

COMMUNITY CONSERVED
AREAS IN SOUTH ASIA

Sri Lanka

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ABSTRACT

Community Conservation Areas (CCAs) are areas that contribute to conservation through community action outside the official government protection regimes. Whilst CCAs focus on their conservation potential, local communities within may have reasons of their own sometimes unrelated to conservation for their actions.

These CCAs usually remain unrecognised in official documents other than perhaps in the tabulation of overall country statistics such as 'forest cover'. As a result many of these areas and the systems that foster them are in danger of being lost forever. The report traces the history of CCAs from the past to the present.

In Sri Lanka, the main influential factors are the large land holding of the State and limited opportunity in the law for community intervention. Thus many of the traditional systems of CCAs visible in the literature cannot be traced on the ground.

However, particularly where the law has recognised community initiatives, CCAs continue to exist over a variety of ecosystems. This is very much visible where resource dependence still exists. This country report seeks to highlight the different types of CCAs in Sri Lanka. An interesting model that Sri Lanka presents is the home garden model practiced on private land but contributing to conservation in a significant manner.

Keywords: Sri Lanka, forest, home garden, fishery, tradition, Constitution, community, Ordinance

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Executive Summary

Conservation is the protection of species, habitats and ecosystems. Community Conservation Areas (CCAs) are areas that contribute to conservation through community action outside the official government protection regimes. Whilst CCAs focus on their conservation potential, local communities within may sometimes have reasons of their own unrelated to conservation for their actions.

These CCAs usually remain unrecognised in official documents other than perhaps in the tabulation of overall country statistics such as 'forest cover'. As a result many of these areas and the systems that foster them are in danger of being lost forever.

In Sri Lanka, the main influential factors are the large land holding of the State and limited opportunity in the law for community intervention. Thus many of the traditional systems of CCAs visible in the literature cannot be traced on the ground.

However, particularly where the law has recognised community initiatives, CCAs continue to exist over a variety of ecosystems. This is very much visible where resource dependence still exists.

Another interesting model that Sri Lanka presents is the home garden model practiced on private land but contributing to conservation in a significant manner.

Background to Community Conserved Areas

Nature conservation is often 'officially' understood to happen only within the limited boundaries of protected areas (PAs), managed by government agencies or in terms of 'laws' formulated by the legislature of a country. Thus any examination of protection and conservation tends to focus on the government managed regimes. However, little noticed and seldom 'officially' recognised, are thousands of unofficial PAs across the globe, managed and sustained by ordinary people for a variety of objects; not always directly linked to conservation.

This is a study that attempts to firstly to acknowledge and secondly to recognise these unofficial PAs outside the normal bounds of the 'official' recognition. The term CCAs has been used tentatively to define these initiatives and may address CCAs as well as other community initiatives and practices that lead to conservation. The study recognises the fact that the initiative may not always be 'area' based in a geographical sense. Sometimes it may be the conservation of a species and in another it may be an initiatives on their own land which relieves the pressure on the surrounding 'official' PA.

Introduction

Status (Past & Present)

Sri Lanka is an island nation in the Indian Ocean. It is small in size being only 65,610 sq km in extent. Due to a series of land related laws, around 82.3 per cent of the total land area in Sri Lanka is under State control in some form¹. This 'ownership' includes 6.18 per cent of the total land area that came to be vested in the Land Reform Commission established under the Land Reform Law² and 12.44 per cent of the total land area alienated under various village expansion, colonisation, middle class allotments, highland colonisation, youth settlement, encroachment regularisation and special leases schemes, etc., where the State still retains the ultimate ownership. Thus the statutory regime that extends to this large State ownership of land is important in considering CCAs.



Sri Lanka (Courtesy: Ashish Kothari)

¹ Government of *Sri Lanka, Report of the Land Commission* (Colombo: Government Printer, 1987)

² Land vested in the Land Reform Commission has been recognised as a distinct category of land in the law.

Also as a result of this significant land ownership, almost the entirety of the natural forests in Sri Lanka comes under the jurisdiction of the State.

The mid 2006 provisional statistics demonstrate that the population in Sri Lanka is 19.886 million. The entire island is populated though not uniformly. Statistics predict that the population will stabilise at 23 million by 2025 and that the urban population will rapidly increase from 30 per cent to 60 per cent³. In the long run this suggests a departure from subsistence reliance on forests in the future.

The population density in Sri Lanka is high, statistics indicating 310 persons per sq km. The literacy rate is approximately 92.5 per cent. The male literacy is slightly higher than female, the male being 94.5 per cent and the female being 90.6 per cent.

Sri Lanka has had a long history of human habitation. The written historical record and the remnant traditional practices demonstrate harmonious living with the environment. At the turn of the 19th century, over 80 per cent of the country was covered by forests. It is during the latter part of the 19th and early 20th century that the colonial rulers started a systematic clearing of land for plantations – coffee, tea etc. The present forest cover is between 20-24 per cent. In addition there is a considerable area under forest plantations.

Increasingly, Sri Lanka has demonstrated vulnerability to natural disasters including flooding and landslides. The past two decades have seen nearly 300,000 families affected annually by natural disasters of which approximately forty per cent is due to floods or landslides. Clearly human activity in the form of haphazard development has increased this vulnerability⁴.

Civil Society

From the mid 1980s, the increased sensitivity towards the environment has led to the formation of a large number of environmental non-governmental organisations (NGOs) and community-based organisations (CBOs)⁵. Almost every little village now has an environmental CBO.

Shramadana is a concept that is well recognised amongst the rural communities. This consists of the entire village contributing labour towards a common objective and is one means of creating a common ownership in the management of resources.

Civil society in Sri Lanka is considerably strong. Many public interest litigations on a variety of subjects including environmental protection are being increasingly brought before the Court system in Sri Lanka. Although not formally mandated, there is also an increasing trend towards public consultation in policy formulation. The National Wetland Policy, National Transport Policy and National Policy on Local Government are instances of policy documents that require public consultations to be carried out.

Government and the Constitution

The system of government is three-tiered with Parliament at the Centre, Provincial Councils at the Provincial level, and Local Authorities consisting of Municipal Councils, Urban Councils and Pradeshiya Sabhas at the local level.

³ The Sri Lankan Water Vision 2025 – Sri Lanka www.lankajalani.org/pdf/pubs/pub1.pdf

⁴ National Action Programme for Combatting Land Degradation in Sri Lanka

⁵ Wickremarathne, D 2004 *Sri Lanka Directory of Environmental NGOs*, Sri Lanka Environmental Journalist Forum, Colombo. This volume contains over 700 NGOs.

The Constitution adopted in 1978 declares that “(t)he State shall protect, preserve and improve the environment for the benefit of the community”⁶. The Constitution further mandates that the protection of nature and conserving its riches is a fundamental duty of every person in Sri Lanka⁷.

In the case of *Bulankulama and others versus Secretary; Ministry of Industrial Development and others (2000)*, a ‘Fundamental Rights’ application, the Supreme Court went beyond the principle of ‘public trust’ and developed an argument based on the shared responsibility between the organs of the State and the public in the protection of natural resources.⁸

The Department of Forests and the Department of Wildlife Conservation, which are the principal agencies concerned with the management of natural resources, come under the Central Government.

The Provincial Councils established by the 13th Amendment to the Constitution (1987) are elected legislative bodies with the power to formulate statutes applicable to the province in respect of devolved subjects. Protection of the environment to the extent permitted by law and the maintenance of herbaria for the purpose of indigenous medicine are Provincial subjects. Social forestry, the establishment and promotion of agro-linked industries, establishment of pastures are subjects on the Concurrent List on which both the Provincial Council and Parliament may formulate law, after consulting the other as may be necessary. Protection of the environment is also a Concurrent subject.

Tenure and Access to Resources Traditional

Community involvement in conservation is not a modern concept in Sri Lanka. The ancient systems of tenure as well as practices, customs and taboos resulted in an elaborate scheme of ‘rules’ that promoted environmental friendly practices.

Sri Lanka has seen approximately 450 years of colonisation. Initially, the Portuguese and the Dutch exercised some control over the maritime provinces of Sri Lanka whilst the entire island came under the British by the Convention of 1815 – the *Kandyans* or the mountain provinces being the last to fall.

Thus traditional tenure was preserved longest in the *Kandyans* territories where traditional practices have still survived to a greater extent compared to the Maritime Provinces, in spite of the impacts of colonisation.

The traditional tenurial systems recognised a multitude of rights to land and to resources. These included Gabadagam – royal villages; *Viharagam* – tenurial arrangements for the maintenance of temples; *Devalagam* – tenurial arrangements for the maintenance of *devales*; *Nindagam* – lands granted to chiefs; *Vidanagam* – lands under a *vidane* for people subject to public service; *Koralagam* – lands belonging to laymen subject to *rajakariya* or service to the king; and Gallatgam – lands in the lower part of the four korales.

Under the traditional system there also existed common property concepts that promoted community of action and cohesiveness in village communities. Thus the irrigating scheme passes from one allotment to another, arranged, when possible, in a series of terraces, in each of which the supply

⁶ Paragraph 27 (14) of the Chapter VI on Directive Principles of State Policy and Fundamental Duties of the Constitution of the Democratic Socialist Republic of Sri Lanka.

⁷ Article 28 of the Constitution

⁸ [2000] 3 SriLR 243

and depth is regulated by low ridges and bunds temporarily breached or dammed as occasion may require. The regulation of this supply, the formation of the enclosing ridges, necessitates community of action on the part of the tenants of adjoining lands. To produce a successful crop, organisation is required, some *panguwas*⁹ needing, “from the nature of the soil or elevation, treatment different from that of others. For this purpose the tenants appoint their own official, the *vel vidana* or irrigation headmen”¹⁰. Decision-making too was based on a consensus approach. In terms of the *Vevalketiya* Stone Slab Inscription justice was administered “by means of a Communal Court composed of headmen and responsible householders subject to the authority of the King in Council, the ‘Curia Regis’... This village court was empowered to carry into effect the laws enacted by the King in Council and promulgated by his ministers”¹¹.

Certain types of forests were viewed as communal property, i.e. the forest area that abutted the village was used in common as appurtenant to the village¹². In the practice of traditional *mulkate chena* the village as a whole had the right to practice *chena* cultivation in a certain area¹³.

In fishing practices too, certain communities enjoyed the right to fish in certain waters on certain days. Thus the right was enjoyed by the community as a whole and not as individuals. One enjoyed such rights only by being a member of that community. Thus the traditional system of tenure promoted community of action and decision making and followed the consensus approach.

The importance of these concepts and practices was that there existed the concept of community ‘ownership’ and community ‘management’ of a resource which the colonial regimes did not favour.

Rights in Transition

Colonisation activities proceeded on a justification that “all the land belonged to the King, by law, and where it had...been granted,...to certain castes or families, under the imposition, either of personal services to be performed, or of certain shares of the produce to be paid to him; or where those lands were given to individuals, to be held only for life, subject to the will of the crown; or as a compensation for executing the duties of certain public offices, and, consequently, held only as long as the individual was continued in those offices...”¹⁴.

Thus Hayley (1923), states that as lords of the soil, the Singhalese kings were owners of all the forests and uncultivated lands not specifically granted to individuals and that in the *Kandyan* districts, the British Crown succeeded to the rights of the Singhalese kings while in the Maritime Provinces the British Crown succeeded to the rights of the Dutch¹⁵. In *Kiri Banda versus Booth* (1901), Court determined that forests were inter regalia and could belong to subjects only by a special grant¹⁶.

⁹ A holding of a tenant

¹⁰ Hayley, F. A. (1923) *The laws and Customs of the Sinhalese or Kandyan Law*. Navrang publication, New Delhi, 1993

¹¹ Walpola Rāhula 1966 *History of Buddhism in Ceylon*. M. D. Gunasena, Colombo

¹² Tambiah, H. W. 1968 *Sinhala Laws and Customs*. Lake House Investments Limited, Colombo.

¹³ Codrington, H. W. 1938 *Ancient Land Tenure and Revenue in Ceylon*. Ceylon Government Press. Colombo

¹⁴ Bertolacci, Anthony 1817 *A View of the Agricultural, Commercial, and Financial Interests of Ceylon*. London

¹⁵ Hayley, F. A. 1923 *The laws and Customs of the Sinhalese or Kandyan Law*. Navrang, India, 1993

¹⁶ 5 New Law Reports 284

With colonisation, land became an important asset, for the purpose of timber and for coffee cultivation. Thus a series of legal instruments were brought into effect, the result of which was to alienate the people from the forests and to vest large areas of land in the Crown. These include Regulation No. 2 of 1822 – for the protection of government revenue from timber growing in the royal forests, and for the imposition of a tax on Jak trees felled on private gardens; and Regulation No. 1 of 1833 – for the protection of government revenue, i.e. timber from private gardens.

The Ordinances that followed include the Crown Lands Encroachments Ordinance (CLEO) of 1840, the Waste Lands Ordinance (WLO) of 1897 the precursor to the present Land Settlement Ordinance (LSO), and the Forest Ordinance (FO) of 1907.

The overall impact of these laws was to transform the entire traditional land tenure pattern of the country. Large tracts of land to which title or interest could not be demonstrated to the satisfaction of the law, vested in the Crown. Systematic regular forest clearing under Crown patronage commenced during this period (1830-1840) for the purpose of felling of timber and for coffee cultivation.

As indicated above another important detrimental impact of the altered land tenure system was the break down of the old community ownership and community management concepts. Whilst the laws exercised a presumption in favour of the State in respect of forest, waste, unoccupied and uncultivated land; it was individuals who could affirm their rights against this presumption, not communities. Thus, slowly but surely, the individual system of rights started to emerge as the sole means of enjoying rights and title in respect of property.

In the ocean environment, the legal principles were different though the final outcome was the same. The Roman Dutch Law as the residuary law of Sri Lanka recognises that the oceans and the sea shore are *Res Communes*. Thus they are the property of the State; the use of which is common to the people of the State¹⁷. Thus there are a series of cases in the early and mid 20th century, where when the fishing communities attempted to establish their rights in relation to fish in certain waters and in particular to prohibit or to regulate fishing contrary to established custom, courts have declined to accept such custom and recognised that in keeping with *Res Communes*, all people of the State have access to the oceans.

CCAs in Sri Lanka

Legal Recognition for CCAs

Overall CCAs are not commonly recognised as a phenomenon in Sri Lanka. Whilst the main contributory factors for this are the restrictive legal framework, the reduction of forest dependence for subsistence purpose, the non-recognition of CCAs as such may also mean that there are undocumented examples scattered throughout the country. The tensions observed consequent to the recent declaration of the Knuckles Forest as a Conservation Forest, i.e. highest protection category in terms of the Forest Ordinance demonstrates that a significant portion of the surrounding villages did carry on some form of traditional practices in the forest area. Hence, a thorough examination of the CCA concept in Sri Lanka would no doubt elicit further examples relating to different ecosystem types and also different management types.

By and large, the current legal framework does not assist the emergence and recognition of CCAs. However, with the emergence of a stronger civil society, community mobilisation has resulted

¹⁷ Lee, R. W. 1946 *An Introduction to Roman Dutch Law*. Fourth Edition

in greater participation in resource management and conservation either at the ground level or as dialogue at the policy level.

CCA Types in Sri Lanka

Several types of CCAs were identified in Sri Lanka during the course of this study. They may be categorised in several ways. The following is an ecosystem based classification which at the same time seeks to reflect the diversity of management approaches.

Forest Related CCAs

Sri Lanka's Fourth Country Report to the Convention of Biological Diversity (CBD) in 2009 states that Sri Lanka's PAs do not in general contain settlements, and where such settlements do occur in forests managed by the Forest Department, they are by legal definition excluded from the surrounding PA¹⁸. The report also goes on to state however that there is wide recognition and acceptance of the participatory role of communities living in proximity to the areas under protection by both the Forest and Wildlife Departments.

Sri Lanka does not have extensive tribal forest communities. The indigenous Veddah community has for the greater part integrated with the main stream communities adopting their language and culture, thus moving away from their traditional lifestyles and practices.

The limited settlements and the restrictive legal provisions may account for the absence of wide spread CCAs in Sri Lanka's forestry sector. Hence, the moment a CCA receives official recognition that may also signify a conflict with the existing legal system.

Recent studies have also concluded that the development process will reduce the subsistence forest dependency over time, though not the commercial forest dependency. Even in areas such as the Knuckles Forest area where traditional systems still persist, forest dependence for subsistence is gradually declining as stated above. This phenomena which was present even before the declaration of the Knuckles area as a Conservation Forest is more visible consequent to the declaration where the villagers are much more hesitant to enter the forests for fear of prosecution.

Another important factor that inhibits the wide spread existence of forest related CCAs is that the traditional concepts of customary law that promoted common ownership and common management of property deteriorated under the individual ownership regimes promoted by the Colonial legal systems, i.e. Roman Dutch law and the written laws.

Even where the CCA phenomena can be observed it is significant that they have not usually been documented from a conservation and biodiversity standpoint.

Forest Hermitage (*Aranya*)

An interesting and significant model of CCAs practiced in Sri Lanka in relation to forested areas is the forest monastery or '*aranya*' system where mainly Buddhist monks practice meditation in forest hermitages. These hermitages are usually established within State forests and are leased out for the purpose of the hermitage. The leases are time bound and extended from time to time. The resident monks have little or no management responsibility vis-à-vis the forest. The affairs of the hermitage and of the forest area are usually managed by a *dayaka sabhava* or patrons which act as a 'management

¹⁸ <http://www.cbd.int/doc/world/lk/lk-nr-04-en.pdf>



An Aranya (Courtesy: Seema Bhatt)

committee' consisting of prominent lay persons either locally or even from the distant city centres. In some instances an area larger than the immediate premises of the hermitage is leased for this purpose while in other instances only the hermitage premises are leased. This is however of limited consequence, since the surrounding forest is usually not policed by the hermitage management. With the presence of the hermitage, the need to provide the resident monks with peaceful and quiet surroundings is generally accepted by the villagers who usually view the presence of the hermitage as a blessing for the village. Peer pressure plays an important role in disciplining activity in and around the hermitage, thus ensuring the protection and conservation of these pockets of forests which are small but sometimes well populated with rare and endemic species. The Forest Department officials visit the sites from time to time to ensure that no degradation of the forest is taking place. However, no proper survey has been carried for any of these *aranyas* from a conservation and biodiversity perspective.

Private bills are Acts of Parliament which are presented and passed by Parliament on the request of private parties. Presented by a Member of Parliament, these bills, once passed, become part of the laws of the country. From the 1990s several such private bills have been presented and passed by private groups seeking to formalise their institutions which include institutions fostering '*aranyas*', The Ambalangoda Delduwa Vivekaramu *Aranya Senasana Dayaka Sabha* (Incorporation) Act, No. 47 of 1991 is one such Act. It recognises the *Dayaka Sabha* as a body corporate, the affairs of which are administered by an Executive Committee elected in terms of rules formulated by the members. The objects of the Sabha include that of developing and maintaining the hermitage and utilising the revenue derived from the sale of the produce in the *aranya* sector of the hermitage for the development of the hermitage and the fulfillment of the needs of the resident Monks.

Lands Owned by Religious Institutions

Another type of CCAs which exists in forested lands is in respect of lands which are owned by temples and other religious institutions. The Buddhist Temporalities Ordinance No. 19 of 1931 for example vests the management of temple property coming within the scope of the Ordinance in trustees appointed in terms thereof. A significant portion of such temple properties have not been 'developed' and remain forested with minimum disturbance. They remain under the management of the trustees. However, these lands are not usually maintained for their conservation objectives and the trustees can at any point convert their use to an extractive one. No comprehensive survey has been carried out in respect of such temple properties from a conservation or biodiversity perspective.

A significant difference between the *aranyas* and the lands owned by religious institutions is that in the former, the land is owned by a third party principally the government whilst in the latter the land is owned by the religious institution. Another difference is that in the former, the *aranya* does not subsist off the forest except for occasional medicinal plants or timber whilst in the latter, at least in theory, these lands have been granted to these institutions for their subsistence from early times.

The legal regime over natural forests does not make a distinction between subsistence harvesting and commercial harvesting within natural forests. This too has had an impact on community initiatives within State forests. In practice, the Forest Department has in certain areas entered into agreements with communities that surround forests giving them the right to harvest forest produce¹⁹. However, this does not confer any management power or authority over the resource to the communities.

Home Gardens

Also called *Kandyan* Home Gardens since they are most prevalent in the Kandy District, (Central Wet Zone) these are home gardens bordering forested areas that are planted with spice, timber and fruit trees which replicate the multi-speciated, multi-layered natural forest structure. These home gardens are well documented and function as an effective buffer-zone providing an interface between forested areas and urban



An Agriculture and Home Garden Landscape (Courtesy: Ashish Kothari)

environments. It is estimated that a considerable proportion of the timber requirements of the country is met from timber harvested from home gardens and not the natural forest. Thus whilst the home

¹⁹ Agreement entered into with the communities surrounding the Nilgala forest to harvest Nelli – *Phyllanthus emblica*; a major ingredient in Ayurvedic medicine. <http://www.sgpptf.org/countries.asp?Country=Sri%20Lanka>

garden itself provides refuge for a multitude of species it also relieves pressure on the natural forests. Although these home gardens fulfill an important conservation role, their inclusion under CCAs is tentative since no direct management function is exercised by the community vis-à-vis the natural forests.

Water Catchment Areas

Urban water needs in Sri Lanka are met by pipe borne water supply administered by the National Water Supply and Drainage Board and the local authorities whilst the rural sector obtains water from wells and other sources where available. There are a large number of community water supply projects which supply water to rural villagers where such pipe borne water or other sources are unavailable. The Rural Water Supply and Sanitation Division of the Ministry of Urban Development, Construction & Public Utilities and the Ministry of Urban Development & Sacred Area Development assists communities in the establishment of community water supply projects partly funded by the communities themselves. Upon being commissioned the water supply project is handed over to the communities for operation and maintenance. Where the water source is dependent on a local surface water body in particular, the villagers have a clear incentive to protect and manage the catchment area for the water source. Where the conditions are favourable, communities have organised themselves in order to protect and safeguard these catchment forests primarily from the water retention perspective. Linked to domestic water supply is that of irrigation water. One of the major village activities is the rehabilitation and management of local irrigation tanks particularly in the dry zone. Together with the rehabilitation of the tank, comes the management and enhancement of the catchment including the planting of new tree species and the management of same. For example, the project to restore the village tank, Kahatakulama wewa in Galkulama, included the planting of forest trees for tank bund rehabilitation²⁰.

Marine and Coastal Environment related CCAs

There are several types of CCAs that exist in relation to the marine and coastal environment. For example, there are several community based organisations (CBO) and NGOs that are engaged in turtle conservation in Sri Lanka. Established largely through NGO initiatives, these organisations are run by them in collaboration with former turtle collectors. These initiatives protect turtles and eggs either *in situ* or at protected sites from human and animal predators. Thus, they may not qualify as CCAs in that they may or may not protect an area, instead protecting and conserving the taxa. The official status of these organisations is uncertain since the law does not provide for the recognition of their existence. The alternate income provided through these organisations comes through salaries as well as by attracting visitors which also brings in income to the village at large.

²⁰ The *Wilpotha Kantha Ithurum Parishramaya* (Women's Saving Effort-Wilpotha), an NGO from Wilpotha in Puttalam was one of the recipients of a small grants scheme, implemented by IUCN Sri Lanka under the Community Conservation Support Fund (CCSF) financed by the Royal Netherlands Embassy in Sri Lanka.
http://www.iucn.org/about/union/secretariat/offices/asia/asia_where_work/srilanka/?2485/Kammandhaluwa-is-smiling-and-prosperous-With-water-from-a-Small-Tank-restored-by-a-Womens-Society



Puttalam Beach (Courtesy: Ashish Kothari)

Fisheries Communities

The case law on resource management shows several instances where the Roman Dutch law principles with open access regimes have come into conflict with traditional fisheries where identified communities enjoyed certain defined fisheries rights, regulated themselves, and even had the authority to exclude outsiders. The case law demonstrates how these traditional systems slowly eroded due to conflict with the Roman Dutch law and the statute laws. In an attempt at restoring or re-introducing the traditional resource management practices, Sri Lanka has enacted laws which create models for CCAs. The Fisheries and Aquatic Resources Act, No. 2 of 1996 contains the most progressive legal provisions whereby fisheries committees registered under the Act are recognised for the purpose of managing fisheries management areas designated by the Act. Registration postulates change in the form and structure of such committees. Thus, committees registered in terms of the Act may be subject to regulations in respect of the election of office bearers, the procedure for the transaction of business, accounts to be maintained by such a committee and an audit.

These communities regulate their affairs through a series of rules which address matters such as (a) which community has priority for fishing on certain days, (b) the catch size, (c) the nature and size of nets used, (d) restrictions on harvesting immature specimens and (e) restrictions during the breeding season. Whilst these communities are successful in addressing inter-agency conflicts, conflicts with outside agencies and external communities may need State intervention.

Rights to Resource Management – Approach of the Judiciary

An examination of the case law from the late 19th century demonstrates that the Courts have moved towards greater democracy and citizen participation in resource management. As stated above, in 1882, F d'A Vincent, observed that Courts have tended to regard the [State] not as a trustee for the whole nation, but as a land-holder²¹. In the 1901 case of *Kiri Banda versus Booth* (1901), Court expressed the view that forests could belong to subjects only by a special grant. In *Y. M. Sultan versus The Kachcheri Surveyor, Trincomalee* (1969), a case decided in 1969, the Court in affirming a prosecution by a Magistrate's Court held amongst other things that "the real object of the prosecution under the Forest Ordinance is to protect Crown land". However, thereafter, a series of cases demonstrates that Courts have required greater responsibility and transparency in the management of the State forests. Thus in *O. S. Perera versus Attorney-General*, decided in 1987, the Court held that "it is difficult to accept an argument that the [Forest] Ordinance was designed solely to protect forests and trees, etc.," and held further that the recognition of the need for timber "creates a legitimate [interest] in the nature of a right to the people to be allowed to transport timber for one's legitimate need". In the Supreme Court special determination in respect of the Land Ownership Bill, the Court recognised that from time immemorial, land has been held in 'trust' for the people thus giving new life to the ancient concept of 'public trust'. The case of *Bulankulama and others versus Secretary, Ministry of Industrial Development and others*, (2000), the Court expanded upon and went beyond the argument of the State as a 'trustee' and developed an argument favouring a shared responsibility between the organs of the State and the public in the protection of natural resources.

Summary

Both ancient and modern CCAs can be observed in Sri Lanka. Particularly those CCAs which are related to religious institutions could be of an ancient type, being based on the ancient land grants given by the kings. In some instances, ancient CCAs, that were related to religious institutions and objectives and which had been abandoned, have been revived due to cultural and religious resurgence. New CCAs have also emerged due to felt needs of the community as well as State or NGO initiatives.

No survey has been carried out in respect of each type of CCA in Sri Lanka. As stated above, CCAs in Sri Lanka are usually not recognised in the context of community managed areas with conservation significance and so no surveys have focused on their biodiversity potential. This is an important matter that merits further study urgently.

Where CCAs exist they fulfill several objectives. The primary objectives with their attendant types could be summarised as follows:

- Conservation – Turtle Conservation Projects.
- Religious – *Aranyas* and temple lands over natural forests.
- Water Supply – Protection of community water sources, stream reservations within tea and rubber estates.
- Irrigation water – Rehabilitation of small tanks and catchment area protection and enhancement.
- Livelihood – Fisheries Management Areas and Turtle Conservation Projects
- Subsistence – Home Gardens

²¹ F d'A Vincent (1882) Conservation of the Crown Forests in Ceylon. Sessional Paper XLIII.

No statistics are available that indicate the commonest types of CCAs in Sri Lanka. However, of the various types the most frequently encountered are the CCAs related to religious institutions and religious objectives. While their prevalence could be one factor for them being encountered more, another reason could be that the religious institutions wield more power and influence than other sections of the community and are more acceptable to the authorities and thus are out in the open. Another significant factor is perhaps that in the CCAs related to religious institutions, the presence of the institutions provides an entity that the officials could deal with directly. The fact that a community is a loosely defined entity may act as a deterrent to official recognition. Thus the CCAs linked to religious institutions are more prevalent and are also able to obtain official recognition readily.

Stability

The Fisheries Management Areas are the most formal having recognition in the law. The Fisheries Management Areas being formal declared areas are also perhaps the most stable. As opposed to those situated on land leased from the government, CCAs which are owned by religious institutions are situated on land that is privately owned, the use of which may be altered only by trustees of these institutions. The *Aranyas* also enjoy a certain amount of stability since they are based on formal leases. However, these leases are short term and will continue only as long as there are monks who occupy these places and as long as there are patrons investing resources into their maintenance. Some of these are of course permanent locations with permanent buildings and permanent management committees. However, the continued existence of these CCAs are dependent largely on Government attitude and acceptance. The threats from outside sources in respect of these areas is considerably less particularly for the better recognised *aranyas*.

The *Aranyas* are supported by influential and prominent persons who are either members of the management committees or are patrons. Patronage could even be political in nature.

The Fisheries Committees being recognised as livelihood groups come under a Government Ministry and a Department which looks after their interests and thus forms a powerful lobby group. In the event of the Stake-Net Fishery Society example referred to above, the local Catholic Church plays a significant role in the management of the affairs of the committees and in resolving disputes²².

Religious institutions too come under a Ministry, which may be seen as allies in the protection of and continuity of CCAs²³.

Gender

These CCAs do not usually have any gender discrimination and may even be initiated by women's collectives. The small tank restoration project referred to above is an activity of the *Wilpotha Kantha Ithurum Parishramaya* (Women's Saving Effort-Wilpotha), an NGO from Wilpotha in Puttalam²⁴.

On the other hand, the rules of the Stake-Net Fishery Society example from Negombo referred to above indicate that only male households have a claim to the share and that the right passes from

²² Powerpoint Presentation by Asha Gunawardena of the Institute of Policy Studies, Sri Lanka on *The Stake-Net Fishery Society (SFS) of Negombo Lagoon*, Sri Lanka http://www.capri.cgiar.org/training/07Feb05_Asha.ppt

²³ Department of Buddhist Affairs, Department of Christian Religious Affairs, Department of Hindu Religious and Cultural Affairs and Department of Muslim Religious and Cultural Affairs.

²⁴ Same as in Footnote 20.

the father to the youngest son, both requirements perhaps are as a result of the fact that fishing in Sri Lanka is an activity in which only the men folk participate.

Legal and Policy Framework

The Forest Ordinance of 1907 provided for the declaration of 'village forests'. These are declared for the use of certain communities and the villagers have limited management functions therein. However, no ancient 'village forests' can be traced on the ground.

The Land Commission (1927) attempted to re-orient the land policy in an attempt at to offsetting many of the adverse impacts of the Crown Lands Encroachments Ordinance and its successors.

Thus the Land Settlement Ordinance (LSO) of 1931, provided for the reserving of areas of land for the practice of communal *chena*. Importantly, the Ordinance provides that where land has been declared to be State property set apart for the purpose of a communal *chena* reserve it may not be used for a different purpose other than by the State and then too only with the consent of two-thirds of the persons present at a meeting of the inhabitants of the village after due notice has been given. However, in the present day instances relating to the application of these provisions are not forthcoming.

The Land Development Ordinance No. 19 of 1935 (LDO) was enacted with the object of the "systematic development and alienation of Crown land" in Sri Lanka. The LDO provides for an open, transparent process for the alienation of State land to individuals initially on the basis of a permit which could later be converted to a grant. The LDO also provides for the mapping out of land for village forests declared in terms of the Forest Ordinance, village pastures, or other village purposes, the protection of the sources or courses of streams and of forest reserves, reservations for climatic and other ecological purposes and for environmental protection and for any other purpose that may be prescribed, having regard to the protection, conservation and development needs of the area. However, these provisions are hardly implemented across the board.

The State Lands Ordinance (SLO) of 1947 recognises that regulations may be made for the purpose of issuing a grant or other disposition of the right to *chena* State land, the issue of permits to *chena* State land.

The Pasture Lands (Reservation and Development) Act of 1983 provides for the reservation of State lands as pasture lands.

The Fisheries and Aquatic Resources Act of 1996 provides for the management of fisheries management areas by defined fishing communities. The Act provides for the designation of prescribed areas of Sri Lanka Waters or land adjacent thereto or both such waters and land as fisheries management areas and for the designation of fisheries committees established under the Act in respect of any fisheries management area as the fisheries management authority of that area.

A fisheries management authority under the Act may make recommendations to the Minister on (a) the conduct of fishing operations, (b) the use of different types of fishing gear in that fisheries management area, (c) the establishment of closed seasons for fishing or closed seasons for the taking of specified species of fish in that fisheries management area, and (d) the times during which fish may be taken. These recommendations then could be incorporated in the official rule making process thus providing means of enforcement.

Proper community control and management of areas are recognised only under the Forest Ordinance in the way of village forests, and under the Fisheries and Aquatic Resources Act in the way of fisheries management areas. The village forests are introduced under the protected area system coming under the Forest Department. In both these instances the concept does not make specific reference to the conservation value of such designation

DeCosse and Jayawickrema (1997) have looked at co-management as an option for community involvement in the management of State forests. This study recognises that even though the legislative framework does not favour such an approach, there does exist a *de facto* open access regime which enables some CCA activity to take place.^{25&26}

Even though, as the table below illustrates, some laws of ancient vintage recognise a certain amount of community activity within State forests, these have by and large fallen into disuse.

The Forest Ordinance, in addition to exercising control over land declared in terms of the FO, also extends its jurisdiction over State land in general.

Law	Type of community management	Present Status
Land Settlement Ordinance	Communal <i>chena</i> reserves	Unclear
Land Development Ordinance	Mapping for: a) Village forest, b) Village pasture, c) Village purposes not specified in the law.	Unclear
Forest Ordinance	Village Forests	No village forests can be traced on ground
Pasture Lands (Reservation and Development) Act	Reservation of State lands as pasture lands.	Unclear
State Lands Ordinance	Right to <i>chena</i> State lands	Unclear

Table I: Statutory provisions that provide for community management of land

The jurisdictional mandate vis-à-vis State land is very much confused. Little attempt has been made to clarify the ambiguities and the overlaps that exist in respect of the land resource. The following table illustrates the institutional overlap pertaining to State land as indicated in their respective laws.

Authority	Statute	Jurisdiction
Department of Land Settlement	Land Settlement Ordinance	Settlement of lands forest, waste, unoccupied, or uncultivated land, or <i>chena</i> or other land which can only be cultivated after intervals of several years, or cultivated or otherwise improved land which was, within the preceding twenty-five years, land of the former description
Land Commissioner's Department	1. Land Development Ordinance 3. State Lands Ordinance	All state lands, foreshore, public lakes and public streams
Forest Department	Forest Ordinance National Heritage Wilderness Areas Act	Reserved Forests, Village Forests, Conservation Forests, National Heritage Wilderness Areas, other State land

²⁵ Decosse, P. J. and Jayawickrama, S. S. 1996 Co-management of Resources in Sri Lanka: Issues and Opportunities. Full reference NAREPP/IRG Report, Colombo, Sri Lanka.

²⁶ The authors present co-management as sharing responsibilities among a wider group of stakeholders distinct from community-based management.

Department of Wildlife Conservation	Fauna and Flora Protection Ordinance	National Reserves (declared over State land) and Sanctuaries (declared over State and non-State land)
Coast Conservation Department	Coast Conservation Act	Coastal Zone
Land Reform Commission	Land Reform Law	Land vested in the Commission under the Land Reform Law.
Central Environmental Authority	National Environmental Act	Declared environmental protection areas & land coming under the Land Use Scheme prepared under the Act
Mahaweli Authority of Sri Lanka	Mahaweli Authority of Sri Lanka Act	Exercise and discharge of powers and functions under the State Lands Ordinance within a special area declared under the Act.

Table II: Institutional overlap in jurisdiction over State land.

Analysis

Out of the existing models that were examined, the most beneficial from a conservation and biodiversity perspective is that of *aranyas*. The reason for this is clear. The *aranya* model mandates little or no interaction with the forest and certainly no destructive practices. The use of the forest is for the tranquility and peace it provides conducive to reflective and meditative practices. By and large the involvement of prominent persons in the management of these *aranyas* provides protection for the hermitage and the forest from outside interference. The activities of the immediate villagers surrounding the *aranyas* are regulated more by peer pressure and less by imposed rules and regulations. Clearly being based on religious practices, this model is also the closest to cultural practices related to biodiversity. In Buddhist, Hindu and other traditions ‘*aranya vasi*’ is one form of activity considered conducive to monastic life leading towards enlightenment.

The other model which has a passive interaction with the forest but actively promotes conservation is the home-garden model. Indeed the impact of the home gardens in reducing pressure on natural forests merits further study.

The Fisheries Committee model is the most formal being enshrined in the law. Being based on livelihoods there is also a greater chance that the decision making will be based on scientific and rational processes taking long term sustainability into consideration. However, the fact that competing interests may upset the balance cannot be discounted in considering this model.

Being based on the livelihood model, the Fisheries Committee example is also the most effective for the generation and equitable distribution of socio-economic benefits. There are strict rules that govern the harvesting of the resource.

In the CCAs examined those which are wholly community initiatives, have the support of the community and are legitimate at the local level. They would not have emerged had they failed to have this legitimacy at the local level. In the event of those which are initiated through external agencies be they NGO or Government; legitimacy at the local level is the result of a process and also the confluence of a variety of factors. Since legitimacy is a process it would also depend on how far the process has progressed.

The factors that promote the government’s official recognition have already been discussed. By and large the legal structure does not enable the recognition of CCAs within certain types of protected areas and so cannot be recognised ‘officially’.

In Sri Lanka, the core natural resources are usually under State control. This is true for forests, the ocean and the sea shore, flowing water etc. Hence the single most important condition in determining the overall success of the CCAs in Sri Lanka is continued State patronage which on the face of it may seem contradictory to the concept of CCAs. However, sans State patronage and particularly in the face of direct opposition from the State, it is unlikely that any CCA in Sri Lanka would continue successfully. This patronage could be in the form of actual legal provisions, a lease, permit or even enabling provisions in the law. Following up on this observation is the fact that the most direct threat to CCAs is the absence of an enabling legal regime.

Evaluation

So far community involvement in the management of natural resources has been recognised only to a very limited extent. Other than in the event of the fisheries resource, no autonomous role has been recognised on behalf of the communities. Community involvement in resource management is usually to the extent allowed by the official system. The communities too, not seeing an opportunity present, are loath to take on the Government. However, the fisheries examples show that if the opportunities are present, the communities are ready and willing to assume this role and do have the initiative to pursue it successfully provided the right conditions exist.

Recommendations

- Carry out a thorough survey of the main types of CCAs in Sri Lanka together with ground surveys combined with a study of the legislative and policy background as applicable to each.
- Based on the survey, identify priority CCAs representing the main CCA types for support. Rather than financial support which may create an unhealthy dependence, this support could be in the form of technical and other support.
- Parallel to supporting the initiatives, document and record it and develop a replicable model.
- Initiate a process for the incorporation of the CCA concept into the policy and legal framework in Sri Lanka.

Opportunities

There are unique opportunities in Sri Lanka that could be seized in the present environment. The East coast of Sri Lanka which has been the subject to continuous conflict for a long period of time has just begun to open up. The Government is putting in major infrastructure facilities and development is taking place at an accelerated pace in this region. Having been subject to conflict for a long period of time this area would also have been less exposed to the adverse impacts of commercialisation and may have preserved traditional systems for longer. Therefore, this represents a clear opportunity for the identification and promotion of traditional CCA system available in the area.

The lead taken by the Supreme Court in recent cases also promotes a more transparent and accountable governance model. The 'public trust' doctrine recognises that the Government is required to hold certain resource in trust on behalf of the public and has traditionally been applied in respect of the seashore and navigable waters etc. These are important initiatives that provide clear opportunity to promote community involvement in resource management.

ANNEXURE - 1**Preliminary database of CCA sites in Sri Lanka**

Site Name (in local language and in English)	Mitirigala Nissarana Vanaya Hermitage
Country (include State and Province)	Sri Lanka
Area encompassed by the CCA (specify unit of measurement).	The entire forest area is approximately 378 ha of which the hermitage covers 250 acres
GIS Coordinates (if available)	
Main ecosystem type	Wet-zone disturbed forest
Whether it includes sea areas (Yes or no)	No
Whether it includes freshwater (Yes or no)	Yes
Marine (Yes or No)	No
Concerned community (name and approx. number of persons)	Meditating Buddhist Monks and the Mitirigala hermitage management committee
Is the community considering itself an indigenous people?	No
Is the community considering itself a minority?	No
Is the community permanently settled?	The community of meditating monks is permanent whilst the individual members may change. The management committee functions on the long term.
Is the community local per capita income inferior, basically the same or superior to national value?	N/A
Is the CCA recognised as a protected area by governmental agencies? If yes, legal document? Establishment date?	The entire forest area is State land and administered in terms of the Forest Ordinance.
Conflicts with land tenure, natural resource use?	No direct conflicts were noted. The hermitage is in the catchment area and thus protects the water source for the surrounding paddy fields.
What is the main management objective (e.g. livelihood, cultural, spiritual...)	Cultural and spiritual. Meditation retreat.
By definition, a CCA fulfills a management objective. To which IUCN management category do you consider it would best fit	
Description of biodiversity & resources (ecosystems, species, functions) conserved by the CCA	Wet-zone forest
Description of local ethnic groups and languages spoken	Singhalese

Broad historical context of the CCA	
Governance structure for the CCA (who takes management decisions, how?)	Hermitage premises leased to the management committee. Decisions pertaining to hermitage taken by the management committee whilst the surrounding forest is managed by the Forest Department.
Length of time the governance model has been in place	
Land and resource ownership in the CCA	State land
Type of land use in the CCA	
Existence of written or oral management plans and specific rules for the use of natural resources in the CCA	Governed in terms of lease
Map and zoning of the CCA (please attach if available and relevant,)	
Relevant pictures with captions (please attach if available)	
Major threats to biodiversity and/or the CCA governance system	The immediate site of the CCA is not under threat. Any threat vis-à-vis the surrounding forest such as encroachment, illegal felling or incompatible development in the could impact the CCA too
Local CCA-relevant features, stories, names, rules and practices	
Gender aspect of the CCA (elaborate)	
Climate change attributes(elaborate)	
Site Name (in local language and in English)	Salgala Forest Hermitage
Country (include State and Province)	Sri Lanka
Area encompassed by the CCA (specify unit of measurement).	50 acres out of approximately 700 acres.
GIS Coordinates (if available)	
Main ecosystem type	Wet Zone Forest
Whether it includes sea areas (Yes or no)	No
Whether it includes freshwater (Yes or no)	Yes
Marine (Yes or No)	No
Concerned community (name and approx. number of persons)	Buddhist monks and Management Committee
Is the community considering itself an indigenous people? (Please note Yes or No; if yes note which people)	No

Is the community considering itself a minority? (Please note Yes or No, if yes on the basis of what, e.g. religion, ethnicity)	No
Is the community permanently settled?	Yes
Is the community local per capita income inferior, basically the same or superior to national value?	N/A
Is the CCA recognised as a protected area by governmental agencies? If yes, legal document? Establishment date?	Yes. Hermitage premises leased from Government and the surrounding forest is State forest managed in terms of the Forest Ordinance.
Conflicts with land tenure, natural resource use?	
What is the main management objective (e.g. livelihood, cultural, spiritual...)	Cultural and Spiritual. Meditation retreat.
By definition, a CCA fulfils a management objective. To which IUCN management category do you consider it would best fit	
Description of biodiversity & resources (ecosystems, species, functions) conserved by the CCA	Wet-zone forest
Description of local ethnic groups and languages spoken	Singhalese
Broad historical context of the CCA	Ancient hermitage site re-established approximately 50 years ago.
Governance structure for the CCA (who takes management decisions, how?)	Hermitage managed by a management committee. Decisions related to surrounding forest taken by the Forest Department.
Length of time the governance model has been in place	Approximately 50 years
Land and resource ownership in the CCA	State land
Type of land use in the CCA	State managed forest
Existence of written or oral management plans and specific rules for the use of natural resources in the CCA	
Map and zoning of the CCA (please attach if available and relevant,)	Wet Zone
Relevant pictures with captions (please attach if available)	
Major threats to biodiversity and/or the CCA governance system	Incompatible development
Local CCA-relevant features, stories, names, rules and practices	
Gender aspect of the CCA (elaborate)	
Climate change attributes(elaborate)	

Basic data

Site Name (in local language and in English)	Rekawa Turtle Conservation Project
Country (include State and Province)	Sri Lanka
Area encompassed by the CCA (specify unit of measurement).	
GIS Coordinates (if available)	
Main ecosystem type	Marine Coastal
Whether it includes sea areas (Yes or no)	Yes
Whether it includes freshwater (Yes or no)	No
Marine (Yes or No)	Yes
Concerned community (name and approx. number of persons)	Village based NGO
Is the community considering itself an indigenous people? (Please note Yes or No; if yes note which people)	
Is the community considering itself a minority? (Please note Yes or No, if yes on the basis of what, e.g. religion, ethnicity)	
Is the community permanently settled?	Yes
Is the community local per capita income inferior, basically the same or superior to national value?	
Is the CCA recognised as a protected area by governmental agencies? If yes, legal document? Establishment date?	The NGOs activities are recognised by governmental agencies. The law does not provide for formal recognition/
Conflicts with land tenure, natural resource use?	Previously there was commercial turtle egg collection.
What is the main management objective (e.g. livelihood, cultural, spiritual...)	Conservation and livelihood.
By definition, a CCA fulfils a management objective. To which IUCN management category do you consider it would best fit	

Additional qualitative information

Description of biodiversity & resources (ecosystems, species, functions) conserved by the CCA	Marine Coastal, Species conservation
Description of local ethnic groups and languages spoken	
Broad historical context of the CCA	Started with NGO intervention approximately 13 years ago.
Governance structure for the CCA (who takes management decisions, how?)	Decisions made by the NGO in consultation with the local communities.
Length of time the governance model has been in place	Approximately 13 years
Land and resource ownership in the CCA	State land
Type of land use in the CCA	
Existence of written or oral management plans and specific rules for the use of natural resources in the CCA	
Map and zoning of the CCA	
Relevant pictures with captions	
Major threats to biodiversity and/or the CCA governance system	The legal framework which does not enable the recognition of the NGO is an immediate threat. In the long run competing commercial interests is one threat.
Local CCA-relevant features, stories, names, rules and practices	
Gender aspect of the CCA (elaborate)	
Climate change attributes(elaborate)	
Site Name (in local language and in English)	Rekawa Prawn Farm
Country (include State and Province)	Sri Lanka
Area encompassed by the CCA (specify unit of measurement).	Rekawa Lagoon
GIS Coordinates (if available)	
Main ecosystem type	Lagoon
Whether it includes sea areas (Yes or no)	Yes
Whether it includes freshwater (Yes or no)	No
Marine (Yes or No)	Yes
Concerned community (name and approx. number of persons)	Rekawa Lagoon Fishermen's Cooperative Society
Is the community considering itself an indigenous people?	

Is the community considering itself a minority?	
Is the community permanently settled? (Please note Yes or No; if the community is mobile, does it have a customary transhumance territory?)	Yes
Is the community local per capita income inferior, basically the same or superior to national value? (please note how confident you are about the information)	
Is the CCA recognised as a protected area by governmental agencies? If yes, legal document? Establishment date?	
Conflicts with land tenure, natural resource use?	
What is the main management objective (e.g. livelihood, cultural, spiritual...)	Livelihood
By definition, a CCA fulfils a management objective. To which IUCN management category do you consider it would best fit (this does not imply that the management objective is consciously pursued by the concerned community, but that it is actually achieved)	
Description of biodiversity & resources (ecosystems, species, functions) conserved by the CCA	Lagoon
Description of local ethnic groups and languages spoken	
Broad historical context of the CCA	Recent
Governance structure for the CCA (who takes management decisions, how?)	Fisheries collective implementing self imposed restrictions to promote sustainable fisheries practices.
Length of time the governance model has been in place	Approximately 14 years
Land and resource ownership in the CCA	
Type of land use in the CCA	
Existence of written or oral management plans and specific rules for the use of natural resources in the CCA	
Map and zoning of the CCA (please attach if available and relevant,)	
Relevant pictures with captions (please attach if available)	
Major threats to biodiversity and/or the CCA governance system	Incompatible development. Competing commercial interests.
Local CCA-relevant features, stories, names, rules and practices	
Gender aspect of the CCA (elaborate)	
Climate change attributes(elaborate)	