

IMPACTS OF DISCRIMINATORY PROVISIONS IN THE LAND DEVELOPMENT ORDINANCE ON WOMEN IN SRI LANKA: A QUALITATIVE EXPLORATORY STUDY CONDUCTED IN MAHAWELI SYSTEM H

R.P.I.R. Prasanna

Department of Economics, Faculty of Social Sciences and Humanities, Rajarata
University of Sri Lanka, Sri Lanka

1. BACKGROUND

Land ownership is an essential indicator of wealth, power, production, sustainable resource management and social status, and security of a person in any society; and thus, equal rights in land are recognized as human rights. The land is one of the factors of production in economics and land rights – own, inherit, and control – establish the necessary conditions to utilize the land optimally.

Globally, women are recognized as a marginalized group in terms of fewer land rights and its' associated social, economic, cultural, political, and other issues. In developing countries, many women are dependent on agriculture for their livelihood. For instance, women account for over 40% of the agricultural labor force in developing countries (FAO, 2011). In Asia, 70% of employed women work in agriculture. Thus, land ownership is a critical determinant of the well-being of women because it improves their access to resources, involvement in economic activities, social security, empowerment, and psychological well-being. Women are marginalized in land rights because, very often, land registration or titling programs focus household head, which is often legally and customary defined as a man, specifically in developing countries. FAO (2010), as quoted by Rai (2014), noted that less than 20% of women in the world are with landownership. Expressly, lack of opportunities for women to access and control over productive resources have been noted as one of the causes of poverty among women and their families (FAO, 1997; Meinzen-Dick et al., 2017).

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Considering these facts, the United Nations reemphasized the need of ensuring equal rights in ownership and control over land and other economic resources to end poverty and achieve gender equality and empower all women in its first and fifth target of Sustainable Development Goals (SDGs) defined in September 2015.

In Sri Lanka, the women rights in land in terms of occupation, ownership, transfer, alienation, and acquisition have recently become a topical subject due to various reasons: mainly the increased number of women-headed households in North and East provinces of the country due to the war effect (Raji, 2017; The Women and Media Collective, 2017), the end periods of the first settled generation of most agriculture colonization schemes, especially the ones established during the period of the 1950s to 1980s, the increased number of informal land transactions in the settlement schemes (Chandrasiri, 2010), and the increasing number of land issue-related complaints received by the authorities. As a member of the United Nations, the country has acknowledged the women rights in use and control over economic resources, including the land to eliminate poverty and establish gender equity. Further, Article 12(1) and 12(2) of the constitution of Sri Lanka acknowledge the equality of all citizens before the law and abolish any gender-based discrimination (Fokus Women, 2016). Further, the country has mostly acknowledged the women role in economic development in the phase of growth-oriented structural circle introduced in 1977. Thus, the successive governments have expanded the opportunities for women to involve in economic activities, improving their access to resources, markets, and providing a conducive legal environment. As a result, today, women play a significant role in the top export-earning industries – garment industries, and in traditional plantation industry – and in sending foreign remittances.

Land related issues in the agricultural regions in Sri Lanka are a chronic issue, which is not focused adequately on the policy and legal settings yet. These issues primarily centered on the Land Development Ordinance (LDO) in 1935 (Raji, 2017; Law and Society Trust, 2010a; World Bank, 2008). Literature has explicitly documented problems related to the ownership transfer, nomination of successors, and sub-division of land (World Bank, 2008; Law and Society Trust, 2010b).

The ordinance has established regulatory provisions over passing the land to one family member excluding the rest from the process and limiting the sub-division of land given to the initial settlers. An inefficient and corrupted administrative setup in issuing, transferring, alienation, and acquisition have also been noted in the literature (World Bank, 2008). Literature also highlighted some embedded discriminatory provisions against women in the LDO 1935, which are operated or practiced even at present. Specifically, food production is among the objectives of settling the families in the agriculture colonization schemes, and

thus, legal and administrative interpretations favor to men. Besides, some customary practices in society are against women land rights. Aggregate effects of these problems and discriminatory provisions in the LDO are reflected from the informal land fragmentation, informal land transaction, farm productivity issues, less interest of youth in continuing with farming and youth outmigration, and stagnated economic status of farming communities (Prasanna & Ranathilake, 2018; Rupasena & Naik, 2009; The World Bank, 2003). Effects of discriminatory provisions against women are not well documented in the literature even though they have a clear association with stagnated poverty and vulnerability and social insecurity of women in the society.

2. LITERATURE REVIEW

The literature has mostly documented the gender gap in the land rights in the country, particularly noting the gender-based discriminatory provisions in the LDO in 1935. Raji (2017) investigated the issues and problems concerning the LDO and its implementation by reviewing the LDO-related literature. The study reveals some discriminatory provisions and practices of the LDO and confirms that existing regulatory provisions and administrative practices do not enough support to establish conditions for women the equal access to state allocated land. At the *Land Kachcheri*, male applicants generally are given a priority due to agricultural purposes. The study conducted by Law and Society Trust (2010a) also confirms the same – a priority for male in land rights – and officials generally states that ‘male is better equipped to handle the work of cultivation.’ The study of Raji (2017) further reveals that according to the ordinance, the spouse who has not been nominated by the land permit holder has only a life interest of the land. Such a spouse cannot nominate a successor to the title. These provisions and practices have increased the vulnerability of women, particularly in the agriculture regions.

However, no adequate studies have attempted to explore the impact of discriminatory provisions in the LDO and customary practices against women rights in the country. Raji (2017) stated, women, have not been given equal access to state land in Sri Lanka, and emphasizes the need of reviewing the LDO to address discriminatory norms and practices layered against women land rights defined in terms of ownership, transfer, control, alienation, and acquisition. Thus, the study of impacts of discriminatory provisions in the LDO and customary practices against women rights in land in agriculture regions is vital to understand the nature of the problem and take appropriate measures to address the issues related to the LDO and aware the community on impacts of discriminatory practices.

3. OBJECTIVES OF THE STUDY

Within this backdrop, the objective of this study is to study the impacts of discriminatory provisions in the Land Development Ordinance on Women in Sri Lanka.

The study focuses on following points: 1) Identification of the discriminatory provisions in the LDO and customary practices against women rights over land; 2) Exploration of demographic profile of the women who are facing the problems of land rights due to the discriminatory provisions in the LDO and customary practices; 3) Investigation of the socioeconomic, cultural, political, and psychological impacts of discriminatory provisions on women; and 4) Examination of how the women act/ behave to sort out land-related issues.

4. RESEARCH METHODOLOGY

4.1 Study setting

This qualitative study, performed in the Agrarian Structure of the *Mahaweli* System H in Anuradhapura district, uses in-depth interviews as the study technique. The *Mahaweli* System H was selected due to the following reasons:

- a. According to agricultural statistics, the system was established in 1980 under the Accelerated *Mahaweli* Development Program, and about 6,000 families have been settled giving 2.5 acres – *mud-land*, mainly for paddy farming and 0.5 acres of upland. Thus, state lands have been given under the LDO in 1935, which is the central legal framework - specifically of the state land- for systematic development and alienation. The ordinance provides a legal setting for government officials to work on the use and distribution of state land. Thus, the area is much appropriate to study the effects of discriminatory provisions against women in the agriculture regions in the country.
- b. The initial conditions of settlers were the same as the selection of colonizers carried out using standard criterions. Thus, the study could assess the effects of discriminatory provisions of the LDO comparing with similar base conditions of the initial settlers in the system in addition to the deviation of their socioeconomic status. Typically, in agrarian structures under *Mahaweli* Development Authority, these settlers communicate their agriculture-related matters and land-related issues with Regional Office of the *Mahaweli* Development Authority in the system.

- c. Herath (2006) reported that most of the dry zone farmers are subsidized and close to the poverty line, indicating that land policy enacted at the macro-level has not benefitted farmers.

4.2 Sampling and data collection in the area

This research aimed to generate empirical evidence on the impacts of discriminatory provisions in the LDO on women in Sri Lanka by taking the *Mahaweli System-H* as a case. Data for the study was primarily drawn from an empirical survey conducted in June and August 2019 among the women who have experienced the effects of discriminatory provisions in the LDO.

Thus, the study defines the population as all affected women by the discriminatory provisions in the LDO in the *Mahaweli System – H*. The number of the diseased women in the system was identified through the reported land-related issues in the Regional Office of the *Mahaweli Development Authority* in the System – H located in *Tambuththegama* in Anuradhapura district. Annually, a large number of land-related cases are reported to the Regional Office, including women-based land-related issues. Of the reported land-related issues, 23 cases were randomly selected for the qualitative in-depth interviews purposive sampling method. Due to the nature of the phenomenon to be studied, an in-depth unstructured interview method was employed to generate qualitative data related to the research subject – impacts of discriminatory provisions in the LDOs against women. Due to the women sensitive nature of the research subject, a well-trained two female graduates were employed to conduct these interviews under the direct supervision of the principal researcher. The interviewers explained the aims of the study to the prospective participants. The interviews were conducted at a convenient place for the participants and place, mostly at their homes, and times. Interviews were conducted according to the standard interviewer techniques. The interview guide was designed to elicit the information on economic, social, cultural, psychological, and any other impacts of discriminatory provisions of the LDO on women in the system and pre-tested. Interviews were tape-recorded with the permission of the participants. Sub-thematic areas of main headings were derived based on the interview results. All interviews were recorded and then transcribed. The qualitative data generated through the field interviews were analyzed with a descriptive method.

In addition to the affected women, key informant interviews were held with the officers – Residential Project Manager, Blog Managers (BMs), and Land Officers (LOs), who deal with land-related issues in the Regional Office in the *Mahaweli Development Authority* in System H.

The secondary data for the study will be drawn from available reports in the Mahaweli Development Authority and published research articles on the subjects.

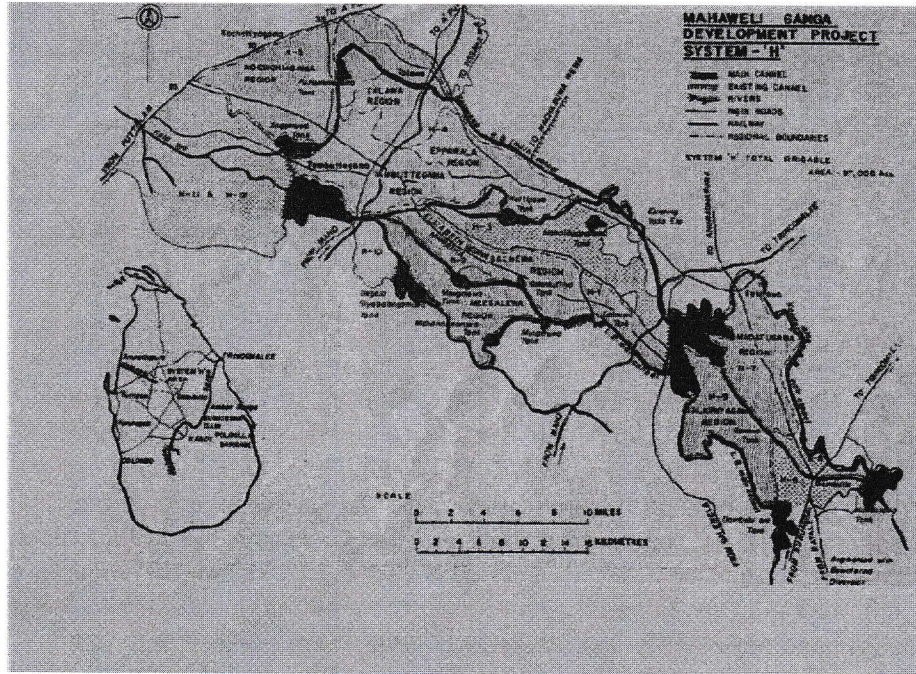


Figure 1: Map of the study area – Mahaweli system H

5. RESULTS AND DISCUSSION

5.1 Discriminatory provisions or practices against women – Literature highlights

The LDO of 1935, which is still the legal structure for systematic development and alienation the state land in Sri Lanka, embedded specific provisions not aligned with gender equality. Some provisions are administratively defined and practiced against women, particularly concerning agriculture land. In terms of agriculture regions, household heads are mostly the men since the land was given mainly for agriculture purposes, and thus, it is biased to male. The LDO provides the procedure of nominating a successor of the land rights.

“Upon the death of a permit holder, the spouse of that permit holder is living, whether or not he or she has been nominated as successor, shall be entitled to a life interest in respect of the land. In such a situation, since the surviving spouse shall be

entitled to a life interest, such surviving spouse shall not be entitled to nominate a successor.”

As lands are given primarily for agricultural purposes in the system and household heads are mostly men, the spouse (mostly women) who have not been nominated as a successor has issues regarding the power to dispose of the land or nominate a successor (refer 48A and 48B of the LDO 1935). According to this provision, the spouse of the deceased permit holder is entitled to succeed to the land, irrespective of nominating as a successor by the permit holder. However, the ordinance has distinct land rights between a spouse who have, and have not, nominated a successor, as mentioned above. In this case, a widow has no right to transfer or sell land if her husband has not named a successor (Raji, 2017). The authorities in the system reported that many land-related issues reported in the system are related to women who received only the life interest after the death of their husbands due to non-nomination of the spouse as a successor.

The second debatable provision highlighted by respective authorities in the system is the discrimination against women in transferring land from initial settlers to their second and third generations. Section 72 of the LDO (as amended) in the absence of the nomination of a successor to a settlement in these areas stipulates inheritance to devolve in the male line according to the concept of primogeniture. The oldest male obtains preference over everybody else (Law and Society Trust, 2010). Males are given the priority as the provided list sub-section (b) of the third schedule.

Section 51

“No person shall be nominated by the owner of a holding or a permit-holder as his successor unless that person is the spouse of such owner or permit-holder, or belongs to one of the groups of relatives enumerated in rule 1 of the Third Schedule.”

Third Schedule

1. (a). *The groups of relatives from which a successor may be nominated for Section 51 shall be set out in the subjoined table.*

(b). *Title to a holding for Section 72 shall devolve on only one of the relatives of the permit-holder or owner in the order of priority, in which, they are respectively nominated in the subjoined table. The holder being preferred to the younger where there are more relatives than one in any group.*

Table

- | | |
|----------------------|---------------|
| (1) Sons, | (7) Brothers, |
| (2) Daughters, | (8) Sisters, |
| (3) Grandsons, | (9) Uncles, |
| (4) Grand-daughters, | (10) Aunts, |
| (5) Father, | (11) Nephews, |
| (6) Mother, | (12) Nieces, |

In this rule, “relative” means a relative by blood, and not by marriage.

According to Law and Society Trust (2010b), the Land Commissioner had recommended the amendment to subsection (b) in the Third Schedule to revise this gender-discriminatory provision, which is not yet accepted.

The third issue reported by the authorities in the system is the limitation that existed in sub-division of given land in the scheme, like other agriculture areas of the country. Particularly, initial settlers have been given 2.5 acres of *mud-land* and 0.5 acres of upland. According to the land law specific to the agricultural settlement schemes, *mud-land* cannot be sub-divided to less than 1.5 acres. This limitation has restricted the permit holder’s wishes to transfer his land equally to his children, and thereby, as stipulated in law and based on customary practices, and land ownership tends to go to the eldest male.

5.2 Descriptive profile of the interviewed sample

The descriptive profile of the interviewed 23 women, who experienced effects of the discriminatory provisions against women in the LDO, reveals that the majority are in the age group of 35 - 65. Most of them (78.2%) have the educational qualification of grade 5 to O/L. It indicates that the literacy level of these women is at an acceptable level in terms of research subject of this study. Their main occupations are farming activities and hired labor (*Kulee weda*). Majority of the women who do farming activities report that they do paddy farming at a small plot of paddy land owned by their brothers. In average, it is 0.28 acres. Specifically, most of them do not have ownership rights of the land used for cultivation.

Table 2: Socioeconomic and demographic characteristics of the surveyed sample

Characteristic		Number of respondents	%
Age	<35	0	0.0
	35-65	16	69.6
	>65	7	30.4
Education level	Zero schooling	0	0.0
	Until grade 5	4	17.4
	Grade 5 to O/L	18	78.3
	O/L to A/L	1	4.4
	Above A/L	0	0.0
Average household size		5.13	
Major occupation	Government	0	0.0
	Private	0	0.0
	Housewife	5	21.7
	Farming	12	52.2
	Hired labor (kulee weda)	12	52.2
Land ownership of the household (Acre)	Mud land*	0.28	
	Upland**	0.47	

Note: * Majority are not owned land but practice farming informally in their brothers or sisters' land.

** Some of the selected families do not have a permit.

Source: Field interviews, 2019

5.3 Causes of land-related issues faced by the women in the system

As presented in Table 2, four types of root causes of land issues mostly relate to the discriminatory provisions against women in the LDO were identified via in-depth interviews:

- 1) the cases of non-nomination of a successor by the permit holder (particularly the men);
- 2) the cases of the nomination of successor but applied gender-based customary ideology;
- 3) regulations over sub-divisions of lands initially granted to settlers;
- 4) some other specific cases.

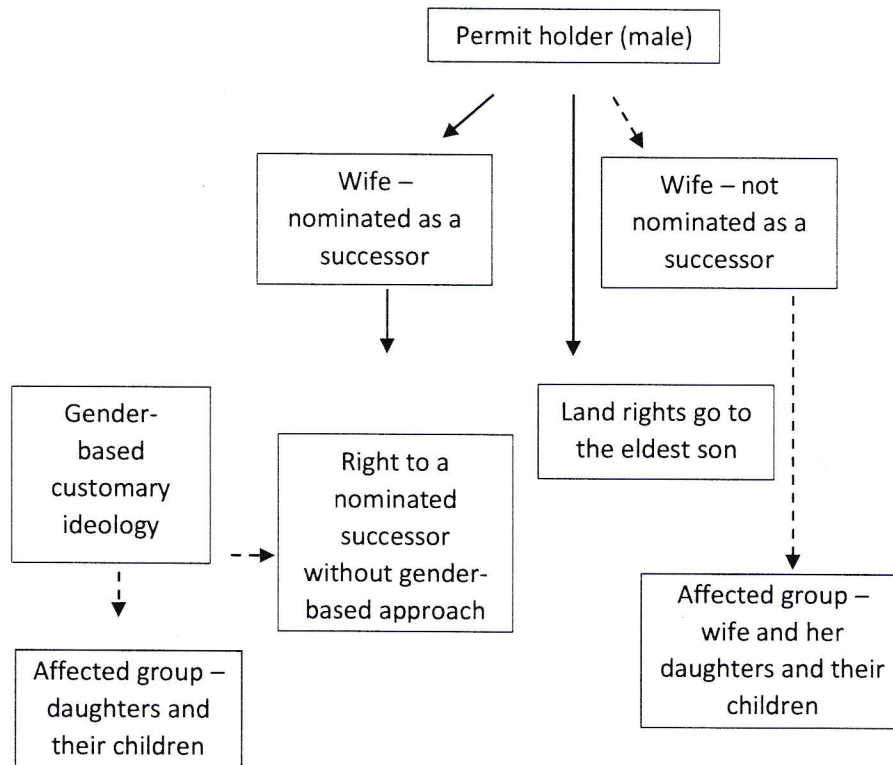


Figure 2: Nature of the women discriminatory reported cases and possible affected parties

Source: Field survey, 2019

In case of non-nomination of a successor by the permit holder, rights of a spouse over land is limited as discussed in Section 4.1. The results show that this negatively affects the spouse, wife in this case, and her daughters. Following is a typical statement given by a respondent over this matter.

Case 12: In this case, the father has not nominated his wife as successor. After the death of the father, the victim’s husband and his brother were jointly cultivating paddy land for consumption purposes. However, the victim's husband died four years before due to a snake-bite poisoning and then began the land-related issues with the isolation of the victim.

“My husband died by a snake-bite poisoning four years ago. Before he died, we lived at his parents' place, and my husband did farming jointly with his elder brother. We were looking after his mother. However, his mother did not receive any rights to name a successor as her husband did not name her as a successor of the lands.

After the death of my husband, we lost every right of land. My husband's brother asked us to go out from the parent place and did not allow us to continue with paddy farming as my husband did before he died jointly with his brother. We laid the foundation for the house at parents' place, even built a toilet, and supported to get a water supply to the parents' place. We lost everything because my husband's mother did not have the rights to name my husband as a successor. In some occasions, my husband's brother hit me. We had to face numerous issues due to this land issue.'

For nominating the wife as a successor of the land, on some occasions, the lands rights go to males due to customary based ideology in the society. Case 5 gives evidence over this matter:

Case 5: The mother received the rights in naming a successor, but she ignored the daughters adhering to the traditions.

'My father was a land permit holder. Before died, he named my mother as a successor of land. Mother has the right to name any one of her children as a successor. But she said her son should receive the right even though he is the youngest member of the family. We did a lot for the development of the land. But she ignored all and adhered to the tradition. She felt that daughters of her will not take care of her or develop the land in the future.'

Table 3: Classification of the root cause of land-related issues faced by the interviewed women

Root cause	No. of women	Percentage
No nomination of a successor	10	43.5
The nomination of a successor; but applied the gender-based customary ideology	6	26.1
Limitation over sub-division	5	21.7
Other	2	8.7

Source: Results of field interviews, 2019

Five respondents have noted the issues related to limitations over sub-division. This mainly noted issue concerned with giving the *mud-land* to the initial settlers. In the system, each farmer was given 2.5 acres of *mud-land*, and the minimum size for sub-division is 1.5 acres in the system like other agriculture regions. Thus, the initial settlers cannot divide given *mud-land* in the case of transferring ownership to their all children. This has established a bias situation in transferring the ownership to the male child of the family as it is the customarily accepted norm in the society. Thus, the provision over sub-division indirectly

provides a discriminatory environment for daughters in the family. Case 21 illustrates the nature of this issue.

Case 21: In this case, the father has transferred the ownership of *mud-land* to his son because of the limit over sub-division. There were six children (5 daughters and one son) of her family. Two daughters were more vulnerable in terms of lands for livelihood activities, and the rest of the daughters were not economically vulnerable as their husbands had sufficient land for cultivation purposes. Due to the existing condition over sub-division, the father has to transfer the *mud-land* to his son adhering to customary practices.

“This issue led to my husband to leave my daughter and me. After leaving my husband due to this land problem, I was displaced and isolated with my daughter at my parent’s house. I didn’t have any income source.”

5.4 Impact of discriminatory provisions in the LDO and practices on women

Social impacts

The main social impact of the discriminatory provisions against women in the LDO identified by this study is the social isolation with the loss of land rights.

At the first instance, these households – mostly the women headed- have become isolated in terms of relationship with relatives due to the loss of land rights. Out of 23 cases, 14 cases reported that they had had conflicts, mostly verbal, with their relatives over land-related issues. One of the phenomena noted in the in-depth interviews was that even though the family members mutually or informally share the *mud-land* after their brother died (victim’s husband), the victim and children lost that informal right as well. This is basically because of the influence of the wife of the permit holder (see Cases 2, 5, 7, and 10).

Case 2: *“Brothers did not give me any land. Even they do not think about how I feed my children. I buy rice, coconut, and rest from the market. I could do so as I do kulee weda. The problem was aggravated after the death of my husband. Now his son holds the right of the land.”*

Case 5: *“My brother do not talk with me now. I was like a mother for him before the problem.”*

Case 7: *“When husband’s brother lived, he allowed us to grow 1 bushel of paddy in their paddy land informally. He committed suicide four years before. After that, his elder son does not allow us to grow paddy in their land, and he plows all without telling us. Now I and my daughter quarrel with them.”*

Case 10: Statement of the victim's son – *“When our grandpa lived, my father has requested to give land to his younger brother. My father's youngest brother got married, and thereafter, decisions concerning land were taken by his wife. She did not allow us to access the land after the death of our father.”*

Secondly, the loss of land rights has pushed these families into poverty. Almost all victims reported that they lost their primary income source. This has pushed the victims to find alternative income sources, as presented in Table 4. Four victims reported that they migrated to Middle-East countries and domestic urban areas to work as housemaids. In-depth discussions with these four families revealed their decision over migration has negatively affected the child education and protection. It gives evidence that the created social isolation pushed these families and their members into less social security in different ways.

Case 14: *“I went to Middle-East because here I didn't have any income source. The only resource we had was the land jointly cultivated with my husband's brother. After the death of my husband, we were unable to continue with farming (.... her appearance was very thoughtful explaining how they lost their land rights). During my period at Middle-East, my children stopped their education and have gone for work at private trading places. At that time, they were less than 15 years old.”*

Economic impacts

Similar to other agriculture schemes, the primary economic activity of settled families in this scheme was to produce food, mainly to generate a surplus to the market. The qualitative in-depth interviews conducted among women who experienced the negative effects of women discriminatory provisions in the LDO revealed different types of economic impacts of the provisions. All case studies indicated the loss of primary income source as the immediate effect of the application of discriminatory provisions in the LDO. Specifically, feelings over the collapse of household economy or feelings over severe economic insecurity were reported by almost all interviewed victims. The 16 cases reported that the problem arose after the death of father or husbands of victims, indicating how women lose their economic security. This could be particularly recognized as an issue in the context of dependency perspective (dependency syndrome) or fewer women empowerment in the agriculture-based rural societies in the country. The following statement given by Case 21 provided clear indication over economic isolation and the increased vulnerability of the affected families.

Case 21: *“Soon after the death of my husband, his brother told me he received the ownership of my husband's father's lands. At that moment, I felt I lost everything. I thought about how I will survive with my one-year-old child. I requested half of the land as I am a widow. But, my husband's brother's wife – who came to the system*

from outside – didn't allow the brother to decide this matter. In the beginning, the brother gave me a small part of the land (a few plots) to grow paddy, but later, he did not allow me to do so. However, I accessed the forest land for Chena cultivation and searched for Kulee Weda when possible. This happened 30 years ago. From then on, I do not have a stable income and find less to survive.”

The unexpected collapse or increased vulnerability of the main income-generating source of these families has pushed the victims to find alternative income sources. These activities have not been supportive activities to achieve the progressive development of the family economy. Table 4 presents the types of economic activities that compelled victims and their children to undertake after losing their primary income-generating activities.

Table 4: Types of economic activities which victims were compelled to undertake after losing their primary income-generating activity

Economic activity	Number of respondents	%
1. Do farming at a small plot of the mud-land owned by their brothers	11	47.8
2. Hired labor (<i>Kulee Weda</i>)	12	52.2
3. Pushed family members to work in private business places	6	26.1
4. Migration to Middle-East	2	8.7
5. Work as a housemaid at domestic places	2	8.7
6. Chena farming	12	52.2
7. Other	3	13.0

Source: Field interviews, 2019

Eleven cases reported that they were temporally allowed to do farming - grow paddy - in a small plot of the *mud-land* owned by their brothers. As there are no ownership rights, these women have faced some issues over water management in the field, receiving fertilizer subsidies, and accessing credit facilities. They specifically mentioned that they had to highly depend on their brothers, particularly in receiving fertilizer subsidy and other agriculture-related extension services.

Twelve cases reported that the victim (mother) and children (mostly the under-aged) of victim families have opted for *Kulee weda* (hired labor), mainly work in the agriculture fields. As *Kulee weda* is mostly seasonal, they were unable to earn a stable income. Six cases reported that increased economic vulnerability

of these families had pushed the family members, particularly **under-aged children**, to employ in private business places. Four cases reported that the mother of the victim family had to migrate to the Middle-East region or domestic urban areas to work as housemaids.

The following statements of cases 6 and 21 provide the nature of the economic hardships faced by the victim families.

Case 21:

“Usually, my brother allows me to cultivate paddy in a small plot of my father's land even though he received the ownership. Also, I went for Kulee weda because I didn't have any income source as my husband left me over this matter. I further extended the encroached forest land for Chena farming.”

“So far, we did not have any problem as forest officers do not ask us to leave the place. However, as we do not have the legal rights over the land, we have to face for problems in receiving subsidies and accessing formal credits.”

Case 6:

“I received about 0.5 acres informally from her brother. That is just to survive. But as we don't have the land rights, we couldn't get even a loan, sometimes fertilizer, and sometimes had to quarrel with a brother over water management.”

Political influences

The study did not confirm any evidence of political influences over land-related issues of this research subject. However, case 20 gives some evidence about how the victim uses political power to manage the problem.

Case 20:

“I worked at a politician's house as a housemaid. I had an opportunity to talk with the madam about my land problem. I told her that I have a letter given by my father over my land rights. Then, madam communicated the matter with authorities and supported to solve the problem.”

Institutional issues

The in-depth qualitative interviews revealed that almost all victims had reported their cases to relevant officers in the area and authorities, but they have not received any prospective solutions for the problem (see Cases 17, 21, and 22). It indicates the absence of a suitable mechanism to address such women-specific land-related issues in the system. Case 21 describes the nature of land administrative issues.

Moreover, the key informant interviews revealed the adverse effects of the non-existence of a specific mechanism to address the women-specific land-related issues in the system, for instance, Case 19. Particularly, authorities lack the understanding of the adverse effects of discriminatory provisions against women in the LDO. Key informant interviews revealed that they have a clear understanding of the root causes of these land problems, but the existing regulatory environment was noted as a constraint to address the problems.

Case 21

“For 20 years, I have been going to the Mahaweli office to request a permit for the land in which now I am living. I attended several Land Kachcheri as well. However, so far, I could not receive any positive answer from the authorities. They say that we will receive the permit soon, but so far we did not get it. So far, we did not have any problem as forest officers do not ask us to leave the place. But, as we do not have the legal rights over the land, we have to face problems in receiving subsidies and accessing formal credits.”

The secondary effects of the failure of addressing these problems are diverse. Specifically, these victims have encroached the forest and reservation part of the system. It has created another form of land-related issue in the system. Case 4 disclosed that the police rejects the acceptance of the complaints about land-related problems. Case 4 and Case 19 noted the corruptions and malpractices in the existing system which handles land-related problems. Case 19 further reported an attempt of sexual harassment by officers, using the distressed situation of the victim.

Case 1:

“We did not receive land for farming. So we encroached reservation part for paddy farming. That is the only option we had to grow something for food. Many times, Mahaweli officers asked us to remove from the land. However, we don't have an alternative.”

Case 4:

“After the death of my husband, my father gave me 1 acre of paddy land for paddy cultivation. He gave me that land in a letter. However, my brother and his wife later received ownership. I met officers in the colonization and C. O. I missed the letter given by my father, but I did farming for 35 years. My brother and his children have given money to these officers (... assume, no firm evidence). So they favor them. I feel very sad.”

Case 19:

“After my husband left my children and me, my brother tried to take my land. I went to human rights and got ownership. I know that my brother gave money to the land officer by selling teak trees at the parents' place (an assumption; no firm evidence).”

Environmental effects

Environmental impact of discriminatory provisions against women in the LDO can be explained based on the behavior of women after losing the land rights. The study found three types of women approach, which are harmful to the environment – encroachment of forest land, enter into reservation part of the system, and *Chena* farming. Five cases reported that they encroached the forest land because they had no options to survive after losing land rights. Cases 1 and 21 provide evidence over this problem. These families have cleared forest areas for *Chena* farming as well.

Case 21

*“As I did not receive land from my father, I had to encroach forest land located next to my parents' land. I cleared the land and built a small house – *pelpatha* – with the support of my brother and sisters. Also, I further extended the part because I wanted to do *Chena* farming. This is an elephants' area. But, I had to find a place close to my brother because of my isolated condition with my daughter due to this case, and I thought about the security of my life in terms of social and economical.”*

Case 1

“We did not receive land for farming. So we entered the reservation part for paddy farming. That is the only option we had to grow something for food. Many times, Mahaweli officers asked us to leave the land. But we don't have an alternative.”

Cultural practices

The victims did not report any specific cultural practices adopted to seek relief.

Violence against women

As noted at the outset of the study, land ownership improves the social status and security of the women, and thereby reduce violence against women. In this study, case 21 reported the nature of land ownership based on violence against women. Case 19 revealed an attempt of harassments (sexual) by the land officer using the distressed condition of women.

Case 21:

When interviewed, a 53-year old woman reported that thirty years ago, her parents were settled in this system with 2.5 acres of *mud-land* and 0.5 up-land. Their family consisted of 6 children – 5 females and one male. Their father died when they were small, and as a female-headed house, her mother owned the lands. Following the customary practices and due to the limitations to subdividing the agricultural lands – *mud-lands* in particular – her mother named their brother as the successor of the land. After the death of the mother, all family sisters had to agree with the mother's decision over naming their brother as a successor. At that stage, the victim was 22 years old with a one-year female baby child. Her husband started violence against her based on this matter as their family became displaced at their parents' land. The rest of the sisters had no problems since they married persons who owned lands. As she did not receive any part of their parents' land, her husband left her. Her feelings over this matter were presented as follows:

“After my husband left due to this land problem, I got displaced (mentally) and isolated with my daughter at my parents' house. I didn't have any income source. My bother supported me by giving a small part of paddy land for cultivation informally. I encroached the nearest forest land and built a small house (Pelpatha). I faced numerous economic hardships to survive. Until now, my husband didn't come to see us (She was crying at the end).”

Cases 4, 12, and 19 notably reported the extended violence against women in depressed and socially and economically vulnerable conditions. Case 4 reveals the complexity of the land-related issues and how such a complex environment creates violence against women who were under distressful situation.

Case 4:

The victim was the fourth member of the family. Her father has transferred ownership of both up-land and *mud-mud* land to her two brothers. The younger brother has given a letter to the victim, noting that one-fourth of the up-land should be given to the victim. However, when she was in Colombo doing a job, her brother has sold the land (including her part).

“They say they purchased the land, so if I need land, they asked me to pay. Why should I pay? This is my father's land; I have a letter as well.”

Psychological impact –

The psychological impact of the LDO created land-related issues were very severe, and the incidences and ideations of committing suicide by the victims were also un The psychological impact of the LDO created land-related issues

were very severe, and the incidences and ideations of committing suicide by the victims were also revealed in this study. Case 21 and 4 explain the nature of this problem.

Case 21:

“Due to this issue, I faced numerous problems. I was first displaced from my parents’ land; then I lost my husband over this matter. At that time, my daughter was a one-year-old. I didn't have any income source. If not my brother helped me, my daughter and I would have to drink poison ... (she was crying).”

Case 4:

“Today, I am living as I am mentally strong. I suffered many times. Even now, my children also do not care for me. The only life security I have is this land. I had to do many things to get this land.”

5.5 Perception of field officers over women who faced land-related issues in the Mahaweli System H

This section provides the results of in-depth interviews conducted with the Residential Project Manager (RPM), Blog Managers (BMs), and Land Officers (LOs) in the Regional Office of Mahaweli System H at Tambuththegama.

1. Nature of the reported land-related issues in the system

According to their views, a series of the land-related issues in the system have occurred due to not revising the LDO enacted in 1935 and the amendments periodically made. These issues are highly complex and vary between cases. Of them, gender-specific discriminatory provisions were reported.

a) Issues related to ownership transferring

People in the scheme were initially settled in the 1980s under the Accelerated Mahaweli Development Project. At present, these initial settlers are living with their second and third generations. Most reported cases are related with ownership transferring matter, since the initial settlers are now retired or near to the retirement age of farming in the scheme. In the case of husbands’ death, women rights in land are interpreted in two ways by the provisions in the LDO (48 and 48A):

- (1) Rights of spouses who have been nominated as the successor.
- (2) Rights of spouses who have not been nominated as the successor – ‘143. *Upon the death of a permit holder, if the spouse of that permit holder is living, even if he or she has not been nominated as successor, he or she shall be entitled to a life interest in respect of the land. In such a situation, since*

the surviving spouse shall be entitled only to a life interest, such surviving spouse shall not be entitled to nominate a successor.'

In these schemes, initial shelters were males as lands were primarily given for agricultural purposes. Thus, household heads or owners of the land are mostly male. If women (spouse) were not nominated as a successor of the land by the deceased husband, the spouse entitles only to a life interest in respect of the land; she does not hold any right to name a successor of the land, and the right goes to an adult male child of the family.

One BM gave the following statement on her experience with this kind of issue:

"After the death of the father, land right goes to mother, if not the eldest son. Let's think that there are five children in the family. First male, second female, third again female, the fourth a male and last female. In such a setting, if the first child died, the land rights go to the fourth male, skipping the second and third females after the death of the father, if father has not nominated mother as successor. In such a situation, the female child in the family gets unfair experience even in the context where second and third females contributed to the development of land."

Field note 2019: Key informant interviews

"If father, the permit holder, nominated mother as the successor of the land, the mother has the rights to transfer the land to any child of their family. But, if father has not named mother as a successor of the land, she only receives life interest of the land; however, she is not entitled to transfer the land to any child; automatically, the rights go to the oldest son of the family. It is the law. It is very complex."

Field note 2019: Key informant interviews

Considering the life interest rights, women do not hold equal rights to use resources as rights held by her husband over the utilization of resources in the land. For instance, she faces difficulties in selling specific properties attached to the land, such as selling trees for commercial purposes. Generally, this kind of cases are reported to the regional offices of the *Mahaweli* in the area. The nature of the problem confirms its association with economic needs of these women and their children or pressurized requests of their children. This provision creates an isolated situation for women who were not nominated as successors of the land, specifically in family and economic situations. As these women have arrived here from outside the region, particularly from the Wet Zone, the isolation in the family context and aggravated economic hardships due to the limitations of resources used in the land weaken the psychological status of these women. Thus, women who were not nominated as successor of the land, tend to be less

protected at their elderly stage due to lack of provisions for naming a successor and limitations over the use of attached resources in the land.

“A permit holder has the right to nominate any child of the family as a successor without concerning gender. But the oldest son receives the rights of the land if the permit holder – mostly father – died without nominating a successor. In case of the spouse – mostly mother – receives only a life interest of the land, if permit holder died without nominating her name as successor. In such occasion, she can live in the land, but can't nominate a successor.”

Field note 2019: Key informant interviews

“If the father and mother died without nominating a successor, the oldest son receives rights of the land. I think this definition is in the LDO because it assumes that the oldest son will remain at home with his parents. Because, in general, it assumes the oldest son was the family member who supports the family and contributes to land development. But, at present, we observe that most of the times, parents are taken care of by daughters at their adult stage. In such occasion, this provision is unjustifiable.”

Field note 2019: Key informant interviews

There are some land-related issues in naming a successor by the permit holder. These issues create complex circumstances for authorities to solve the problem as they go beyond the legal setting of the land. Following is a typical case presented at the key informant interview on a specific land-related issue, and it explains how the problem emerged and grow:

“Let's explain a typical example. The initial settler – permit holder- has both mud and uplands. One of the children – a son - lives in these lands for 37 years, building a house in up-land and growing crops- mainly paddy- in mud-land. After 37 years, father – the permit holder – named his daughter as a successor of the lands both up- and mud-land. After that, the daughter asked the rights of lands. According to the law, rights go to daughter as she was named as a successor of the land by the initial permit holder. But, she has to ask her brother to go out the land (including all resources) where he lived for 37 years, building a house and developing the agricultural land. There are no provisions for these cases. If our officers had investigated the matter when permit holder named the successor, we can't do anything. But, officers in the grassroots level could have taken a decision based on the nature of the matter. The son says his father lived with him for a long period, but at the last stages, sister took father to their place with the intention of naming her as a successor of father's land. I instructed my officers to call both to the office and asked the sister to allow her brother to use the up-land, which she agreed to do so.”

It is accepted that land is one of the assets that establish the social and economic protection of people. In this theoretical point of view, the provision of entitling only a life interest of land in the case of non-nomination of successor by the permit holder negatively affects social and economic protection of unmarried female members of the family, because mother, who was not nominated as successor of the land, do not have any provisions to transfer land rights or name such vulnerable family members as a successor of the land. This is common for disabled family members too if any.

The authorities mainly reported that the root cause of the main land-related issues in the system is due to the non-nomination of the successor of land, specifically non-nomination of women (spouse) as a successor of land. Thus, their officers at the ground level encourage the landowners or permit holders to name their wives as a successor of the land to minimize the land-related issues in the system and avoid the vulnerability of the women at the elder stage. For that, they aware the landowners through their networks in the system and at farmer organization meetings.

b) The minimum unit of sub-division

According to officers in the *Mahaweli* Development Authority in the System H, the second critical root cause of the land-related issue in the system is the condition of the minimum unit of sub-division of land. When people settled in the scheme, they were given 2.5 acres of paddy land (mud-land) and 0.5 acres of upland. The minimum unit of sub-division of mud-land is 1.5 acres, and the settlers cannot sub-divide their mud-land to transfer ownership to their children. In terms of up-land, the minimum size of sub-division is ten perches, which is the minimum size accepted by local councils in the area.

Food production was among the primary purposes of establishing agricultural colonies in the 1950s to 80s in the dry zone, and the condition related to sub-division was established to minimize the fragmentation of alienated land to avoid the improvident alienation. It is empirically tested that fragmentation leads to reduce farm productivity and diminish the scale merits in farming due to the issues related to resource management. Notably, the purpose was to transform the domestic agriculture from subsistence farming to commercial farming, to generate a surplus in food production to feed the population in the non-farm sector. The view of officers in the *Mahaweli* Development Authority in System H reveals that although the LDOs do not allow sub-divisions in the land, the second and third generations of the settlers practice farming by informally sub-dividing the land. Thus, the farming system is again reversing towards the subsistence level as farming is limited to their self-consumption purposes. Also,

this informal sub-divisions of farmlands have created numerous issues in terms of water management and input management programs such as fertilizer subsidy programs, and issues concerning boundaries.

c) Restriction to change the nominated successor

As indicated in section (a), if the husband - permit holder - do not name his wife as a successor, she only entitles to a life interest of land. The officers reported that many requests had been made to change the name of a successor, in case the mother has only the life interest of the land. The reason is that the named successor does not take care of the mother after the death of her husband, and frequently, it is one of the daughters who care for the mother at her elder stage. Even though these requests are fair, the name of the successor of the land cannot be changed as nominated permit holder – father – is not living and mother do hold only the life interest of the land.

“Father has named son as a successor of the land, not mother. But, after the death of the father, daughter take care of the mother. As a result, she requests us to change the name of the successor. However, the mother could not do so now as she received only a life interest in land. If a permit holder lives, he can change the name of the successor; if not, the mother can't do any change. Mother can't take decisions concerning the land. She cries at our office, but we can't do anything.”

Field note 2019, Key informant interviews

2. Suggestions to address the discriminatory issues – views of authorities

i) Conduct Land *Kachcheri* for the recognized vulnerable groups
Due to the increasing number of land-related cases in the system, which is a common issue in the agricultural colonization schemes, it is suggested to design a special Land *Kachcheri* for marginalized or vulnerable groups to establish their full-rights to access the land. In this connection, the nature of the problem would thoroughly be studied to recognize whether a request is genuine.

ii) Revise the provisions of the minimum unit of sub-division
It is suggested to revise the provision of the minimum unit of sub-division – 1.5 acres – allowing landowners to transfer their lands to children. In this connection, they suggest a minimum unit of sub-division as 1.25 acres. At the same time, the introduction of new crop systems with modern techniques to gain optimal benefits from limited land are suggested to overcome the issue of food production and scale merits.

iii) Organize awareness programs over land-related issues

It is suggested to be aware of the nature of land-related issues in the system. In this connection, awareness-raising programs should be organized through their networks, particularly through the network of farmer organizations. This could help to enhance the landowners' understanding of the importance of naming a spouse as a successor of the land and broaden their understanding on the nature of land-related issues, and thereby minimize the land-related issues in the system.

- iv) Inclusion of provision in the LDOs to establish equal rights to men and women

It is suggested to establish the provisions to establish spouse rights in the land after the death of permit holder, irrespective of nominating, or non-nominating a successor of the land. In this connection, specific conditions should be attached with the provisions, because if a spouse is young, after the demise of the permit holder, the spouse could re-marry, and the children of the first marriage may have problems in land rights. Following is the statement given by the officers, specifically on this matter.

"If the permit holder died at an early stage, land rights goes to the wife. If she married again, children of the first marriage would get badly affected."

Field note 2019, Key informant interviews

6. CONCLUDING REMARKS

The main aim of this study was to analyze the impacts of discriminatory provisions in the LDO of 1935 and its amendments on women in Sri Lanka. The following four specific points were considered to accomplish this objective:

- 1) identify the discriminatory provisions in the LDO and customary practices against women rights over land;
- 2) explore profile of the women who are facing the problems of land rights due to the discriminatory provisions in the LDO and customary practices;
- 3) investigate the socio-economic, cultural, political, and psychological impacts of discriminatory provisions on women; and
- 4) examine how the affected women act/ behave to sort out the land-related issue.

The results of the analysis disclosed mainly three types of discriminatory provisions against women in the LDO:

- 1) as stipulated in Chapter 48 and 48A, rights of the spouse who have been nominated as a successor, but applied male bias customary ideology
- 2) rights of the spouse who has not been nominated as a successor

3) provisions over a minimum unit of sub-division.

Particularly, section 72 of the LDO laid down the case in the absence of the nomination of a successor. All three types of provisions coupled with customary practices or ideologies in the Sri Lankan society, limit or violate the women rights over land – own, inherit, and control.

First, the study explored the impacts of women-specific discriminatory provisions and customary practices on women through conducting qualitative in-depth interviews. In terms of social impacts, the study found a socially isolated condition of the victims with the loss of land rights. This condition has pushed these families into poverty, which should not be only recognized in terms of monetary terms but also social terms. Most of the cases occurred after the death of father or husband, indicating fewer women empowerment in the agriculture-based rural societies in the country.

In economic terms, the immediate effect of the application of discriminatory provisions in the LDO is the collapse of household economy or feelings over severe economic insecurity. The unexpected collapse or increased vulnerability of the primary income source of victim families has forced them to find alternative income sources such as practice farming in an informal manner in the brothers' lands, *Kulee Weda*, work at private business places- particularly by under-aged household members, migration to Middle-East or to urban areas for work purposes, and *Chena* cultivation.

The institutional issues concerning women-specific land issues revealed the absence of any specific mechanism to address the disputes in the system. The authorities have a clear understanding of the root causes of women-specific land-related issues but have noted limitations of the regulatory environment in solving the problems. The less responsiveness of authorities over women-specific land-related complaints or records were found, and the attempts of officers in sexual harassment using the distressed situation of the victims were also noted.

With the loss of land rights, these victims have encroached the forest land and reservation part of the system and entered into *Chena* farming. The study found that violence against these women began after the loss of land rights in numerous ways. The psychological impact of the LDO created land-related issues were very severe, and the incidences and ideations of committing suicide by the victims were also unveiled in this study.

The study makes the following recommendations to address women-specific land-related issues in the system:

- i. Conduct *Land Kachcheri* for the recognized vulnerable groups. It is suggested to design a special *Land Kachcheri* for marginalized or vulnerable groups to establish their full-rights to access the land.
- ii. Revise the provisions of the minimum unit of sub-division.
- iii. Organize awareness programs over land-related issues.
- iv. Inclusion of provision in the LDOs to establish equal rights – **joint ownership** - among men and women. It is suggested to establish the provisions to establish spouse rights in the land after the death of the permit holder, irrespective of nominating or non-nominating as a successor of the land.

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APPENDICES

Appendix 1: Interviewer guide for in-depth interviews of victims of Land Development Ordinance and Customary Practices

The main component of RF	Main questions	
Pro-active preparation	Can you describe how your family has been settled here? What are the main criteria the government used to select your family to settle in this scheme?	
Socioeconomic and demographic characteristics of the victims	Can you describe the educational background of initial settlers and current landholders? When were your children born? What are their main income activities? Are they married? If so, do they have children? How many?	Age, household size, marital status, occupation, land ownership of household, etc.
Identify the status of family assets since the settled period	Can you describe the assets your family received when the family was settled? Specifically, land and other assets. Can you describe how initially received land was distributed among the members of the household? What were your family primary livelihood activities? Explain from the beginning of the settlement.	
Identify the awareness of victims over the land ordinance	Can you explain the legal setting of the land development ordinance or land law applicable to you? How do you aware of the land development ordinance? Explain.	

	<p>What are the customary practices with regard to land? Do you consider those practices? If so (yes or no), explain the reasons.</p>	
<p>Identifying the nature of the land-related issue</p>	<p>Can you briefly describe the type of land-related issue (Occupation, ownership, transfer, alienation, Acquisition of land, and any other)?</p> <p>Can you describe when and how this land-related issue emerged?</p> <p>Can you describe how this land-related issue developed over the years?</p> <p>Can you explain the causes related to this land issue?</p> <p>Can you describe how this problem aggravated over the years?</p>	
<p>Identify the administrative mechanism applying to handle the problem.</p>	<p>Can you describe how did/do you handle the matter with authorities?</p> <p>Do you go to authority places with a male? If so, can you explain the reasons?</p> <p>Can you explain the problems or limitations that you faced at the authority?</p> <p>In point of your view, what are the causes of those problems? Explain.</p>	
<p>Identify the culturally-related factors associated with the land problem</p>	<p>Can you describe how cultural context of your family or society associates with the land problem?</p>	
	<p>Can you describe how this problem affected your family on the following points?</p>	

<p>Identify the social and economic effects of the land issue</p>	<p>Describe the economic impact of the land problem. Describe the impact of family relationship. Describe the impact on social relationship. Describe the impact on agricultural activities (e.g., water management, production, productivity, transport, technology adoption, credit) Describe the disturbances to the investment plan Describe any violence, if any.</p>	
<p>Identify the political factors associated with the land issue</p>	<p>If any, can you explain how local and national politics involve with this matter? Did you meet them? If so, who are they (if the respondent is willing to give the details)? If so, can you describe their responses on your land-related matter? Can you explain how you met politicians? (alone or with male) If so, explain the reasons.</p>	
<p>Cultural factors associated with the emerged land-related issue</p>	<p>If any, what are the cultural places that you visited? (e.g., Temple, Kovil, Devale) What are the specific cultural activities that you undertook expecting to solve this problem? Please explain in detail. Can you roughly note the cost of undertaking these activities?</p>	

Identify the physiological issues faced by the women	<p>Can you describe the physiological issues you faced on the following points?</p> <p>In the family context, When you were dealing with authorities to handle the problem, When you were dealing with agriculture activities, When you were dealing with cultural functions related to family or society, When you were dealing with a politician on this matter.</p> <p>Can you describe how do you feel about this matter?</p>	
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