have an aggregate period of at least eight years of efficient and satisfactory service as an estate apothecary on an estate or an estate and in the public service.</p>	<p>The Medical Ordinance, on the other hand, requires under Sec. 29, that a medical practitioner satisfy certain conditions to qualify as a medical practitioner, including the completion of a degree of medicine. Therefore, in other parts of the country, a medical practitioner has to possess a degree in medicine to prescribe medicine.</p> <p>This difference in qualifying conditions between EMAs and medical practitioners under the Medical Ordinance can create a disparity in the quality of the medical service delivered. As such, appointing apothecaries will be problematic within estates if they do not possess the necessary qualifications to prescribe medicine.</p> <p>Further, the Medical Wants Ordinance provisions are outdated, whereby it has provisions to charge the RPC for the drugs and the service provided by the government. Further, in default of such payment the government agent or his representatives reserve the right to seize the crops, livestock and belongings of such RPCs until the full settlement of the payment.²²⁷ These provisions are not applicable in the current context as Sri Lanka provides free medical services. The ordinance also stipulates provisions for establishing a Medical Wants Committee. These provisions are no longer in use.</p> <p>To address these issues, the disparities between the qualifications criteria of persons who can prescribe medicine should be removed to ensure that the HCT has equal access to quality medical professionals. In other words, the qualifying criteria of the Medical Wants Ordinance should be in line with Medical Ordinance.</p>

Plantation Convention	Legislation	Gap analysis
		<p>The KILs revealed that the MOH has already commenced this process where medical practitioners qualified under the Medical Ordinance are being appointed to estate hospitals as well.²²⁸ However, to speed up the process of selecting qualified experts, the Medical Ordinance could be changed to include a provision requiring these appointments to be made within a particular timeframe and under the supervision of the appropriate minister.</p>

5.5. Summary

The enactment of the Citizenship to Persons of Indian Origin Act, No.35 of 2003 secured the legal citizenship of the HCT community. However, despite this legal (formal) recognition of the HCT community through legislation, they remain one of the most marginalised communities economically, socially, and politically. The report has identified three key legal issues and a policy concern that should be addressed to ensure that the rights of this community are upheld. They are: (1) the use of archaic terms in the laws that apply to the estate sector; (2) the inability of the HCT community to meaningfully access state services; and (3) the deprivation of housing rights. In relation to policy issues, the report highlighted the difficulties faced by the HCT community due to poor implementation of the OLP.

Much of the community's rights, including labour rights, have been side-lined by the continuation of archaic laws.

These laws contain outdated and ambiguous terminology in reference to the community such as 'immigrant labourer' and 'Kangany'.²²⁹ Moreover, the distancing of the HCT community from state services by depriving them of easy access to administrative units - GNDs and DSDs - has led the community to an increased dependence on RPCs. This distancing of the state is further compounded by the poor implementation of the OLP. Furthermore, the uncertainties surrounding the property rights of workers to the line houses that they have inhabited for decades have deprived many within the HCT community of the basic right of housing.

Overall, the socio-economic issues faced by the HCT community have been exacerbated by the uncertainties surrounding the laws and the absence of a cohesive legal framework to protect this community.

6

Recommendations

This section briefly sets out recommendations for each of the main legal issues identified in Section 5 above. The previous section identified four main legal and policy issues, which are: (i) delimitation of administrative

units, (ii) housing and land issues, (iii) language issues, and lastly (iv) issues about labour laws. The following sections will identify in detail recommendations for each of the legal issues identified in Section 5.

6.1. Introduction of a delimitation criteria

Addressing the challenges that the HCT community faces in accessing public services can contribute to improving the nexus between state functions and the HCT community. As such, in terms of the delimitation process, the population size and the geographical area should ideally be manageable by a single Grama Niladhari or the Divisional Secretary responsible for the area. Similarly, residents in a particular area should be able to easily access government services without it being prohibitive.

Thus, a delimitation criterion established by law and/or policy is essential to minimise the disparities in the delimitation process. This will establish uniformity and better enforcement. In this regard, criteria has been formulated by a member of the former Delimitation Commission.²³⁰ In this method, the 25 districts of the country are grouped into 9 broad categories, taking into consideration factors such as the population density, terrain, elevation and the status of road access.²³¹ This proposal, which was published in 2021, is aimed at providing a basis to arrive at an appropriate size of a GND for each category. However, at the time of compiling

this report (February 2022), the proposed delimitation criteria is yet to receive the approval of the ministry in charge of the subject.

In the process of formulating a delimitation criterion, it is apt for Sri Lanka to consider international examples to draw a comparative analysis. For instance, New Zealand has taken into consideration factors such as the interests of various communities (for example, tribal affiliations of Maori electorates), facilitation of communication, and topographical features when determining the electorates' delimitation process.²³² They also revisit the existing boundaries every five years to consider any changes to the boundaries. Furthermore, South Africa, in compliance with its objectives under their relevant law - Sections 24 and 25 of the Municipal Demarcation Act - takes the following five factors into account when demarcating municipal boundaries: "(i) existing and expected patterns of human settlement and migration, (ii) employment; (iii) commuting and dominant transport movements; (iv) spending; and (v) the use of amenities, recreational facilities and infrastructure...".²³³

The reformation of boundaries through the delimitation process is a lengthy process and is complicated by the political implications of redrawing boundaries. Therefore, as an alternative to reforming the delimitation process or in the interim, the administrative functions could be provided through a Multipurpose Service Centre (MSC).²³⁴ The MSC would serve as a hub for services through the establishment of a physical structure in a central location closer to communities. Each MSC can house a variety of administrative services such as DS services, postal and bank services, and development functions under one roof for the convenience of

all stakeholders. The MSCs could be located near factories, collection points or other such central points that are convenient to the community.²³⁵ Such MSCs could be operated during convenient hours with a special focus on plantation communities beyond the standard working hours of 9 am to 5 pm. This could significantly reduce the extra time and costs borne by workers and the communities to commute to DS offices located far away. More importantly, this could eliminate the extra money that workers spend on intermediaries such as brokers who currently complete administrative tasks/service access on the worker's behalf.

6.2. Establishing minimum standards when providing alternative housing

The government, as the KILs have confirmed, is currently in the process of providing workers residing in estate quarters alternative housing as a solution to the issues they face. However, some workers expressed displeasure at the idea of shifting to alternative housing provided by the government based on several factors such as the new houses being too far from the work estate and the lack of schools in the vicinity.

The right to adequate housing is enshrined in multiple international conventions and declarations, the pioneer being the Universal Declaration of Human Rights 1948 (UDHR). These other international instruments include the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the Convention on the Elimination of All Forms of Discrimination Against Women (1979) (CEDAW).²³⁶ The UDHR recognises the right to housing as a right of every woman, man and child with an adequate standard of living for one's health and wellbeing.²³⁷ Multiple international instruments cover the right to adequate housing from a wide variety of angles. For instance, the housing rights of women have been enshrined in Article 14 of CEDAW, which eliminates discrimination against women, especially in terms of housing and sanitation. The United Nations Declaration of the Rights of the Child (1959) addresses the housing rights of children. Moreover, the housing rights of workers have been recognised by ILO

Recommendation No.115 on Worker's Housing.²³⁸

Although Sri Lanka has made reservations under Plantation Convention in terms of housing, as stated above, the right to an adequate standard of living has been recognised in multiple international instruments that Sri Lanka has ratified or acceded. The UDHR in Article 25.1 and ICESCR in Article 11 explicitly provide that the state should recognise the right to an adequate standard of living. Therefore, although Sri Lanka has made reservations in terms of the Plantation Convention, the state's obligation to secure adequate housing in terms of other international treaties and conventions is very much intact and in force.

The right to adequate housing is ensured by other international obligations as well. The responsibility of providing adequate housing, however, is not restricted to the government. The elements of adequate housing according to UN Habitat includes:²³⁹

1. Protection against forced evictions and the arbitrary destruction and demolition of one's home;
2. The right to be free from arbitrary interference with one's home, privacy and family; and
3. The right to choose one's residence, to determine where to live and the freedom of movement.

It also debunks the common misconception that housing requires the state to build housing for the entire population.

However, the state must meet the minimum standards recognised through their international obligations, when providing alternative houses. Currently, various projects are being conducted through the State Ministry of Estate Housing and Infrastructure to provide new houses for workers.²⁴⁰ The annual Performance Report of the State Ministry also details foreign funding received to establish housing for the HCT community. Based on available public information, there does not seem to be a criteria for the minimum standards for housing. Therefore, Sri Lanka can use the standards adopted by United Nations Committee on Economic, Social and Cultural Rights on the Committee's Comments No. 4 (1991) as a yardstick.²⁴¹ As such, the following can be used by the state to meet adequate needs in setting up new housing projects:

i. Security of tenure (protection against eviction):²⁴² Housing is inadequate if its occupants lack a degree of tenure security, which ensures legal protection from eviction, harassment, and other dangers.

- ii.** Availability of services, materials, facilities, and infrastructure: Housing is insufficient if the occupants lack access to safe drinking water, proper sanitation, energy sources for cooking, heating, lighting; food availability or waste disposal.
- iii.** Affordability: Housing is not adequate if its cost endangers or impedes the enjoyment of other human rights of the occupants.
- iv.** Habitability: Housing is inadequate if does not provide physical safety or sufficient space as well as protection from the cold, moisture, heat, rain, wind and other health and structural dangers.
- v.** Accessibility: Housing is not adequate if the special needs of the underprivileged and marginalised populations are not acknowledged.
- vi.** Location: Housing is not adequate if it is separated from employment possibilities, healthcare services, schools, day care centres and other social facilities or if it is in polluting or dangerous locations.
- vii.** Cultural adequacy: Housing is not adequate if it does not respect and consider cultural expression.²⁴³

6.3. Effective implementation of the language policy

There are several ways to effectively implement the official language policy in Sri Lanka. Those have been identified below.

- i.** Deploy human resources – the state should recruit and deploy Tamil-speaking officials at the GN and DSD levels of administration, particularly in all majority Tamil-speaking areas such as the hill country. Implementing this recommendation will ensure compliance with the OLP as enshrined in the constitution, which promotes effective delivery of public services.
- ii.** Deploy other resources – Circulars should be

implemented to regularly conduct language audits. To overcome language difficulties, a comprehensive audit should be conducted regularly in all government departments to identify the deficiencies of physical resources to effectively implement the language policy.²⁴⁴ For instance, the audit should identify physical resources such as translated manuals, guidelines to follow procedures, dictionaries and computer software to expeditiously translate. These would ensure that all communications are conducted in a community-friendly manner, including signboards visible in all three languages or specifically in the Tamil language in HCT areas.

In furtherance of better implementation of the OLP and Articles 18 and 19, Chapter IV of the Constitution, circulars should be issued to mandate all oral and written communication through the Tamil language across all government agencies and departments, specifically when communicating with all bilingual administrative units including HCT areas and the Northern and Eastern Provinces. Mandating bilingual communication between government agencies will ensure language proficiency attained by government officers is put to better use to serve the public.

- iii. Proactive disclosure is a key requirement under the Right to Information Act of Sri Lanka (RTI Act). Disclosure of information is enshrined in Sections 8 and 9 of the RTI Act and Regulation No. 20 under the RTI Act. It enables the public to access important information about public services. An assessment conducted by Verité in 2017 found that proactive disclosure of information through the official websites of 55 public authorities in Sri Lanka, in all three languages, to be largely unsatisfactory.²⁴⁵ The public authorities were assessed based on a scoring system. The

assessment, developed on Section 8 and 9 of the RTI Act, took two dimensions into account: (i) the information content disclosed and (ii) the usability of that information. The assessment found English as the predominant language used by the public authorities to disclose information. According to the scoring system used in the assessment, only a few public authorities, such as the Ministry of Justice and the Ministry of Public Administration, ranked well in terms of disclosing information in the Tamil language on their websites. As such, 5 per cent of public authorities received 'unsatisfactory' language scores and 78 per cent of public authorities received 'moderately unsatisfactory'; only 16 per cent received 'moderately satisfactory' language scores for disclosing information in an easily accessible manner.²⁴⁶

The lack of access to public information inhibits people's right to information on functions and services provided by the government.²⁴⁷ As such, public authorities should expeditiously implement actions to disseminate information proactively through their websites in all three languages.

6.4. Suggestions to improve the existing legal framework

In terms of the labour law framework, the laws relating to the plantation sector need to undergo significant changes. Approaches to legal reform can occur in two ways:

1. Amendments to existing laws to reflect the current operations and nature of the industry; and
2. Introduction of a new comprehensive law based on international standards.

6.4.1. Amendment to existing laws

As illustrated above in Tables 7 & 8, Sri Lankan laws relating to the plantation sector are still governed by legislation that have very limited application to the current

practices and context. Although some of the provisions in the legislation such as the Minimum Wages (Indian Labour) Ordinance, Indian Immigrant Labour Ordinance and Service Contracts Ordinance have been replaced by general labour laws, the old legislation is not formally repealed. These laws could be amended to recognise the plantation sector workers instead of carrying terminology that refers to the community as "Indian immigrants". The exclusive recognition provided to plantation workers through legislation will bring uniformity and provide them equal protection of the law.

The amendments could therefore be introduced to align with Sri Lanka's international obligations under ratified conventions, specifically eliminating the reservations made in terms of Articles Parts II, III, V, VI, X and XII of the Plantation Convention.

In addition, the gaps identified in Table 6 above should be taken into account when considering amendments to the existing legal framework.

6.4.2. Introduction of a new law

Given the complexities in the legal framework relating to the plantation sector and the vulnerabilities faced by the workers, amendments to existing laws might not provide comprehensive protection to workers. For example, in terms of housing provided to workers, the existing law only recognises the employer's responsibility to provide housing. But there is currently no legislation that ensures that the provided housing meets basic living conditions. Hence, a new law that recognises the following two aspects can be introduced:

- a.** Collating all the relevant aspects of the existing legislation

As stated above, some of the existing legislation such as the Indian Immigrants Labour Ordinance have limited application to current operations in the sector. However, the provisions in some of the legislation codify certain rights and obligations specific to the sector that will be relevant in the current context. For example, the Medical Wants Ordinance has provisions that specifically bind the superintendent to providing medical services to workers. As such, while eliminating the older provisions, the new law should also be mindful to retain the relevant labour aspects that are still relevant in the current context to ensure the community's rights are protected.

- b.** Addressing some of the discriminatory provisions within the existing law

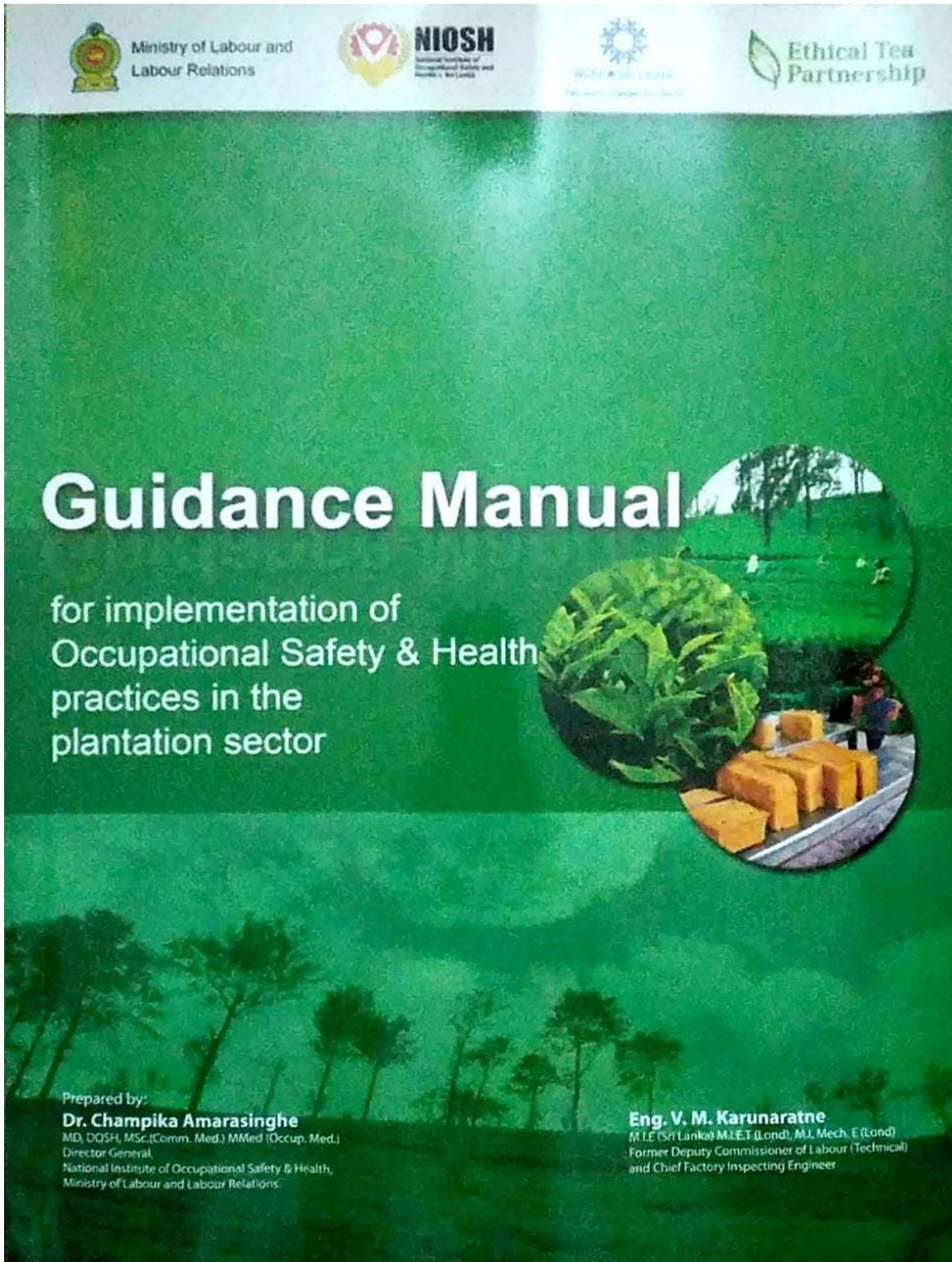
The new law should also recognise the nuances of labour that have gone unnoticed in the sector. The existing Wages Board decision provides a blanket per-day rate of Rs. 1,000/- to both male and female

workers, regardless of the type of work they do.²⁴⁸ However, according to the Klls, while male workers are paid in full, the female workers are sometimes paid per kilo of leaves plucked, which sometimes leaves them less than Rs. 1,000/-. The difference in the payment was emphasised by the workers during the Klls especially because female workers are predominantly assigned the job of plucking tea leaves. Hence, their work is measured by the weight of leaves at the end of the day. Male workers, on the other hand, are assigned tasks outside the plucking of leaves, such as fertilising and treating the tree bushes. The gendered workplace practices in the estates have therefore created a situation where work performed by male workers is unquantified. This entitles the male workers to receive the full payment of Rs. 1,000/-. As such, the new law should provide legal protection by addressing the dynamics and nuances of the sector.

Moreover, in terms of occupational safety and precautions at the workplace, Sri Lanka can take guidance from international conventions such as C184 - Safety and Health in Agriculture Convention, 2001 (No. 184), and C155 - Occupational Safety and Health Convention, 1981 (No. 155).²⁴⁹ The new law could incorporate provisions in terms of safety measures as stipulated in the conventions to ensure that appropriate safety measures are adopted in the workplace. For example, C184 states that national laws and regulations should specify the duties of employers and workers with respect to occupational safety and health in agriculture.²⁵⁰ Further, Article 7 of the C184 states that national legislation or a competent authority should ensure that employers have provided adequate training and instructions to the workers considering their level of education and language.²⁵¹ In addition to that, C155 - Article 09 states that laws and regulations concerning occupational health and safety should include an appropriate inspection system with an enforcement system that provides adequate penalties for violations of laws.²⁵²

Annexures

Annexure 01



Annexure 02

Table 9: Statistics of GNDs, in relation to the population and terrain in the Nuwara Eliya District in comparison with six other chosen districts²⁵³

District	Population '000s	Total Area km ²	Population density (population/km ²)	Elevation (m)	Terrain	No. of DSDs	No. of GNDs	GND/DS	Population/GND	MIN. DISTANCE TO THE DS OFFICE Percentage (%)		
										Less than 2 km	2 – 5 km	More than 5 km
Ampara (EP)	652	4,415	148	860	Difficult	20	503	25	1,296	32.5	30.2	38.3
Badulla (UP)	818	2,861	286	2,320	Difficult	15	567	38	1,443	6.3	17.6	76.1
Monaragala (UP)	453	5,639	80	1,520	Difficult	11	319	29	1,420	5.8	17.9	76.3
Nuwara Eliya (CP)	715	1,741	411	2,530	Difficult	5	491	98	1,456	4.3	7.6	88
Kurunegala (NW)	1,624	4,816	337	1,220	Easy	30	1,610	54	1,009	*	*	*
Matara (SP)	817	1,283	637	1,220	Easy	16	650	41	1,257	13.4	28.4	58.2

EP - Eastern Province

UP - Uva Province

CP - Central Province

NW - North-Western Province

SP - Southern Province

* Information not available

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(b) dismiss a workman by reason only of his membership of a trade union or of his engaging in trade union activities;
(c) give any inducement or promise to a workman for the purpose of preventing him from becoming, or continuing to be, a member, office - bearer or representative of a trade union;
(d) prevent a workman from - (i) forming a trade union ; or (ii) supporting a trade union by financial or other means;
(e) interfere with the conduct of the activities of a trade union;
(f) dismiss, or otherwise take disciplinary action against, any workman or office-bearer of a trade union -
(i) for any statement made by such workman or office-bearer in good faith before any tribunal or person in authority; or
(ii) for any statement regarding acts or omissions of the employer relating to the terms and conditions of employment, of the members of such trade union made by such workman or office bearer, in pursuance of an industrial dispute for the purpose of securing redress or amelioration of working conditions of such members;
(g) refuse to bargain with a trade union which has in its membership not less than forty per centum of the workmen on whose behalf such trade union seeks to bargain."
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222. Section 2(b) of Estate Quarters (Special Provisions) Act - *during the period he exercises the right conferred on him by paragraph (a), be entitled to have all the facilities which are necessary for the exercise of that right and which he had prior to the termination of his services.*
223. Section 03 of Estates Quarter (Special Provisions) Act- *shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a period not exceeding six month or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.*
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