

A Study on Effectiveness of Selected Special Land Mediation Boards in the Eastern and Northern Provinces

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Final Report



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List of Acronyms

AGA	Assistant Government Agent
CBOs	Community Based Organisations
CEPA	Centre for Poverty Analysis
CMB	Community Mediation Board
COHRE	Centre on Human Rights and Evictions
CPA	Centre for Policy Alternatives
DS Division	Divisional Secretariat Division
DS	Divisional Secretary
GA	Government Agent
GND	Grama Niladari Division
GN	Grama Niladari
GS	Grama Sevaka
HH	Household
HSZ	High Security Zone
ICG	International Crisis Group
IDP	Internally Displaced Person
KPI	Key Person Interview
LDO	Land Development Ordinance
LTTE	Liberation Tigers of Tamil Ealam
MBC	Mediation Boards Commission
MoJ	Ministry of Justice

MTO	Mediation Training Officer
NGO	Non-Governmental Organisation
PTF	Presidential Task Force
RDS	Rural Development Society
RTA	Registration of Titles Act
SEZs	Special Economic Zones
SLMB	Special Land Mediation Board
UNDP	United Nations Development Programme
WRDS	Women Rural Development Society

1. Introduction

Past studies analysing land related disputes in the directly war affected areas such as the Northern and Eastern provinces highlight boundary and boundary related issues, issues arising from actions of the State and non-state parties such as illegal and/or secondary occupation of land and land grabbing, discrimination and marginalization of women, and grievances associated with the lack of land (Fonseka & Raheem, 2011; Selvakkumaran et al 2014). Impacts of these issues include illegal/secondary occupants having lived in specific lands for more than ten years which in turn, give rise to issues of prescription and possibly, compensation for improvements; lack of land for engaging in livelihoods, land disputes among close family members leading to family estrangement and, constraints for land development resulting in the inability to reach overall individual and household wellbeing.

While most land related issues are common throughout the country, the protracted war - resulting in multiple and complex displacement experiences during the war - and often equally complex return and resettlement experiences post-war, mean that individuals, families and groups are rendered particularly vulnerable to land related issues in the Northern and Eastern provinces. They face certain endemic problems. For example, one such vulnerable group commonly identified in past studies on land related issues in the directly war affected areas is women who manage their households. Past studies find that, invariably, the armed conflict adversely impacted women's land rights in the Northern and Eastern provinces due to displacement, forced eviction, occupation by armed forces or the Liberation Tigers of Tamil Elam (LTTE), loss of lives of breadwinners, and destruction of property and documents relating to title (Pinto-Jayawardena & de Almeida Guneratne, 2010). Thus, women are increasingly called upon to enforce land rights under extremely harsh conditions. More specifically, women—particularly those residing in war-affected areas—lack awareness regarding testamentary proceedings and face problems in obtaining assistance from the government, given the difficulty in proving the death of her husband in whose name aid is usually granted (Pinto-Jayawardena & de Almeida Guneratne, 2010).

In the Report of the Lessons Learnt and Reconciliation Commission (LLRC), these complex land related issues and disputes were identified as potentially leading to other disputes and therefore a 'hindrance to normalcy' in the war affected areas (Selvakkumaran et al 2014: V). As such, the Ministry of Justice (MoJ) proposed the setting up of Special Mediation Boards to facilitate the resolution of issues and disputes relating to land. As a result of this decision, Special Land Mediation Boards (SLMBs) were set up according to the provisions of the Mediation (Special Categories of Disputes) Act No 21 of 2003. The establishment of the SLMBs was carried out by the MoJ in close collaboration with the Ministry of Land and Land Development.

These boards were set up with the primary aims of providing timely and speedy resolution of issues targeting amicable settlements while providing ease of access and ensuring confidentiality with the overall goal of restoring relationships and facilitating reconciliation. Recent discussions with the Ministry of Justice and Ministry of Land and Land Development highlighted plans in place to bring in changes to legislature in order to increase the coverage of the SLMBs to the rest of the country and relevant other changes in order to strengthen the service provided by the SLMBs.

2. Study objectives, research questions and methodology

The Asia Foundation (TAF) had been working closely with the Ministry of Justice (MoJ) and the Mediation Boards Commission (MBC) over decades, to strengthen and in certain cases revive the Community Mediation Boards in Sri Lanka, and especially in the directly war affected areas of the country. As part of this engagement, in 2016, 'the Foundation started a project Promoting Shared Values, Shared Spaces and Dispute Resolution in Sri Lanka with the goal of empowering and engaging marginalized populations, young people, and war-affected communities in the North, East and South of Sri Lanka in reconciliation initiatives' (The Asia Foundation, Terms of Reference - A study on effectiveness of selected special Land Mediation Boards in the Eastern and Northern Provinces). Within this project, the Foundation has been working with MoJ and MBC, to support the establishment of Special Mediation Boards to address land issues in selected districts.

Three key activities are covered under the said objective of the project:

- a. Establishing Special Mediation Boards to address land disputes in selected locations and train trainers and mediators;
- b. Establishing resource pools (panel of experts) and district level briefing sessions; and
- c. Creating awareness of the land mediation boards and networking with policy makers.

As part of their continuous support to strengthen community mediation processes in Sri Lanka, the Asia Foundation commissioned the Centre for Poverty Analysis (CEPA) to carry out an exploratory study to understand how people experience Special Land Mediation Boards in the Northern and Eastern Provinces, the progress and achievement of Special Land Mediation Boards and the lessons learnt so far.

The overall objective of this study is to assist The Asia Foundation in understanding how 'justice' delivered by the land mediation boards is understood and perceived by those who have sought redress or resolution of their disputes through this process. Following this objective, the study was designed as an inductive enquiry of which, the outcome provided bottom-up conceptualizations of justice both delivered and sought in relation to people's experiences of accessing mediation boards in the Northern and Eastern Provinces and understanding early lessons learnt.

Research questions

The two main research questions guiding this study are:

1. How do people experience Special Land Mediation Boards in the Northern and Eastern Provinces?
2. What is the progress and achievements thus far of the Special Land Mediation Boards, with a focus on lessons learnt?

Sub-research questions:

1. *What is the nature of land related disputes in the Northern and Eastern Provinces and what are the resolution mechanisms?*

This research question was primarily explored through the literature review, supported by primary data, paying specific attention to the land related issues unique to the directly war affected areas, their impact on vulnerable groups and the resolution mechanisms currently being used.

2. Who accesses land mediation boards?

Given that mediation boards are a relatively new mechanism, it is important to understand ascribed characteristics of the users. These characteristics may include socio-economic factors such as ethnicity, class, gender and caste or other characteristics such as displacement and resettlement history. We assumed that these characteristics would play a role in shaping people's expectations and also their satisfaction levels in relation to Special Land Mediation Boards.

3. How do people experience land mediation processes and their outcomes?

Once expectations of "justice" delivered by Special Land Mediation Boards are formed and people approach the mechanisms to discuss their land related disputes, their satisfaction or dissatisfaction with the SLMBs is contingent upon their experiences and perceptions of the outcome and the process that facilitated the settlement. The conceptualisations of "process" and "outcome" according to this sub-research question were derived inductively based on perceptions of the disputed parties.

4. How was the selection of mediators and their skills and knowledge strengthening carried out? How effective is the selection and training, as perceived by mediators and those who access land mediation boards?

The rapid assessment carried out prior to establishing the Special Land Mediation Boards (Selvakkumaran et al, 2014) highlights people's opinion of the need for specially trained mediators to handle land related disputes, reflecting on their reservations towards the mediators currently attached to the community mediation boards (CMBs) handling such disputes. As such, this study analysed the selection and the training processes of mediators to the SLMBs, through key informant interviews with selected mediators, mediator trainers and relevant other land related officials and in-depth case studies about perceptions of their effectiveness from disputants' perspectives.

5. What are the lessons learnt and early successes of the land mediation boards?

Despite challenges posed by the COVID-19 pandemic for the functioning of the Special Land Mediation Boards, this study draws out emerging lessons from the process, for improvement purposes.

Methodology

Given the complexity of the social situation that mediation is taking place in, the research used a constructivist approach to understand the diverse forces that influence the process and outcome of mediation. The meanings that the people attach to mediation is context dependent and it can differ from one another, depending on identities and identifications of those who engage with the mediation process. These meanings can also govern the nature of people's engagement with the mediation process. Participation of diverse actors in the process adds further complications to the process and outcome. The central role that the State plays in establishing and capacitating the SLMBs shapes how others perceive the process and related outcomes. Therefore, a comprehensive analysis of people's

experiences of getting involved in the SLMBs and what and who shapes their perceptions and expectations regarding mediation of land disputes is important. Therefore, the study adopted an inductive, ground-up approach to gain a richer and deeper understanding of how SLMBs have been implemented and the related outcomes. The research was carried out in the following three stages:

- I. Literature review
- II. Primary field research
- III. Analysis and reporting

I. Literature review

The literature review specifically focused on the nature of land disputes present in the study areas, alternative dispute resolution and background to the inception of SLMBs. The literature review informed the research design and drafting of data collection instruments.

II. Primary field research

An in-depth qualitative and inductive approach was used to understand the perspectives of actors who are connected to the SLMBs in Sri Lanka. The primary data collection was carried out in two phases: scoping phase and in-depth data collection phase. The sampling criteria for case/disputant selection for the in-depth interviews were derived based on the existing information on the SLMBs, expectations of The Asia Foundation, and CEPA's experience in working on similar themes. The research was conducted in Mannar, Vavuniya, Jaffna and Trincomalee districts where land mediation plays a significant role in addressing the land related disputes.

Phase I: Scoping

Although the study team envisaged an in-person visit to the study locations for scoping purposes, this was not possible due to COVID-19 travel restrictions in place at the time of data collection. Hence, all the interviews in the scoping phase were carried out virtually, mainly via phone calls. The purpose of the scoping phase was to validate the sampling framework, establish contacts, draw information required to identify the key informants and the sampling of in-depth case studies. During this phase, the study team consulted two mediators from each SLMB (chairperson and a mediator) from all the four study districts. The team also obtained information to assess the present status of SLMBs, especially on their functions during the COVID-19 situation. Information from the scoping phase, combined with the desk-based literature review and initial consultations with experts on land mediation were used to design the study tools. Prior to finalising the study tools, feedback from The Asia Foundation team on the tools were obtained and changes were incorporated.

Phase 2: In-depth discussions

The team carried out Key Person Interviews and in-depth discussions as part of the primary data collection process.

a. *Key person Interviews (KPIs)*

The purpose of the KPIs was to understand the nature of prevalent land issues in the respective areas, dispute resolution mechanisms commonly used and their effectiveness, broader processes and expectations in setting up SLMBs, the opportunities and challenges involved, and early lessons learnt. The KPIs also provided insights on how these challenges can be overcome for a better impact. A total of 35 KPIs were conducted at district, provincial and national levels, covering groups that are directly part of SLMBs such as mediators and Mediation Training Officers (MTOs) and other relevant stakeholders such as Provincial, District and Divisional Secretariat level officials, non-government sector representatives and academics/experts on land mediation, as the table below illustrates. The majority of KPIs were conducted in-person, while a few were conducted over the phone, given the time constraints and non-availability of respondents. Two open-ended questionnaires were used for KPIs and mediator interviews (see annex 1 and 2). Table 1 provides a summary of the KPIs carried during the in-depth data collection phase. A detailed list of KPIs is provided for further reference in annex 3.

Table 1: Summary of KPIs

District	Scoping	SLMB KPI	Other KPI	Total (By District)
Mannar	01	03	04	08
Vavuniya	02	03	05	10
Jaffna	02	02	07	11
Trincomalee	03	07	06	16
Colombo	01	0	04	05
Total	09	15	26	50

b. *In-depth case studies*

In addition to the KPIs, the study team conducted in-depth discussions with purposively selected individuals who have taken their grievances to the SLMBs. An open-ended questionnaire was used for these interviews (refer annex 4). The cases were identified from the records of the SLMBs after an extended discussion with the respective Chairpersons. Insights from these purposively selected case-studies can be used to identify some overall trends in the study districts but cannot be generalized. The following are some important considerations used for sampling cases for in-depth studies. The research team ensured the incorporation of these characteristics when selecting the sample for the in-depth study:

Current status of the disputes: Two types of cases can be identified on the basis of current status of the cases: whether they are settled or unsettled as indicated in table 2 below. In each district, the sample was proportionately allocated to capture the status of the cases.

Proponent/Opponent: When identifying the cases for in-depth study, we ensured the sample had a mix of disputants who had taken the disputes to the SLMBs (proponents) and opponents to understand different perspectives on the process and outcome of the mediation process.

Resettled/returned people/households: Displacement and resettlement have been at the core of land issues and making this a key criterion was expected to ensure that we capture the important dynamics attached to this. The return of internally displaced as well as from overseas adds to the land access and ownership related disputes.

Nature of the land related dispute: Land related issues in the Northern and Eastern provinces are diverse. Through this study, attempts were made to capture a range of such issues that are leading to tensions and conflicts.

Ethnic diversity: People's settlement in the Northern and Eastern provinces has unique patterns along ethnic lines. This also colours the nature of land issues, especially in the event of return after displacement. Hence, the focus on ethnic composition of a given location, in selecting the study locations was expected to add another key dimension to the study.

Socio-economically vulnerable groups: As briefly mentioned above, vulnerable groups in the former war zones face particular land related issues and challenges in seeking solutions or settlements for their problems. Therefore, in selecting the sample, women headed or managed households, and families that receive Samurdhi/live below the poverty line were also purposively included.

The sampling matrix given in table 2 was used, based on the information shared by The Asia Foundation for the year 2019. The sample captures both settled and non-settled disputes and are proportionate to the total such cases in the target districts. The research team obtained the necessary information such as contact details, type of disputes, state of the disputes (settlement/non-settlement), sex and the type of disputing party (proponent/opponent) at the commencement of the field data collection in each district, through extensive discussions and review of records with the respective Chairpersons of the study districts. The study team ensured that the required information on disputants were obtained well in excess (in most cases three-fold) of the sample size (mentioned in table 2) in order to avoid sampling bias and to avoid rejections when fixing appointments for the interviews. While certain districts had the required information collated in one document, certain other districts had the information compiled in various documents and locations.

Table 2: Sample matrix

Location	Key Person interviews	In-depth case studies				
		Number of disputes handled by the SLMBs		Sample (10%)		District Total
		Settled	Not settled	Settled	Not settled	
Mannar	8	29	18	3	2	5
Jaffna	8	87	148	9	15	24
Vavuniya	8	127	22	13	2	15
Trincomalee	8	196	123	20	12	32
Centre/national	10					
Total	42	439	311	45	31	76

In total, 79 in-depth case-studies were carried out in all four study districts. Table 3 provides a summary of key attributes of the case-studies carried for the study. Although the ethnicity data of the disputants was not collected nor recorded by the SLMBs, the research team attributed the religious identity based on the names made available to the team.

An in-depth interview with the disputants took about 1-1.30hours and all the interviews were conducted in the local languages. A team of two conducted these interviews; one team member conducting the interview and the other taking detailed qualitative notes, which were subsequently translated into English for thematic analysis.

Table 3. Summary of case-studies

District	Settled	Non-Settled	Male	Female	Opponent	Proponent	Ethnicity		
							Tamil	Muslim	Sinhalese
Jaffna	09	17	14	12	06	20	26	0	0
Mannar	03	03	04	02	02	04	4	2	0
Vavuniya	13	02	06	09	04	11	11	3	1
Trincomalee	20	12	19	13	14	18	4	27	1
Total	45	34	43	36	26	53	45	32	2
79 case studies									

3. Background

Impact of the armed conflict

A key deciding factor as it pertains to land disputes in the Northern and Eastern Provinces is the impact from the armed conflict. Items reviewed for this study comment on the impact of the armed conflict on land rights with a focus on the effects on vulnerable communities.

A study conducted by the Centre for International cooperation and Security at Bradford University in 2004, focusing on the economic impact of the armed conflict, illustrates the adverse effects of the conflict at a household level, thereby possibly affecting the proper exercise of land, property and housing rights (Alison, 2004). In the immediate aftermath of the end of the armed conflict, the International Crisis Group (ICG) further observed that wide restrictions on access to land were placed on communities in the Eastern Province due to security measures taken in the areas previously controlled by the LTTE (ICG, 2009). Furthermore, literature reveals that as a direct result of the war, most inhabitants in the Northern and Eastern provinces had fallen victim to common land related problems such as displacement, military or LTTE occupation of private property, lack of documentation, poor access to water, and informal dispute resolution (Centre for Policy Alternatives (CPA), 2005)). Moreover, instances where ambiguous ownership and competing claims to land due to direct or indirect effects of the armed conflict were also noted. These include: (1) multiple actors claiming rights to the same plot of land, (2) loss of documentation to prove ownership of land during the height of the war due to displacement and, (3) the loss and destruction of documents due to fires, bombings, and looting. Issues pertaining to the loss and destruction of documents were not only impeding individual rights but also complicating matters at an institutional level such as with district registrars and notaries (Gunasekera, 2021).

Most recent literature on military occupation in the Northern province suggest that one of the reasons for the prolonged presence of military in these areas is to ensure that there is no relapse and recidivism of former combatants now integrated to society (Gunasekera, 2021). But such presence has a direct impact on access to land. According to a report by ACPR and PEARL, as of 2017, approximately 25 per cent of the active military personnel in the country were based in Mulaitivu, occupying a land mass of 30,000 acres (Gunasekera, 2021).

Juxtaposing multiple crises that affected the social fabric in Northern and Eastern provinces, a study by the Centre on Housing Rights and Evictions highlights that the persons displaced by the armed conflict in Sri Lanka were not treated in a manner equivalent to persons affected by the Tsunami that affected the area (COHRE, 2006).

Discrimination and Inequality

It has been argued that in Sri Lanka, discrimination resulting from land policy varies with both explicit and implicit effects. Daudelin (2003) argues that in many cases, differential impacts result from a diversity of factors such as institutional characteristics of the tenure regime, literacy, language and the cost of formal proceedings. Daudelin further argues that the link between differential impacts of land policy can be analysed based on two logics; approaching the link as a class based one, where the people deprived of land rights can be compared with the ones who are endowed with land rights (vertical inequalities) or approaching the link as based on ethnic identity (horizontal inequalities). It is suggested that horizontal inequalities identified above often overlap with the vertical inequalities. In the context of Sri Lanka, the paper finds that most government sponsored settlement schemes have differential impact due to most settlers being Sinhalese which will affect the demographic balance of the area of concern.

Extending on this observation, a study conducted by the ICG in 2009 observes the fear entertained by different communities – particularly in the Eastern Province – that the return, resettlement, and relocation of IDPs may change the demographic patterns of the area (ICG, 2009). This is affirmed in another study tracing the history of the ethnic conflict which notes how the uneven distribution of benefits of government sponsored irrigation schemes compounded ethnic polarisation (ICG, 2008). Notably, it is also argued that land issues are prevalent not only between the Sinhalese and Tamil communities but also between the Muslim community and other communities. This further suggests that all three communities perceived the relocation and resettlement initiatives of the government with apprehension and suspicion attributed to the fear that it may subvert the existing demographic composition of the locality (Korf, 2003).

Political capital has been found to be a key factor as well. Korf (2003) has observed distinct variations in levels of political capital assets held by different ethnic groups to secure land tenure for members of their community during the subsistence of war. Sinhalese often hold an advantage over minority ethnic groups in this regard on account of having greater access to and influence over political actors within the militarised society. It is further argued that it is not variations in relative prices that drive change in property rights, but actors who influence the formation of property rights while pursuing their self-interest. Hence, within a patron-client model – where differentials in political assets govern access to resources and solutions – institutions often reflect the power asymmetry of actors. To this end, Korf observes that ‘clientelism’ is practiced by Sri Lankan politicians who exchange benefits for political support during elections. In applying this theory to the context of the civil war, the author concludes that communities exercise their property rights according to their bargaining power which leads to the politicisation and ethnicisation of land related issues, particularly evident in early 2000s where both the LTTE and the Government occupied parts of the Eastern province. Case studies attributed to the same author in the same area suggest that farmers in the Eastern province used institutional relations with combatants to secure their entitlement to natural resources, whereas the Sinhalese farmers sought the assistance of institutional mechanisms such as the police and armed forces to secure their property rights, which created and nurtured a patron-client culture in the East.

These assertions have been confirmed by a more recent study (2015) conducted on land policies, land-based development programmes and the question of minority rights in Eastern Sri Lanka. It finds that land policies and settlement projects implemented by successive post-independence governments have contributed to a number of benefits to the Sinhalese in particular, with a negative impact on the rights of minorities (Yusoff, Sarjoon, Awang and Hamdi, 2015).

Dispute Resolution Mechanisms

Legal framework in settling land disputes

Displacement due to war or conflict causes a plethora of land concerns that take years to address. Assuring people's land rights are recognised and maintained requires security of tenure and freedom from forced evictions. As explained earlier, the civil war resulted in large-scale displacement and evictions. Communities' requests for land return and tenure security have been faced with various obstacles. The inability to return to the land, lack of financial means to defend land rights and the lack of understanding of rights have all hampered resolution of various land disputes. Land rights are frequently endangered by growing demand for land and natural resources, uneven power relations, and large-scale land-based investments and resource privatisation. Land purchases without due process and forceful evictions are prevalent in places where land is in high demand for development projects. For the purpose of this review, selected, related literature pertaining to the resolution mechanisms, key actors and the process(es) of land dispute resolution in Sri Lanka are referenced.

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 authority of the provinces. A study conducted by the CPA in 2010 stresses on the government's failure to set out its policy on land in accordance with the Thirteenth Amendment. 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 policy guidelines set out under the Directive Principles of State Policy contained in Article 27(2) of the Constitution. Further complicating matters is that Sri Lanka's land law is already complex. Most legislation was enacted decades ago and were not designed with rights in mind. This is highlighted in the work of Moore and Bartsch who lay down the Laws, Acts and Ordinances related to Housing, Land and Property Roman Dutch Law (RDL) in detail.

What is also particular to the Northern and Eastern provinces is the application of different types of laws. For instance, while three personal laws apply to various parts of the community based on their ethnic origin and/or domicile, general laws apply to the remainder of the public. While the general law controlling property is commonly considered to be equitable, personal laws in particular such as the Thesawalamis have many gender discriminatory clauses that can deny women the ability to own, inherit and administer property (Gunasekera, 2021). These laws are in effect despite the Constitution (Article 12) providing for the equality of all before law and non-discrimination against any citizen on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds. Without post-

enactment judicial review and an express constitutional provision validating existing law regardless of its inconsistency with the fundamental rights chapter, these gender discriminatory laws remain valid (Wickramaratne, 2020).

Despite the law seemingly providing for a framework for resolution over private and state land, including formal court procedure and a grievance handling mechanism under the Ministry of Land, property disputes may stagnate in official courts or develop into more serious conflicts if left unchecked. Moreover, although ad hoc policies and administrative mechanisms have been introduced occasionally, for a long period, there was no overall effective policy framework that could address these issues (Wickramaratne & Rupasinghe, 2007).

This gap - owing to the outdated land law provisions and seemingly discriminatory personal laws – has resulted in a collaborative effort by civil society actors and the government to adopt different approaches to assist communities to secure their land rights. Mediation has thus come into play as a contender of 'Alternative Dispute Resolution' (ADR). ADR refers to all procedures available for resolving conflicts other than adjudication or litigation. When accessibility to mediation services is assured, the process is easily initiated and is relatively inexpensive.

Among the many ADR processes prevalent in Sri Lanka are Arbitration, Mediation, Conciliation and Negotiation. Whilst adjudication/litigation is fundamentally adversarial in nature, alternatives are more concerned with a process of settlement. This characteristic distinguishes it as a more palatable procedure; it is also this characteristic that serves as the foundation for its fiercest criticism. However, it is the degree of 'user satisfaction' that determines the approval of a process as a successful one, not any scholarly understanding of what should be sought and attained by individuals who utilise justice administration systems (Wijayatilake, 2016). For the purpose of this review mediation and land mediation in particular will be explored.

Antecedents of mediation in Sri Lanka

In Sri Lanka, minor land disputes between private parties are resolved through Community Mediation Boards whereas disputes over State land are frequently resolved through Land Officers attached to the Ministry of Land and Grama Niladhari, who serve as government representatives at the community level. In the aftermath of the conclusion to the war, a study on case findings show that the vast majority of disputes to be mediated are related to assault and land (Siriwardhane, 2011). But the nature of these disputes has also changed over the years. Most recent available statistics on Community Mediation Boards suggest that 75% of the complains received fall under the category of financial disputes and around 9% are related to 'hurt' (Jayasundere and Thirunavukarasu 2019), derived from the Mediation Boards Commission data). The authors further indicate that approximately 8.5% of complains received by the Community Mediation Boards are related to land disputes. Mediation in the Northern and Eastern Provinces reduces the number of cases being filed in the courts, relieving case backlogs, improving social harmony and local dynamics by introducing a method of problem solving that seeks out mutually agreeable solutions focused more on restitution than punishment. (Siriwardhana, 2011).

A study conducted in 2011 by CEPA suggests that mosque committees and temple committees should be used as a first attempt to resolve these disputes in the locality but that these choices should be recognised and documented inside formal institutional frameworks. The report further argues that at the local level, key participants in these processes should have a better grasp of fundamental land laws and regulations, their ramifications and procedures for resolving disputes through awareness development and that the conciliation/mediation boards might be formed using the same core personnel (CEPA, unpublished 2011).

Important to note is the Land Commissioner General's Land Circular (2013/1) which outlines an established process for addressing state land disputes in the Northern and Eastern provinces (Moore and Bartsch, 2015). This includes the use of Division Days and Mobile Services procedures. Additionally, the SLMB process - the focus of this study - is available by referral for all applicable land cases (Moore and Bartsch, 2015)

Community Mediation Boards

As discussed previously, a prominent legacy of the war is conflicts and disputes pertaining to land. Many people lost deeds and other proof of ownership while many others lost possession because of prolonged forced absences which in turn led to disputes over ownership on their return. Such land related disputes are amongst those commonly brought before Community Mediation Boards (Munas and Lokuge, 2016).

The first CMBs in Sri Lanka were established in 1990 by the Act No. 72 of 1988 (as amended) and were governed by an independent Mediation Board Commission, composed of five members appointed by the president, and administered by the MoJ. An interest-based mediation process is mandated to facilitate voluntary settlements of civil disputes and criminal offences. Appointed by the Mediation Board Commission, CMBs are composed of a panel of twelve or more mediators pertaining to the need in the respective circumstance and area. (Moore and Bartsch, 2015)

Inception of Special Mediation Boards and Special Land Mediation Board

TAF, at the request of the MoJ, undertook a rapid assessment study of community-level disputes in the Northern and Eastern provinces. The identification of a large number of land disputes of a complex nature and the resultant complexities involved in resolving land disputes led to the recommendation to set up Special Boards. Working in close collaboration with the Ministry of Lands, the Special Mediation Boards (Land) were thus established by the MoJ using the provisions of the Mediation (Special Categories of Disputes) Act No 21 of 2003. This resulted in eight Special Land Mediation Boards being proposed to be established at the district level in the Northern and Eastern provinces, and four SLMBs in the other provinces. All SLMBs were to include mediators who are representative of the communities in which they serve and would be balanced geographically by gender, ethnicity, religion, and other distinctions. A distinct characteristic of the mediators was that they would possess some type of qualification and/or experience related to land.

Reviewed literature further observes that by January 2017 the Special Land Mediation Boards were officially inaugurated by the Ministry of Justice and the Mediation Boards Commission in Jaffna, Kilinochchi, Trincomalee and Batticaloa. The types of cases would differ than those handled by CMBs and are inclusive but not limited to cases where the monetary value of the private land or property in question is up to Rs. 2,000,000 (as recommended by the MoJ). Furthermore, the State or representatives of the State can be parties seeking mediation.

Jurisdiction and procedure of Special Mediation Board (L)

Moore and Bartsch (as commissioned by The Asia Foundation), sets out a relatively detailed process of land dispute resolution procedure in their work, 'Resolving land disputes and effective procedures and strategies.' Accordingly, once parties come to a mutually acceptable agreement as a consequence of their involvement in land mediation, the chairperson will submit copies of the settlement to the Mediation Board Commission and the appropriate government authorities and encourage parties to seek assistance from the proper authorities in order to ensure regularisation of the settlement.

However, if a settlement is not reached, the SLMB will inform but *not advise* parties regarding further procedures. A variety of options are available for unresolved disputes including the litigation process. Additionally, the respective SLMB will send a report on the dispute's conclusion and lack of resolution to the Mediation Board Commission, which in turn, will forward it to the Divisional Secretariat and any other appropriate authority as needed. If the issues before an SLMB concerning State land include government policy and macro policy issues such as landlessness, during the intake process, a report will be forwarded to the Mediation Board Commission, the Ministry of Justice, Ministry of Land and Natural Resources and other relevant ministries. Chairpersons of Mediation Boards will be provided with information to make referrals of these macro cases to government institutions that can assist in their settlement.

Standards for Special Mediation Boards (Land) Mediators

A mediator is a neutral and unbiased individual or group who aids parties involved in a disagreement or conflict in participating successfully in a collaborative problem-solving process, promoting conversation and decision-making. However, their responsibility is limited in terms of being involved in the substance of the dispute.

Moore and Bartsch's study further elaborate that the MBC will determine the composition of Special Land Mediation Boards considering the specialised nature and complexities involved in land disputes. Mediators must therefore, meet the specified standards of criteria in addition to the general criteria expected of other CMB mediators. Hence, the emphasis on some previous knowledge and experiences in this regard. But as indicated below, SLMBs are culturally embedded and can lead to differential impacts on the basis of gender.

Women's Representation in and Access to Mediation

As a key consideration in the study, women's access to and representation in ADR requires special consideration. The impact of ADR on women has received attention globally but few studies focus on the experiences of female mediators. The notion that ADR is also embedded in the cultural and social norms of the community has been consistently pointed out. This becomes both a serious concern and a factor that helps women seek resolution to disputes within an enabling space. The former, because socially embedded notions of gender relations may play a role in how the dispute is addressed and resolved. The latter has been cited especially where female mediators are represented. Hence, global literature remains mixed in terms of the positive impact of ADR on women's access to justice (Delgado, 2017).

In Sri Lanka, similar trends are noted. CMBs are generally viewed as socially embedded processes (Welikala, 2016; Munas and Lokuge, 2016). Evidence points to women accessing the Community Mediation Boards only to some extent and that representation of women mediators remains low - a factor that may also discourage women from accessing the CMBs (Siriwardhana, 2011; Jayasundere and Valters, 2014). Other factors impacting women's access to the CMBs include the lack of privacy afforded and the pre-existing power structures which are also reflected within the CMBs (Jayasundere and Valters, 2014).

The study by Jayasundere and Rahman (2016), provides clear insights that may also be relevant to the mediators in the SLMBs. The existing mediators of the CMBs were mostly middle-aged, married women representing the dominant Sinhala-Buddhist community. Notably, they were also found to have overwhelming support (96%) from their families and social networks to carry out their work, as the role was considered important; but the data also points to how household responsibilities may deter women from joining as mediators. Among some of the challenges faced by the female mediators was a perception of a lack of authority and capacity in comparison to male mediators and a possible lack of acceptance from disputants. However, the female mediators also believe that disputants listen to both male and female mediators and may at times, be more receptive to women mediators (Jayasundere and Rahman 2016). Their perceptions of the importance of the CMBs also indicate that responding to any perceived gendered challenges remains of secondary importance. Rather, their recommendations tend to focus on expanding and strengthening the CMBs in order to support more community members seek resolution.

In the context of this study and given the nature of the disputes, the generalizability of these findings may not be possible. However, they do point to some common characteristics among female mediators and how they may perceive their role as mediators.

4. Findings

A. Nature of land disputes in the Northern and Eastern Provinces

Broad land issues in the study areas

As mentioned above, this study is taking place in the backdrop of complex, contentious post-war issues which contributes to the emergence of land issues and how they are dealt with, in general. While SLMBs are capable of handling some of these issues, many are too complex and outside the purview of the SLMBs. However, these issues are briefly discussed here in order to understand the context within which land issues emerge and how the SLMBs function. The lack or loss of documentation, secondary occupation, issues over forest, wildlife and archaeological sites are key issues identified through the primary data collection.

1. The lack or loss of documentation

The inability to prove ownership or right to hold land is a primary concern of those who return after displacement, where title deeds and agreements of private lands and state land such as permits, grants and leases of state lands have been lost or destroyed during the conflict. The documents related to the state lands are available with the owner, Divisional Secretariat and with the office of the Provincial Land Commissioner. There are instances where all these copies are lost due to the war. In such events, establishing the ownership will lead to disputes when many parties claim ownership. Multiple waves of displacement during the past three decades caused people to flee their homes within very short notice without their documents and even those who took the documents along with them had to throw the documents away or were asked to leave them behind.

People in this area faced lengthy displacement during the civil war. Some people moved to India, some Muslims moved to other districts and some other Internally Displaced People lived in camps. People who moved to India faced a long-term displacement. Most of the people in Maanthai and Nanattan division moved to India (Key person, Male, Mannar)

Another factor that concerns documentation is missing persons or persons forcibly disappeared. The right to succession or land ownership cannot be exercised when death certificates of the spouses or current owners are not available. Although there is a provision by the State to provide death certificates for those who are considered missing or forcibly disappeared, the family members are not willing to obtain death certificates since they are unsure of the death or they expect their loved ones to return. This makes the succession or transfer of the ownership difficult or not possible.

Women who are abandoned by their husbands, women headed families, women whose husbands were forcibly disappeared during the civil war are facing difficulties in transferring their cheethanam (dowry) property. In order to overcome this impediment getting a death certificate of their husband is the only remedy available for them to transfer their cheethanam property. Most of the women do not like to do this as it is connected with some forms of emotional sentiments with them. (Key Person, Female, Jaffna)

If the father owns a land, legally, the rights and ownership of that land could be transferred to his children after his death. We need to get a no objection letter signed by the children or obtain

the death certificate of the deceased in order to transfer land ownership. Unfortunately, many have died or gone missing during war. It is not possible to obtain a death certificate for those who have gone missing, hence it is difficult to transfer land and that specific family will get affected. (Key Person, Male, Mannar)

Non-formal transactions are transactions that are not recognised in a court of law. However, such transactions took place during the war, mainly in times of uncertain situations such as displacements. People transfer rights of ownership or for the use of the lands without the required documentation. *Kaithundu* is a commonly used terminology to identify such transactions. *Kaithundu* is a piece of paper used as an evidence for informal/non-formal land transaction between two individuals. The information written in this document is not uniform across all the documentations. It may contain information such as details of the seller, buyer, deed/permit number, cash value, the date of transaction, extent of the land and the purpose of the transaction. In some instances, lawyers get involved in these transactions. However, these documents are not considered legally valid, hence can lead to disputes when multiple parties claim ownership or access.

The land disputes in Vavuniya are very high because of Kaithundu. In a kaithundu the amount of money received via lawyer, permit number and the Identity card number are mentioned. It does not contain more than that. Lawyers can avoid writing such kaithundu. It would be more helpful to avoid disputes (Disputant, female, Vavuniya)

A type of illicit transaction that was frequently mentioned by the Key Persons and disputants is forged documents. The transfer of lands through spurious deeds is commonly known in the two provinces as *Japan Deeds*. This is a locally used term to refer to the illegal deeds executed for Annual Permit lands/state lands that are non-transferable and needs to be renewed every year. These types of transactions are performed for both private and state lands. There are instances where such deeds are used to sell the same piece of land to more than one person.

2. Secondary occupation

The protracted, multiple displacement as the quote below indicates, due to the prolonged war contributed to varying degrees and types of secondary occupation, i.e., third party possession of properties belonging to one party by other actors in the study locations.

I was displaced in 1986 and returned in 1989. Then again I was displaced in 1990 and came back in 1995. After 2 years, we started to move to many places. We had lived in 23 houses from here to Mullaitivu since 1997. (Disputant, Male, Mannar)

The study revealed many instances of individuals occupying private land or state land alienated by the DS to other people. These disputes are common when illegal occupants have lived in these lands for long periods of time during the absence of the actual owner, giving rise to issues of prescription and possibly, compensation for improvements. In certain instances, the owners of these lands fled the area due to the war and may now live in other districts or overseas. Claims on land by these returning landowners create new disputes. This issue is reported especially in the Mannar district which witnessed mass-scale displacement of Muslim communities to the other districts in the South or West

of Sri Lanka as well as the displacement of the Tamil refugees to South India. During the war, the LTTE distributed the lands belonging to those who fled the area, to their supporters and families of the LTTE cadres. However, the returning of the original owners in a post-war context where the presence of the LTTE administration is no more, leads to new disputes.

According to the LTTE's policy those migrating abroad should hand-over their lands and properties to them. Lands, properties, deeds and documents were handed over to the LTTE. The Tigers distributed these lands to their supporters, converting them into land owners. (KPI, Female, Jaffna)

Military possession of private land and properties, and state lands provided to people by the DS are also concerns expressed by the respondents. In addition, the military occupy land and property declared or used for common access in certain areas. Apart from the ownership or access related concerns, people also expressed safety concerns of such occupation.

Yes such cases have taken place. Since the government provides reasoning behind alienation, people are helpless. For instance, lands are being alienated for development of roads but the government fails to provide an explanation/ reasoning behind this to the owners. There is also a military base in the place of a school land. There is no resolution to such cases. (KPI, Female, Jaffna)

Lands in Savakacheri have been used as high security zone, military camps. The military is also using certain lands for agricultural purposes in which the land owner is forced to work as an employee under them. (KPI, Female, Jaffna)

The establishment of high security zones which include private land and permit lands is a contentious issue in certain areas. These zones deny access to residential as well as productive agriculture land and often puts the owners in vulnerable socio-economic situations as they create landlessness among the people. Furthermore, those who have lost their lands to high security zones still live with their relatives and neighbours as internally displaced people.

High security zones and lodges were established in a land in Palali, nearby to which army camps were also established. It is pathetic to see the land owners (of the high security zones and lodges) being forced to live in the army camp. Although people residing in camps were given houses in Keerimalai under the housing scheme, they were not given lands (for agriculture, farming, etc). (KPI, Female, Jaffna)

In the event that the lands belonging to the owners are released from the high security zones, decades after occupation, the owners find it difficult to identify the lands because of the destruction of the boundary demarcations and the lack of knowledge of the new generation of the families on the land.

Most of the people in Palaly have lands within high security zones. The people who got their lands from high security zones cannot even put up a fence to their lands. Many people are not aware of their boundaries because people in this generation do not know the boundaries of their parents' lands. (KPI, Male, Jaffna)

When the army released our land it looked like a forest. We struggled a lot to clear that forest area. We built a house there and rented to someone as there are less people in that area. Since it has been 30 years I do not know people very much. (KPI, Male, Jaffna)

3. Issues over forest, wildlife and archaeological lands/sites

The discussions with the Key Persons and disputants indicated numerous complications involved with regard to the demarcation of lands held by the Forest, Wildlife and Archaeological Departments. Disputes with the communities emerge particularly when these departments survey and demarcate the lands as reserved. The main concern in this regard is the absence of consultation with the community, the Divisional Secretary or the Grama Niladari (GN) in this process. Rather, the demarcations are done with the help of modern satellite technology and GPS facility. At times, these demarcations are outsourced to third parties who have little or no knowledge about the population dynamics nor the history of the area. The technology used by the Forest Department identifies these lands with foliage of over 3 meters as forest land, irrespective of the history behind it. In the context of protracted displacement, the inhabitable lands can also be shown as forest cover because the growth of the vegetation in abandoned land could be high, as the quotes below by a key government official and a mediator indicate.

The Divisional Secretary, the designated authority to alienate state land of that area is also unable to intervene in these disputes. While this land demarcation by the Wildlife/Forest department denies access and right to land, it also creates new disputes when owners return after protracted displacement. Furthermore, there is little or no awareness among the public on the restrictions with regard to the demarcated reserved forest, especially where they have been engaged in forest-based livelihoods. The Gazette notification declaring Vankaalai as a bird sanctuary is one such example highlighted in Mannar, which deprived access to property owned or used by the people for productive purposes. Further, these conflicts with the Wildlife/Forest department have been stated as a cause of dispute across all the study districts.

Disputes between people and forest department and wildlife are the major issues in the Mannar district. The forest department has been functioning in Mannar since 2010. Laying stones in the state lands is another big issue (kallu poduthal). The forest department has created 3 new forests in the Nanattan Division so far. The government has authority to lay stones (kallu poduthal) in a particular area where wild trees are grown. The forest department had laid down stones in the lands of displaced people. Their lands, houses, wells and useful trees had been destroyed due to the civil war. In the destroyed lands we can see wild trees due to the absence of habitat for many decades. Such lands have been seized by the forest department is a big problem for us. (Key Person, Male, Mannar)

The civil war is also a reason for the creation of forest lands. After the 1983 displacement there were no surveys in our district. After the resettlement of the people in those areas, when birds

come to a place, the Wildlife department establishes those places as bird sanctuaries. I really do not know under which authority they are doing this. (Mediator, Male, Mannar)

These types of disputes are handled by the formal judicial process. In the event that the judgements are in favour of the public/land owner, at times, they are restricted from developing the land because cutting the trees in the land is not allowed by the Department of Forest officers , as the quote by a mediator below indicates.

Private lands in Aandiya Puliyanikulam in Vavuniya were seized by the government as state lands. The particular person appealed to courts and got back his land. However, he had issues in clearing wild trees in his lands as the forest department has restricted the public to cut down wild trees. (Mediator, Male, Mannar)

A similar tension between the Archaeology department and the communities emerge in the two provinces. Demarcations by the Archaeology department, which enters the territory within the post-war context is often perceived and suspected as ‘land grabs’. These acts are confronted by people and they lead to new disputes. Another related point is perceptions of land grabs as ancient Buddhist religious sites in the Trincomalee district. These land grabs are believed to be depriving access and ownership to land in these areas, leading to the emergence of new disputes as stated by a key government official below.

Ancient temples in the area are known to acquire state land as well as private lands. Thiriyaya Vihara and other 27 Temples around the area occupy about 300-500 acres of land. (Key Person, Male, Trincomalee)

Land issues taken to the SLMBs

As indicated in the background section, the nature of disputes that are taken up by the SLMBs are defined to a certain extent. The SLMBs categorise the dispute into the following main types. The study team was unable to obtain data disaggregated by these categories from the Chairpersons except for Mannar and Vavuniya districts. Hence, providing a district-wise comparison of the nature of disputes is not possible at this stage.

- I. Boundary Disagreements
- II. Encroachment / Secondary Occupation
- III. Fraudulent / Illegal Transaction
- IV. Co-ownership disputes
- V. Inheritance
- VI. Tenant Rights Issues
- VII. Abuse of Care Takers
- VIII. Access and Right of Way disputes
- IX. Documentation and Land Registration Issues
- X. Other Issues

Disputes mediated by SLMB in Mannar district

As per the statistics made available to the team by the Chairperson, Mannar district recorded a total of 189 cases as of 31st August 2021. Out of this, 151 cases are linked to private lands while 38 are state land related disputes. The State land disputes mainly relate to annual permit and LDO permits. A majority of cases - over 52% mediated by the SLMBs - belong to the category of encroachment/secondary occupation followed by the cases of co-ownership disputes (17%). The third highest category of the cases reported from Mannar district is boundary disputes.

As for the settlement rates, one third (60 out of 189) of the cases mediated by the Mannar SLMB has been issued settlement certificates while a little over a third (70 out of 189) have been issued with non-settlement certificates; 47 cases are pending. The board was able to mediate the cases that belong to both State and private land disputes in the district. Approximately, 75% of the settled cases (issued settlement certificate) belong to private lands category. The statistics also indicate that a large proportion of the cases (100) were recorded from Mannar Town DS division where the functions of the SLMBs are regularly held. The Madu DS division, located away from the SLMB, recorded the least number of cases.

In Mannar district, 91% of the cases received by the SLMB are direct submissions by the disputants. This trend holds for cases related to state land as well as private land. Other popular methods of receiving cases are through referrals by the police, especially those related to private land disputes. Divisional Secretariats have also referred a few private land related dispute cases to SLMB in the Mannar district.

Disputes mediated by SLMB in Vavuniya district

Data made available to the study team by the MTO is not consistent with the data from Mannar to make a similar comparison. Since its inception, Vavuniya SLMB has received 1016 cases as of October 2021. Out of this total, 171 cases are settled and 232 have received non-settlement certificates. It should be noted that almost 50% of the total cases (487) received by the Vavuniya SLMB are pending and are yet to be resolved.

Approximately 83% (844 out of 1016) of the disputes recorded in Vavuniya district are related to state lands. Over 60% of these state land related disputes fall under the category of documentation and land registration issues and 20% of these cases belong to encroachment/secondary occupation. In terms of private land disputes, most cases (approximately 26%) are about encroachment/secondary occupation and around 20% belong to boundary disagreements. Other types of disputes reported are co-ownership, access and right related disputes and documentation and land registration issues.

Disputes mediated by SLMB in Jaffna district

As per the discussions with the Mediators and chairpersons of the Jaffna district SLMB, most disputes received are about private lands over boundaries, co-ownership, inheritance, encroachment, documentation and illegal transactions. This is also because the availability of state land in the Jaffna district is exceptionally low compared to other districts in the Northern province. Although the SLMB

received complaints over the private lands under High Security Zones, the board did not take them up for discussion as they do not fall under the purview of the SLMBs.

The Jaffna district SLMB receives cases mostly from Jaffna, Uduvil, Kopay, Sandiippay, Chavakachcheri, and Theevaham areas. No cases are received from Delft, Maruthankerny, Uduthurai and Thaalaiyadi areas due to the distance factor. Land disputes in other areas do not come to the SLMBs and some are received by Community Mediation Boards too because the CMBs are located at the DS level and therefore are closer in proximity to the disputants.

Disputes mediated by SLMB in Trincomalee district

Common land issues received by the SLMB in Trincomalee are co-ownership, access and rights of ways disputes, encroachment, inheritance, illegal transaction and documentation related. Most of these disputes are related to cultivation and agricultural land. The destruction of boundaries and demarcation difficulties are also common in Trincomalee district. The cases in SLMB surge during the cultivation period when lands are being used in Muthur, Kuchcaveli, Kantale, Padaviya, Seruvila and Thambalagamam areas. However, the study team noted that a majority of the cases are received from Muthur, Kinniya and Trincomalee Town and Gravets and Eachchalampaththu DS divisions. The board receives cases pertaining to both State and private lands. Although the land acquisition by the ancient temples in the area is considered a contentious issue, the SLMB does not take up any such issues for discussion. The study team is unable to make a comparison of cases received by type and divisional secretary level since the data was not made available by the respective SLMB in the district.

B. Profile of the people accessing SLMBs

Socio-economic profile: In general, people belonging to all socio-economic strata are accessing SLMBs, as stated by a Mediator in the extract below. Our study finds that, based on KPIs and discussions with disputants, in comparison to formal dispute resolution mechanisms, people from the low-income strata approach SLMBs more frequently to resolve their land related disputes.

“It’s generally the people who have no means and nowhere else to turn to that come to the Land Mediation Board. For example, one heartbreaking situation was an old ‘amma’ who had been occupying a land near the river. It’s just her and her old husband. There’s a pathway that runs in between the land. The land on the other side is occupied by a police officer’s family. So, the police officer keeps threatening the old lady asking her what right she has to stay on that part of the land without a deed. It’s such a sad situation.” (Mediator, Female, Vavuniya)

Level of education of disputants: Further, the study shows that the services of SLMBs, are available and accessible for those who are relatively less educated. The following table records responses from 60 out of 78 disputants regarding the level of education of their formal education (the rest of the study sample had not responded to this question). The majority of the disputants who accessed SLMBs to resolve their disputes have studied up to Ordinary Level or below. Less than 25% in each district have completed Advanced Level education with only a small fraction of the disputants having studied above Advanced Level. SLMBs being a relatively low-cost option and the need for less documentation creates a conducive space for those with low education to access this service without much difficulties. It can also be noted that among the disputants consulted for this study, those who have studied up to Advanced Level and above are from the Jaffna and Trincomalee districts.

Table 4: Number of disputants by level of education by study districts

Level of education	Mannar	Jaffna	Trincomalee	Vavuniya
Grade-1-5	0	15	15	0
Grade 5-9	60	25	26	63
Grade 10-O/L	20	30	30	25
Advanced Level	20	25	22	13
Above A/L	0	5	7	0

Table 5: Percentage of disputants by level of education by study district

Level of Education	Mannar	Jaffna	Trincomalee	Vavuniya
Grade-1-5	0	3	4	0
Grade 5-9	3	5	7	5
Grade 10-O/L	1	6	8	2
Advanced Level	1	5	6	1
Above A/L	0	1	2	0
Recorded responses	5	20	27	8

There is a popular view that SLMBs are accessed by the people with a relatively low level of education and those belonging to a low socio-economic strata. These views are coloured by their own experience and the common perception among people of the Alternative Dispute Resolution Mechanisms such as SLMBs that these mechanisms are established to serve such people. The quote below by a graduate disputant who is working in the public sector indicates that the cost-effective nature SLMBs help people in accessing them.

I will recommend LMB to other people. If people go to court they will have to lose money. The lawyer fees are very high. LMB is good for less-educated and rural people. (Disputant, male Trincomalee)

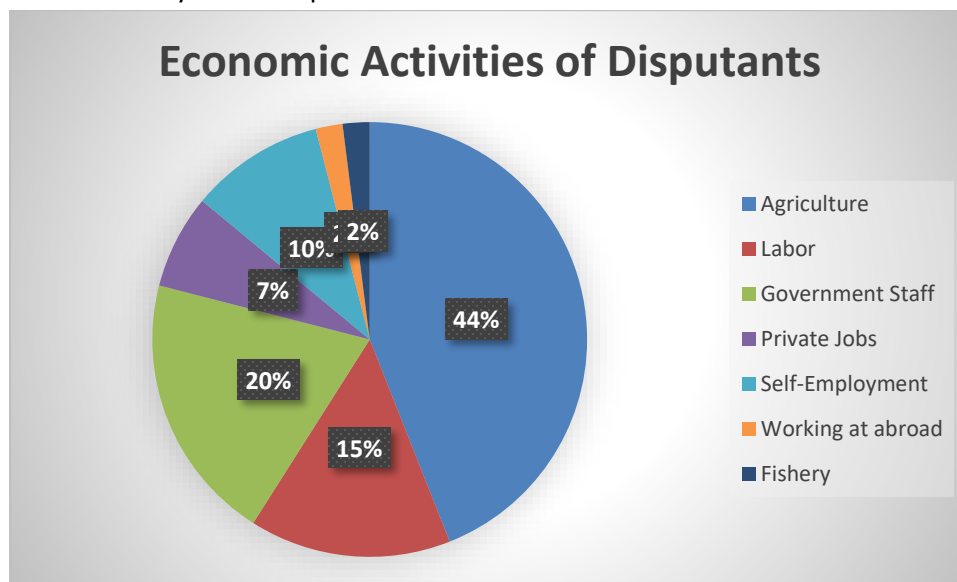
However, there are claims in some areas such as Trincomalee that these Boards are accessed by those with relatively higher levels of education. The following quote by a government teacher and a disputant who participated in the study supports such claims.

LMB is doing a great job I heard from people. Most of the educated people go to LMB. If someone goes to the police, the police tell them to go to LMB. Some people fight there. LMB is very soft in approaching people but the police are not like that. (Disputant, male Trincomalee)

Economic activities of disputants: The following chart illustrates the types of economic activity performed by the disputants in the study sample. Although we conducted interviews with 78 disputants, only 41 disputants responded to the question on their economic activities. We have not provided the district level disaggregation, given the low response rates.

The chart shows that those who approach SLMBs engaged in a variety of economic activities. Depicting the wide range of economic activities in the study areas, most disputants accessing SLMBs stated that they engage in informal economic activities such as agriculture (44%) and wage labour (15%). Apart from this, those employed in self-employment and private sector are also resorting to SLMBs to settle their disputes. It is also notable that approximately 20% of the disputants who responded to this question from all the districts are employed in the public sector. This shows that the SLMBs are accessed by those both from formal and informal sectors. Other significant groups are those from overseas and those engaged in fisheries related economic activities.

Figure 1. Economic Activity of the respondents



Land ownership of disputants: As a way of assessing the socio-economic conditions of the disputants accessing SLMBs, the respondents were asked whether they own land. Although we did not ask about the extent, nature of ownership and use, ownership of land can be used as a proxy/indicator to assess the disputants' asset ownership. The following table shows the responses by each district. The data shows that a majority of the disputants from all the districts own land with only a small fraction reporting not owning land.

Table 6: Land ownership of study disputants by district

	Yes	No
Mannar	5	1
Jaffna	20	2
Trincomalee	23	7
Vavuniya	12	3

Diaspora: The discussions with some Key Persons, especially in the Jaffna district indicated that diaspora members are another category that reach out to the SLMBs. These discussions highlighted a number of reasons for diaspora members to approach SLMBs to resolve disputes over their lands in Sri Lanka. The fact that the SLMBs are processual and less intrusive attracts diasporas towards SLMBs. As indicated in the excerpt below by a mediator, the social stigma attached to accessing the courts also makes diasporas resort to SLMBs since they perceive accessing SLMBs as a 'dignified option'.

The encroachments of lands which belong to diaspora are common in Jaffna. Older parents of such Diasporas do not like to go to courts as it is their prestige issues. (Mediator, Male, Jaffna)

As a result, the SLMBs receive a large number of cases during the summer holiday season when diasporas visit Jaffna to take part in various temple festivals. However, given the nature of the land disputes, they cannot be resolved during a short period of time. This results in unsettled cases as one party is not attending the mediation sessions (see excerpt below by a Key Person from Jaffna district). Furthermore, when diasporas return for a short period with the intention of resolving their land disputes, they access the SLMBs and place pressure on the Mediators to fast track the mediation process as per the second quote given below by a Key Person we interviewed.

We receive many land disputes during the months of July, August and September. People who come from foreign countries during the festive seasons visit their lands and come to us for the disputes. Then they will return to their countries after their vacation without informing us. Then again they come and fight with us. As these Diasporas left Sri Lanka without informing us creating a lot of pending cases here. (KPI, Male, Jaffna)

Sometimes, the land owners are abroad. Their lands are encroached by others. When the people return from foreign (countries) they fight for their lands. Sometimes the foreign returnees come to Sri Lanka with the return tickets and demand us to sort out the issues within a short period of time. (KPI, Male, Jaffna)

Internally displaced persons: One other prominent group that resorts to SLMBs for justice are those who faced protracted displacement, especially the ones who are returning from South India after decades of being displaced. The issues are often encroachment and secondary occupation by other parties as per the experience below by a disputant. There are instances of the caretakers of the lands illegally selling the lands in the absence of the owner who fled the country due to war.

I went to India in 1990. After that we returned in 2004. When I returned to Vavuniya, my land was using by a lady. She didn't give my land to me. So I complained about it to GN. GN solved this problem through kachcheri. The lady asked Rs.1, 75,000. We also gave. (Disputant, Female, Vavuniya)

Chettikulam, Nedungkeni natives migrated to India as refugees, leaving their lands behind. Incidence of caretakers of lands selling them, converting the ownership of lands to them, government alienating lands for public usage are taking place in Vavuniya district. (KPI, Female, Vavuniya)

Boundaries of abandoned lands are destroyed and changed during the time of displacement as noted by a male disputant who returned from India after being displaced for prolonged periods.

When I returned from India, my land was changed as forest and there were no boundaries. In that time my land was under the LTTE. So we couldn't ask my land from them. After the end of the war, we took our land. Some piece of my land (has been) caught by others and took permit for that land. (Disputant, Male, Vavuniya)

The SLMBs do not record the ethnic or religious identity of the disputants. However, as stated in the methodology, the research team was able to attribute these markers to the disputants to assess the

accessibility by ethnicity after the discussions with the chairpersons and based on the names of the disputants. Overall, we found that the Tamil and Muslim communities, who are the majority ethnic groups in most of the study locations, were accessing SLMBs to resolve their land related disputes. We found that there is a disproportionate access by the Sinhalese in all the districts. The records of the mediators/chairpersons showed very little or no access by Sinhalese. There were no records of Sinhalese accessing SLMBs in Mannar and Jaffna districts. Of the data that was made available to the study team during the data collection visit, less than five case records were found in Vavuniya and Trincomalee districts. The reason for such unequal access by Sinhalese in these respective districts is rather unclear. As the sample of Sinhalese disputants were very low, we could not identify any trends from the discussions with disputants on access of SLMBs by the Sinhalese communities. Discussions with the Key Persons and Mediators alluded to factors such as proximity to the location where the SLMBs are held, ethnic and religious composition of the SLMBs as possible reasons. However, the SLMB that was operated in Kanthalai-Trincomalee, with the intention of addressing the challenge of those living in Kanthalai travelling relatively far to access SLMBs, had to be halted as the board was not receiving an adequate number of cases to justify the operation of such a board. Given that in districts such as Trincomalee all three ethnic groups are present, but are mostly clustered together by ethnicity, operating SLMBs in close proximity to these ethnic clusters should be considered.

The study clearly highlights that the profile of people who access the services of SLMBs are diverse and they represent different socio-economic strata irrespective of their level of education or economic activity. Further, what should be noted here is that the SLMBs also ensure that the most vulnerable and poorest segments of the communities access SLMBs and seek justice to settle their land disputes by creating space for them to voice their grievances.

C. Disputants experiences on process and outcome of Special Land Mediation Boards

Location, proximity and access

The lack of a dedicated space to conduct mediation sessions was creating confusion and inconvenience to both the disputants and the mediators. Many of the sessions were being held in public school premises, but as noted below, the external environment has had a direct impact on accessing these locations:

Location is the main problem for us. We did our mediation activities at St. Xavier's Boys' school. After the Easter Sunday Attack, the principal of the school did not like to conduct mediation activities in the school. Then we shifted our board to Al Azar School. There, we faced some problems with donkeys. People who come for mediation did not close the school gates properly. Donkeys which were roaming on the roads entered the school and damaged school premises. Due to this reason, we shifted our mediation activities to a community centre in Mannar. There, a compost production is being carried out by the community center. Now, we are going to shift our mediation board to another place (Mediator, male, Mannar).

Some of the centres are located closer to the city limits and therefore, remain accessible via public transport but the constant changing of the locations can have a negative impact on the disputants accessing the mediation boards as well. They have to be informed of the change of venue and if the distance to the location is too far and public transport linkages are poor, disputants may opt out of accessing the session on the date specified. The lack of a dedicated space and the accessibility of these "mobile" centres can therefore, also have an impact on the under-utilisation of the SLMBs.

Further, the operation of the SLMBs at the district level creates issues of accessibility, especially for those who use public transport. At the point in time when this study was carried out, in three of the study districts, the SLMB was being operated in only one location, whereas in Trincomalee, the SLMBs were being operated in three locations. In all of the study districts, SLMBs have been in operation in one or two more locations in the past, but for various reasons, this has reduced. For example, in Trincomalee, the SLMB was operated in Kanthalai for about 2-3 months, at the initial stages. However, with the very low number of cases being reported from these areas, the Kanthalai centre has been discontinued. As per the mediators in Trincomalee, at present, Sinhala disputants from anywhere in Trincomalee are requested to be present at the centre in Kinniya for mediation. The Sinhala speaking disputants that were interviewed in Trincomalee were very appreciative of the fact that the Kanthalai centre was in operation, as they were living close to the centre. A KPI and the mediators from Trincomalee mentioned the high number of cases being referred for SLMBs from areas such as Vakaraï but the disputants face accessibility issues since the closest SLMB location is Muttur (about 1-2 hours by public transport, one way). There had been requests made by the government officials for the operation of a centre close to Vakaraï. However, the mediators in Trincomalee were of the opinion that with the given pool of mediators, expanding to Vakaraï was not possible at present.

In certain other districts such as Jaffna, mediators stated that disputants were accessing CMBs to resolve their land disputes, given that they operate closer to their locations, as the extract below illustrates. While the Community Mediation Boards are advised to refer these cases to SLMBs, the distance to the SLMB location is proving to be a challenge for disputants. Disputants from Jaffna who were part of the

study sample stated that they would prefer for the SLMBs to operate closer to their community, especially in areas where agriculture land is located, but for the mediators to be from other locations, as otherwise perceptions of bias will come into the process.

People in Chulipuram and in Karainagar face difficulties in transportations. Therefore, people in those areas prefer to go to community mediation board for their land disputes. Now, the community mediation boards are strictly emphasized not to take land disputes. (Mediator, male, Jaffna)

Language

Since the composition of the mediators included a multi-ethnic group, concerns regarding language competency was not common. For example, in Vavuniya, the Sinhala-speaking mediators worked mostly in the Sinhala-dominant divisions of Vavuniya to minimise any challenges in terms of language competency. A similar trend is noted in Trincomalee but with varying results as the Sinhala-speaking mediators had to travel far, in order to participate in the sessions held weekly. In Trincomalee, those who speak Sinhalese as the first language also seem to be part of mediation that took place in the Tamil language. In these instances, the Sinhala mediators stated that they could understand and to a limited extent at least communicate in Tamil, while their fellow Tamil speaking mediators helped with the translations when required. In Mannar and Jaffna, there are no Sinhala speaking mediators at present, and this was not highlighted as a problem by disputants, mediators or key persons in the two districts.

Cost

In general, the disputants were well aware of the 'cost saving' characteristic of the SLMB and were highly appreciative of this aspect, when compared with other options such as the formal procedures. The major concern was accessing the mediation centres over the weekends using public transport and at times using three-wheelers, incurring costs varying from Rs 250-1000, one way, the distance to the centre and at times, the constant changing of the venue for mediation which sometimes results in additional transport expenses. However, compared to the cost of taking a case to the formal judicial process, these transport related costs were not seen as critical negative factors by the disputants.

Process of mediation

Invitation

Access to mediation is open: where there is adequate awareness, disputants can request for intervention from the Board. But referrals are also made by the Police to the SLMBs and less frequently by the Divisional Secretariat office – mostly perceived as a result of tensions regarding the SLMBs "taking over" the power of the government officials that are seen as 'mandated to deal with land issues'. The invitations in the form of a letter are generally sent by the relevant district level Land Mediation Board Chairperson to the disputants, indicating the date and venue of the SLMBs. In a few cases, disputant respondents of the present study indicated that they were informed of the mediation details via the telephone, by the Chairperson. However, the general practice is that, since the Police also refers "cases" to the SLMB, the respective Boards must reach the disputants via formal letters. The concern, as discussed at length below, is the power to summon the disputants to the sessions.

If we receive cases from the Police we send letters to both parties. If one party brings a case then we send a letter to the second party. We send letters 3 times to the parties. If they do not

respond to us then we will send a letter via GS for the 4th time. If they do not respond to that then the chairperson will write a comment about the respondent (Mediator, male, Mannar).

As a community based dispute resolution mechanism, access to the SLMBs remain voluntary and while some prefer to use this as a more cost-effective and less time consuming intervention, some disputants may yet prefer not to be present at the sessions, for a variety of reasons.

Hence, the Chairpersons/Vice Chairpersons commit a lot of time for follow-up. This includes placing phone calls to the respective individuals and requesting their presence at the meetings. The absence at the first session results in further formal communication and if the disputant remains absent on three occasions, such cases would be considered unresolved.

Appointment of mediators to mediate a case

If the disputants do appear on the designated date, the procedure remains simple and straight-forward. In most cases, each disputant can choose a mediator of their choice and the third mediator must be collectively chosen. However, certain disputants stated that the mediators were appointed for them and that they were not given the opportunity to select the mediators of their choice.

The extract below from a woman mediator highlights the importance of the availability and appointment of women mediators especially when one of the disputing parties is a woman. As the quotation illustrates, given that land related disputes could at times manifest in other forms of overt and latent violence, space should be made available for disputants to openly discuss such issues. In instances where one of the disputants is a female, some of the SLMBs such as Mannar and Vavuniya specifically stated that they encourage the presence of a female mediator, thus proactively seeking to create a gender balance. However, in other SLMBs such as Jaffna, the availability of a very limited number of women mediators (only one at the time of the study) means that this appointment of a woman mediator was not practiced.

Some women requested for women mediators because some women face sexual harassment by neighbours, it can be openly spoken only with female mediators. So some ladies who come there select female mediators for such kind of issues. (Mediator, female, Mannar)

Discussion

The particular nature of the SLMB as an alternative mechanism to a court proceeding is well-understood as a value in the process by almost all the disputants that were part of the study. As indicated below, the mediators are aware of the soft power they exercise in bringing together disputants so an open discussion can be held:

We are not like courts. All we do is negotiate with people to settle their disputes. For example: there was a land dispute among two brothers. They are blood relatives. Due to the land dispute, one party has attacked another party with a hoe and has been hospitalized for a few weeks. When this dispute came to us, we called both parties to the board. One party did not attend the mediation for 2 -3 sittings. Then we contacted them via phone and brought them to the board. We allowed them to talk with each other. Finally they came to an amicable solution. Here, meeting both parties at one place is the main problem. Once they meet each other then there will be no issues. We finished this case with one sitting. The Land Mediation Board facilitates

both parties to meet each other but in courts, meetings of parties are very rare (Mediator, male, Mannar).

People who have disputes like to talk about it. There was this one case where this old gentleman who was estranged from his daughter because she eloped with someone he didn't approve of. She comes with a small child for the mediation session and within two sessions we managed to solve their dispute. The small child gradually got closer to the grandfather, sitting on his lap and being affectionate. Very soon the grandfather also felt affectionate towards the child. His land was written in favor of the child. Its they themselves that take the decision. Because they spend on travel as well, as a financial relief we spend the Rs.5/- towards a stamp from our pockets (Mediator, female, Trincomalee).

Such instances highlight the important role the SLMBs can play at the community level. Its power lies in enabling such discussion and the potential for a resolution to be reached, without the intervention of a court of law. Such space for discussion, facilitated by experienced mediators, is considered very important by the disputants, especially when the disputants are from the same family or close relatives and estranged because of land issues. In most cases, across all the districts, mediators of SLMB were seen to be respectful and courteous; elderly women for example stated that they were addressed as 'amma' by the mediators. The study team were also told of incidents where the mediators have supported those with walking difficulties and mobility constraints to take their place in the mediation venue. However, the study team did encounter a few cases in the study districts, where the disputants felt that the mediators were not respectful nor professional in their conduct, that one disputant party was not given the chance to properly explain their case and that the mediators were over-riding the disputants' attempts to explain.

In general, disputants felt that the mediators spent enough time discussing the cases with them and that the mediators went through the documents that they submitted in support of their case. However, in a few cases that were part of this study, disputants complained of certain documents not being considered, such as a house plan, linked to a dispute that involved a waste-water disposal, boundary wall and an entry-way issue. In another instance, the disputant complained of mishandling of submitted documents, as the mediators have shared reference numbers of land related documents with the other disputing party without the permission of the proponent.

Further, perceptions of lack of 'force' or 'authority', as has been reiterated several times in this report, had contributed towards a sense of dissatisfaction among the disputants (and at times contributed to a sense of frustration among mediators, as discussed below). A direct impact of this lack of 'strict enforcing ability' is where the cases may remain unresolved resulting in either party to the dispute feeling aggrieved about the process adopted and withdraw or completely reject participation in the sessions. For the mediators, this poses a unique challenge: unless the disputants are present at the SLMBs, they remain unaware of how the sessions can actually be beneficial to them. At the same time however, the mediators are unable to enforce participation hence, the SLMBs' potential to mediate remains weak, which in turn colours disputants' perceptions and experiences of the mediation process.

Not just in instances of ensuring or enforcing participation in the process, this lack of 'authority' or 'forcefulness' was reflected during the mediation process as well, especially in obtaining compensation. One disputant in Jaffna stated that while the SLMB had successfully mediated his case and the two disputing parties had come to an agreement for a certain amount of compensation, the full amount that was owed to him by the other party was not received, as the mediators were not 'forceful enough' to

press the opponent. In another case in Jaffna, the disputant claimed that he was not offered any compensation for the loss of a crop he had to suffer, at the hands of the opponent; that the SLMB did not acknowledge this aspect of the mediation process, although the Police, the first point of contact for this particular case, did inquire about crop loss and suitable compensation.

Further, SLMB members not performing site visits, to get a 'better understanding of the dispute' and its layout on the ground was seen as a limiting factor by some disputants. The mediators explained that this condition was in place to prevent any potential personal security threats that may arise during such a site visit. However, some disputants were of the opinion that such a visit will provide added layers to the understanding of the issue at hand and would lead to alternative and creative 'solutions' for issues being discussed.

Overall, the analysis of cases that ended in non-settlement within the study sample shows that disputants are satisfied with the process followed and the SLMB, despite the case not ending in a satisfactory manner. These disputants appreciate the effort that the mediators put in, the low-cost nature of SLMB and the open space provided for discussion within the mediation process.

Concluding the discussions and documentation

In most instances, the dispute was either resolved and a settlement certificate was issued or a non-settlement certificate was issued within 2-4 hearings. However, in Jaffna, the number of hearings/sittings per case appear the highest, with the disputants of the sample stating that they were part of 6-8 sessions, prior to a resolution being reached. The latter could be attributed to the limited number of mediators in operation in the Jaffna SLMB and therefore their higher caseload per day, resulting in delays. A few cases were reported across all the study districts of non-issuance of a non-settlement certificate, sometimes despite repeated requests from the disputing parties, as per the disputants.

Follow up

In general, no follow-up was done of the resolved or non-resolved cases, after the case was finalised and the settlement or non-settlement certificate was issued. Within the study sample, one case was reported from Jaffna where an opponent was contacted by the SLMB as per the opponent, following a 'complaint' made by the proponent, after the case was concluded as settled and a settlement certificate was issued. This made the opponent question the credibility of the mediation process, as being called for the SLMB following the issuance of the settlement certificate was seen to undermine the whole process.

D. Mediator selection, skills and knowledge and challenges faced by mediators in Special Land Mediation Boards

Composition

Most of the SLMBs had a fair gender and ethnic balance as indicated in Table 7 below. Recruiting, and even more importantly, retaining women mediators appear to be challenging, similar to the trends seen in the operation of Community Mediation Boards (see Jayasundere and Rahman, 2016) as discussed in the section below.

Table 7: Mediator composition by ethnicity and sex

District	Total	Ethnic			Sex		Source of Information
		Sinhalese	Tamils	Muslims	Male	Female	
Jaffna	14	0	14	0	13	01	Chairperson
Mannar	22	0	13	09	16	06	Chairperson
Vavuniya	45	10	31	4	Don't know	Don't know	Mediator
Trincomalee	43	08	16	19	32	11	Mediator
Total	124	18	43	28	61	18	

Source: Primary data via Chairpersons of SLMBs- Jaffna, Mannar, Vavuniya and Trincomalee

The composition in general, provides a somewhat diverse group from which the disputants can select their mediators (see section on 'process' in previous section on disputants' selection of mediators). However, in some instances, the over-representation from certain parts of the district was noted. For example, in Trincomalee, most of the Sinhala-speaking mediators were from Kanthale – a predominantly Sinhala-speaking area whereas in some other parts such as Kinniya and Muttur, there was an over-representation from other communities such as Muslims. The mediators however, believe that the composition helped, especially where local representation was strong, such as in Trincomalee - more specifically in Kinniya and Muttur. The review of documents and files revealed that most cases were coming 'directly' to the SLMBs, rather than as referrals in Kinniya and Muttur and this trend was confirmed by the selected sample of cases interviewed as well. However, in other districts, such as Jaffna, the composition of the mediation board was not seen to be particularly an advantage, as per the mediators. In Mannar, the suggestion was to include mediators from all the five DS Divisions in order to ensure more participation, diversity and inclusivity.

The pool of mediators also included those in public service and officers who had retired. A mix of professions (i.e. government administrative officers, teachers, principals, community leaders) also contributes towards the diversity of the pool.

Discussions with Chairpersons and Mediators highlight that a mix of age groups within the mediation board is conducive for a successful mediation process. As a specific example, in Jaffna, at present there are 14 members in the board, out of which, four members are above 60 years old and about five-six members are in the age group of 35-40. The mediators and the key persons were of the opinion that those in the older generation were able to garner the required respect from the disputants and that their vast experience contributes very successfully to the mediation process, especially in cases where the disputants are aggressive. Such groups however can also lead to friction in some instances especially where the relatively younger mediators are perceived as challenging the seniority of the older

mediators, by speaking up and questioning how decisions are arrived at. Such instances must be placed within the cultural contexts where the elders in the community demand respect from the relatively younger generations. The Chairpersons highlighted the need for interventions from their side on such occasions to ensure that the tensions did not escalate further. Further, some key persons and mediators from the study districts were of the opinion that the younger mediators are better able to handle filing systems and use technology to coordinate the processes, compared to some of the older, retired mediators. One mediator was of the opinion that the older mediators lack the required coordination skills. However, these concerns should not take away from the importance of having mediators of different age groups within the pool as this can also help make the SLMBs appear more accessible by reflecting the diversity that exists in the community as a whole.

Selection and recruitment of mediators for SLMBs

The process of screening and selecting the appropriate members for the SLMB is simple and direct. Two alternative mechanisms have been used in the selected districts, both however, based on the Gazette Notification issued by the MoJ. Many had applied directly for the position but some had been requested by the Divisional Secretary and/or Grama Niladhari of the respective Division to apply for the vacancies.

In the recruitment process of mediators to the land mediation board, first the DS office applies forms on the behalf of the public by suggesting people with good conduct on their side. Then GS selects some people. The GS receives a circular regarding this. I applied to the Community Mediation Board but I was not selected for that board. Then the AGS applied for me to the Land Mediation Board (Mediator, male, Mannar).

Since the SLMB is relatively new, these two processes have helped in reaching out to potential candidates for consideration. In some instances, there is a perception that the nomination of the members was at the discretion of the Divisional Secretary “on behalf” of the communities.

What is unclear however, was the basic educational qualifications required including any other experience. The general sense was that many of those eventually selected were current or former public officials including Principals, teachers and Development Officers. Hence, prior experience of having worked in any form of dispute resolution and/or knowledge about land issues or the law as relating to land were not pre-requisites in the selection process. The emphasis has been on selecting candidates who are well-recognised and command respect within the community. Therefore, the selection places emphasis on community acceptance of the process over the technical capacity of the mediators to offer legal advice – which is not the primary objective of the SLMBs. One mediator expressed his frustration with the younger generation, who they thought were not stepping forward to take up positions as mediators.

Once the applications had been received, the candidates faced an interview as well as an examination. While many could not recall the contents of the examination, it appears to have been organised as a multiple choice question format. Only those who had “passed” the examinations, were interviewed. The process overall, had been transparent and has led to the selection of a group of mediators who were willing to work in such a community setting on a voluntary basis. However, in one instance, a public officer who had taken part in the selection examination stated that the results were made public and available only for those who ‘passed the exam’ and not for all the candidates that took part in the exam. As such, the respondent felt that there was a lack of transparency in the selection process.

It must be noted that in some instances, questions were raised regarding the suitability of the candidates. However, these appear to stem from individual perceptions of certain professions (i.e. teachers) as reflected in the quotation below - which are then applied in the context of the conducting of the SLMB sessions. A common issue that was raised by mediators was the importance of other criteria in the selection process, especially the selection of the Chairperson, beyond the technical and behavioural competencies that are assessed at present. These included coordination and management, record keeping and filing, organization, time management, and monitoring skills. In some locations, the need for a 'strong personality' who can 'control any tense situation' and being seen as 'free of corruption' were also highlighted as key characteristics to be a successful Chairperson of a SLMB.

Similarly, there appears to have been some flexibility offered to ethnic minorities in Trincomalee. The lowering of the minimum age stipulation, may have been informed by an overall change in policy or the difficulties in reaching out to a representative group of these two ethnic groups.

There were about 40 people who participated. But there was a little injustice done there. They told us they cannot take people less than the age of 35. But they took in Tamils and Muslims below the age of 35. But during the second batch that was trained it was a good, fair process. My wife was in the second batch of trained mediators. Officials from Colombo came to interview the second batch (KPI, male, Trincomalee)

Women mediators in SLMBs

A key concern for this study was to examine how gender identity plays a role within the SLMBs. As a rule, most of the SLMBs sought to maintain a balance of men and women in their pool of mediators. In recruitment, women were not accorded any special status, following a 'gender-neutral' recruitment process, primarily via nominations. While the study team does not have data on the number of applicants to the SLMB disaggregated by sex, based on the disaggregation of the selected pool of mediators and even more importantly, the disaggregation at present, it is evident that women representation, especially in certain locations, remain an issue to be addressed.

The nomination and the subsequent recruitment process being gender neutral means that the existing social norms and hierarchical gender relations, of the 'older male demographic as the mediator' (Jayasundere and Rahman, 2016), get reflected in the selected pool of mediators within SLMBs as well, similar to Community Mediation Boards and are reified during the mediation process, as the extract below illustrates. Therefore, as explained above, the limited number of women mediators result in the SLMBs being unable to encourage or appoint women mediators for panels that concern women disputants, as seen in Trincomalee and Jaffna. Further, the case presented below further highlights that the social norms that dictate who a 'mediator is or should be' also apply to the appointment of the 'chief mediator'.

The reason why disputants select male mediators mostly according to my opinion is that male mediators are more knowledgeable than female mediators, they can visit people's land for observation unofficially, and they are available all time. When we are dealing with cases there should be 2 mediators for opponent and proponent and another mediator will be the chief mediator for the cases. But our women mediators don't get chance to be chief mediator for any case. It's like an unwritten rule - automatically male mediator goes for chief mediator for cases. We didn't even ask about that but we share our opinion among our women mediators only.

Mostly female mediators are in LMB for writing and file maintaining (Mediator, woman, Mannar).

What is more concerning is that women also find it more difficult to continue to participate in the SLMBs. Family obligations and caregiver responsibilities make it far more challenging for some women to attend all the sessions every weekend. Similarly, distance to the centre where the SLMBs are held, ease of access to public transport also become factors in determining whether women are present in all the sessions, as the first quotation below illustrates. A more practical concern is that due to maternity leave and child-rearing responsibilities, at times, several young women would be unable to attend the sessions. While this was *not* considered a major hindrance, the gender composition of the SLMBs can be skewed in such instances. Further, social norms that dictate travel at night or being accompanied by a man, also act as obstacles for women's participation in mediation as the second quotation below illustrates.

Some women do not come to mediations regularly. Some are on maternity leave and some female mediators think that getting scolded by disputants is unnecessary for them and it can degrade their reputation in the society. Most of the female mediators do not like to come to the mediation board because of this problem (Mediator, male, Mannar)

The problems female mediators face are they have work pressure, they feel inconvenience travelling in weekend. Especially as Muslim female mediators, if they travel in nights or if a man help a female with transport due to transport issues, the society will create rumors about that woman (Mediator, woman, Mannar).

In a few instances, women mediators felt that they faced challenges in playing the role of a mediator when the disputants were aggressive or were challenging their position as mediators by 'over-riding' their voice during discussions, based on their 'superior knowledge of the law'. Further, some women mediators also alluded to a sense of not being supported by their male counterparts, and at times, being 'over-ridden' by their colleagues, as the quotation below from a woman mediator illustrates. These specific issues and challenges need to be studied, understood and discussed further, with the participation of both men and women mediators.

We also talk in the (land mediation) board. But since it is mostly Principles who are on these boards as mediators their voice will be dominant voice since they can manage it better than ladies. Than It means they are the ones who talk a lot and loudly. (Mediator, female, Mannar)

Hence, while the SLMB process has remained mostly gender-neutral and has sought to include women in the ranks of the mediators, the lack of consideration on how women would juggle their multiple roles of paid employment and unpaid care responsibilities along with the demands placed by having to participate in sessions each week, has had a direct impact on preventing women from active participation in the SLMBs. Their role has been identified as being important to the functioning of the SLMBs and helps make the SLMBs appear more women-friendly and approachable, but more concerted attention must be paid to how women can be supported to be more active participants in this process.

Skills, knowledge and competencies: effectiveness, challenges and limitations of training

All of the mediators interviewed for this research, had received the 06-day training. This was following the screening and examination process. The training content was deemed useful as it addressed some of the key areas which the mediators had to pay attention to. These included issues related to mediation

process, the related skills required, behavioural aspects during mediation and a technical/legal training on land related dispute resolution. However, emphasis was placed on the importance of enhanced knowledge on land laws and documentation processes in record keeping. Most mediators that were part of the study could recall training being offered on handling gendered dimensions of mediation, including 'equal treatment for women disputants', but most of them could not recall the elements of the training in detail.

Notably, the respondents also pointed to the soft skills which they considered were essential to being a good mediator. These ranged from the tone of the voice to be used in such circumstances to the importance of punctuality and time management, maintaining eye contact, being calm and patient and respectful and a good listener. The importance placed on these soft skills point to the recognition of maintaining neutrality and creating an environment that facilitates an open discussion. In one occasion, a Sinhala Buddhist mediator shared his experience of how concepts of 'mindfulness' and being 'open-minded' helped him and his fellow mediators to guide the discussions and help disputants arrive at solutions. He further elaborated that his fellow mediators appreciated these skills that he brought to the discussions.

The mediators should try to understand both parties psychologically and mentally. They must act according to that. Their attitudes matter in dealing land disputes. Attitudes and characteristics are highly needed for a mediation (Mediator, male, Mannar).

Some of the examples cited by the mediators where disputes between family members were successfully resolved, point to the importance of being understanding and creating the necessary space for issues to be resolved. Hence, the emphasis placed on soft skills improvement is not misplaced.

There was also concern raised by some key stakeholders interviewed, that the training must focus more on inter-personal relationships and the improvement of basic knowledge on the law related to land, as the first extract below illustrates.

I am very much aware of the training mediators undergo. No matter how well trained they are they need to have an understanding of the situation, mentality of the disputants, psychology behind this. I think they need to be more experienced to handle such situations. They need to build good rapport with land surveyors and lawyers, to learn the subtle details of this field and also maintain neutrality while handling such situations (KPI, female Jaffna)

The Land Mediation Board members ought to have full knowledge about land laws. The Mediation Boards argue that the land related laws are not necessary for the negotiation. However, they must have a basic understanding about land laws. The Land Law is necessary to deal with cases when both parties to a dispute are not connected with a particular land. They could have taught the mediators at least after the appointment (KPI, male, Mannar).

Such an outsider's perspective could be informed by two factors: first it suggests a lack of understanding of the scope of the SLMBs. Secondly, it could be a reflection of the limitations placed on SLMBs to resolve matters related to land in a positive way. The mediators on the other hand, point to the importance of refresher trainings. There has been little effort to provide any extension of similar trainings since they were orientated during the initial stage. Concerns regarding the status of knowledge of the new recruits were also raised as they may have not received the same lengthier version of the

training provided to the original group of mediators and at least in one instance, concern was raised of the new batch of recruits not receiving any training at all.

Socially embedded nature of mediators

As described previously, the mediators' success is to some extent informed by their social embeddedness. As several case-studies illustrate, mediators view their roles as one that extends beyond the role of merely land disputes but rather, "speaks" to their understanding of the cultural nuances and "readings" of family dynamics.

More often than not, its disputes between family members. We keep the case aside and first talk about the families, going back to their history. This way some people reminisce about their previous togetherness and the dispute gets resolved over time. You must have met the [name of male mediator] right? We even handled a case between him and his brother as well. We somehow balance it all. ... We have been trained on this. For some people telling us their dispute is much like a confession (Mediator, Male, Trincomalee).

This kind of interpretation that the mediators are able to bring into these disputes is ill-afforded in other dispute resolution processes. Rather than interpretation of the law as relating to land, the ability to examine the underlying complex social relations lends to enhancing the credibility of the SLMBs. The mediators facilitate an open discussion and at times, can draw on the specific contexts in which the dispute may have arisen. While a decision being coloured by familial relations may not be acceptable in legal processes, the SLMBs are able to navigate these relationships in a more conducive manner because the mediators are thus embedded into the community.

As a result of their 'social embeddedness' mediators also appear to rely on local knowledge about a dispute in order to seek means to settle it, as the excerpt below illustrates. But this also exposes the SLMB to corruption and the perception of favouring one party over the other, especially in instances where the disputants may not be from the same community. A few instances were cited where the mediators could be approached in their community to influence the process especially when one party is known to the mediator. The use of such 'knowledge' to 'steer' decisions or discussions is also problematic given the mandate of the mediators to 'facilitate' the mediation processes rather than influence it. As a general rule however, mediators also tended to remove themselves from examining disputes where such a conflict of interest was evident.

It's actually a huge support [when local representation is strong]. Because sometimes, we find mediators who might know the whole story right from the beginning when disputant parties are reluctant (Mediator, female, Vauniya).

What is not overtly mentioned but could be subtly at play are also the power dynamics. By their own accounts, the land disputes that are referred to the SLMBs are originating from within the community. The value of the land is generally considered to be less than two million rupees and the disputants are mostly of lower socio-economic backgrounds. The mediators, as community leaders and recognised public officers – retired or otherwise – can also exercise their power and authority to 'steer' the disputants towards a resolution they do not seek. Similarly, and more troubling is that when the disputants are from varying socio-economic backgrounds, one party can decide not to appear before the SLMBs. This in turn reverses the power dynamics as the mediators have no overarching power nor authority to 'summon' the disputants. Hence, while the perceived power imbalances can lend credence

to the decisions arrived at in the SLMB, limits are also placed since the disputants may exercise higher political and social power to decide the direction of the dispute.

Expert panel

The study found that the Expert Panel is not consistently active in all the districts. For example, they are not functioning in certain districts such as Jaffna at present. In Mannar and Vavuniya, the expert panel is active and they join the SLMB on invitation, as required. In Trincomalee in contrast, the expert panel meets every week, parallel to the SLMBs and provide their services as required. This panel primarily provides technical advice, but they also seem to be involved in 'mediating' 'difficult' or complicated cases (cases where disputants are proving to be adamant on their own stance). In certain occasions, disputants stated that the surveyors who are part of the panel charge their fee in the second round of surveying, and therefore that the disputants prefer to get the required surveying done through one of their known surveyors. In Jaffna, given the complexities in resolving private land related disputes, the lack of a functioning expert panel was highlighted as a main challenge by the mediators.

Mediator Training Officers

As per discussions with MTOs and mediators, the main tasks of the MTO include resolving any challenges that the mediators face, observing and providing feedback to mediators on their performance during mediation for both CMBs and SLMBs, and collating and sharing data on the cases handled by the respective SLMBs on a monthly basis. The insufficiency of resources made available to them to cover their transport costs was stated by MTOs as a major concern, as Rs 3500 per month was deemed inadequate especially as some of the MTOs were monitoring and supervising more than one district. As per the mediators, the role that the MTOs play and the advice and guidance they receive from the MTOs was seen to be useful and helpful in performing their mediation related tasks. However, the mediators felt that a more systematic review and experience sharing process, with the participation of the MTOs, would be useful for better learning and functioning of the SLMBs.

Challenges faced by mediators

There were several key challenges noted in operationalizing the SLMBs at the ground level. As indicated above, a lack of a dedicated space is a concern raised. This leads to confusion and mistrust of the process adopted as the address shown in the official letters sent to the disputants and the venue of the SLMB sessions may at times, be contradictory. For community members whose knowledge of the SLMBs is poor and where certain disputes are referred by the Police to the SLMBs, this may be seen as creating a sense of lack of legitimacy. Similarly, some of the centres chosen are the same locations where the Community Mediation Boards are also held. This can lead to further confusion and misunderstanding among community members regarding the difference between the two processes as well, with the former being better known. Further, in certain locations, 2-3 cases were being mediated in the same 'classroom', which was seen to compromise the privacy of the disputants involved.

A key concern regarding operationalizing of the SLMBs, as expressed by all the mediators and some disputants that were part of the study, is the lack of authority granted to the SLMBs. This has become a point of frustration for the mediators as they are unable to "invite" the disputants. In at least one case, mediators expressed a loss of motivation to continue to act as a mediator given what they felt was the lack of effectiveness and efficiency of the SLMB process. This was directly attributed to the lack of authority at their disposal. As mentioned previously, those from a higher socio-economic background (i.e. perceived to be more powerful) can disregard the letters sent and not attend the sessions. This undermines the process, as a single party can decide to withdraw from the mediation process at any

given time. Hence, the tendency for cases to remain unresolved can be high, contributing to dissatisfaction on the land mediation process as a whole, among communities.

Another concern is regarding the participation of the mediators. Some concerns were raised that a few of the mediators lack a commitment towards the process. They tend to mark their attendance at the sessions but at times, leave the sessions in order to carry out personal commitments. An informal means of disciplining such mediators is to prevent them from being part of the selection pool but unfortunately, this may lead to the further discouragement/demotivation of these mediators.

Further knowledge about the legal aspects related to land was considered important by the mediators. As indicated before, this also stems from the expectations of the disputants and the external stakeholders who believe the SLMBs must play a more proactive role in resolving such land disputes in a more 'concrete' manner. This concern was expressed most explicitly in Jaffna by mediators, stating that 'Jaffna people are born with law knowledge', and therefore mediating their cases require a sufficient command of the technical aspects of the case. Mediators also stated that they find it difficult to apply the legal knowledge on land that they acquired through the training in a practical manner to cases when mediating. In Trincomalee, this requirement was seen to be at least partially addressed by sending cases that are deemed technically challenging or 'difficult to resolve' to the expert committee, that is available at every sitting in Kinniya. From the perspective of the mediators, the concern is the lack of access to refresher trainings – an opportunity to regroup, reassess the functioning of the SLMBs and how best to address specific cases that have come up in relation to land. Hence, a refresher training or continuous and systematic access to the expert panel are considered more important.

In Jaffna, the mediators expressed the need for psychological counselling support for them, as some of the cases that they mediate can be mentally 'draining', as the extract below illustrates.

We also face some problems psychologically. We cannot show our anger on disputants. We need some counselling. If we deal with 3 cases per day, we will get mentally tired. Disputants take 2 to 3 hours to elaborate their problems. They easily mislead us from the case. If we ask them to tell the problem shortly they do not listen to us. They will say all the details are necessary for the case and start telling the whole story. (Mediator, male, Jaffna)

Since the mediators tend to volunteer for the position, they had few concerns regarding the receipt of a payment. However, in one location, the mediators stated that they were promised a payment of Rs 2500 per sitting, whereas they receive only Rs 1500 at present. In another location, delays in the payment were also raised. Concern was also expressed stating that the Chairpersons and Vice-Chairpersons spend a considerably longer time in organising and also overseeing the administrative aspects of the SLMBs, including submitting the necessary documentation for their nominal payment. The possibility to reimburse the cost of telephone calls and the stationery were two types of expenses that were highlighted in the course of data collection. The travel related costs of certain mediators, as some of them were travelling close to 20-30km to get to the centre, was also mentioned by the mediators and was highlighted as a major challenge.

It must be noted that in many of the districts, the SLMBs are held on a weekly or bi-weekly basis and therefore, the time commitment demanded by the mediators is quite high. Hence, the payment (i.e. allowance) does contribute towards compensating for the time utilisation of the mediators. The failure to provide the promised Justice of Peace position to the mediators was also seen as a discouraging trend by the mediators, across all the study districts.

It must also be noted that SLMBs are only now beginning to re-start since the COVID-19 pandemic started and effected local as well as national-level lockdowns and mobility restrictions. The costs of organising/hosting these sessions on a weekly basis may have increased especially if the LMBs have to offer basic sanitisation facilities to the participants and therefore, these costs must be considered and some form of compensation provided.

A key challenge observed is the under-utilisation of the land mediation boards by the community members. While land disputes are relatively high, tapping into the LMBs as a dispute resolution mechanism is not equal. This was mostly because of the lack of awareness of its functions and the extent of support offered through mediation for land dispute resolution. For example, information regarding the role of the SLMBs is considered poor among the Sinhala communities in Vavuniya. This also leads to the under-utilisation of the Sinhala-speaking mediators in the district as community members do not come forward. The same situation was mentioned in Kanthalai in Trincomalee, despite repeated efforts by the mediators to raise awareness especially through the relevant government officials such as the Police and the Divisional Secretariats. Most mediators were aware of or have been a part of awareness raising campaigns that were conducted at the initial stages of the SLMB initiation. These campaigns had targeted the relevant government officials such as the District Secretaries, Divisional Secretaries, Land Officers, Provincial Land authorities, Police, religious institutions and leaders such as Hindu Kovils and Mosques and in some cases the Grama Niladaris. In Mannar, mediators mentioned announcements being placed about the SLMB and their introduction in the newspapers as well. However, the mediators were of the opinion that with the COVID-19 pandemic and the restrictions on the SLMB operations, these awareness raising campaigns have lost their effectiveness. Further, in some locations such as in Jaffna, certain groups and individuals such as lawyers were perceived to be discouraging disputants from taking their cases to the SLMBs, as stated by the mediators. In a few districts, the mediators perceived that government officials such as Divisional Secretaries were lacking in initiative and proactiveness in referring cases to the SLMBs. In Vavuniya, the lack of information and awareness raising material in Sinhalese was seen to be a challenge to engage in awareness raising.

A challenge that was specifically expressed during the discussions with the mediators in Jaffna was the mediator vacancies that remain unfilled within the board. At present, there are only 14 mediators remaining, out of the originally recruited 27 mediators. Among the 14, mediation is handled by 11 mediators, as the Chairperson, Vice-chairperson and the secretary do not engage in mediation. With each case taking 2-3 hours, there are instances where a mediator has to deal with two cases at the same time, as per the mediators interviewed in Jaffna. This was seen as a critical factor that hinders taking on new cases for resolution, prolonging the mediation process and therefore creating dissatisfaction among disputants, as the absence of one or two mediators in a given day would result in postponing the cases, creating undue pressure on the currently active pool of mediators.

4. Conclusions

The establishment of SLMBs in the Northern and Eastern provinces in the post-war context where land disputes have become serious concerns in recovery and resettlement is a remarkable achievement. As stated in the background section, the need for SLMBs in these former war zones has been highlighted in many studies as well as policy discussions. In turn, in accordance with the provisions of the Mediation (Special Categories of Disputes) Act No 21 of 2003, SLMBs are set up by the Ministry of Justice under the guidance of the Mediation Boards Commission.

In general, the SLMBs mirror the social and demographic characteristics of the population that it serves. Considerable effort had been made to recruit mediators for SLMBs ensuring geographic representation from all the Divisional Secretariat Divisions within a district. However, in certain locations, geographic representation is somewhat skewed. The use of appropriate local language within the mediation process is appreciated. However, the gender composition of the SLMBs remains a concern in certain boards, especially in Jaffna. It should be noted that none of the SLMBs have equal gender representation, with women mediators making up only 25 percent to 30 percent of the SLMBs in Mannar, Vavuniya and Trincomalee. Although a clear, transparent process had been adopted in selection and recruitment of mediators, the Chairperson and Vice-Chairperson, the gender-neutral approach in nomination and selection requires reconsideration.

The training offered at the inception of the Boards are highly appreciated and valued by the mediators. However, the lack of follow up and refresher trainings are highlighted as important needs in sustaining the functions of SLMBs, especially given the erratic work and operational patterns during the Pandemic in 2020-2021. Customised trainings to meet the needs of each board is a requirement on the ground. Although MTOs frequently receive trainings with regard to mediation, there seems to be limited systematic and structured space or opportunities for the MTOs to share their learning with the mediators of SLMBs. Since land mediation is a new topic for most of the mediators, there needs to be continuous learning and updating of knowledge on the context, legal aspects, government policies and circulars.

Given the fact that the SLMBs are relatively newly established, the learning from everyday practices of land mediation needs to be incorporated to continuously improve the mediation process. There is no such formal mechanism established to incorporate such learnings. This requires continuous external support, especially from the centre, i.e., Ministry of Justice, Mediation Boards Commission and other actors working on strengthening SLMBs. Furthermore, the SLMBs are not sufficiently monitored to provide feedback on their functions. Though the MTOs are tasked to play a role in this, given their other commitments and constraints and challenges that they face (e.g. travel), the support they can provide to the SLMBs remain limited at present.

The lack of a dedicated physical space to conduct SLMB activities is a common issue across all the SLMBs studied. This contributes to the risk of losing or damaging confidential documents related to the

disputes and the loss of respect or legitimacy of the SLMB in the eyes of the disputants. These perceptions manifest in how the general public perceives the SLMBs.

The lack of a proper information system for record keeping hinders functions of the SLMBs. The data on the disputes are kept in physical files, sometimes scattered across different locations and are not digitised in most cases. This affects the monitoring and learning functions as well as the decision-making process of SLMBs. SLMBs are not provided with necessary equipment such as computers, printers, internet facilities nor the skills or skilled personnel to digitise these case records.

The ability of the SLMBs to reducing the caseloads and pressure on formal dispute resolution mechanisms is undisputed. Although SLMBs are not designated to resolve macro level land issues such as contentious issues with the high security zones, secondary occupation by the military and wildlife or forest land related tensions, the fact that they are able to mediate disputes with regard to private land and certain types of state lands remain very important. The number of cases received by each SLMBs in the study districts is an indication of this achievement. As the discussion above indicates, the SLMBs show considerably high settlement rates while this rate varies across districts. Settling disputes in SLMBs take relatively shorter periods of time compared to the time taken in the formal judicial processes. However, the settlement rates should not be the only measure of the nature of justice delivered through SLMBs because the concept of interest-based mediation is not necessarily about the outcome, but also about the process that drives people's satisfaction over the process. Therefore, the importance given by the SLMBs to the process of mediation is vital to note here. The fact that SLMBs create space for those who cannot or do not want to access courts to resolve their land disputes due to cost and time concerns is also a key achievement.

The study reveals that resolving (minor) land disputes in the study areas contribute to the overall peace and cohesion within the communities. This is achieved by addressing the inter-personal disputes at the early stages and not allowing them to escalate into more intense disputes. The mediation process also creates a space for the disputant to further understand their disputes, gain perspectives of the opponents as the SLMBs facilitate a conversation between the conflicting parties.

The expectation of the people of the SLMBs is mediated by their experiences of seeking justice through formal processes such as the Police or judicial processes. In this regard, the process adopted by the SLMBs is conducive to embrace participation of communities representing different social strata. In comparison to the formal processes, the ability to articulate the disputes in local languages makes SLMBs closer to the communities. Furthermore, SLMBs provide space for women to take part in the process without much hesitance irrespective of the gender composition of the mediators. However, it should be noted that some women disputants from Trincomalee pointed out their preference to have women mediators as part of the panel.

The social embeddedness of the mediators has both negative and positive implications with regard to people's perception of outcomes and the process followed. Being familiar with the local culture and norms, the nature of land issues and tensions created spaces for seeking justice for disputants

considerably. However, at the same time, the existing social networks, power relations between the mediators and the disputants influence the process and outcome. In the event that the mediators or the chairperson are from the same locality, the perceptions of partiality emerge as opposed to the mediators being from other divisions/areas. Nevertheless, given that SLMBs are established at the district level, mediators or chairpersons are generally not known throughout the study district. For instance, the disputants from Jaffna had no prior knowledge of the mediators or the Chairperson unlike in Trincomalee where the Chairperson seems to be well known in Kinniya and Muthur DS divisions. This popularity had also resulted in an increasing number of disputants directly approaching the SLMB.

While people appreciate the processual nature of SLMBs where the interest-based mediation is used, disputants also expect the SLMBs to deliver 'judgements' as opposed to 'settlements'. This emerges at the backdrop of parties not responding to invitations by the SLMBs or not complying with the settlement terms. This relates to the sustainability of the cases when disputing parties ignore the terms arrived at the SLMBs in case of a settlement. Such cases are often taken to the courts or Police or other dispute resolution mechanisms. Although this expectation of a hybrid nature of justice delivered at SLMBs is contradictory to the concept of interest-based mediation, people assume that this will help resolve disputes better.

5. Recommendations

There is a clear requirement for continued support to sustain the Special Land Mediation Board activities, in the short to medium term, especially given the irregular functioning of the boards since the COVID-19 Pandemic started its spread in Sri Lanka. These support functions should be played by a diverse range of stakeholders such as the Ministry of Justice and the Mediation Boards Commission, other relevant government authorities and stakeholders such as the District Secretaries, Divisional Secretaries, Provincial Land authorities and non-government agencies such as the Asia Foundation.

- Support the on-going legal reform processes related to ADR led by the MoJ and providing support to MBC and MoJ to implement the changes proposed, especially in increasing the coverage of the SLMBs to the rest of the country and the related workplans such as the recruitment of mediators, training etc.
- Make available dedicated spaces/venues for SLMBs within the existing infrastructure in order to ensure privacy of the mediation process and establishing a routine location to minimise confusion when the venue is changed.
- Revisit the effectiveness of conducting the SLMBs on a rotation/mobile centre basis and the possibility of responding to the demands coming up from identified locations within the district for SLMB to be conducted at closer proximity.
- Make available resources for communication, especially for the Chairperson and the Vice-chairperson
- Make available ICT resources and strengthen of the knowledge and use of online communication and meeting platforms such as Zoom and Teams and social networking applications such as WhatsApp, among MTOs, Chairpersons and mediators, in order to ensure smoother functioning of the SLMBs, during travel restrictions and crisis moments such as COVID-19 pandemic. Necessary changes to protocols to be followed in conducting mediation over such platforms should be made, in consultation with MBC and Ministry of Justice.
- Recruitment, maintaining and training of the cadre
 - Fill cadre vacancies immediately (Jaffna)
 - Enhance participation of women mediators (see more specific recommendations to improve women's participation below)
 - Continued and regular training/refresher courses: regular updates and training on legal and social dimensions attached to land issues and dispute resolution (Short modules preferred given their other commitments)
 - Training 'new recruits' or those already in the mediator carder but have not received all the training modules that had been on offer so far
 - Strengthening of language skills for Sinhala medium moderators (especially women) in places like Trincomalee
 - Enhance transparency in the recruitment process (making the exam results available to all)
 - Assess the prospective Chairperson's ability to coordinate, skills in organisation and documentation when making recruitment decisions
- Revitalise and strengthen the Expert Panels
- Active and continuous promotion of SLMBs for a better reach
 - Awareness raising material being made available in both Sinhala and Tamil languages
 - Introduction of a set of innovative and effective methods and tools to raise awareness and communicate this message especially through social media; target meetings with

Civil Society Organisations that operate at the village level such as Rural Development Societies and consider street drama performances at the village level.

- Include information sharing on SLMBs into on-going and planned efforts and awareness campaigns on related topics organised by the Ministry of Justice and Ministry of Land and Land Development.
- Creation and maintenance of a more effective information management system:
 - Allocation of skilled personnel, equipment and technology to enable digitisation of the documents which is now only available in hard file format
 - Allocation of space for hard file storage
 - Systematic record keeping of copies of issued settlement and non-settlement certificates, with signatures of the disputing parties
 - District-wise databases of data collected using a consistent format, to be centralised and made accessible to relevant decision makers
- Strengthening monitoring and process support provided
 - Review of the existing processes as a joint effort led by the Ministry of Justice and Ministry of Land and Land Development
 - Conduct monthly and quarterly systematic reflection and sharing meetings at a district level and quarter/bi-annual meetings at the inter-district and inter-provincial levels including participation from other stakeholders such as the Provincial Land Commissioners and Divisional Secretariats
 - Establishment of a mechanism to allow skills transfer from MTOs to the mediators
- Incentivizing the mediators: expedite the awarding of the Justice of Peace positions, the payment process and the provision of IT training if required.
- Enhancing the participation of women mediators
 - Revisit the gender neutral nomination and recruitment process
 - Review the gender training and offer refresher training
 - Explicitly provide space for women mediators to voice any challenges they face, during proposed monthly/quarterly review and reflection meetings and proactively design mitigation measures and support structures
 - Explore possibilities of releasing the government officials from their duties half a day a week as 'lieu leave'.
- Advocate with relevant authorities including the Bar Association of Sri Lanka to stop the issuance of fraudulent documents, including by the lawyers

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Annex 1 Guiding questions for KPIs

An Exploratory Study on Effectiveness of Selected Special Land Mediation Boards in the Eastern and Northern Provinces

Questions to Key Person

Research Team

Name of interviewer/s:

Name of the note taker/s:

Mode of interview (In-person/virtual):

Date of interview:

Time of interview:

Place in which the discussion took place:

Respondent:

Name of the respondent:

Organisation (if applicable):

Sex:

Involvement in Land Mediation Board:

Designation:

District (If applicable):

III. Comments regarding the interview (to be filled in soon after completion of interview)

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SECTION I: About Land issues in the area

Land Ownership

1. To your knowledge what are the prevailing issues of ownership of land in this area?
2. What are the issues relating to other land/agricultural/fisheries/livelihoods related to land (access to the sea through landing sites etc.)?
3. What are some of the specific problems in relation to accessing land? Such as claiming ownership etc.
4. Who in your opinion are affected most by these problems? Women? Widows? returnees?
5. To your knowledge how do individuals/groups acquire ownership of property in this area? Both in the past and present context.
 - a) If it is a government grant have they received the deed for the land?
 - b) What type of deed? Swarnabhoomi etc
 - c) Who was the original grantee?
 - d) Have the lands been surveyed? [for demarcation & clarity of location]
6. What types of land tenure are available in your area? (Private, state land etc)
7. Can permit holders' alienate property on their own?
8. How is land registered in this area? What is the procedure?
 - a) What is the normal procedure for formal record-keeping of permits/grants?
 - b) Are there any special procedures provided now for the land registration in this area with the ending of the war?

Conflict/War:

9. To your knowledge, have those who have lost family members as a result of the war been able to obtain death certificates?
 - a) If not, why?
 - b) Who are the people affected most by this problem? (women, children etc..)
10. Did the war destroy many houses/land in this area?
 - a) If yes, were the boundaries of the land destroyed?
 - b) How were boundaries identified?
 - c) Have the boundaries been restored?
 - d) How were the boundaries restored?
 - e) Has the government restored them? Were people required to pay? And were they able to pay?

11. To your knowledge, what are the land related issues that have come up as a result of the war and resultant displacements?

Access to Property:

12. Have people been deprived of access to their land (private) to your knowledge?
 - a) What were the reasons? [i.e. HSZ/SEZ/demarcations of sacred/religious or archaeological sites]
13. Are there instances of third parties possessing/occupying property (i.e. houses) of others that you know of in this district? [Secondary Occupation etc.]

SECTION II: Resolving land-related disputes

About resolving land issues

1. Where do people generally go to resolve their disputes?
2. Where do people usually go to resolve land disputes? Why?
3. What are the mechanisms currently in place to resolve land disputes? Probe for
 - Peace committees, inter-religious committees, production-based organisations,
 - What kind of actors get involved in resolving disputes? (Police, politicians, GN, DS)
4. What is the process followed in each of these mechanisms?
5. How effective are these mechanisms in resolving land related disputes?

Resolving land disputes through Land Mediation Boards

6. Have you heard about the Special Land Mediation Boards? What are they? How do they differ from other dispute resolution mechanisms available?
7. Why do you think SLMBs are necessary to resolve land-related disputes?
8. What is the function of SLMBs?
9. How do they function? Where are they held? When?
10. Is the location and time accessible for the people to attend?
11. How were they established? By whom?
12. How effective are they in resolving land disputes? How do SLMBs contribute to overall peace situation of the country?
13. Are you aware of the process followed within these boards? (Ask about summoning, mediation, settlement, post-settlement)
14. Who do you think accesses SLMBs? (probe for socio-economic and demographic groupings)

Skills and training:

15. What do you think about the skills and capacities of the mediators? What kind of skills are necessary to become mediators or chairpersons of these SLMBs? Are they sufficiently trained to deal with the land related disputes?
16. What capacities do you think should be enhanced? Why? Who can help with this?

Recruitment:

17. What kind of people become mediators in SLMBs? What are the pre-requisites of the mediators? What kind of qualities are expected?
18. What is the process followed in recruitment?
19. Would you be interested in serving as a mediator in a Special Land Mediation Board? Why?
20. In your opinion, what kind of people should become mediators in SLMBs?

Composition:

21. How many members are there in the SLMB in your district?
22. Who are they? (Profession, education, gender, ethnicity, religion)
23. Where are they from? (mostly from one DS division, represent different DSDs)
24. In your opinion, how popular do you think the SLMBs are among the general public? Do people approach the SLMBs to resolve their disputes or do they approach because of a referral?
25. How do people generally hear about SLMBs? Have you heard about any awareness raising programs by the government or relevant authorities with regard to SLMBs? If yes, What are they? If not, what can be done to increase the awareness?

People:

26. What kind of people access SLMBs to resolve their land related disputes? (poor, rich, middle class)
27. Do you think a particular group seeks access more than others? Why?
28. What kind of people do not access SLMBs to resolve their land related disputes? Why? where do they go to resolve those disputes?

Issues

29. What kind of land issues are dealt by the SLMBs? Ask for disputes over:
 - boundary, pathways/road, succession and inheritance of land, sharing/dividing-family dispute, documentation, secondary occupation
30. Are disputes over state lands taken up at SLMBs? What is the procedure followed when the state become a party in the dispute?
31. What kind of issues that SLMBs cannot handle? Why?

Outcome/Satisfaction:

32. Are you satisfied with the performance or outcome of the SLMBs? Why?
33. Do you think the outcomes of the settlement/non-settlement at SLMBs is sustainable? Why?

34. How can this be enhanced to achieve a better outcome? (e.g involvement of different actors, introducing different processes)
35. Do you think resolving land disputes through SLMBs can improve intra or inter community social cohesion? Why?
36. What do you think about the level of satisfaction on the outcomes of the disputants over SLMBs?
37. What are the main challenges that SLMBs face? How can they be addressed? Who can help?

Annex 2 Guiding questions for Mediators

An Exploratory Study on Effectiveness of Selected Special Land Mediation Boards in the Eastern and Northern Provinces

Questions to the Mediators

Research Team

Name of interviewer/s:

Name of the note taker/s:

Mode of interview (In-person/virtual):

Date of interview:

Time of interview:

Place in which the discussion took place:

Respondent:

Name of the respondent:

Organisation (if applicable):

Sex:

Position in Land Mediation Board:

Service period (As a mediator):

Profession (Present/past, If applicable):

District:

III. Comments regarding the interview (to be filled in soon after completion of interview)

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SECTION I: About mediators

1. What motivated you to become a mediator?
2. Have you been a mediator prior to becoming a mediator at a SLMB?
3. Were you involved in any dispute resolution process before? If yes, what were they? What was your experience in the process?
4. Can you tell us about your experience in the application process? (where did you hear about? What made you apply for this?)
5. What were the steps followed?
6. What were your expectations of the SLMBs when you applied? Was it an application based on a promise of an incentive? If so, what kind and has it been delivered?
7. How many cases did you handle so far? How many were; settled/not-settled/withdrawn?
8. Who do you consider a successful mediator within SLMBs?

SECTION II: Land-related disputes in the area

Land Ownership

2. To your knowledge what are the prevailing issues of ownership of land in this area?
14. What are the issues relating to other land/agricultural/fisheries/livelihoods related to land (access to the sea through landing sites etc.)?
 - a) What are some of the specific problems in relation to accessing land, claiming ownership etc.?
15. Which group in your opinion is affected most by these problems? Women? Widows? returnees?
16. To your knowledge how do individuals/groups acquire ownership of property in this area? Both in the Past and present context.
 - e) If it is a government grant have they received the deed for the land?
 - f) What type of deed? Swarnabhoomi etc
 - g) Who was the original grantee?
 - h) Have the lands been surveyed? [for demarcation & clarity of location]
17. What types of land tenure are available in your area? (Private, state land etc)

18. Can permit holders' alienate property on their own?
19. How is land registered in this area? What is the procedure?
 - c) What is the normal procedure for formal record-keeping of permits/grants?
 - d) Are there any special procedures provided now for the land registration in this area with the ending of the war?

Conflict/War:

20. To your knowledge, have those who have lost family members as a result of the war been able to obtain death certificates?
 - c) If not, why?
 - d) Who are the people affected most by this problem? (women, children etc..)
21. Did the war destroy many houses/land in this area?
 - f) If yes, were the boundaries of the land destroyed?
 - g) How were the boundaries identified?
 - h) Have the boundaries been restored?
 - i) How were the boundaries restored?
 - j) Has the government restored them? Were people required to pay? And were they able to pay?
22. To your knowledge, what are the land related issues that have come up as a result of the war and resultant displacements?

Access to Property:

23. Have people been deprived of access to their land (private) to your knowledge?
 - a) What were the reasons? [i.e. HSZ/SEZ/demarcations of sacred/religious or archaeological sites]
24. Are there instances of third parties possessing/occupying property (i.e. houses) of others that you know of in this district? [Secondary Occupation etc.]

SECTION III: Resolving land-related disputes

About resolving land issues

38. Where do people generally go to resolve their disputes?
39. Where do people usually go to resolve land disputes? Why?
40. What mechanisms are currently in place to resolve these disputes? Probe for
 - o Peace committees, inter-religious committees, production-based organisations
 - o What kind of actors get involved in resolving disputes? (Police, politicians, GN, DS)
41. What is the process followed in each of these mechanisms?
42. How effective are these mechanisms in resolving land related disputes?

Resolving land disputes through Land Mediation Boards

1. What are Special Land Mediation Boards? How do they differ from other dispute resolution mechanisms available?
2. Why do you think SLMBs are necessary to resolve land-related disputes?
3. What is the function of SLMBs?
4. How do they function? Where are they held? When?
5. Is the location and time accessible for the people to attend?
6. How were they established? By whom?
7. How effective are they in resolving land disputes? How do SLMBs contribute to overall peace situation of the country?
8. Are you aware of the process followed in these Boards? (Ask about summoning, mediation, settlement, post-settlement)
9. How did your Board function during the unpredicted situations (Such as the COVID-19 pandemic)? How did you use technology in the process during this time?

Skills and training:

10. What do you think about the skills and capacities of the mediators? What kind of skills are necessary to become mediators or chairpersons of these SMBs? Are mediators sufficiently trained to deal with the land related disputes?
11. Did you receive any gender-related trainings? Did you find them useful in the mediation process? Any areas to be further improved?
12. Did you receive any training related to dispute resolution? Did you receive any training related to resolution of land-related disputes?
13. Who carried out the training? What were the areas covered in the training? What was the duration of the training? Was the content and duration sufficient? Do you think your capacities to deal with complex land-related matters were enhanced as a result of this training?
14. What is your assessment of the quality of the training provided to the mediators in SLMBs?
15. What capacities do you think should be enhanced for better function of SLMBs? Why? Who can help with this?

Recruitment:

16. What kind of people become mediators in SLMBs? What are the pre-requisites of the mediators? What kind of qualities are expected?
17. What is the process followed in recruitment?
18. In your opinion, what kind of people should become mediators in SLMBs? What are the qualities of a good mediator in SLMBs?

Composition:

19. How many members are there in the SLMB in your district?

20. Who are they? What is the composition of mediators? (Profession, education, sex, ethnicity, religion)
21. How many women mediators are there in your Board? Are there any particular challenges in relation to recruiting women mediators? How can these be overcome?
22. Do women mediators face any specific challenges in contributing?
23. Where are they from? (mostly from one DS division, represent different DSDs)
24. In your opinion do both divisions (Sinhala and tamil) get equal support from the authorities? If not, why do you think there's a lack of support to one compared to the other?
25. In your opinion, how popular do you think the SLMBs are among the general public? Do people approach the SLMBs to resolve their disputes or do they approach because of a referral?
26. How do people generally hear about SLMBs? Are there any awareness raising programs by the government or relevant authorities with regard to SLMBs? If yes, What are they? If not, what can be done to increase the awareness?

People:

27. What kind of people access SLMBs to resolve their land related disputes? (poor, rich, middle class)
28. Do you think a particular group access more than others? Why?
29. What kind of people do not access SLMBs to resolve their land related disputes? Why? where do they go to resolve those disputes?

Issues

30. How many issues did your SLMB handle so far? Can you give us a breakdown of the cases?
31. What kind of land issues are dealt by the SLMBs? Ask for disputes over:
 - boundary, pathways/road, succession and inheritance of land, sharing/dividing-family dispute, documentation, secondary occupation
32. Are disputes over state lands taken up at SLMBs? What is the procedure followed when the state become a party in the dispute?
33. What kind of issues do the SLMBs have no jurisdiction to handle? Why?
34. What are the most sensitive cases?
35. How do you think your positionality in the society can affect your performance as a mediator? Does your pre-existing relationship with parties affect your role as a mediator? How do you manage such tensions?

Outcome/Satisfaction:

36. Are you satisfied with the performance or outcome of the SLMBs? Why?
37. Do you think the outcomes of the settlement/non-settlement at SLMBs is sustainable? Why?
38. How can this be enhanced to achieve a better outcome? (e.g involvement of different actors, introducing different processes)

39. Do you think resolving land disputes through SLMBs can improve intra or inter community social cohesion? Why?
40. What do you think about the level of satisfaction on the outcomes of the disputants over SLMBs?
41. What are the main challenges that the S LMBs face? How can they be addressed? Who can help?

Annex 3 List o KPIs

District	Details of KPI	
Colombo/Other	Dr. Chris Moore Expert on Mediation M.M.P.K Mayadunne Secretary, Ministry of Justice Chandima Sigera Additional Secretary, Ministry of Land	
Jaffna	SLMB KPIs	Other KPIs
Jaffna	Mr. Theva Thayalan	K.Maheshwaran
	Chair Person	Retired _Assistant Land Provincial Commissioner
	N.Rathikumar	Kosalai Manoharan
	Mediator	Senior Lecturer, Faculty of Law, University of Jaffna
		S.Muralitharan
		Additional GA
		P.Sanathanan
		Mediators Training Officer
		Mrs.Vinitha Amalaniroshan

		DO, Community Mediation Board
		N.Uthayini Women Development Officer
		S.Sarojini Manager Center for Women & Development
		Rajani Rajeswari Founder Vallamai
Mannar	Mr.Prince Dias Chairperson	M. SriSkanthakumar, Divisional Secretary
	Mr.Aslam Vice Chairperson	Azeem Moulavi Religious Leader
	Mrs.Masahira Mediator	Mr.Winson Croos Land officer
		Mr.Jago Pillai Survyer
Vavuniya	Mr.Navaratnam Chairperson	Mr. Vimalarajah Mediators Training Officer
	Mrs.Ranathunga Vice Chairperson	P. Latha Women Development Officer
		K.Vasanthan Land Officer
		P.Priyatharshini

		Manager Rural Women Forum
		Mr.Aslam Grama Niladhari
Trincomalee	M.H.Kalas Chairperson	A.S.M. Nijam Do-CMB
	V.Yogalaxumi Mediator	S.L. Naufar Land Officer
	P.N.Rajapaksha Mediator	N.Kanapathippilla Expert Panel - Valuation
	P.N.Rajapaksha Mediator	Ms.Shiyama DO-CMB
	N.F.Nasreen Do- SLMB	Ms.Jaseena DO-CMB
	Mrs.Thahira Mediator	Rahula CO
		MR. Kunanayaham District Secretariat
		Mr. Ravirajan Assistant Land Commisioner
		Zainul Abdeen Mohamed Azhar Founder,
		Rural Economic and Community Development Organisation

		V.Savarinayagam Mediator Training Officer
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2. KPIs conducted with the Chairpersons and Mediators for scoping phase

District	SLMB KPI
Jaffna	Mr.Rathikumar Mediator
	Mr. Theva Thayalan Chair Person
Mannar	Mr.Prince Dias Chairperson
	Mr.Aslam Vice chairperson
Vavuniya	Mr. Vimalarajah Mediators Training Officer
	Mrs.Ranathunge Vice Chairperson
Trincomalee	H.Kalas Chairperson
	V.Yogalaxumi Mediator
	P.N.Rajapaksha Mediator

Annex 4 Guiding questions for in-depth interviews

An Exploratory Study on Effectiveness of Selected Special Land Mediation Boards in the Eastern and Northern Provinces

Questions to the Disputants

Position in the community

1. How long have you been living in this village? Were you born here? When did you come here? What made you to come here?
2. Are you part of any society (social, economic, cultural or religious) in the community? Do you hold any positions in the society?
3. Which religious institute you visit mostly? Do you meet the religious leaders often? Do you get advice from them on any issues?

Networks and political affiliation

4. If you want to resolve any dispute or problem that you are facing, who do you go to first? Why? Example-boundary issues, loan repayment issue
5. If you want to get advice or resolve livelihoods/employment related issues, who do you go to? Why? Example, getting a job for your son/daughter-who do you go to?

Displacement history

6. How many times did you get displaced? To where?
7. When did you come here? What were the conditions like when you returned?
8. Who helped you during the process of resettlement?

Socio-economic profile of the disputants

9. What is your level of education? What is the highest education qualification within the household?
10. Who do you consider the head of the household?
11. What are your family's main forms of livelihood? Is this a traditional livelihood or a new form of livelihood? (to explore the caste affiliation)
12. Do you own land/housing?

Disputes in general

13. What kind of disputes did you face when you returned? Who do you usually approach to resolve disputes?
14. What was/were the dispute/s you took to LMB?

Land dispute

15. Where is the disputed land located (GN division/village)?

16. What is the extent?
17. What type of ownership?(Sinnakkara, Shared, Permit, Lease etc)
18. How is the land used? (cultivation residential, commercial)
19. How did the dispute occur? What caused the dispute?
20. When did the dispute occur?
21. Who are the actors/parties involved in the dispute?
22. How did it develop?
23. What steps were taken to resolve it?
24. Who did you approach first to resolve it? Who was involved in trying to resolve it?

Land M Boards

25. Were you aware of LMBs prior to taking your dispute? How did you hear about it?
26. As far as you know, how can a disputant approach LMB?
27. Did you approach LMB to address this dispute?
28. Why did you approach LMB? Did you have a choice? Or was this the only alternative available to you?
29. If you had a choice, would you have gone somewhere else? Where?
30. Why did you go there? (cost, easy access, past experience, word of mouth, track record of LMBs, was asked to do so-by police, no other options,)
31. What was/were your expectation/s when you approached LMB?
32. How many times did you go to the LMB?

Process

33. How were you invited? Did you get a letter? From whom? What did the letter say? Was the letter clear and did you understand what the next step was?
34. What did you feel when you saw the letter? Did you get advice from anyone about what is mentioned in the letter?
35. At any point did you think of not going to MB after seeing the letter? Why?
36. Is it different to what you expected? In what ways?

Experience with the mediation process

37. Can you tell us a little about the process followed in approaching LMB to resolve your dispute? What was your expectation about the process?
38. Were you confident to face LMB?
39. How did you travel? How long did it take to reach there? Did you know the location? What did it cost for you to go there?
40. Who was there? Did you know them? How?
41. How many men and women were there? Do you think the composition of the LMB affected the discussion in any way?
42. Did a surveyor, lawyer and/or a valuer take part in the process? Can you describe how they got involved?
43. For how long did you have to wait? How did they call you in? how did they address you? (by name, nick name, amma, appa)
44. Describe the setting for us? (seating arrangement, type of hall, seats given)
45. What were the questions they asked? Did you understand the questions? Were you able to ask for clarifications? Were you able to respond to the questions?
46. Did you feel uncomfortable at any point during the discussion? Why?
47. How long was your issue discussed? Do you feel that is adequate? Why?

48. In general, did you feel that they listened to your side of the story?
49. Do you feel that the discussion was deep enough or was it superficial? Were there other things that you felt needed to be discussed but did not get a chance to discuss? What are the reasons?
50. Was the other party present? What did they say? Were there any tense moments during the discussion? How did the LMB member react during this moment?
51. At any point did you feel that they were biased? Why?
52. How was the discussion documented? Who did it? Were you asked to write anything during the discussion or afterwards? Were you able to write? Did anyone help?
53. How did each sitting conclude?

Outcome

54. What was the final outcome?
55. Are you happy with the outcome (settlement or non-settlement or withdrawal)? Why? If not, why are you not satisfied? (Is it biased? Is it not practical/feasible to implement? You don't agree with it?)
56. How satisfied are you with the technical advice received? Was it helpful in the process?
57. Did your perception or expectations about LMB change after going through the process?
58. Do you have a settlement/non-settlement certificate?
59. In general, did you feel that you are/were treated well? (impartial, informed, respect) why?
60. In what state is the dispute at?
61. Would you go to LMB to resolve any other land disputes in the future? Why?
62. Would you recommend others to approach LMB to resolve land disputes?
63. If not resolved yet,
64. Why is it not resolved? What are the obstacles or challenges?
65. How do you think it can be resolved?
66. How would you compare your experience of the LMBs with your experience with other dispute resolution mechanisms such as the Police, Divisional Secretariats, religious leaders, GS or the Courts?
67. What was similar and what was different?