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Best Practices on Women and Access to Land: Case Study on Sri Lanka

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* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

I. Introduction

The issue of access to land remains critical in Sri Lanka. The civil war that ravaged the country for the past thirty years ended in May 2009. More than 300,000 were internally displaced. The process of resettlement is being carried out by the State. Guaranteeing access to land rights for women is important within this context. The state is allocating new land to those who are being relocated to new areas, while those who were in possession and ownership of lands are reclaiming them. The rights of those who were illegal occupiers or in secondary occupation also need to be balanced with those who are returning to reclaim their lands.

The struggle for control of land in the North East of the country drove the conflict.² According to the government, over 40 percent of the 'High Security Zones' set up during the conflict have been dismantled and those displaced from those areas are free to return. The multi ethnic communities that live in the East have major issues such as the fear of colonization, corruption and control of land mass and these fears need to be addressed. The Involuntary Resettlement Policy of the government has not been implemented, although it was an opportunity to have a transparent visible process of resettlement. The government must seize the opportunity the end of the conflict has thrown up to solve some of the pressing land issues that have surfaced. A circular on land disputes arising in the North and East will only fuel the fire if implemented.³ The circular seeks to temporarily suspend land alienation in the North and East unless it is for the purposes of national security or for the development of special projects of the state.⁴ This kind of instruction will only serve to disenchant the persons affected.⁵

Women are disproportionately affected by the conflict. It has seen an increase in the percentage of women who assume responsibilities within the home due to the disappearance, death, disability or migration for employment of their spouses. Recent studies indicate that the numbers of women headed households have increased in the Northern and Eastern Provinces due to the impact of the war.

Issues surrounding land continue to frustrate. There is no gender disaggregated data kept by the Land Commissioner General on land or house ownership and this is a glaring gap which needs rectification. Many research studies have revealed that a high percentage of both men and women are of the opinion that women and men should have equal rights over land.⁶ This opinion is shared by a cross section of women from different ethnicities. Yet this is not the case and the government continues to grant single ownership of state land when allocating land. Sri

² 'Extinguishing Fear: The Challenge of Land Policy in Eastern Sri Lanka', Mario Gomez, Centre on Housing Rights and Evictions (COHRE), 2011.

³ Land Commissioner General (Circular No. 2011/04/ of 22nd July 2011) on "Regulating the Activities Regarding Management of Lands in the Northern and Eastern Provinces".

⁴ FRIDAY FORUM Position Paper / Discussion Draft for Public Debate, 24th October 2011

⁵ The circular was challenged in the Court of Appeal which issued a stay order on the operation of the circular.

⁶ "Is Land Just for Men? Critiquing Discriminatory Laws, Regulations and Administrative Practices relating to Land and Property Rights of Women in Sri Lanka", Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne (eds), Law & Society Trust, 2010; *Post Tsunami: Women and Their Right to Own Property: Report of 100 Case Studies from the Southern and Eastern Provinces of Sri Lanka*, COHRE, Sri Lanka; *Gender Perspectives on Tsunami Reconstruction in Sri Lanka*, National Committee on Women, Colombo, 2006, cited in **Land and Property Rights of Women: Discriminatory Laws, Regulations and Administrative Practices**, Law & Society Trust, December 2009.

Lanka has a multi ethnic population which is governed by different personal laws as well as the general law. The different inheritance, marriage and divorce laws bestow women with different rights over property which makes application of the law complex.

This paper examines best practices and innovative initiatives with regard to women's land rights. It will be divided into three parts. The first will look at how rights are understood at different levels and the importance of having access to information is, in order to have this understanding. The second will look at how rights can be claimed through mobilization of different actors; civil society, international organizations and women at grassroots level. The third part will focus on how rights can be guaranteed through the implementation of laws, policies and other administrative instruments. In conclusion, the paper will look at challenges in securing women's access to land.

II. Best Practices and Innovative Initiatives

1. Access to Information on Land Rights

(i) *Working with Men*

Working with male government officials at local level to raise awareness levels on land rights proved to be a useful exercise. Male officials were amenable to the concept of joint ownership although they had reservations about eliminating the head of the household terminology in forms generated by the State. As the majority of government officials working at ground level are male, it is important to ensure that they are amenable to such changes. The rural community deals on a day to day basis with these officials and it is important that they are sensitive to gender related issues of land allocation and titling.

(ii) *Fact Finding Missions*

Fact finding missions are a useful method to gather specific information. COHRE conducted a fact finding mission to look into the land issues of women working in the tea plantation sector. COHRE met with tea plantation women workers, officials from government ministries and departments and representatives of plantation companies to gather information and to ascertain the housing situation of women tea plantation workers. COHRE also conducted a fact finding mission to Galle in the south of the country, an area that was ravaged by the tsunami of 2004. The mission was an attempt to understand what relief has been secured by women affected by the tsunami as regards their housing and land titles. The women who participated in these discussions were interested in finding out the purpose of these missions and also interested in the idea of calling for joint titling of state land. Such fact finding has the added benefit of creating awareness on land rights among the respondents. A study on women and urbanization also collected data from urban slum settlements in Colombo on the reasons they migrate into the city.

(iii) *Engaging with the Media*

The television has become an important medium to disseminate information and to create awareness on rights issues. Chat shows, discussions, and programmes aired on significant days celebrated nationally (for example, International Day on the Elimination of Violence against Women, International Women's Day) have dealt with the land rights of women. These programmes reach out to rural and urban communities and also to policy makers and inform the general public about these issues. Television has a wide reach and rural and urban communities watch the many discussions aired on television.

(iv) *Collection of Signatures for Advocacy Purposes*

COHRE set about collecting signatures of women leaders and local level government officials on abolition of the head of the household concept and calling for joint ownership of state allocated land. This was undertaken during workshops held in different parts of the country with women leaders and government officials. The objective for collecting these signatures was to have an evidence base that could be used for advocacy with the state.

(v) *Evidence Based Advocacy*

Several meetings have been held with government departments and government ministries on JO and HOH. These government entities ask for evidence to show that women have been discriminated against as a result of the state giving single ownership of state land. Case studies of women who have been discriminated against by not having ownership of state land was collected as an evidence base to counter the argument that women have not suffered discrimination as a result of single ownership of title being given mostly to males who are considered the head of the household. The collection of case studies is also useful in advocacy with high level policy makers.

(vi) *Awareness of Land Rights through Street Drama and Short Plays*

Several scripts were developed on women and their land rights. The head of the household concept, joint ownership of property, domestic violence, and discrimination against women were some of the issues raised in the playlets. One playlet looked at issues of discrimination against women belonging to different communities, which arose after the tsunami. Another script was developed as a street drama and acted out in the street in an urban slum settlement where audience participation was encouraged. Awareness raising through the medium of theatre and street drama is an effective, enjoyable way of gathering knowledge of one's rights.

(vii) *Other Awareness Raising Initiatives*

The publication and dissemination of issue or briefing papers proved an effective method of creating awareness on particular land related issues. Briefing papers provide a summary of an issue that is in user friendly language and succinct. These briefing papers are disseminated among civil society organizations, policy makers and international organizations. Similarly, research publications can also be disseminated widely among policy makers and also can be used for advocacy purposes.

2. Mobilization Initiatives

(i) Formation of a lobby group on Joint ownership and Head of the Household

A Lobby Group was formed in 2009 by the Centre on Housing Rights and Evictions (COHRE), an INGO base in Colombo, consisting of two INGOs, a grassroots network, two women's organizations and COHRE. The lobby group consisted of CARE, Women & Media Collective (a women's organization working in Colombo), Oxfam, Muslim Women's Research and Action Forum (a women's organization working on the rights of Muslim women based in Colombo), Praja Abhilaasha, a grassroots network working on rights issues and the plantation sector was represented by the Estate Community Development Mission (ECDM) coordinated by a member of the Christian clergy.

The objective of forming the lobby group was to advocate for the introduction of joint ownership in the allocation of State land and to also lobby for the elimination of the head of the household concept in state land allocation. The lobbying took different forms. Whenever workshops and discussions were held by COHRE, the lobby group members attended and participated in the discussions and urged participants to urge the state to grant joint ownership of state land. The lobby group functioned as a collective force in pushing for administrative and legal reform.

Another important task of the Lobby Group was to support and endorse the Shadow Report on land prepared by COHRE. A shadow report submitted by an international organization which is endorsed by other international and civil society organizations and networks would lend more credibility and legitimacy to the shadow report. The shadow report was referred to by the CEDAW experts during the review of the Sri Lanka report and its impact can be assessed by fact that reference was made to the issues dealt with in the shadow report in the Concluding Observations of the CEDAW Committee.

(ii) Writing and Submission of a Shadow Report to 48th Session of CEDAW in January 2011 during review of Sri Lanka State Report

The Sri Lanka State Report was due to be reviewed in January 2011 at the 48th Session in Geneva. In early 2010, the Women's Housing Rights Programme at COHRE decided to initiate a process to submit a Shadow Report on the granting of joint ownership of state land and on the elimination of the head of the household concept. A shadow report submitted by one organization to CEDAW would not be as persuasive as one that is submitted after a collaborative effort. COHRE called upon the lobby group to support and endorse the report. This was considered a useful process as the report would be more credible and would carry more weight if it had the support of many organizations. COHRE along with CARE and Oxfam, two women's organizations and two grassroots networks signed onto the report. The lobby group was kept informed of the writing of the report. Several meetings were held with the lobby group and the writing of the report was based on a consultative process. The information for the report was gathered through desk research, workshops with women leaders who were from grassroots level, legal research and was also based on the work that COHRE had been carrying out on joint ownership and head of the household concept for several years.

(iii) Collaboration on Press Campaign

Newspaper advertisements were placed in March 2012 to celebrate International Women's Day (IWD). It was a collaborative process where sixteen organizations signed onto the advertisement which appeared in ten newspapers in three languages. The organizations included those from civil society, the INGOs and women's organizations. The collaboration itself was useful to create awareness among the organizations involved on the issues that were raised in the advertisement. Over five organizations contributed to and sponsored the advertisements appearing in different newspapers. The collaboration of many organizations working on various human rights issues, calling for joint ownership of state land and the elimination of the head of the household in one call also lent credibility to the campaign and it also assisted in getting maximum publicity. It was also another means of creating awareness on the land rights of women.

(iv) Presence at CEDAW Committee Meeting to Review State Report

COHRE sent its Senior Programme Officer (SPO) to attend the CEDAW meeting in Geneva. The presence of the SPO was strategic, in that she was able to lobby the CEDAW Committee members personally on the issues raised in the shadow report. The opportunity to interact, chat and persuade the CEDAW experts to question the state delegation and to take heed of the issues in the shadow report is an effective manner in which to raise such matters at international level. The presence of the SPO was critical to the process of lobbying with the Committee and went a step further than the mere submission of a shadow report. This initiative underscores the importance of lobbying effectively at international level.

(v) Incorporation of Land Related Issues into Other Related Programmes

A civil society organization FOKUS Women has recently commenced a programme working with nine partner organizations working on women and governance and gender equality. The programme is being implemented in the northern and eastern areas of the country that were most affected by the conflict. Land rights have become a pressing issue in the post conflict period with many thousands displaced wanting to return to their original lands. A few of the partner organizations have a component on land rights of women and will look at issues of ownership possession and other issues that have surfaced as a result of the conflict. This is an innovative yet indirect method of ensuring that the land rights of women are guaranteed. This initiative will also promote the building of women's networks and collaborative alliances to work on post conflict land concerns of women.

(vi) One on One Meetings with Government Officials

Several meetings with Ministries were held over the past four years. COHRE met with the Secretaries to the Ministries of Justice, Lands, Plantation Industries, Women's Empowerment, Resettlement, Public Administration and Nation Building. COHRE also met with the then Minister of Human Rights and Disaster Management and gained strong support for joint ownership of state land and elimination of head of the household concept. These one on one meetings were held to brief these Ministries and to enlist their support in working towards the

objective of granting state land in joint ownership of title and also on the elimination of the head of the household concept. These strategic one on one meetings were effective to persuade these government officials on particular land issues of women.

3. Guaranteeing Rights and the Implementation of Laws and Policies

(i) Legal Opinion from the Attorney General

The request for a legal opinion from the AG to clarify the position as regards joint ownership was resorted to by COHRE. In the case of joint ownership of state land, the questions posed to organizations working on joint ownership of land by state entities was whether the current legal framework allowed for joint ownership of state land to be allocated. Having a legal opinion to this effect from the Attorney General was a critical move as it lent credibility and legality to the advocacy that was carried out. It also was a useful tool that is and was used to legitimize the call for joint ownership of titles in state land allocations as the legal opinion was disseminated at every workshop, discussion and training programmes held for civil society, donors, INGOs, government officials and grassroots women leaders.

(ii) Financial Aid for Reconstruction of Damaged Housing

The North East Housing Reconstruction Programme (NEHRP) project gave financial aid to reconstruct houses damaged by the war. An assessment is carried out to identify whether the houses are fully damaged or partly damaged. The houses that qualify to be reconstructed are chosen on the basis of the highest marks accrued based on a marking scheme. The application form for financial aid needs to be signed by both spouses and financial aid was deposited to a joint account maintained by both the husband and wife. Priority was also given to a female head of the household in the application process.

(iii) Passing of Regulations under Housing Law on Joint Applications for Loans

The passing of regulations under a law is a more expeditious method to change certain administrative practices and are easier to get passed and into operation than amendments to the laws. A former female Minister of Housing passed regulations under a law that provided for loans to be given for the purposes of purchasing land or housing or other forms of accommodation.⁷ The said 2008 Regulations stipulated that the Housing Authority in charge of providing loans would give preference to applications made jointly by husband and wife, a widow, a wife who is divorced or who is legally separated from her husband.

This Regulation introduced an incentive to make joint applications for loans for land and housing. It also was a form of affirmative action in terms of giving preference to women who file applications. This Regulation was passed due to the initiative of the then Minister of Housing, a woman who wanted to ensure equality in housing allocations.

⁷ National Housing Development Authority Act No. 17 of 1979.

III. An Assessment of Land Reform relating to Women: Challenges

- Lack of interest by the state to push through legal reform on issues generally concerning women. Eg. The Land Development Ordinance. Till now, there has been no concerted effort to push through amendment in Parliament. Another example is the National Commission on Women Bill which has been in the pipeline for over 6 to 8 years. Recently the Bill was rejected by Cabinet and was withdrawn.
- Unless the state is to benefit, the state machinery will turn slowly. Eg. land acquisition laws or even laws on prescription after the tsunami. There was a need to clarify the position as regards prescription of land in cases of secondary occupation. Currently an amendment or a new law on prescription is being considered.
- No land or housing policy in place.
- Reluctance by the state to make inroads into personal laws that impinge on the land rights of women governed by these personal laws. The argument being that these groups need to be allowed to retain their personal laws and to be governed by the law that applies to their community or group without interference.
- Lack of information on resettlement and on how it is being carried out.
- Land Commissioner reluctant to change administrative practices.
- State is hostile or unsupportive of women's concerns generally.