

# An Analysis of Professional Participation of Registered Licensed Surveyors in Land Partition

CP Ranawaka#, RMNM Weerasinghe and TC Kathriarachchi

*Faculty of Built Environment and Spatial Sciences, General Sir John Kotelawala Defence University, Sri Lanka*

#ranawakap@kdu.ac.lk

**Abstract-** Statistics of land ownership in Sri Lanka shows that approximately 82% of land in the country is under state control while only 17.7% is privately owned, and as a tool of administration and management of private lands, Partition Act (Amended) No:17 of 1997) has been enacted especially for clearing co-ownership disputes through litigation. Out of longer-term pending cases in the court, the main cases are partition cases followed by other land disputes. This situation urges the requirement of emphasizing 'private land administration and management as they are having "doing business" potential, due to clear title and less intervention by public sector decision-makers relative to public lands. This study aims to examine the professional involvement of Registered Land Surveyors (RLS) in partition cases as Court Commissioners and its relationship with laws delays in land litigation. Two provinces; 'Sabaragamuwa' and 'Southern', were selected purposively for the study, and statistics of RLS were analyzed. A simple Random sample of RLSs was drawn from Kegalle District in the Sabaragamuwa Province. Answers were obtained for a structured questionnaire. The study reveals that a large number of private lands which have development potentials remains stuck in the adjudication process of partition due to the lack of Court Commissioners which in turn leads to prolonged litigations. It was also revealed that 50% of the RLSs are reluctant to join this volunteer position due to drawbacks in the Partition Act. More than 70% of the RLS who are engaged with partition surveys are over 70 years of age and joining of new RLS with the courts for the last ten years is below 1 %. It is anticipated that if the situation continues and if appropriate remedial measures are not taken by the authorities and professional institutes, partition litigations would adversely affect the

private sector land administration and management.

**Keywords:** *partition, appraisal for owelty, court commissioner, Registered Licensed Surveyor (RLS)*

## I. INTRODUCTION

It is revealed that the number of litigated co-ownership disputes over private lands under the Partition (Amendment) Act no. 17 of 1997 are being increased (Progress Report, 2018, Ministry of Justice, World Bank Report, 2012). There are 215,855 cases in District Courts, 6261 cases in civil appeal courts and 4051 cases in Court of Appeal. 8% accounts for land, and partition cases (World Bank Report, 2012). 45% of the Partition cases are more than five years of time pending and 54% of the cases in such courts that are more than 10 years pending. (Progress Report, 2018, Ministry of Justice).

15% of the total lands are considered private lands out of which 1% accounts for 'urban lands' with 'doing business' potentials (World Bank). As 80 % of 'urban lands' are private lands, situation highlights the requirement of emphasizing on administration of private lands by 'Partition', especially for clearing ownership disputes through litigation which is being neglected.

According to the ownership statistics, 85% of the total lands in Sri Lanka are under the control of public sector institutes under any kind of law or administration and those laws have a long history. The administration and management of public lands in Sri Lanka is governed by more than 39 operational laws (Mapa, R.B., et al, 2002). As the land related functions institutionally fragmented, and geographically deviated, existing legislative framework is complex, inconsistent and fails to address the current and future needs of society and to enhance the investment climate in Sri Lanka (World Bank).

Overall accessibility to the land is one of the eight factors that defines 'rank of potential of doing business' in a country (Doing business, 2020). It takes 129 to 144 weeks for finalizing acquisition proceedings of a public land (Land manual, Acquisition guidelines, Page 340). The Efforts on administration of private lands are fewer than public lands as they are not under the public sector hence decision makers do not need to have documents like land permits or annual permit, land grants, long term leases, or processes of vesting or acquisitions.

Private sector land partitions and subdivisions are mainly being accomplished by the Registered Licensed Surveyors (RLS) as Freelance Practitioners (other than 'Bimsawiya' declared areas) complying with the regulations and recommendations stipulated by Sri Lanka Land Survey Council (SLLSC). RLS are the commissioners usually appointed to the 'Partition', 'appraisal of shares to Owelty' and recommend to 'Partition in Kind or Sell' (Partition (Amendment) Act no. 17 of 1997).

## II. BACKGROUND OF THE STUDY

In 1909, Crown Landmark Ordinance No:7 of 1909 was introduced for further improvements of boundaries separating public lands with private lands clearly. (Perera, N.S, 1958). As the British has established deed registration in Sri Lanka in 1863, most of the private land registrations were being carried out under 'deed registration system' which is one of the three registration methods still in use in Sri Lanka (Lars-Jonas Kaddik & Jona Rydberg, 2013, Divithure, H, 2008). It designates the document to transacted land with no spatial data leading to unclear location, unclear boundaries, and time-consuming ownership investigation during the transaction, mortgage, or subdivision (Lars-Jonas Kaddik & Jona Rydberg, 2013). The influence of real estates with an unclear legal status on lands is repeatedly indicated. Such a property, among others, extends the time necessary to prepare land for investment projects (Buško & Przewiężlikowska, 2016). Most of such private lands were being transferred through generations by 'deed registration system' leaving co-ownerships. It is necessary to establish institutional frameworks minimizing complications due to co-ownerships by national,

cultural, political and judicial settings (Enemark, S et al, 2005).

## III. PROBLEM STATEMENT

Number of partition cases over coownership disputes on private lands is being increased. Partition cases are the longest running cases in courts followed by land cases. The contribution to the administration and management of private lands in terms of 'Partition Act' by 'Professional involvement of RLS' has not been studied so far.

## IV. LITERATURE REVIEW

For the court ordered surveys, there are two identified types of disputes namely 'L' type and "P" type (DSR 2018, Partition Act no. 17 of 1997). Matters due to uncertainty between true boundary lines as defined by deeds or other instruments and the line actually established by occupation and the erection of buildings, fences, and other structures are under 'L' or 'land' (Joseph P. L, 1916).

"P" cases are formed due to co-ownership of subjective objects. "Partitioning refers to the situation where land is with co-ownership (whether as joint tenants or tenants in common) is transferred to one or more of the co-owners of the land. (Schurgott, K. et al, 2005). The legal meaning of the terms 'partition' and 'subdivision' are not same. The term 'partition' is used to describe both the action and the remedy available to any 'co-tenant' who wishes to dissolve a co-tenancy relationship (Giulietti V.G, 2021).

The Partition Act empowers the court to order a sale of the entire property instead of partition, and to divide the proceeds of sale among the co-owners in accordance with their shares in the property (Conway, H., 1997 Pepler, W.R., 1976). It is sometimes described as a 'forced sale' (Paul, P, 2005). Under the common law in Sri Lanka, any owner of property who owns an undivided concurrent interest in land can seek such a division. In some cases, the parties agree to a specific division of the land and if they are unable to do so, the court will determine an appropriate division (Partition Act No. 17 of 1997).

A subdivision is an interim step involved under partition where an identified plot of land divided into several plots. A track of land segregated from

large track in technically subdivision (Chang, Yun-Chien, and Fennell, Lee Anne, 2014). There is a 'statutory gap' in between 'partition' and 'subdivision' that should be bridged by appropriate enactment. Since the concept of partition is heavily involved with legal, social, and economic matters; ethical and moral, most of the countries used different tacit knowledge. There are discussions among academics that courts could have taken judicial notice of the Planning Act to avoid public policy denied partition to minimize the dichotomy (Chang, Yun-Chien, and Fennell, Lee Anne, 2014).

#### Voluntary and compulsory partition

If all the co-owners agree to the terms of the partition and none of the co-owners is a minor or an interdict or no sever property interests, the partition may be voluntary (Gates, A.L., 1982-1983). In some states of United States (US) additional rules are added depending on industries like oil drilling for voluntary subdivisions (Block, G., 1961-1962). If cotenants know each other's portions, they may reach an amicable partition (Chang, Yun-Chien, and Fennell, Lee Anne, 2014).

In some states of US, independent 'arbitrators' or 'appraisers' are involved when co-owners of a property are unable to come to an agreement on the value of the property and their rightful shares to divide the property and to allot the shares (Mitchell, Thomas W, 2001).

A tenant in common or tenants as a team has the absolute right to seek a 'compulsory partition' unless there are exceptional circumstances. If a single owner objects to right, share and/or value, interest or improvements, partition must be made (Act No: 17 of 1997, <https://legal-dictionary.thefreedictionary.com/partition>). Both real (buildings, soil and plantations) and personal property (movable property) can be subjected to compulsory partition (Act No: 17 of 1997).

#### Partition in kind and partition by sell

The 'Partition in Kind' is provided by Act considering lifelong interests, equity, and fairness (Gates, A.L.,1982-1983, Block, G.,1961-1962, Giulietti V.G, 2004). Partition on kind is an egalitarian method and do not sever personal sentiments, does not compel person to sell land,

and displace families or family members from their land (Gillian K. B., 2004, Peiris, G.L, 2013).

The 'Partition by Sale' are concerned in two occasions. First, a 'Partition by Sale' takes place if it is impossible to divide the property physically among the co-owners. The second occasion is when a 'Partition by Sale' can also take place when a 'Partition in Kind' could not be made without substantial injury to any of the interested co-owners. (Peiris, G.L, 2013).

Sales are also voluntary, forced, public or private. For instance, private sales necessarily auction sales sometimes are voluntary (Bouvier, J.,1856, Conway, H.,1997). A forced sale or judicial sale is one made without the consent of the owner of the property by some officer appointed by law (Bouvier, J., 1856).

#### Appraisal value of shares and their improvements

A valuation is not the same as a survey as there are difficulties in identifying the basis for valuation (Cooper S.A.A., 2010). It is important to get a property survey under partition as well as a property valuation for soil, interests, and improvements and plantations and finally equal values which is assessed by the court (Abdul, R.A., et al, 2008, Cooper S.A.A., 2010).

In United Kingdom, valuation is carried out by a RICS registered property surveyor. The Co-owners feedback pressure plays an important role in valuation behavior and judgement accuracy (Abdul, R.A., et al, 2008).

Actual appraiser behavior was found to be driven by subconscious procedures and production rules, called heuristics, learned gradually with experience. It is necessary to perform normative valuation model, which corresponds to the general information processing and human problem-solving theories (Newell and Simon, 1972, Simon (1978). It provides a standard, systematic algorithm to form a perception of the problem within a valuation task within the environment (Wolverton, 1997).

#### Partition acts in the world

In Poland, 'Court Commissioners' are called 'Legal Surveyors' and the documentation prepared by licensed surveyors play a crucial role in the regulation process.

In Canada, the law of partition is statutory and as a matter of right, laws of different states vary greatly. Alberta, under the common law of English, only coparceners had a legal right to demand partition. But later, right to proceed at 'law for partition' was extended to joint tenants. The partition Act discourages the sale in lieu of partition where only physical division was impracticable. The present aspect of public interest is that land should not be subdivided without regard to sound planning principles.

In the United States, partition is statutory and federal governments have enacted different Acts, generally favoring physical division. American judiciary does not encourage Partition in Kind and Owelty instead, court system uses its discretionary power to order partition by sale (Gillian K. B. 2004).

In England, there was no partition action in law or in equity for joint tenants or tenants in common until the mid-sixteenth century. The court of chancery could order 'Partition in Kind' or 'Owelty Partition' only for coparceners to seek judicial intervention through courts of chancery (highest court in UK). This situation prevailed concurrently in Alberta (Gillian K. B.2004). Partition was effectively eliminated in England when the 1925 property legislation restructured co-ownership tenure to give effect to a policy against fragmentation of holdings (Cooper, S.A.A, 2010)

In Caribbean islands, for partitions, four varieties of common law co-ownership needs have to be fulfilled with no hesitation as tenancy in common, joint tenancy, parcenery and tenancy by the entireties.

There, as has been shown, the owners of a moiety of the property are usually entitled to a sale as a matter of right. Owners of less than a moiety may obtain a sale but must show cause (Pepler, W.R.1976).

#### *Amendments, replacements, insertions*

History of the Partition Acts in the world goes back to 16<sup>th</sup> century. Between 1600 and 1830 British parliament passed more than 3500 acts altering individuals' right to real and equitable access (Dan Bogart & Gray Richardson, 2008). Most of the partition Acts in the world are influenced by traditions of England, as they were

British colonies. Even in United States, up to the 20<sup>th</sup> century, partition law had some residuals of English law. With the economic boom and enterprise development, parties wanted the right of deciding Partition in Kind or Partition in Sell.

The Coparceners and/or co-owners wanted right to have decisions in their own. Legal process and concurrent activities needed to be much coherent, and amendments, replacements and insertions were made constantly for addressing equity and other issues like social, political, legal, and economic.

At the beginning, partition was a 'Right' and then it was a 'Writ' to partition. Later it was 'bill' to partition. Later Partition can be 'Owelty partition' or 'payment of Owelty'. Partition can also be made by granting each party the right to use the land for a specified duration. This remedy has fallen out of favor due to the obvious inconvenience and potential inequities created. Partition by sale is the more modern remedy, whereby a court may order that the land in question be sold for the highest price obtainable and the proceeds distributed to the parties according to their interests (Gillian K. B, 2004).

#### *Planning control over partition*

Most of the partition Acts in the world are included with reference to the sections of planning Acts and varies greatly deviating from English law (Pepler, W.R, 1976). Section 31 (scheme of partition) of the amended partition Law says, "where any F divided partition or portions that are to be allotted to any person under an interlocutory decree are less than the minimum extent required by written Law regulating the subdivision of land for development purposes, the surveyor shall, so far is practicable, divide the land in such a manner as would enable the allotment or sale of such portion as one lot (Act no 17 of 1997).

There are arguments that planning regulations derogate the absolute right to a partition and issues of pursuant with partition act and subdivision as defined by planning acts concurrently. A Partition to be a subdivision within the meaning of the Planning Act must meet three basic requirements. (1) There must be a division of the parcel. (2) The order for partition must be a tool within the meaning of the

Planning Act. (3) There must be a transfer or creation of an estate or interest in part of the parcel.

#### *Court automation in the world*

Sri Lanka reports least Land Disputes Resolution Index (LDRI) in the region as 1.0 out of 8 which is one of five measures of the quality of land administration index. This value for Maldives is 4.5 which is best in the region and Pakistan remains 3.5 (World Bank 2018). In terms of longer term cases in the system, the main cases are partition cases, followed by land and money matters. (World Bank, 2013).

Litigation on partition requires dozens of documents which are publicly unavailable and inaccessible information. In terms of management information, the data on court cases and disposal rates that is gathered by the Judicial Service Commission (JSC) is not publicly available

(<https://openknowledge.Worldbank.org/>).

Information about trends in the practice of law in Sri Lanka's courts is also not consolidated or automated. There are government run databases of acts with search capability called Lawnet, but it does not contain important implementing regulations by agencies. The 'Law net' publishes law reports with judgments, but these are not searchable beyond the alphabetical names of litigants in cases. (<https://openknowledge.worldbank.org/>). Sri Lanka could learn from the court automation adoption experiences of India and Australia.

For instance, the first judicial IT-project was started in 1980 when the Austrian land registry was automated electronically. Within twenty years, summary proceedings on payment, electronic register, establishing Electronic Legal Communication (ELC) and electronic edict file for the publication of court documents were created. In year 2003, a website for a list of court experts and court interpreters was set up (Maurer, M., 2007).

#### *Appointment of commissioners*

The 'Commissioner' means 'person with a commission', a member of a commission, the representative of the governmental authority in a district, province, often having both judicial and administrative powers or the officer in charge of

a department or bureau of the public service or the administrative head of a professional sport (Webster Dictionary).

The provisions applicable to Court Commissioners have not been clearly defined in statutes but have certain powers in voluntary assignment proceedings (Nohl Max W., 1917). The 'Court Commissioner' is appointed for executing interlocutory decree to partition the landed property (Loyd, William H., 1919). The RLS becomes an 'Appointed Commissioner' to a particular commission received by him or her. It is unclear whether the designation 'Court Commissioner' is terminated once the commission accomplished by the appointed commissioner to that commission or continued. Lawyers are sworn as 'Commissioner of Oaths' to attest affidavits, statutory declarations and other legal documents.

Alberta Survey Act says "Everything done in the practice of land surveying shall be done by or under the supervision, direction and control of a practitioner. No Alberta land surveyor shall sign a plan or document in the practice of surveying unless it is prepared by him or under his personal supervision, direction and control" (Allred, G. K., 2007).

#### **V. ROLE OF A COURT COMMISSIONER**

The partition statutes provide for the use of a 'panel of commissioners' to assess whether and how a parcel should be divided which panel has the power to recommend Owelty payments equally as an appraiser. If the commissioners feel that the parcel cannot be divided fairly, they could recommend partition by sale. In some states in US like North Carolina, statute sets forth a detailed process that empowers three disinterested commissioners to obtain a survey, plot tracts and streets for accessibility, and make Owelty determinations (Rivers, F, 2007-2008). In Georgia, three disinterested qualified persons are appointed for 'appraisal' and Owelty determination. Some courts in some states are allowed to appoint a commissioner of commissioners.

#### **PROFESSIONAL BODIES AND ACADEMIC BACKGROUND**

Most of the countries have regulatory bodies for registration of surveyors but only for cadaster.

Because of the cadastral surveying the term 'registration' is used to indicate government recognition of competence in cadastral surveying.

The profession is changing and the number of competencies in which surveyors are actively involved is over 200 (Hannah, J., et al, 2008). The professional membership is awarded based on the degree level academic qualification and industry training which runs not more than three years and recognized by the relevant professional institute. In Turkey, to provide a legal status the Act about Licensed Offices of Surveying and Cadaster was enacted in 2005 to accredit surveyors. According to the Act, accreditation of private surveyors requires written and oral exams, work experience and certain legal prerequisites (Yunus, K., Mehmet, C., 2015).

International Federation of Surveys (FIG) and Royal Institute of Chartered Surveyors (RICS) are global level professional institutes that offer memberships to survey community that represents their work ethics and values to employers.

Different parts of the world report a range of major problems. Some surveying skills which are recognized and valued in some countries are not considered in the same light in others. Issues of registration with regulatory bodies, barriers to membership and Professional negligence of institutes are some inherent problems with institutes.

Institute of Surveyors Sri Lanka (SISL) is the local professional body of the RLSs. During the past 10 years, 227 surveyors have been enrolled with the SISL membership.

## VI. METHODOLOGY

Firstly, two provinces 'Sabaragamuwa' and 'Southern' were selected and statistics of the RLS were analyzed. Secondly, a Random sample of 25 RLS including two male and 23 female RLSs were selected from Kegalle District in Sabaragamuwa Province. Accordingly, answers were obtained for structured questionnaires forwarded to the sample through Google document.

There were twenty-two questions intended to draw direct answers to evaluate the suitability of the commissioners and level of participation for executing commissions. There were 73 questionnaires in accordance with five-point Likert Scale, intended to pronounce their opinion on selected specific matter.

Provisions of Partition Act No:17 of 1997 was examined by perusing the 83 sections and subsections which are directly related to the commissioner and practical application of each section was analyzed. The Appropriateness of the land partitions were evaluated by perusal of the quality of the final partition plan randomly selected.

As public sector RLSs are ruled out by the head of the institute not to involve in the court commission surveys, statistics of public sector RLSs are excluded from the calculations. This analysis focuses only on effect of RLSs on delays of partition cases. There are several other reasons for prolonged delays of partition and land cases in Sri Lanka.

## VII. ANALYSIS AND DISCUSSION

The concept of 'Partition' and how it differs from 'Land subdivision' were elaborated under the literature review. The provisions of Partition in Kind and Partition in Sell and appraisal for Owelty were discussed. Global literatures on different partition acts, provisions within them, alterations taken place and effect on planning regulations were analyzed. Requirement of court automation for avoiding long term pending was discussed. Appointment of commissioners, role of commissioner, registration of surveyors with regulatory bodies, role of the local and global bodies and their influence on commissioner, global survey community and their knowledge, skills and attitudes towards the judiciary process over partition and level of involvement with partition and their influence on public sector land administration and management were discussed.

Above mentioned facts are analyzed with reference to Sri Lanka and based on the level of contribution of RLS towards the judicial process over 'Partition' when appointed as commissioners, to what extent Partition (Amendment) Act no. 17 of 1997 is effective to

the commissioner, what are the remedial measures to be taken to improve the commissioner’s role for expediting the partition process, and the institutional reforms, legal reforms and professional improvements for smoothing the partition platform in Sri Lanka.

#### Analysis of court cases in district court and magistrate court

Analysis has revealed 11 types of court cases in Sri Lankan judicial system. The aggregate data from individual courts shows that nearly 79% of pending cases in first instance courts in 2012 were in the Magistrate Courts, while 21% were in District Courts.

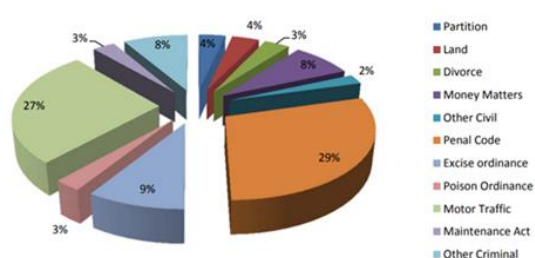


Figure 1: Breakdown of Cases in District and Magistrate Courts, 2012 Source: Sri Lanka Justice Sector Review, World Bank Report No. 77662-LK

#### A. Longstanding cases

In 2011, land, and partition, cases accounted for 8% of all cases in District Courts. Partition cases accounted for 45% of cases pending in District Courts for more than five years and 54% of cases were pending for more than 10 years.

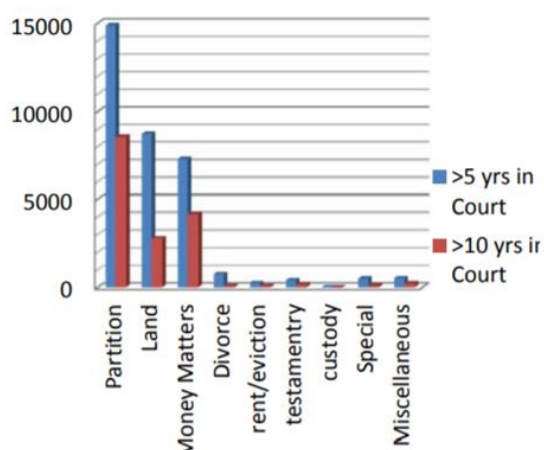


Figure 2: Longstanding civil cases by case type in 2012.

Source: Sri Lanka Justice Sector Review, World bank Report No. 77662-LK

There was a small increase of partition and other land cases in 2012 compared to 2011. Number of pending cases in Appeal Courts, Provincial Appeal Courts and Supreme Court have not been considered. It was revealed that majority longstanding cases are partition and land cases.

#### B. Participation of RLSS in southern province

Almost 50% of the RLSs in Southern province have decided not to involve with the court commissions surveys.

Table 1: RLS in Southern Province

District	Total RLS	Registered Licensed Surveyors			RLS (Non-Court Commissioners)	Number of Courts
		RLS (Public Sectors)	RLS (Private Sector)	RLS (Court Commissioner)		
Galle	83	34	49	39	10	4
Matara	64	20	44	24	20	2
Hambantota	25	14	11	6	5	4
<b>Total</b>	<b>172</b>	<b>68*</b>	<b>104</b>	<b>69</b>	<b>35</b>	<b>10</b>

Source: Sri Lanka Land Survey Council (2021)

\* Not allowed to involve with court commissions surveys

There are eight (10) courts in the Southern province including three District courts namely Galle, Matara & Hambantota. There are only sixty-nine (69) RLSs as Court Commissioners within Southern region. 34% RLSs has declined to join with partition surveys. This amount is 45% in Matara district. From among these 69 surveyors, 73% of the surveyors are over 70 years of age (SISL, 2020).

#### C. Participation of RLSS in Sabaragamuwa province

Almost 51% of the RLSs in Sabaragamuwa province decided not to involve with court commissions surveys.

Table 2: RLS in Sabaragamuwa Province

District	Total RLS	Registered Licensed Surveyors			RLS (Non Court Commissioners)	Number of Courts
		RLS (Public)	RLS (Private)	RLS (Court Commission)		
Kegalle	40	11	29	17	12	4
Ratnapura	60	31	29	15	14	4
Total	100	42*	58	32	26	8

Source: Sri Lanka Land Survey Council (2021)

\* Not allowed to involve with court commissions

### VIII. SURVEYS

There are eight (8) courts in the Sabaragamuwa province, including two District courts namely Kegalle and Ratnapura. There are only thirty-two (32) RLSs as Court Commissioners within Sabaragamuwa region. It means 45% of the RLS have declined to join partition surveys. This amount is 59% in Kegalle district. From among 32 surveyors, 65% of the RLSs are more than 70 years of age (SISL, 2020). During the last ten years, 6 surveyors only have joined the District court as court commissioners, while 5 surveyors have left the courts.

#### A. Knowledge and skill

All the RLSs in the sample have more than 30 years of experience. 92% possesses diploma or higher diploma. One is a graduate and another one possesses post graduate degree also. 88 % of the RLSs in the sample use digital data collection methods while 12% is using analog data collection methods. 64% of the RLS are working in fully digital environment while other 36% is still in transition period from analog to digital. 28% of the RLS are considering other emerging planning and environmental regulations need to be incorporated into their works.

All the surveyors are freelance practitioners other than legal surveyors. These freelance practitioners are not fully committed for court

commission surveys. Average number of fieldwork days is three or less. Monthly submissions are not more than three commissions.

#### ATTITUDE TOWARDS COURT COMMISSIONS

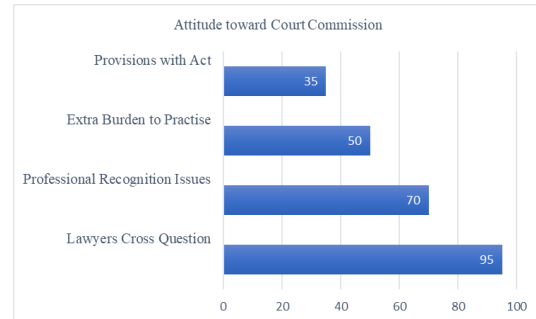


Figure 3: Measure of RLSs Attitudes

95% of the RLSs expressed their reluctance to face the nature of taking evidence and cross-questioning by the lawyers which they deem is not appropriate to a commissioner but to a suspect.

75% of the RLS surveyors were reluctant to be a court commissioner due to derogation of professional recognition at the partition process and insufficient facilities to commissioners.

80% of RLSs says that involvement with court commissions is an extra responsibility that is unnecessary burden to their professional life, and it is a disturbance to their freelance partitioning.

85% of the RLS expressed that the provisions in the Partition Act was not enough for charging survey fee timely. There are cases dismissed without charging survey fee, evading payment for small shares, mismanagement of the clients' payment by the lawyers and taking long time to final deposits.

In Southern province, only 2 surveyors have joined the courts during the last 10 years.

#### B. Application of technology

The survey proves that 36 % of the sample is still technologically in a transition period. 25% of the commissioners are still using very conventional instruments for partition and subsequent plan works. 40% of the sample is still reluctant to use online applications, working with Computer Aided Drawings (CAD) environment, using



digital equipment and smart applications in websites of supportive institutes.

### C. Analysis of partition act no: 17 of 1997

Partition Act No:17 of 1997 in Sri Lanka mainly focuses on Partition in Kind. The Act consists of 83 sections. Twenty amendments; two replacements and three insertions have been made so far. Even though section 29 of the Act provides for some provisions for recovering survey fee, 95% of the RLSs are of the view that those provisions are not enough. Issues related to labor charges, transport cost and/or facilities, and non-payment of share of fee by plaintiffs and defendants were their major concerns.

95% of the RLS expressed that, the Act has not catered for personal security at the field when executing the commission.

30% of the RLSs said that, still they are waiting for payments owed from the plaintiff and/or defendants.

70% of the RLSs say identifying 'subjective object' is the most important.

90% of the RLSs say issuing proxy under section 16.3, of the civil court procedure to the parties appear at the preliminary survey is important.

65% of the RLS say that the calculation of valuation, compensation and Owelty to the parties is crucial at the middle of feedback pressure of the parties.

### D. Appropriateness of the partition plan

According to the questionnaire, 80% of the RLS revealed that stakeholders support was not enough due to social, legal, economical and practical matters.

25 manually prepared plans and 25 computer aided plans were used for this evaluation. All the plans were prepared under Partition Act. All the plans were perused in terms of Regulatory Acceptance, Mobility and Accessibility, Physical Dimension (shape), Circulation, Neatness, and Completeness.

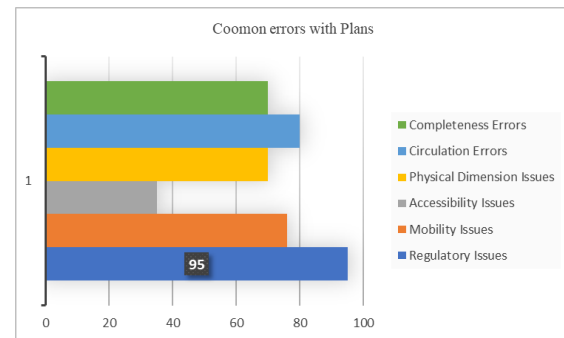


Figure 4: Percentage of Planning Regulation violation

Errors in CAD plans are largely reduced compared to manually prepared plan

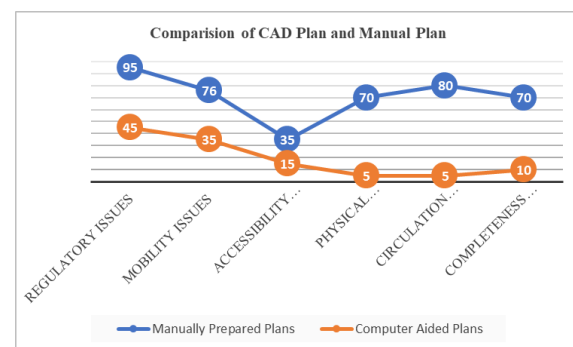


Figure 5: Manual and CAD Plan Comparison

## IX. CONCLUSION

Partition and land cases are the cases longest pending in courts for a long time: Lack of RLSs, lack of information required, complexity of court proceedings and high ratio of judge: number of cases are the main reasons.

More than 50% of the RLS are reluctant to join with the court commission surveys: There were only two RLSs who have joined with the panel of court commissioners in Sabaragamuwa Province as well as Southern Province during the last 10 years.

More than 70% of the RLSs who were engaged with court commissions in Sabaragamuwa, and Southern provinces are above 70 years of age: Barriers to registration with LSC and membership with SISL are the main reasons for lack of younger RLSs. Inherent difficulties with the job, limited adaption to the new technology and limitations of physical mobility due to ageing are the reasons for quality of the final output.

There is an obvious issue of carrying out court commission surveys.

Means of recovery of payments for surveys are informal: Due to delay of payments, inadequate rates, travelling and other expenses and time cost, 100% RLSs have not been fully committed for court commissions. This is one of the main reasons for late submissions. Number of monthly average survey days is three. Average submission rate is 3 commissions per month, as surveying, drafting, documentation, correspondence and submissions are carried out by RLSs themselves.

As tendency of partition in Sri Lanka is mostly towards 'Partition in Kind', RLS involvement is high: Physical partition, appraisals of shares and buildings plantations there on and appraisal of values for Owelty for equity shares are crucial tasks accomplished by RLS at the middle of pressure of plaintiffs, defendants and lawyers in absence of arbitrators. There is an emerging issue of professional qualifications regarding the appraisal of valuations for such calculations in urban areas with high land values.

Almost 100% of the RLSs don't feel that they are part of the court: The nature of taking evidence and cross-questions by the lawyers make the commissioners feel as if they were accused rather than a commissioner assisting the court. This is another reason for lack of court commissioners. 90% of the RLSs assume that court commission surveys are an extra burden to their freelance practice.

Lack of facilities at the court, slow speed of encashment of survey fees, unnecessary noticing and wasting additional days for the summons discourages the long stay with court commission surveys: Most of the RLSs are reluctant to involve with "L" cases.

Need of remedial actions: If remedial actions are not taken, 75% of the commissioners would be retired from this voluntary task during the next 5-10 years. This will adversely affect the administration and management of private sector land which claims 80% of urban lands with enormous potentials of doing business.

There is an issue of professional recognition of the 'commissioner' and satisfaction with the job they perform.

## ABBREVIATIONS

RLS	Registered Licensed Surveyors
SLLSC	Sri Lanka Land Survey Council
JSC	Judicial Service Commission
FIG	International Federation of Surveyors
RICS	Royal Institute of Chartered Surveyors
CAD	Computer Aided Drawings

## REFERENCES

- N.S Perera, 1954-1958, The Ceylon Survey Department: Article, Covering the period of 1905-1031 G.L Peiris, 2013, Law of Property, Vol 3, P 296)
- Pepler, W. R., 1976, "The Right to Partition in Alberta." Alberta Law Review, vol. 14, no. 1, 1976, p. 179-185. Hein Online.
- Gillian K. B., 2004, Partition by Private Laws, Western new England Law Review, Vol 26:125, <https://heinonline.org/HOL/License>.
- Document of the World Bank, 2013, Report No. 77662-LK, Justice Sector Review, Sri Lanka, Poverty Reduction and Economic Management Sector Unit, South Asia Region, <https://openknowledge.worldbank.org/>
- Partition Act No: 17 of 1997
- Giulietti V.G., Real Property, Partition by Private Sale Absent Specific Statutory Authority [notes], Western New England Law Review, Vol. 26, Issue 1 (2004), pp. 125-168.
- Maurer, M., 2007, Court Automation in Austria, <https://heinonline.org/HOL/License>.
- Allred, G. K., 2007, The Surveying Profession, Strategic Integration of Surveying Services, 6th FIG Regional Conference 2007, Printed at San José, Costa Rica 12-15 November 2007
- William, H.L. at al, (1919) Partition, University of Pennsylvania Law Review and American Law Register, Vol. 67, No. 2 (Apr. 1919), pp. 162-190, Published by the University of Pennsylvania Law Review, <https://www.jstor.org/stable/3314500>
- Abdul, R.A., et al, 2002, Client Feedback Pressure and the Role of Estate Surveyors and Valuers, Journal of Property Research, June 2008, 25(2) 89-106, ISSN: 0959-9916 (Print) 1466-4453 (Online) Journal homepage: <https://www.tandfonline.com/loi/rjpr>
- 20, School of Property, Construction and Planning, Birmingham City University, Birmingham, UK, B42 2SU.
- Dan Bogart & Gray Richardson, Estate Acts 1600-1830, A New Source for British History, Working Paper 14393, National Bureau of Economic Research, 1050, Massachusetts Avenue, Cambridge MA02138, 2008,

Mapa, R.B., et al, 2002: Land issues in Sri Lanka, Past, Present and future, symposium no 31, Paper no.974, 17<sup>th</sup> WCSS, 14-21 August, Thailand

Chang, Yun-Chien, and Fennell, Lee Anne, 2014, Partition and Revelation, University of Chicago Law review, 81 U. Chi. L. Rev. (2014)

Gates, Andrew, L., 1982-1983: Partition of land and mineral rights, Louisiana Law Review, Vol. 43, Issue 5 (1982-1983), pp. 1119-1142

Loyd, William H., 1919, University of Pennsylvania Law Review and American Law Register, Vol. 67, Issue 2, pp. 162-190

(Nohl Max W., 1917), Power and duties of a court commissioner, Marquette law review, pp 172

Rivers, F., 2007-2008, Inequity in Equity, The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity, Temple Political & Civil Rights Law Review, Vol. 17, Issue 1 (Fall 2007), pp. 1-82

Joseph P. L, 1916, Establishment of Boundary Lines by Practical Location, California Law Review , Mar., 1916, Vol. 4, No. 3 (Mar., 1916), pp. 179-205, URL: <https://www.jstor.org/stable/3474282>.

Block, G., 1961-1962, Voluntary subdivision rule, Texas law review, Austin, Texas, 1962, Vol 40, pp. 254

Mitchell, Thomas W., 2001-2001, From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community through Partition Sales of Tenancies in Common [article] Northwestern University Law Review, Vol. 95, Issue 2, pp. 505-580, (Winter 2001).

Conway, H., 1997, The Repeal of an Act for Join tenants 1542 and the Jurisdiction to Order Partition or Sale under the Partition Acts 1868 and 1876 [article], Dublin University Law Journal, Vol. 19, pp. 1-32. 19, Dublin U. L.J. 1 (1997)

S. A. A. Cooper, 2010, Partition of Land in the Commonwealth Caribbean, 39 common law world review, pp. 283-309 (2010).

Hannah, J., et al, 2008, Surveying: a profession facing a global crisis, European Congress of Surveyors, Strasbourg 17th - 19th of September, The Perspectives - the role of the surveyor in the European society and economy.

Doing business measuring business regulation, World Bank, <https://www.doingbusiness.org/en/data/exploretopics/registering-property>.

Robert, S., 2016, 'Taking advantage of advances in technology to enhance the rule of law' (Australian Academy of Law, October 2016)

World bank, 2013, Sri Lanka Justice Sector Review, Report No. 77662-LK, Poverty Reduction and Economic Management Sector Unit, South Asia Region, June 2013.

## AUTHOR BIOGRAPHIES



PInr Pujitha Ranawaka  
Senior Lecturer at Department of Spatial Sciences  
Faculty of Built Environment & Spatial Sciences  
Research Interests: Land Administration and Management, Land Partition and Subdivision, Spatial Planning



Lt Col (Rtd) Thushara Kathriarachchi MSc, LLB, PgdHR  
Attorney-At-Law  
Lecturer Probationary at Department of Quantity Surveying,  
Faculty of Built Environment & Spatial Sciences  
Research Interests: Environmental Law, Law of Delict, International Criminal Law



RMNM Weerasingh  
Undergraduate Student  
Department of Spatial Sciences Faculty of Built Environment