
**A STUDY REPORT ON
ANALYSIS OF KEY LAND LAWS IN SRI LANKA:**

A special reference to Women and Community Land Rights

A study commissioned by Institute of Constitutional Study (ICS)

October 2017

A STUDY REPORT ON
ANALYSIS OF KEY LAND LAWS IN SRI LANKA:
A special reference to Women and Community Land Rights

A study commissioned by:
Institute for Constitutional Study (ICS)

A study report by:
M. Thirunavukarasu LL.B, MDS
Attorney at Law

October 2017

Table of Contents

<i>Contents</i>	2
<i>Acknowledgments</i>	3
<i>Abbreviations</i>	4
<i>Executive Summary</i>	5
Chapter 1 - THE STUDY	
1.1 Introduction	6
1.2 Objectives	7
1.2 Research Problem	8
1.4 Methodology	8
1.5 Preliminary Sources	9
1.6 Limitations	9
Chapter 2 - A BRIEF OVERVIEW OF THE PRESENT STATE OF THE POLICY, LAW AND PRACTICES	
2.1 Introduction	10
2.2 Contextual Matrix	10
2.3 Key Laws relating to Land and Property in Sri Lanka	11
2.4 The ownership, possession and other rights and interests a person has over land and property	14
2.5 Recent development in Land Reforms in Sri Lanka	16
Chapter 3 - ISSUES AND PROBLEMS PREVAILING IN THE PRESENT POLICIES, LAWS AND ADMINISTRATIVE ARRANGEMENTS RELATING TO DISCRIMINATION OF WOMEN AND COMMUNITIES	
3.1 Introduction	17
3.2 International Covenants and Principles relating to Land and Property Rights of Women	18
3.3 Issues and Problems relating to Land and Property in Sri Lanka	21
Chapter 4 - SUGGESTIONS, RECOMMENDATIONS AND ADVOCAY STRATEGY OVER PREVAILING INEQUALITIES WITH REGARDS TO WOMEN AND COMMUNITIES	
4.1 Suggestions and Recommendations	37
4.2 Recommendations and Advocacy Strategy	41
4.3 Conclusion	42

Acknowledgements

It is with a sense of deep appreciation that I record my sincere thanks gratitude to Professor Navaratne Bandara, ICS for his valuable guidance towards this Study and Mr. Prashan Gunaratna for his logistical support. I also wish to place on record of thanks to the Senior Public Officers in the field of Land and Land Development, Academics, Practitioners, Professionals, and Technical Experts for their generous support and inputs.

Abbreviations

CEDAW – Convention on the Elimination of all forms of Discrimination Against Women

CEPA – Centre for Poverty Analysis

CPA – Centre for Policy Alternatives

FAO – Food and Agricultural Organization of the United Nations

GDA – Global Development Agenda

HSZ – High Security Zones

IASC – The Inter Agency Standing Committee

INGO – International Non-Governmental Organization

JMRIO – Matrimonial Rights and Inheritance (Jaffna) Ordinance No.1 of 1911

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

IDPs – Internally Displaced Persons

LDO – Land Development Ordinance No. 19 of 1935

MMDA - Muslim Marriage and Divorce Act No.1 of 1995

NGO – Non Governmental Organization

RDL – Roman Dutch Law

SDGs – Sustainable Development Goals

SLO – State Lands Ordinance No.8 of 1947

SLFP – Sri Lanka Freedom Party

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNP – United National Party

USAID – United States Agency for International Development

WID – Women In Development

Executive Summary

Land is an imperative and crucial factor in the social, cultural and economic identity of the people in Sri Lanka due to the importance it has been given throughout our history. Moreover, the rights and interests over land are unequivocally and legally secured without any discrimination on the basis of gender, caste, religious or ethnic lines for its peaceful enjoyment and for the economic development of the people and the country. The complex nature of the legal system, administrative regulations and procedural aspects and practices related to land have resulted in much inconsistency, confusion as well as discrimination of women and communities in respect of their land rights. The variety and inconsistencies of different personal laws, national policies and regulations have contributed in worsening this discrimination. These discriminatory aspects have its roots in colonization or age old religious and communal beliefs. Due to the lack of amendment and legal reform these aspects are still applicable. In this background it is ironic how the legal and justice systems itself have become a breeding ground for injustice, inequality and explicit discrimination.

In the local context, being a multi ethnic and multi religious country, there are many laws, rules and regulations that govern the land rights, administration and management of land and property in Sri Lanka, including customary laws (personal laws/special laws) of the country. This Study is based on the premise that the legal system and the administrative rules, procedural aspects and practices on land have led to complexity, and more specifically on the inconsistent and discriminatory laws and rules with regard to gender and communities land rights. Due to such unfair policies, procedures and laws related to land, which are inconsistent with fundamental rights and freedoms guaranteed by the Constitution and the international norms and standards, the local land law has become the breeding ground for many injustices and discriminative practices. In this background it is necessary to assess the existing national policies, laws and administrative practices relating to land in Sri Lanka in order to provide a better, conducive and responsive environment to protect and uphold land and property rights.

Therefore, it is of great importance to rectify this situation by identifying and removing such legal restraints and replacing them with clear, precise and reasonable laws and practices. In order to identify the flaws and vacuums in the legal system which makes way for such injustice, it is crucial to consult the women and the members of the communities who are governed by such laws and practices. The Study proposes suggestions and recommendations for greater deal of policy reforms and an advocacy strategy to do that.

CHAPTER 1**THE
STUDY****1.1 Introduction**

The land tenure practice in Sri Lanka is closely connected to the human settlement of the country. In general, land and property denotes not only the person's individual right to land but also those rights which may be described as proprietary rather than personal in character¹. Land is one of the critical and important factors in the economic development of any country. It is one of the three major factors of production in classical economics along with labour and capital. Land is an essential input for housing, food production, livelihood etc. Thus land is the key factor in the agricultural economies, which provides substantial benefits in the economic and social spheres of a country. In Sri Lanka 18% of the land is privately held and the rest almost 82% is State land. There are many laws, rules and regulations that govern the land administration and management in Sri Lanka. As far as Sri Lankan communities are concerned land has been a very significant asset. Customary laws of the country mainly deal with the land/immovable property of each community and they show how the ancient people of Sri Lanka were very particular about their land.

There is a vacuum in our legal system and constitutional framework for a comprehensive, coherent and vibrant framework on land leading to the complexity of land issues in the Country and more specifically on the inconsistent and discriminatory laws and rules with regard to gender and vulnerable communities. Though the Thirteenth Amendment to the Constitution stipulates in relation to rights over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement are placed in the Provincial Council List, and thus fall within the jurisdiction of the provinces.² However it is not merely demarcating and/or devolving clear land powers and functions in implementing such provisions provided by the Constitution. Although there is no constitutional guarantee on the right to property—'a right not to be arbitrarily denied the right to land, housing and property' can be gathered from the other rights spelled out in the Constitution, such as the right to equality and the freedom of movement, and the broad policy guidelines set out under the Directive Principles of State Policy contained in Article 27(2) of the Constitution.

¹G.L. Peiris, *The Law of Property in Sri Lanka* – Vol I, pp.1-3

² See Provincial Council List, Ninth Schedule of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Due to some national policies, legal frameworks, and administrative practices which prevent women from being an effective and an integral party in enjoying the right to land, during the past two decades, there have been increasing concerns among the international community and the UN over the need to safeguard women's land, housing and property rights (UN Habitat, 1999). Moreover, the term 'rights' is often left undefined in discussions on land, housing and property rights of women. Thus the normative framework itself appears to leave many women vulnerable to exploitation due to this lack of definition. There is an increase in the number of female-headed households due to mass-scale killings of men, migration and abandonment. The increase is seen mostly within the Tamil community in the north and east (National Peace Council, 2002; Alison, 2004).

A study carried by Jean Daudelin iterates that the discrimination resulting from land policy varies and can be explicit or implicit (Daudelin, 2003). The explicit discrimination was evident during the colonization. The state of discrimination is still continuing at present and even to date. The Rule I of the Third Schedule of the Land Development Ordinance, No. 19 of 1935 (LDO) is one of the classic examples of exclusion of women from inheritance/succession. Further personal laws such as Thesawalamai also has legal provisions which does not treat women equally in land transactions. These legal provisions and practices make the women and vulnerable communities more vulnerable due to their status and social recognition.

1.2 Objectives

- To provide an overview of laws relating to land and property in Sri Lanka
- To emphasize the issues and problems prevailing in the present policies, laws and administrative arrangements relating to discrimination of land rights of women and communities.
- To make suggestions and recommendations to prevailing inequalities with regards to women and communities in order to rectify and modify policies, laws and administrative arrangements affecting land rights of women and communities.
- To make suggestions and recommendations to carry out an advocacy strategy in order to make these provisions to in line with international norms and principles of equality on land rights of women and communities.

1.3 Research Problem

Land is an important natural resource in Sri Lanka as it is in any country, due to its importance, scarcity, and use; it provides a place in the earth for people to live on and also opportunities for making livelihood out of it. It is a much valued treasure, provided it is properly and duly protected and exploited. The cultural relationship of people in Sri Lanka with land is an important factor that gives sensitive, responsive and economical values to the land that they live with. Land is of utmost economic and developmental value in any society. People, communities, societies and nations thrive on the developmental use of land. Due to its value and importance for human existence, it has also the potential to be a fertile source of conflict and dispute amongst people, communities and nations. Sri Lanka is not an exception to this phenomenon.

It is, however, true that the legally recognized ownership and other interests over land – in particular over privately held land and State land- do not properly recognize all segments of the society to avoid unwarranted issues amongst people. Such an important and precious natural resource has been a cause for creating discrimination and different treatment amongst people mainly due to the policies, framework, rules and procedures of these legal land ownership and interest. The land which should provide valuable opportunities for people to improve their livelihood and enjoyment of life becomes a vehicle for disruption and disappointment in life of many due to improper policies and laws which are framework and with fundamental rights and freedoms guaranteed by the Constitution and the international norms and standards relating land and property rights. It is in this respect that it becomes necessary to assess whether the existing national policies, laws and administrative practices relating to land provide the best, conducive environment by eliminating much of the controversy that erupts due to the system and procedures.

1.4 Research Methodology

- The chosen methodology for the study shall be qualitative and include as follows:
 - Legislative framework of land and property in Sri Lanka.
 - Case law
 - Books, Journals, Reports, Materials published by the Government, Non-Government, Academic and other Institutions.
 - In addition to literatures, interviews with Government Officials who are dealing with land and property.
 - Web articles

1.5 Preliminary Sources

1. The 1978 Constitution
2. The key relevant laws relating to Private and State Land
3. Circulars, rules, orders, methodology and related materials regulated by the Ministry of Land and its Institutions.

1.6 Limitations

1. Lack of comprehensive and specific studies, literatures and documentations associated with the topic in relation to Sri Lanka.
2. Politically highly sensitive topic as this stage of period
3. Time constraints and nature of the limited scope.
4. Limited opportunity to obtain related documentations, information and statistics.

CHAPTER 2***A BRIEF OVERVIEW OF THE KEY LAWS RELATING TO LAND AND PROPERTY AND RIGHTS AND INTERESTS OVER LAND*****2.1 Introduction**

Land has a great importance as a natural resource and a mode of property, mainly due to its scarcity which increases with the population growth, as a means of income and livelihood as well as the concept of ownership and possession over it. Land is also used to show economic prosperity, social status and command social security and recognition. Ownership of land also gives a cultural and social identity to communities and ensures ethnic and national security. Apart from land being useful to individuals, generations and communities it is also of great importance to Governments and the leaders of a country. A great responsibility lies in the hands of Governments and rulers of a country to promote sustainable development and usage of land and preserve it for the generations to come.

In the local context, Sri Lankans have often given a great importance to land when compared to most countries. Sri Lankans treat owning or possessing land as a means of establishing the status of a person. Further land has been the sole means of income of many locals as agriculture is a popular livelihood. The cultural relationship of Sri Lankans with land has established sensitive, responsive and economical values to the land. Further being a multi ethnic and multi religious country, there are many laws, rules and regulations that govern the land rights, administration and management of land and property in Sri Lanka, including customary laws (personal laws/special laws) of the country. Accordingly land has been the subject of many conflicts, disputes and prolonging court cases. This complex nature of land and its dwellers require a well-structured and strong legislation which upholds clear, unwavering rights over land.

2.2 Contextual Matrix

The total land area of Sri Lanka is 65,610 square kilometres including an inland water area of around 2905 square kilometres. According to the governmental statistics, only 18% of this land is privately owned land and the balance 82% is State land, i.e., belonging to the State.

Sri Lanka was under Portuguese, Dutch and British rule respectively. As many countries under foreign rule do these rulers, mainly the British, who took over the whole country under their rule, took measures to take over the land mass under their scrutiny. This resulted in majority of the land becoming State land. This explains the great disparity

between State Land and privately owned land even today. Further the laws that were enacted to take over land by the State are still in operation.

Over 8000 square kilometres of State lands were distributed under the Land Development Ordinance to people up to 1985 and close to 12000 square kilometres of lands were distributed under the Mahaweli Project and Presidential Task Force on Land Alienation since 1985.³

However the land law in Sri Lanka is a mixture of laws related to private land, including the personal laws which are applicable to identified communities demarcated either by way of religion or area and also laws governing State Land. According to a recent study carried out by the Centre for Policy Alternatives⁴, the absence of a comprehensive, coherent and clear constitutional framework on land contributes to the complexity of land issues.

2.3 Key Laws relating to Land and Property in Sri Lanka

2.3.1 Key laws relating to Private Land

The laws and practices relating to land in Sri Lanka are complex and diverse in nature, where there are numerous laws, traditional practices, institutions governing the rights and interests over land of a person – whether the land in question is state land or private land. Roman Dutch Law is the residuary common law of the country, which applied to issues of ownership over and/or inheritances of land, when there is no statutory law in place. *Tambiah J* observed that “*the Roman Dutch Law is the Common Law or General Law of Ceylon*” and also observed that “*it has thrived on the soil of Ceylon, although to a lesser degree of growth than in South Africa*” in the 1965 Court of Appeal dictum⁵. Therefore Roman Dutch Law plays a key role in the matters pertaining to the land and property in Sri Lanka. The groups of the population known as Kandyan Sinhalese, Northern Tamils and the Muslims are governed in the matter of rights in property, particularly with regard to succession and inheritance, by their personal laws namely the *Kandyan Law*, the *Thesawalamai*, and the *Muslim Law* respectively. And there are other laws dealing with specific aspects in relation to State land or private land. Due to these reasons Prof G. L. Peiris observes that the law relating to property is one of the major areas of the substantive civil law⁶ in Sri Lanka.

³ Land Watch Asia, *Land Ownership and the Road to Self Determination, Sri Lanka Country Paper* at p. 223.

⁴ CPA, 2010

⁵ *Thambiah J, Silva vJohanisAppuhamy*(1965), 67 NLR, p457, p464

⁶ G. L. Peiris, *The Law of Property in Sri Lanka*, Volume – 1, p1

There are number of laws governing ownership, occupation and other rights and interest a person has over private land. Roman Dutch Common Law, Prescription Ordinance, Prevention of Frauds Ordinance, Notaries ordinance, Ceiling on Housing Property Law, Land Reform Law, Land Acquisition Act, Registration of Documents Ordinance, Title Registration Act, Mortgage Act, Rent Act, Primary Courts' Procedure Act No.44 of 1979 and the Customary laws of Sri Lanka namely Thesawalamai, Kandyan Law and Muslim Law including Jaffna Matrimonial Rights and Inheritance Ordinance and Thesawalamai Pre-emption Ordinance.

The following represents a brief overview of most important laws:

Roman Dutch Law – Common Law of Sri Lanka - The Roman Dutch Law (RDL) is a very ancient and rich legal system based on the Roman Law. Although some countries did away with this law and made new laws for their own, in some countries the law still applies, one of which is Sri Lanka. Sri Lanka still treats the RDL as the common or general law of the country. Although the RDL has several uses in various branches in Sri Lanka, Land is one of the important areas which gives effect to the RDL by courts and judicial system.

Prescription Ordinance No. 22 of 1871 - This piece of legislation has been very important in order to give effect to the possessory rights and to ownership of a property to the possessor of the land. Section 3 of the Ordinance sets out the time period of 10 years after which a landowner may lose title due to the 'adverse possession' (uninterrupted and undisturbed) of the land in question by a competing claimant. This is only applicable to private lands, since section 15 of the Prescription Ordinance provides that: 'Nothing herein contained shall in any way affect the rights of the State' and the application of this Ordinance on state lands is excluded.

Customary Laws/Personal Laws of Sri Lanka -It is the general law of the country which applies with regard to the transfer or creation of title or interests over land in the country. However, there are many personal laws/customary laws which deal with the substantive rights over the land belonging to those governed by these personal laws/customary laws. A brief overview of these personal laws is given below:

a) Kandyan Law

The Kandyan Law applies to the Kandyan Sinhalese of Sri Lanka. The succession/inheritance of the property belonging to Kandyan Sinhalese is dealt with according to the provisions of this Law.

b) Thesewalamai

This Law applies to Malabar inhabitants of the Province of Jaffna (Northern Province). It was codified by the Dutch and this is essentially a customary law which is both territorial and personal. The succession/inheritance of the property belonging to the Tamils of Northern Province is dealt according to the provisions of Thesawalamai Law.

c) Muslim Law

This Law applies to the Muslims of Sri Lanka as their personal law. The succession/inheritance of the property belonging to Muslims is dealt with according to the provisions of this Law.

2.3.2 Key laws relating to State Land

There are number of laws governing ownership, occupation and other rights and interests a person has over State land. Waste Lands Ordinance, Land Development Ordinance, Crown Lands Ordinance, Crown Lands Encroachment Ordinance, State Lands Ordinance, Land Resumption Ordinance, Land Redemption Ordinance, Land Settlement Ordinance, Sale of State Lands (Special Provisions) Law, State Land (Recovery of Possession) Act, Land Grants (Special Provisions) Act, Land Acquisition Act, Land Reform Law, Mahaweli Authority of Sri Lanka Act, National Environment Act, Prescription Ordinance, Thoroughfares Ordinance, National Thoroughfares Act, Forest Ordinance, Fauna & Flora Protection Ordinance, Local Authorities Laws namely Municipal Councils Ordinance, Urban Councils Ordinance and Pradheshiya Sabha Act, and the 13th Amendment to the Constitution.

There are many institutions and authorities which deal with State lands. They can be identified as The President, Ministry of Land, Land Commissioner General's Department, Department of Survey, Land Reform Commission, Department of Land Settlement, Registrar General Department, Land Use Policy Department, Provincial Land Ministries, Provincial Land Commissioner's Department, District Secretariats, Divisional Secretariats, Department of Forest, Mahaweli Authority, Urban Development Authority, Road Development Authority etc.

The following represents a brief overview of most important laws:

Land Development Ordinance No.19 of 1935(LDO) - This Ordinance is the key legislation with regard to systematic land development and alienation of State Lands. Permits, Grants and Free Grants are provided under this law to specific categories of people (low income, high income and educated youth).

State Lands Ordinance, No. 8 of 1947 (SLO) – This Ordinance mainly deals with Grants and Disposition of State Lands and describes how they will be managed and controlled. The Ordinance provides for the issuance of Annual Permits, Long Term Leases, Grants, Vesting Orders and Releasing Certificates.

Land Grants (Special Provisions) Act No.43 of 1979 – This law provides principles for the alienation of agricultural and estate lands to be granted to landless persons.

2.4 The ownership, possession and other rights and interests a person has over land and property

2.4.1 Ownership

One can become an owner of a property by different ways such as inheritance/succession, gift, purchase/transfer, grant, last will, prescription and order of a court. The ownership means the exclusive right to use, possess and dispose of land/property, subject only to the rights of persons having a superior interest and to any restrictions on the owner's rights imposed by agreement with or by act of third parties or by operation of law. Ownership involves enjoyment of a number of rights over a land. The owner can alienate some of these rights while still retaining others.

2.4.2 Possession

The possession is occupation either in person or by agent with the intention of holding the land as its owner⁷. The occupation is mere physical presence on a land and property. Therefore, it could be seen that the rights relating to occupation by one person or through an agent is an ingredient of Possession and Ownership. The right of possession is one of the fundamental elements of ownership. The right to possess implies the right to vindicate, that is, to recover possession from a person who possesses it without title to possess derived from the owner. The intention of the occupier or possessor is more important than the physical occupation, where the state of mind of the possessor needs to constitute that he/she possesses the land against the will of the owner or show that they are possessing the land as owners. Moreover, the person must have control and the intention to hold it as its owner.

⁷Vide New Law Reports, at p.213

A person can have ownership and other proprietary rights less than ownership such as servitude, inheritance, obligation (Lease, Mortgage etc.) over land. Some of the aspects are discussed here.

a) Servitude

Servitude is a real right enjoyed by one person over or in respect of a property of another, whereby the latter is required to suffer the former to do, him/her to abstain from doing, something upon such property for the former's advantage.⁸ It may be classified as Real/Praedial Servitude and Personal Servitude. In Real Servitude, the person who has servitude right may enjoy it as incidental to and inseparable from immovable property of which he/she is the owner. It exists for the benefit of lands and houses of the dominant property and the burden of them is imposed on lands and houses of the servient property. Personal Servitude is enjoyable by a person without reference to any property of which he/she is the owner. It exists for the benefit of persons, and is enjoyed in respect of moveable as well as of immovable property.

b) Mortgage

Mortgage was defined under Roman Dutch Law, as a right over another's property which served to secure an obligation⁹. According to English Law "mortgage" is a disposition of property as a security for a debt¹⁰. Section 2 of our Mortgage Act No.06 of 1949 provides that the mortgage includes any charge on property, for securing money or money's worth. Mortgages are mainly classified as conventional general mortgage and special mortgage. Conventional general mortgage was abolished in Sri Lanka. At present only the special mortgages are valid and effectual in Sri Lanka. Under the special mortgage certain, particular and specified property of a person can be mortgaged as security for the money borrowed from the creditor¹¹.

c) Lease/Rent

The concept of Lease is recognized by the Common of Law of Sri Lanka, which is the Roman Dutch Law and it is also recognized in the Case Law. The Lease is a contractual arrangement by and between the Owner of Property (usually referred to as "Lessor") and the User of the Property (usually referred to as "Lessee") in order to contract by which one party while reserving a reversion to himself/herself, confers upon the other right to the exclusive possession of property for specific period of time¹². The conditions of the Lease are mutually agreed by the parties to the contract which give effect to the rights and responsibilities to both the parties once they entered into an agreement of

⁸ R. W. Lee, *Introduction to Roman Dutch Law*, 1946, 4th Edition, p167

⁹ R. W. Lee, *Introduction to Roman Dutch Law*, 1946, 4th Edition, p184

¹⁰ *Halsbury's Laws of England*, Vol.27, Para 236

¹¹ *Black's Dictionary*, p1010

¹² W. D. Gamage, *Conveyancing and Office of Notary*, 1998, p178

Lease. The Lease gives the right to the Lease Holder to exclusively enjoy and use the property for the stipulated period of time.

2.5 Recent development in Land Reforms in Sri Lanka

The recent developments and suggested policy reforms such as proposed constitutional reform and the statement on land reform envisaged in Vision 2025¹³ in relation to State land such as the proposed Land Bank Act and Land (Special Provisions) Act etc. are very important in shaping the existing policies and laws towards the discriminatory aspects towards women and vulnerable communities. These also envisage amending the State Land Ordinance and Land Development Ordinance to strengthen the ownership and rights over State lands.

¹³ See Chapter 7, vision 2025

CHAPTER 3***ISSUES AND PROBLEMS PREVAILING IN THE PRESENT
POLICIES, LAWS AND ADMINISTRATIVE
ARRANGEMENTS RELATING TO DISCRIMINATION OF
WOMEN AND COMMUNITIES*****3.1 Introduction**

This Study is based on the premise that the legal system and the administrative rules, procedural aspects and practices on land have led to complexity, and more specifically on the inconsistent and discriminatory laws and rules with regard to gender and vulnerable communities. Most policies, frameworks, rules and procedures related to legal land ownership and interest discriminate vulnerable groups, especially women without allowing them to enjoy the land rights and fundamental freedoms which are guaranteed by the Constitution.

Accordingly, due to such unfair policies, procedures and laws related to land, which are inconsistent with fundamental rights and freedoms guaranteed by the Constitution and the international norms and standards the local land law has become the breeding ground for many injustices and discriminative practices. In this background it is necessary to assess the existing national policies, laws and administrative practices relating to land in Sri Lanka in order to provide a better, conducive and responsive environment to protect and uphold the land and property rights.

This complex legal system has often disregarded the rights of the vulnerable groups, specifically, women. There are many unfair legal practices and procedures which infringe the rights of women solely on the basis of gender. However, despite these negative attitudes and discrimination Sri Lankan women have been contributing greatly towards the sustainable use of land and land development, striving for equality with regard to land rights, however the legal system which discriminates against them and confine them within narrow boundaries demarcated by manmade law does not make way for their struggles. Practically, in the year 2007, 39.2 percent of women were economically active.¹⁴ Women accounted for 38 percent of the total work force in the agricultural sector and over 60 percent of all women engaged in agriculture work in plantations. More than 70 percent of rural women work in subsistence production, although much of their contribution is unpaid family work. It is estimated that 56

¹⁴DCS, 2008

percent of the women work as unpaid family workers¹⁵. Most women in Sri-Lanka own land, though the landholdings own by women are much smaller compared to their male counterparts. According to a study conducted by International Centre for Research on Women (ICRW) in 2006 in three locations, 30 percent of women own property of which 54 percent own only a house and not the land it was built upon.¹⁶

As all post-conflict societies, Sri Lankan post conflict society also created many new challenges for women living in conflict affected areas, as many males who have been the sole breadwinners of the family and on whom the women have been socially, financially and emotionally dependent upon have died or disappeared during or after conflict. There are instances where women, have not only been denied any right over the land of the family, but had been thrown out of the houses in case of death of their husbands during the conflict.¹⁷ The women who do not own the land and property rightfully after the death of their husbands, face more challenges to earn the subsistence for their families compared to those women who acquire land. This was clearly evident during and after the two decade long armed conflict on northern and eastern provinces and after the tsunami disaster in 2004.

Further the vulnerable groups such as racial and religious minorities, especially in the Northern and Eastern parts of the country and rural communities have faced with much trauma with regard to issues related to land.

3.2 International Covenants and Principles relating to Land and Property Rights of Women

International covenants and declarations have recognized the right to property of all human beings, despite age, race, gender and such other grounds.

The Universal Declaration of Human Rights can be recognized as the foremost document by which valuable aspects of human existence such as integrity, dignity and equality are set out as achievable ideals to be implemented in national law and policy.¹⁸ Rights relating to land and property; rights to equality before the law and to equal

¹⁵FAO (2003), Women in Agriculture, Environment and Rural Production. Fact sheet Sri Lanka, URL: <http://www.fao.org/sd/wpdirect/wpre0112.htm>, Bangkok, FAO Regional Office for Asia and the Pacific.

FAO (2006), Rural women in Sri Lanka's post-conflict rural economy URL: <http://ftp.fao.org/docrep/fao/009/ag114e/ag114e00.pdf>, by Wanasundera, L. Rome.

¹⁶ Results Data Initiative, 2008, International Centre for Research on Women (ICRW), 2006

¹⁷http://www.seu.ac.lk/researchandpublications/social_review_fac/V3N1/2%20Article%20pages%2016%20-%2023.pdf

¹⁸AsbjornEide, Economic, Social and Cultural Rights as Human Rights, pp12, 20.

protection¹⁹; the right to own property²⁰; and the right to adequate housing²¹ have been recognized as vital by this document²².

Article 1 of the UDHR states that “all human beings are born free and equal in dignity and rights and that they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”²³ Article 2 states Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁴ Article 17 of UDHR states that everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property.²⁵

Convention on the Elimination of All forms of violence Against Women (CEDAW)²⁶ in Article 15 states clearly that States Parties shall accord to women equality with men before the law and that States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.²⁷

International Covenant on Civil and Political Rights²⁸ and the International Covenant on Economic, Social and Cultural Rights²⁹ also uphold individual and communal rights irrespective of gender. However none of these documents identifies the right to property as a human right on its own. But Article 11(1) of the ICESCR recognizes the right of everyone to an adequate standard of living including *inter alia* the right to adequate housing and to the continuous improvement of living conditions. Rather than

¹⁹ Art.7

²⁰ Art.17

²¹ Art.25

²² Art.16

²³ Universal Declaration of Human Rights (1948), Art.1

²⁴ Ibid.Art.2

²⁵ Ibid Art.17

²⁶ Convention on the Elimination of All Form of Discrimination against Women (CEDAW).(1998) CEDAW/C/NPL/1.Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Initial reports of State parties: Kingdom of Nepal, URL: <http://www.un.org/womenwatch/daw/CEDAW/reports.htm>, New York, USA.

²⁷ Convention on the Elimination of All forms of violence Against Women (1979), Art. 15

²⁸ International Covenant on Civil and Political Rights, adopted on 16/12/1966 by General Assembly Resolution 2200 (XXI), Supp. No.16, UN Doc A/6316 (1966). The ICCPR entered into force on 23/03/1976.

²⁹ International Covenant on Economic, Social and Cultural Rights, adopted on 16th December 1966 by General Assembly Resolution 2200 (XXI), and entered into force on 03rd January 1976.

a mere commodity, the right to 'adequate housing'³⁰ has been recognized as an integral component to the right to life with dignity in a secure and peaceful place to live as per the other General Comments on the ICESCR, the right to housing consists of legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location and cultural adequacy.³¹ According to the General Comment 8 indirect discrimination also construes discrimination as much as direct discrimination. It also states that equality does not necessarily mean identical treatment and where differentiation is necessary to ensure substantive equality, it is accepted. Further Article 3 of both abovementioned documents clearly states that the States Parties to each Covenant undertake to ensure the equal right of men and women to the enjoyment of all rights set forth in the said Covenants.³² The Committee states that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. The Committee also stresses the importance of the responsibility of the states to ensure that the matrimonial regime contains equal rights and that obligations for both spouses, *inter alia*, with regard to the ownership or administration of property, 'whether common property or property in the sole ownership of either spouse'.

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (2012) in its principles of implementation which are considered essential to the application of these guidelines explicitly recognizes human dignity, non-discrimination, equality and justice and specifically gender equality.

Under equality and justice it is expressly recognized that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.³³

The principle of gender equality urges to ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when

³⁰Decided by the Committee on Economic, Social and Cultural Rights (CESCR) was established under ECOSOC Resolution 1985/17 of 28th May 1985. See UN Doc. EC/12/1991/41

³¹General Comments 4, Para 8

³² Art.3 of ICCPR and ICESCR

³³ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (2012), pg.4-5

necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.³⁴

3.3 Issues and Problems relating to Land and Property in Sri Lanka

The major issues and problems relating to land and property could be mainly brought under the following categories for the purpose of this Study:

1. Issues relating to the land ownership/title of land and property in Sri Lanka
2. Issues and problems due to non-existence of a comprehensive National Policy on Land
3. Issues and problems in the present key policies, laws and procedural aspects in relation to land right of women
4. Issues and problems relating to vulnerable communities during natural or manmade disasters
5. Issues and problems relating to alienation of State Lands to rural and estate landlessness

1. Issues relating to land ownership/title of land and property in Sri Lanka

i. Prescriptive Issues

The disputes over prescriptive issues with regard to properties, has been very important in order to give effect to the possessory rights and to ownership of a property to the possessor of the land. Section 3 of the Prescription Ordinance sets out the time period of 10 years after which a landowner may lose title due to the 'adverse possession' (uninterrupted and undisturbed) of the land in question by a competing claimant (This has been amended in 2016 to give some exception to conflict affected areas initially for two years – the 10 year aspect does not apply).

- People who are appointed as caretakers of land and property are now claiming prescriptive title to the land and property.
- People have executed Deed of Declaration to the land they illegally occupy and got them registered in the respective land registry, and now claim ownership.

³⁴ Ibid. pg.5

- There are instances, there have been multiple intended deeds transaction on the Deed of Declaration. For an example, the land is transferred or gifted to a person to obtain a valid deed transaction.

ii. Possessory Ownership

Land or a part of land could be possessed illegally and could be claimed under the Section 66 applications under the Primary Courts Procedure Act. This is a harmful provision, where 2 months of possession could be claimed against the owner. This has been a common issue in the rural or sub urban areas mostly.

- The time limit of 2 months is a very short period, where people could easily occupy someone's land and claim possessory rights. In these instances the primary court provides "Status-co" remedy to prevent breach of peace in the community.

iii. Issues of valid title under registration of documents process

The Registration of Documents system merely deals with the registration of any instrument affecting the land. If the instrument does not pass title due to its defective formulation or other lapses, the registration does not confer any title on the purported instrument; when everything is in order it may give merely priority of ownership of a land parcel.

- The Registrar of Lands would register any deed or instrument relating to land but would take no responsibility for the validity or accuracy of the rights dealt with in such deed. There is no cross checking when it get registered in relation to ownership.
- The only benefit of such registration is that a registered deed or instrument would prevail over an unregistered one provided the other conditions were the same. The law extends priority to the document that was registered earlier in time than to the document which is registered later in time. This has given rise to many issues in securing proper title/ownership of property, thus the property cannot be used as proper collateral asset for mortgage and other development means.

iv. Multiple Claims

There are ownership issues/disputes which arise due to two or more people claiming one, and the same piece of land. Both or all of these claimants possess valid Deeds that prove ownership for the same land. Therefore multiple claims

for a particular land parcel could arise and it could result in disputing the valid title/ownership.

v. Boundary issues

Due to unavailability of cadastral surveys/maps, this has become one of the most common issues related to private lands in our country. Land could be described without a Plan in a deed and could be described by boundaries. Therefore, land demarcations cannot be identified on ground as per boundary description. It is not compulsory for a person to agree upon the Surveyor Plan prepared by a Licensed Surveyor and a person can always disagree with the survey plan.

vi. Fraudulent deeds (illegal deeds)

There are forged/fraudulent documents prepared for property and these fraudulent deeds could be registered in the respective folios in the same register.

- It creates uncertainty regarding one's property rights.
- Sometime these lands have subsequently been transferred to other persons or granted to/inherited by children creating more complex disputes over ownership. Therefore, the space for engaging in fraudulent acts is high and the registers can be amended, stolen or rewritten.

vii. Inheritance/Succession issues/disputes

Sri Lankan law context is much more complex when it comes to inheritance/succession issues, as different laws apply to different persons/community. The Roman Dutch Law is used as a general law applicable for many Sri Lankan and the personal/customary laws or principles are applicable for Kandyan Sinhalese, Northern Tamils and Muslims. These laws are often very complex and not clear. Therefore, there are disputes over inheritance/succession of property.

- These order of succession or inheritances are based on some underlying principles of such community, some are cultural or religious. Therefore, it is hard to change or amend as it may create value based issues.

2. Issues and problems due to non-existence of a Comprehensive National Policy on Land

As discussed previously in Chapter 1, there is a vacuum in our legal system and constitutional framework for a comprehensive, coherent and vibrant framework on land leading to the complexity of land issues in the Country and more specifically on the inconsistent and discriminatory laws and rules with regard to gender and vulnerable communities. Power and authority on matters relating to land is highly centralized, where the central government retains rights relating to land tenure, transfer and alienation of land, land settlement, land use and land improvement. Though the Thirteenth Amendment to the Constitution stipulates in relation to rights over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement are placed in the Provincial Council List, and thus fall within the jurisdiction of the provinces, however it is not merely demarcating and/or devolving clear land powers and functions in implementing such provisions provided by the Constitution. Soon after the enactment of the 13th Amendment, then

Ministry of Lands, Irrigation and Mahaweli Development issued a Circular³⁵ instructing the land work that has to be carried out by the Provincial Councils and Provincial Land Commissioner's Department in really giving effect to the Constitutional Provisions.

- One of the vital element and supreme spirit of the 13th Amendment is the establishment of a National Land Commission in order to regularize and streamline the State land management and administration in neutral and orderly manner ensuring the rights of all citizens of Sri Lanka taking into consideration of multi ethno, religious and cultural factors. It also expected through the Commission to emphasize the proper coordination among central-provincial, inter-intra institutional relationship and administrative arrangements other issues and concerns over the rights and interests over land³⁶.
- Lack of a strong national policy on land - it was evident that the Land is used as a political tool to take political advantage and mileage in the past history of Sri Lanka. Land laws and policies were changed according to the ruling party mainly Sri Lanka Freedom Party (SLFP) and United National Party (UNP).

3. Issues and problems in the present key policies, laws and procedural aspects in relation to land rights of women

As explained previously in this paper, the land in Sri Lanka could be broadly categorized into two groups, called State land and private land. Accordingly the law relating to 'private' land which means the land owned by private individuals or institutions is governed by one set of laws and 'State' land which is the land that is not owned by private individuals or institutions and the ownership of which is vested in the State, is governed by another set of laws.³⁷ There could also be some laws which relate to lands which were earlier 'State' lands and which became 'private' or 'semi-private' lands; similarly there are laws which relate to lands which

³⁵ Circular No. 02/233 dated 01st December, 1989, Ministry of Lands, Irrigation and Mahaweli Development

³⁶ But, there is drawback due to the questions of the validity of the land powers enshrined in the 13th Amendment was questioned in the Supreme Court Judgment of 2004.

³⁷ "... We, therefore, use the term Crown Land not as implying that such land vested in the Crown for the personal benefit of the Sovereign or even for the benefit of the Government, but as a convenient term to designate all land which, not being vested in any individual, ought to be held by the Crown as trustee for the general community." [Vide Third Report of the First Land Commission (1927-1929) as quoted by Goonesekere, R. K. W., in *Select Laws on State Lands*, at p.33. Refer to *Bulankulamev. Secretary, Ministry of Industrial Development* [2000] 3 Sri L R 243 wherein Amerasinghe J said: "The organs of State are guardians to whom the people have committed the care and preservation of the resources of the people. ... any question of the legal ownership of the natural resources of the State being vested in the Executive to be held in trust or used for the benefit of the people in terms of the Constitution is at least arguable. The Executive does have a significant role in resource management conferred by law, yet the management of natural resources has not been placed exclusively in the hands of the Executive. The exercise of Executive power is subject to judicial review."

were earlier 'private' lands and which became 'State' lands due to actions of the government.

However, there are lands in the Northern Province of Sri Lanka that are not easily identifiable as 'private' or 'state', as proper ownership remains unknown. If there is no legal document vesting the authority of such land in the state, there could be no impediment for the application of the Prescription Ordinance. Consultations previously carried out in Jaffna District reveal that lawyers in Jaffna have informally agreed not to use the Prescription Ordinance if the original owner was dispossessed as a result of the conflict (CPA, 2010). However, this was a temporary and *ad hoc* initiative undertaken by lawyers, and was never perceived as governmental policy. Section 13 of the Ordinance include(s) infancy, idiocy, and unsoundness of mind, lunacy or absence beyond the seas. Hence one solution would be to expand the scope of these exceptions to include displacement, to ensure that no person displaced from his or her land, particularly as a result of conflict, stands to lose such land by virtue of prescription.³⁸

3.1 State Land

The State land is alienated under different 'schemes' and under different laws to serve different purposes. The land alienation under the Land Development Ordinances done under the following broad categories; Village Expansion, Regularization of Encroachments, Presidential Task Force on Land Alienation, Major Settlements Schemes, Middle Class Settlements Schemes, Highland Settlements Schemes and Youth Settlements Schemes.

The Amendment Act passed in 1981, to the Land Development Ordinance, authorized the Government to map out State land for village expansion; village forests; village pasture; village purposes; human re-settlement; protection of the sources or courses of streams; prevention of the erosion of the soil; forest reserves; government purposes, including government buildings, roads of works; reservations for climatic and other ecological purposes and environmental protection; preservation of objects of archaeological or historical interest; the requirements of local authorities; the development of towns; alienation to certain classes of persons; and any other purpose that may be prescribed, having regard to the protection, conservation and development needs of the area.³⁹

³⁸Sriskandarajah, Karunakaran&Sumanthiran, 2003, Study conducted by Centre for Poverty Analysis (CEPA) on land and vulnerable groups in Northern Province, USAID LAPP Program, Tetra Tech ARD, 2011, Section 3 AND 15 of the Prescription Ordinance No.22 of 1871

³⁹Refer to section 6 of Land Development Ordinance, as amended by Act No. 16 of 1969.

There is no declared national policy on the criteria of these schemes or how the grantees or beneficiaries are selected. There is no declared national land use policy that has been put out to the people. However, the Ministry of Land and Land Development is taking steps to establish a Land Bank with complete and comprehensive data relating to the land in the country so that it could facilitate the work of a National Land Commission once it is established.

Under the Thirteenth Amendment to the Constitution, rights over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement are placed in the Provincial Council List, and thus fall within the jurisdiction of the provinces.⁴⁰ The aforementioned CPA study⁴¹ stresses the government's failure to set out its policy on land in accordance with the Thirteenth Amendment. The study also suggests that—although there is no constitutional guarantee on the right to property—a right not to be arbitrarily denied the right to land, housing and property' can be gathered from the other rights spelled out in the Constitution, such as the right to equality and the freedom of movement, and the broad policy guidelines set out under the Directive Principles of State Policy contained in Article 27(2) of the Constitution.

When assessing the current situation related to State Land it becomes obvious that there is much controversy and chaos as a result of taking over an excessive amount of privately owned land by the State, confusion of applicable laws, lengthy and exhausting procedures set out by laws and also vesting of excessive power in public officials and departments over certain land. The majority of land disputes and strife in northern and eastern provinces are results of prolonged war as people who were issued permits or grants were forced to abandon those lands due to security and safety reasons and there are some communal land disputes between groups of different racial and religious backgrounds.

Even though the state in has allocated new lands to more than 300,000 internally displaced population, majority of which are women, they are facing systematic gender discrimination in the process of reallocation of land. The concept of the 'head of the household', which is seen to be synonymous to the male member of the family, has resulted in the discrimination against women in matters of housing and land rights. The term 'head of the household' in administrative procedures refer

⁴⁰See Provincial Council List, Ninth Schedule of the Constitution of the Democratic Socialist Republic of Sri Lanka. Clause 18 states: 'Land, that is to say, rights in or over land, land tenure transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II.' According to Appendix II, 'land' is deemed be a Provincial Council Subject, subject to the special provisions on state land, inter-provincial irrigation and land development projects, and the National Land Commission.

⁴¹ CPA, 2010

specifically to a man. The acceptance of male members as the head of the family further excludes women from applying for state land which is granted to landless peasants creating further injustice to the women heading households. The CEDAW committee in its review of 2011 has realized these constrains and has urged the Sri-Lankan government to abolish the concept of 'head of the household' and to recognize the joint ownership of land and property.⁴²

There are instances where the State Institutions, such as Forest Department, Divisional Secretariats, Land Reform Commission, Sri Lanka Government Railway, Urban Development Authority, Ports Authority, Road Development Authority and specifically the Mahaweli Authority, institutions created to protect and uphold the rights of the citizens in the country acting discriminatively and infringing the rights of vulnerable groups in the community in following discriminatory practices and procedures.

Mahaweli land issue is a problem which affects over 2000 members of general public. Under the Mahaweli Development Project large portions of land were declared by gazette as the land of the Mahaweli Authority. In many of these lands people were living before these declarations were made, although they did not have any title deeds or written document to prove it. However, these were lands occupied by them and their parents though the lands may have been declared, by law, to be those of the Crown under the laws passed by the then British government. While it is true that the occupiers did not have any title deed to these lands, it is also equally true that these lands do belong to the people of the country.

a) Land Development Ordinance, No. 19 of 1935

The Land Development Ordinance (LDO) was enacted to re-introduce and re-create a peasant society, which was eroded by the colonization and especially under the British Rule. It was iterated by then Minister of Land D.S. Senanayake in 1933. The LDO governs a number of aspects pertaining to land rights. Rule 1 of the Third Schedule to the Ordinance enumerates an order of succession to be followed upon the death of a permit-holder or grantee who has failed to nominate a successor. This order of succession prefers male relatives to female relatives and thereby discriminates against women (COHRE, 2007a; COHRE 2008a). This order of the succession is definite and was opened amendments

⁴²CEDAW Committee, The Global Initiative, 2012

- Land Development Ordinance No.19 of 1935 (LDO) has become the breeding ground of many principles and practices which are discriminatory of women and vulnerable communities. However it provides a gender neutral approach in the alienation of land.⁴³ LDO establishes gender discrimination in respect of state land. It is based on two aspects: one is the surviving spouse's right to succeed to the permit/grant holder on the occasion of the latter's death intestate; the second point is the Third Schedule of the Ordinance which is of male-preference in case of grant/permit-holder's death intestate. The LDO does not recognize the surviving spouse as a successor to a deceased intestate permit/grant-holder.⁴⁴ The status and rights of the 'surviving spouse' is questionable in light of the right to equality and non-discrimination recognized in the Constitution and applicable international standards.
- The discrimination is evident in Sections 48(A) and (B) of the amendment, which guarantees the surviving spouse's life interest to the land of the permit/grant-holder, where s/he has not been nominated, until (if) 'the surviving spouse marries' after the death of the permit/grant-holder. S/he loses her life interest upon such marriage, but a nominated spouse does not lose her/his rights by reason of a re-marriage.⁴⁵ The new s.72 reinforces the surviving spouse's rights where it prescribes the application of the rules in the Third Schedule subject to the conditions, i.e. upon the death of a permit-holder/grantee (i)without leaving behind his or her spouse, or, (ii) upon the failure of such surviving spouse to succeed to that land, or (III) upon the death of such spouse.⁷¹ Accordingly, rules of the Third Schedule apply subject to the surviving spouse's rights enumerated under Sections 48 (A) and (B).
- Third Schedule of LDO is another instance of discrimination based on gender, against women. The Schedule lists out the order of title in land alienation as follows in Section 1.

⁴³ ss.2,24,26 of LDO No.19 of 1935

⁴⁴ See s.72 of LDO No.19 of 1935

⁴⁵ Proviso to s. 48(A) and (B).

b) Land Grants (Special Provisions) Act, No. 43 of 1979

Section 3 of the Act refers to transfer of State land to any private individual by the President. Any such state land transferred to a private individual termed as grantee could nominate a successor to succeed to such land on his death by way of section 9. In the case of no such nomination, as per section 10 such land will devolve on his surviving spouse, failing which it will devolve on his relatives in the following order (1) Sons, (2) Daughters, (3) Grand Sons, (4) Grand Daughters, (5) Father, (6) Mother, (7) Brothers, (8) Sisters, (9) Uncles, (10) Aunts, (11) Nephews and (12) Nieces.

- The order shows patriarchy and also male domination over females as expressed in most state land laws which are contradictory to Fundamental rights of equality in the Constitution of Sri Lanka⁴⁶ and also the international norms and covenants such as UDHR, ICCPR, ICESCR, CEDAW, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (2012) to which Sri Lanka is a party to.

3.2 Private Land

Under the laws governing private lands, the majority of the legislation is built on the foundation of the Roman Dutch Law principles which makes up the General Law of the country. However, personal laws which are applicable to identified communities in the country are also part of the legal system related to privately held land. Kandyan Law, Muslim Law and Thesawalamai, are the personal laws that have codified their communal customs and practices as formal legislation. This paper will discuss the laws related to private land in the light of the rights of women and other vulnerable groups.

Being a democratic, socialist republic, Sri Lanka in its Constitution provides equal legal protection to women and men. Article 12 (1) of the 1978 Constitution of Sri Lanka states that all persons are equal before the law and are entitled to the equal protection of the law. Further, according to article 12 (2) no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.

⁴⁶Article 12, Constitution of Sri Lanka, 1978

According to the general law on matrimonial property right of 1923, “a married woman is capable of holding, acquiring and disposing of any movable or immovable property as if she were a femme sole, without the consent or intervention of her husband. This applies to all property belonging to her at the time of marriage and property acquired or devolved to her after marriage. She also has the same remedies and redress by way of criminal proceedings for the protection and security of her separate property”⁴⁷.

a) Thesawalamai

Tamils from the Jaffna peninsula follow Thesavalamai law, which has been applicable to them since time immemorial. Under this law the property acquired by a spouse during the subsistence of the marriage for valuable consideration, such consideration not forming or representing any part of the separate estate of the spouse and the profits arising during the subsistence of marriage from the separate estate of that spouse have been recognized as *Thediathettam* property.⁴⁸ On the death of either spouse, one half of the *Thediathettam* belonging to the deceased spouse and has not been disposed of by last will or otherwise, shall devolve on the surviving spouse and the other half shall devolve on the heirs of the deceased.⁴⁹ As the Jaffna Matrimonial Rights and Inheritance Ordinance No.1 of 1911 was amended by the Amending Ordinance No.58 of 1947, with regard to marriages contracted before 1947 the previous law has been applied and for marriages contracted after 1947 the abovementioned law was applicable.⁵⁰

⁴⁷ Gender and Land data, FAO

⁴⁸ Section 19 of the Jaffna Matrimonial Rights and Inheritance Ordinance No.1 of 1911(JMRIO) as repealed and replaced by Section 5 of the Amending Ordinance No.58 of 1947

⁴⁹ Section 20 of the Amending Ordinance No.58 of 1947

⁵⁰In **KumaraswamyvsSubramaniam**, Kand R married and their property rights were governed by JMRIO until amended. K purchased an undivided 7/8 share in his own name in 1943. R died in 1948. Children argued that half of the property should have been vested in R on the date of purchase and that the entire 7/36 share devolved on them upon her death. K argued that the entire 7/18 belonged to him after the Amendment No.58 of 1947. Court held that R’s rights in respect of the *thediathettam* acquired before 1947 were governed by JMRIO and the provisions of amending Ordinance didn’t operate to divest the rights already vested in R under the earlier law. An undivided half share in the property had automatically vested in R as the non-acquiring spouse by operation of law. In **Parasathy vs Sethupillai** and **Sangarapillai vs Devaraja Mudaliar** the court cited the above case. Therefore it was concluded that new sections are not applicable to property rights governed by the JMRIO before being amended. A half of the *thediathettam* would automatically devolve on the non-acquiring spouse which would in turn be passed on to the children as his/her heirs.

In **Subramaniam vs Kadirgaman**, the land was acquired by a husband before 1945 for valuable consideration which formed his separate estate. Wife died in 1948 and the land did not fall within the new definition of *thediathettam* because it was acquired by husband for valuable consideration which formed his separate estate. The land which was termed as *thediathettam* during 1911 to 1947 may cease to be entitled to that label/term

A wife's property including her dowry property called *Cheedanam* and her ancestral property called *Muthusam* is regarded as her separate property. However, she is precluded from disposing of her separate property without the consent of her husband.⁵¹ Further, in practice that the notarial execution of transferring such rights always required to include father's name or husband's name. For an example "X" wife of or daughter of "Y". "The Jaffna Matrimonial Rights and Inheritance Ordinance No. 1 of 1911 (JMARIO) reiterates this position, though it permits the wife to petition the district court to obtain consent in respect of her separate property under special circumstances.⁵² Section 8 of the JMARIO provides that the wife may obtain consent from the district court to deal with her immovable property and the court may grant consent in specific circumstances. Such circumstances include (1) where she is deserted by the husband; (2) where she is separated from the husband by mutual consent; (3) where he is in prison for a period exceeding two years; (4) where the husband is a lunatic, or idiot or his place of abode is unknown; (5) when his consent is unreasonably withheld; or (6) where the interest of the wife and children require that such consent should be dispensed with.⁵³

When studying the Thesawalamai law it is clear that women are entitled to patrimonial inheritance but loses this right if she has been given a dowry at the instance of marriage by the father or her birth family. Though, women shares property with her husband, they cannot sell, transfer, or gift their property without the written consent of their husbands.⁵⁴ The report by FAO on rural women in post-conflict rural economy has described the situation of Tamil women and their right to land that, "The customary law, Thesawalamai, governs inheritance of property and matrimonial rights of Tamil women in Jaffna. Under Thesawalamai a woman can own property individually, is entitled to patrimonial and non-patrimonial inheritance, can

after 1947, but that does not mean that it divested either spouse of the proprietary rights in the land already vested on them. The court cited **Akilandanayaki vs Sothinagarathnam** where it was held that section 6(3) of the Interpretation Ordinance prevented new section from affecting any proprietary right of a spouse.

Manikkavasagar vs Kandasamy where the husband died in 1973 intestate and issueless. Court of Appeal held that the property purchased during the subsistence of the marriage is presumed to be acquired property until contrary is proved. Supreme Court held that Court of Appeal's view was under old Thesawalamai and under new definition, son's earnings during his bachelorhood from no more his parent's *tediathettam* but remain his separate property because the definition excluded son's earnings according to JMARIO in 1911 came into force.

⁵¹Tambiah, 2001; Nagendra, 2008

⁵²Ibid.28

⁵³Jaffna Matrimonial Rights and Inheritance Ordinance No. 1 of 1911, Section 8

⁵⁴JayanthiLiyanange, 2002 cited in WID, 2003

acquire property during marriage and can keep the dowry she received.⁵⁵ Control of her property, however, is in the hands of her guardian, and as the guardianship of a woman passes from the father to the husband, the husband maintains control of her property.

- The woman cannot invest in the property, mortgage, lease, or sell it without the prior permission of her husband.
- A woman cannot enter into contracts without her husband's consent and women are treated as 'minors' in the Courts of Law.

Thus effective control rests with the husband".⁵⁶ Matrimonial rights and inheritance (Jaffna) Ordinance sets out that a widow can possess separate property; she receives half of property acquired during marriage and half shared equally amongst children (sons and daughters); widow has no right to ancestral property and children (sons and daughters) inherit equally.⁵⁷

b) Kandyan Law

Under Kandyan Law there are two types of marriages, namely *diga* and *binna*. *Diga* marriage requires the bride to live with the groom in his property and requires the father of the bride or her family to provide her with a dowry which could be money, property or a combination of both. Such woman married in *diga* does not inherit her father's property and she is considered part of the groom's family. In a *binna* marriage the groom moves in with the bride and live in her parental property. In such marriage a dowry is not considered mandatory and such bride is allowed to inherit her parental property equally with her brothers and unmarried sisters.⁵⁸

Widows are allowed to receive the life estate of non-ancestral property. Life interest means that a widow can receive the income from the non-ancestral property of her husband. She can also receive maintenance from ancestral property if non-ancestral property is insufficient, then devolves to descendants.

All daughters if unmarried are considered equal as sons with regard to inheriting the parental property. And all children inherit maternal ancestral land equally provided that mother had not married in *binna*.

⁵⁵ URL: <http://www.fao.org/docrep/009/ag114e/AG114E10.htm>

⁵⁶ Ibid 2

⁵⁷ Jaffna Matrimonial Rights and Inheritance Ordinance No.1 of 1911(JMRIO) as repealed and replaced by Section 5 of the Amending Ordinance No.58 of 1947

⁵⁸ Kandyan Law Declaration and Amendment Ordinance, Kandyan Succession Ordinance No.23 of 1917

c) Muslim Law

The Muslim community in Sri Lanka is governed by Muslim Law which is a communal law based on Islamic legal principles specifically with relevant to intestate succession and matrimonial affairs.

Muslim Intestate Succession Ordinance No.10 of 1931 which governs the intestate succession of Muslims provide for inheritance by women as wives, daughters, sisters and grandmothers but they do not inherit equally to their male counterparts.⁵⁹

Section 47(1) of the Muslim Marriage and Divorce Act empowers the Quazi Court to inquire into and adjudicate upon any claim for maintenance by a wife, restricts this power in the case of a divorced wife to the award of maintenance “until the registration of the divorce or during her period of iddat, or, if such woman is pregnant at the time of the registration of the divorce, until she is delivered of the child”⁶⁰ and to lying in expenses⁶¹. It is important to note that there is no express statutory provision for the award of matak which may be described as a „consolatory gift“ which a husband is commended in several verses of the Holy Quran⁶² to make to his wife on the occasion of the divorce.⁶³

Further “the doctrine of unity of person” has no place in Muhammadan matrimonial law⁶⁴ and the wife possesses an independent legal personality even after the marriage. The marriage would also not affect the property rights of the wife.⁶⁵ The most important feature is that under Sri Lankan Muslim law there is no legal bar to a Muslim woman instituting legal proceedings even against her own husband.⁶⁶ The marriage does not in any way make her husband her legal representative.⁶⁷

⁵⁹ Muslim Intestate Succession Ordinance No.10 of 1931

⁶⁰ Section 47(1)(d), Muslim Marriage and Divorce Act (MMDA) of 1951

⁶¹ S.47(1)(g), MMDA, Nafeek v SithiJanufa [2006] 1 Board of Quazisⁿ Law Reports 43

⁶² the Holy Quran, SuraBaqara II: 229; SuraAhzab XXXIII: 49 and SuraTalaq LXV: 2

⁶³ S.Marsoof, Marriage Laws of the Muslims in Sri Lanka, Law College Law Review, 2006

⁶⁴ MohanlalDayaljiManek, Handbook of Mahomedan Law, 5th ed., 39

⁶⁵ Tillekeratne v. Samsedeen (1901) 4 NLR. 65

⁶⁶ Pathumma v. Cassim 1 MMDLR 76; IdroosLebbeMarikar Mohamed Mohideen v. Ummu Nona 2.MMDLR 83.

See also, the case reported in 1851 Austins Report 169

⁶⁷ Timothy David v. Ibrahim (1911) 13 N.L.R. 318

4. Issues and problems relating to vulnerable communities during natural or manmade disasters

The conceptualization and classification of vulnerable groups in relation to land and property in this study could be brought under the following major categories due to the unique and critical issues and problems are faced by these groups. Furthermore the legal and administrative issues relating to them are very complex in nature due to various reasons ranging from legal to administrative practice and security issues and the list go on. Sri Lanka has faced rigorous and severe manmade disasters and a natural disasters in the past decades. It was evident the complex nature of issues pertaining to land and property during these period. Though the Government made few regulations and rules to redress and remedy the issues in relation to manmade disasters time to time those were not comprehensive and most of the piece meal and ad-hoc in nature. During the Tsunami attack on Sri Lanka in 2004 December, the legal issues arose out of it was much more complex and difficult to deal with. Therefore, the Government took policy decisions in dealing with different issues and also brought a Tsunami (Special Provisions) Act, No. 16 of 2005⁶⁸ to deal with the legal issues pertaining to different issues of which also dealt with legal and administrative issues in relation to Land and Property as well.

- There is no comprehensive policy to protect and promote the land and property rights of the affected people. It is real vacuum in our legal system at the present.

The people who are affected during the civil conflict/war fall into Returnees, Resettled and IDPs. Land grabbing or systemic acquisition or secondary occupation or the declaration of High Security Zones (HSZ) and establishment of Military Camps in the North and East has a hugely impacted on these people depriving their right to ownership and possessory rights. When the displaced people—both IDPs, returnees, resettled people and asylum seekers—return to their area of origin, they may be broadly categorized as ‘returnees’. This group is often confronted with innumerable land-related issues, as their rights are heavily affected both by their absence and events that may have taken place in those locations. Many returnees are forced to return to certain areas. The term ‘forced returns’ is used to identify ‘all forms of coercion intended to make IDPs return to their place of origin or relocate to alternative sites’ (IASC, 2007). With regard to ‘Resettled persons’ are those who are compelled to abandon their places of origin and take up residence in completely different areas. The designated areas of resettlement are usually determined by the

⁶⁸See Part III, IV and V, Tsunami (Special Provisions) Act, No. 16 of 2005

state. Reasons for resettlement in areas other than their place of origin may vary; and in the case of conflict-affected IDPs, the threat of landmines may be a possibility.⁶⁹ However, a governmental agenda to change the demographic composition within a given area could also explain a policy of resettlement as opposed to a policy of return.

Resettled persons are particularly vulnerable to land-related issues, as they are almost entirely dependent on the government for the effective exercise of their land rights. For instance, resettled persons would possibly lose title to their original lands owing to a variety of reasons discussed later in this review, including the demarcation of HSZs. Such persons would thereafter be compelled to wait for the government to grant them title to the resettled land. As a result, resettled persons are invariably condemned to a state of dependency. Though the present Government taking steps towards the return of land to the original owners or possessors, it has lot of contention among different interested parties for differing reasons.

5. Issues and problems relating to alienation of State Lands

The meaning of State Lands could be the (1) lands vested in the State under the Waste Land Ordinance No:1 of 1894, (2) lands settled as State Land under the Land Settlement Ordinance No:21 of 1931, (3) the lands acquired to State under the Land Acquisition Act No:9 of 1950, (4) the lands vested in the State under the Land Grants (Special Provisions) Act No. 43 of 1979, (5) lands vested in the State by a Court Order, (6) lands legally owned by State which the State may alienate. Further with regard to the application of State Land (Recovery of Possession) Act, the following lands are considered as State Land; (1) lands belonging to Land Reform Commission, (2) lands belonging to the State Plantation Corporation, (3) lands belonging to Estate Development Board and (4) all other lands of Corporations, Boards and Authorities.

The concept of alienation of State Lands to lower income families was originally aimed at creating a peasant community/farmer community to improve agriculture based economy, which was eroded during the British rule in Sri Lanka. The State Lands are alienated or vested mainly under Land Development Ordinance, State Lands Ordinance and Land Grants (Special Provisions) Act under different programs

⁶⁹ See 'Over 182,000 IDPs Released and Resettled', Official Website of the Government of Sri Lanka, 10 March 2010, at http://www.priu.gov.lk/news_update/Current_Affairs/ca201003/20100310over_182000_idps_released_resettled.htm.

and projects. The administrative circulars that are enacted time to time sets out the guidelines and criteria for the provisioning of State Lands for landless people.

- The procedural aspects relating to eligibility and selection of beneficiaries under this laws are complex and long. The awareness in relation to right to apply for land also not every effective most of the people do not know the process of application submission. For an example the rules and administrative practices which are introduced by these land reforms policy and welfare policies themselves exclude the plantation community and make them alien. For an example the *annual income* stipulated under the LDO for the qualification for applying for State Land.

CHAPTER 4**SUGGESTIONS, RECOMMENDATIONS AND ADVOCACY STRATEGY OVER PREVAILING INEQUALITIES WITH REGARDS TO WOMEN AND COMMUNITIES****5.1 Suggestions and Recommendations****1. National Policy on Land and Comprehensive Legal Framework**

There is no National Policy or a Comprehensive Legal Framework in dealing with Land and Property in Sri Lanka, particularly on State Land. The 13th Amendment to the Constitution requires a National Land Commission to be established by the Government. The National Land Commission shall include representatives of all Provincial Councils. Further the Amendment provides to formulate a national policy with regard to the use of State land and a Secretariat to manage and administer social, physical and economic factors that affects the land. The failure to set up such a Commission for almost 30 years is a breach of the constitutional obligations of the State. The national policy formulated by the National Land Commission must be made transparent and the government should take necessary steps to give comprehensive legislative framework for its proper and due implementation. This is crucial since the present legislative and administrative framework is inadequate to keep up with the development of the current society and it has led to corruptive, ineffective practices and confusion with regard to in the land management and development.

2. Women's land rights and control over resources

As discussed in Chapter 3 of this Study – there are policies and laws which prevent women being an active right holder and control over land resources due to inherent nature of discriminative and inequality principles that were applied in the national policies and laws dealing with land and property in Sri Lanka. A vibrant and coherent land policy in relation to land rights of women needs to be in place in order for the proper inclusion of the women in social and economic development. Advocacy, lobbying and creating networks are strong methods to defy ignorance and promote understanding of complex legal issues and reach out to the decision makers. The Aga Khan foundation in Bangladesh and the Aurat Foundation in Pakistan are examples to such organizations. The State Land laws especially the critical laws such as LDO, Land Grants (Special Provisions) Act, and Land Acquisition Act need to be amended in line with the international norms and principles underpinning the gender equality. The Personal Laws need to be looked into carefully taking the validity and importance of such laws and the principles underlying in amending or annulling them. In general it

should either be annulled or amended severely to omit the laws which are discriminative on the basis of gender. The Laws must uphold gender equality in accordance with the 2030 Global Development Agenda (GDA) and Sustainable Development Goals (SDGs) as mentioned in Goal 5 which states “achieve gender equality and empower all women and girls”

3. National Policy of Protection and Promotion of Land Rights of vulnerable Communities affected during Disasters

Actual issues and problems and the quantum of such land and property issues of vulnerable groups identified under this study is not known exactly. In relation to the issues and problems of war affected person and communities appear to be an implicit presumption that once these populations are returned or resettled, their problems are greatly reduced. On the contrary, it is upon return or resettlement that a vast number of land related issues such as prescription and demographic manipulation come to light. Vulnerable groups such as women especially those who are managing households and children amongst returnees and resettled population often face great hardship in returning to the lifestyles they lived before displacement due to conflict. In Sri Lanka the vast number of women headed households resulting from armed conflict and tsunami has given the great responsibility of raising children and managing a household to women suffering from poverty, having no means of livelihood and lacking in experience or education. The worst problem is that the land laws and practices related to land management and succession are discriminative of women and vulnerable groups. Thus future research must also focus on the specific issues faced by these communities, so that laws and policies designed to address displacement are truly successful in ensuring durable solutions for all vulnerable groups.

4. National Policy on Alienation of State Lands

The Land Development Ordinance, State Land Ordinance and Land Grants (Special Provisions) Act are the main piece of legislation in alienating the State Lands for the poor segment of the society and bridge the gap in social inequality. These laws and regulations pave the way and provide procedural aspects relating alienation and lease of State Land to the people who are landless among other objectives of the law. The policies are brought time to time in order to implement the laws and fulfil the purpose

of the law. The conditions laid out in the laws and as well as regulations are contrary to the international norms and principles ensuring land and property rights of the people. They are need to be revisited to suit to the present need and interest of the people concerned.

5. Land Information System and Access to Information

There shall be Land Information System (LIS) incorporating the latest technology. It should support the people to know about the land and other information for investment purposes for economic growth. The information should be also connected to other required information on soil, climate, telecommunication and electricity supply etc. The cadastral survey and subsequent process of title registration need to be implemented in ensuring the proper land information system.

6. Effective Dispute Resolution Process

One of the major issues in relation to land disputes is case delays in the adjudication process. The procedural laws with regard to the issue of resolution or settlement of land disputes, the present adversarial system of civil court proceedings is not only time consuming and resource intensive but also fails to bring about amicable settlement amongst the disputing parties. This leads to fragmentation of societal relations and divisions among parties. In this respect, alternative dispute resolution mechanisms may provide speedy resolution and pave the way for amicable settlement between the parties thus facilitating improvement of strained relations. The government has already set up three pilot Special Mediation Boards under the provisions of the Mediation (Special Categories of Disputes) Act of 2003 in five districts in the North, East and North Central provinces of the country to deal with land related disputes. This is a favourable move which could be replicated with regard to land disputes in all the parts of the country.

7. Need to gather more quantitative data from the northern and eastern provinces

There is a lacuna in the literature in terms of quantitative data from the Northern and Eastern Provinces. Due to the breakdown in state institutions, lack of census and statistical data, and the loss of documents during the armed conflict, it has become virtually impossible to obtain credible quantitative data on land-related issues especially in the North. For example, there is a deficit in specific data on female-headed households, demographic details of returned or resettled populations, the extent to which landowners have registered their titles, and details of land disputes and the extent of their resolution through state institutions. It is important that future research incorporates a distinct quantitative element that complements the more than adequate qualitative data on the subject.

Apart from the abovementioned critiques, the quality of literature on the land rights of vulnerable groups in Sri Lanka is more than satisfactory. Thus, any future initiative involving the designing and implementation of a 'Land Rights, Gender and Vulnerable Groups Strategy' in Sri Lanka could benefit greatly by referencing the currently available literature on the subject.

5.2 Recommendations and Advocacy Strategy

NO	SUGGESTIONS/ RECOMMENDATIONS	ADVOCACY STRATEGY	
		Key Stakeholders	Methodology
1	National Policy on Land and Comprehensive Legal Framework	Presidential Secretariat Prime Minister's Office Ministry of Land and Parliamentary Reforms Ministry of Provincial Councils and Local Government Ministry of Justice	<ul style="list-style-type: none"> Preparation of policy briefs and implementation strategy Meetings with key stakeholders Meetings with policy makers and political leaders
2	Women's land rights and control over resources	Presidential Secretariat Prime Minister's Office Ministry of Land and Parliamentary Reforms Ministry of Provincial Councils and Local Government Ministry of Justice NGOs and INGOs	<ul style="list-style-type: none"> Preparation of policy briefs and implementation strategy Meetings with key stakeholders Meetings with policy makers and political leaders
3	National Policy of Protection and Promotion of Land Rights of vulnerable Communities affected during Disasters	Presidential Secretariat Prime Minister's Office Ministry of Land and Parliamentary Reforms Ministry of Provincial Councils and Local Government Ministry of Justice NGOs and INGOs	<ul style="list-style-type: none"> Preparation of policy briefs and implementation strategy Meetings with key stakeholders Meetings with policy makers and political leaders
4	National Policy on Alienation of State Lands	Presidential Secretariat Prime Minister's Office Ministry of Land and Parliamentary Reforms Ministry of Provincial Councils and Local Government	<ul style="list-style-type: none"> Preparation of policy briefs and implementation strategy Meetings with key stakeholders Meetings with policy makers and political leaders
5	Land Information System and Access to Information	Ministry of Land and Department of Survey	<ul style="list-style-type: none"> Discussion with Surveyor General Department
6	Effective Dispute Resolution Process	Ministry of Justice/Mediation Boards Commission Ministry of Land and Parliamentary Reforms	Discussion with MOJ and MBC
7	Need to gather more quantitative data from the northern and eastern provinces	Ministry of Land and Parliamentary Reforms Ministry of National Integration and Reconciliation Northern and Eastern Provincial Councils	Field Research FGD KIIs

5.3 Conclusion

As explained above land which is a scarce, precious natural resource has become the source of discrimination and restraint when it comes to women and vulnerable communities. It is of great importance to rectify this situation by identifying and removing such legal restraints and replacing them with clear, precise and reasonable laws and practices. In order to identify the flaws and vacuums in the legal system which makes way for such injustice, it is crucial to consult the women and the members of the communities who are governed by such laws and practices. This is required since these laws are often based on the traditions and age old customs of these groups and some have embraced such discriminatory laws as part of their tradition and resist any change in such rules and practices.

Even after successful legal enactments and amendments, it is important to take measures to make sure that these laws are absorbed into the society. Changing age old traditions, customs and legal practices is not easy and it requires the support and contribution of the society to which it applies. The support and acceptance of these legal changes by the men in the case of amendments regarding women's discriminatory laws and by the majorities and not so vulnerable groups in the community, when vulnerable and minority communities are concerned is also important.

An effective and interactive network between stakeholders must be created to ensure constructive dialogues, evaluation of the legal changes and promote legal awareness, improve access to legal aid and encourage legal research.

Key Sources

International Conventions, Treaties, Declarations and Guidelines

1. *Universal Declaration of Human Rights - 1948*
2. *International Covenant on Civil and Political Rights - 1966*
3. *International Covenant Economic, Socio and Cultural Rights – 1966*
4. *Convention on the Elimination of All Forms of Discrimination Against Women – 1979*
5. *Voluntary Guidelines on the Responsible Governance of Tenure – 2012*
6. *Voluntary Guidelines for Securing Sustainable small-scale Fisheries - 2014*

National

1. The 1978 Constitution
2. National Policy on Land and Property
3. The key relevant laws relating to Private and State Land
 1. *Land Development Ordinance, No.19 of 1935*
 2. *Land Grants (Special Provisions) Act, No.43 of 1979*
 3. *Land Settlement Ordinance, No. 20 of 1931*
 4. *Registration of Title Act, No. 21 of 1998*
 5. *State Lands Ordinance, No. 8 of 1947*
 6. *Land Acquisition Act, No. 09 of 1950*
 7. *Jaffna Matrimonial Rights and Inheritance Act, No. 21 of 1911*
 8. *Kandyan Law Ordinance, No. 39 of 1938*
 9. *Muslim Intestate Succession, No. 10 of 1931*
 10. *Agrarian Services Act, No. 46 of 2000*
4. Rules, Regulations, Circulars and related materials regulated by the Ministry of Land and its Institutions.

References:

1. G.L. Peiris, *The Law of Property in Sri Lanka – Vol I*
2. Provincial Council List, Ninth Schedule of the Constitution of the Democratic Socialist Republic of Sri Lanka
3. Land Watch Asia, *Land Ownership and the Road to Self Determination, Sri Lanka Country Paper*
4. CPA, 2010
5. Thambiah J, *Silva vJohanisAppuhamy*(1965), 67 NLR
6. R. W. Lee, *Introduction to Roman Dutch Law*, 1946, 4th Edition
7. *Halsbury's Laws of England*, Vol.27
8. *Black's Dictionary*
9. W. D. Gamage, *Conveyancing and Office of Notary*, 1998
10. Chapter 7, vision 2025
11. FAO (2003), Women in Agriculture, Environment and Rural Production. Fact sheet Sri Lanka,
12. FAO (2006), Rural women in Sri Lanka's post-conflict rural economy by Wanasundera, L. Rome.
13. Results Data Initiative, 2008, International Centre for Research on Women (ICRW), 2006
14. http://www.seu.ac.lk/researchandpublications/social_review_fac/V3N1/2%20Article%20pages%2016%20-%2023.pdf
15. AsbjornEide, Economic, Social and Cultural Rights as Human Rights, pp12, 20.
16. Universal Declaration of Human Rights (1948), Art.1
17. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (2012), pg.4-5
18. Circular No. 02/233 dated 01st December, 1989, Ministry of Lands, Irrigation and Mahaweli Development
19. Goonesekere, R. K. W., in *Select Laws on State Lands*, at p.33.
20. *Bulankulamev. Secretary, Ministry of Industrial Development* [2000] 3 Sri L R 243
21. Sriskandarajah, Karunakaran&Sumanthiran, 2003
22. CEDAW Committee, The Global Initiative, 2012
23. Pinto-Jayawardena K. and de Almeida Guneratne J., Is Land Just for Men?, (LST 2010),
24. Guneratne C., Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, CENWOR Study Series No. 35, (2006), p.15
25. N.R.Wijeyesekera, Equal Land Rights for Empowerment of Women : A South Asian Perspective with Special Emphasis on Sri Lanka, International Journal for Studies on Children, Women, Elderly And Disabled, Vol. 1, (January) ISSN 0128-309X
26. Goonesekera S., *SRI LANKAN WOMEN'S RIGHT TO HOUSING AND LAND: THE RHETORIC OF EQUALITY AND THE REALITY OF STATE ACTION*, in Charting Pathways to Gender Equality – Reflections and Challenges, (CENWOR 2010),
27. Jaffna Matrimonial Rights and Inheritance Ordinance No. 1 of 1911, Section 8
28. Jayanthi Liyanange, 2002 cited in WID, 2003

