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FOKUS WOMEN

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1. Anuradhapura District Women's Network
2. Association of War Affected Women
3. Puttalam Women's Society
4. Viluthu, Centre for Human Resource Development
5. Women Action Network for Transformation

Submitting Organization

FOKUS WOMEN is the Sri Lanka Country Office of FOKUS Oslo. FOKUS, Forum for Women and Development is a knowledge and resource center for international women's issues with an emphasis on the spreading of information and women-centered development cooperation. FOKUS' primary goal is to contribute to the improvement of women's social, economic, and political situation internationally.

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1. Preface

- 1.1. The Vienna Declaration and Programme of Action (1993) frames human rights as universal, indivisible, interdependent and interrelated.¹ The Declaration, for the first time, conceptualised socio-economic rights and civil liberties as intrinsically linked. In this context, the rights to equality and non-discrimination—often characterised as civil and political rights—are now acknowledged as fundamental to the protection and promotion of *all* rights, including socio-economic rights.
- 1.2. Rights relating to land and livelihoods are usually considered ‘socio-economic’ in nature.² Yet laws and practices relating to land and livelihoods fall within the scope of the International Covenant on Civil and Political Rights (‘the Covenant’) if they directly result in or permit inequality or discrimination.
- 1.3. This Shadow Report focuses on laws and practices in Sri Lanka that either result in inequality between men and women or discriminate on the grounds of sex. The scope of the Report is limited to **land and livelihood issues faced by women in the post-war context, with a focus on women headed households**. The Northern and Eastern Provinces of Sri Lanka remain the geographic focus of the Report. Some examples from ‘border villages’ located in the North Central Province are also cited.³ The Report, therefore aims to provide the United Nations Human Rights Committee (‘the Committee’) with information on the violations of Article 16 (read with Article 3), and Article 26 of the Covenant.

2. Background

Socio-economic Context

- 2.1. In the aftermath of a protracted thirty-year war, women in Sri Lanka have emerged as primary caregivers and income-earners within their households. They often become heads of their households due to the death, disappearance, detention or disability of their spouses. The number of women-headed households in the country rose during this period.⁴ According to the Ministry of Child Development and Women’s Affairs, there are 59,501 women-headed households in the North and East—42,565 in the Eastern Province and 16,936 in the Northern

¹ UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, para.5.

² See Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) U.N. Doc. E/C.12/GC/20 (2009).

³ The term ‘Border Villages’ was used during the war to describe villages located close to the borders of the Northern and Eastern Provinces that were affected by the war.

⁴ See Department of Census and Statistics on women-headed households in 2001, 2006/2007 and 2009/2010 respectively. The national average (excluding parts of the North and East) rose from 20.1% to 23.3%.

Province.⁵ However, unofficial estimates indicate a much larger number, with some independent estimates suggesting more than 40,000 women-headed households in the Northern Province alone.⁶

- 2.2. Traditional land ownership in the North and East is gendered. On the one hand, ownership over houses and homesteads usually devolve on women as part of their dowry.⁷ The practice often secures a woman's housing rights in the event of her spouse's death. On the other hand, ownership over productive land, such as paddy land, usually devolves on men.⁸ This practice adversely affects a woman's livelihood prospects in the event of her spouse's death, as she often has no access to cultivable land. Stereotypical gender roles, in terms of women being caregivers within the household and men earning income through cultivation, significantly influence land ownership in the North and East.
- 2.3. As pointed out in the Shadow Report submitted by the Centre for Housing Rights and Evictions (COHRE) to the United Nations Committee on the Elimination of All Forms of Discrimination against Women during its 48th Session, '[t]he high percentages of women headed households in the rural and other areas of the country means that these women require state given land in their names if they are to increase their livelihood opportunities and take over the responsibilities within the home.'⁹ In this context, securing equal rights to land and sustainable livelihoods is crucial for women and their families—particularly in a post-war setting, where women are compelled to perform dual roles as caregivers and income earners.
- 2.4. Several other problems pertaining to land and livelihoods have emerged in the post-war context. State occupation and acquisition of land for military purposes, the absence or loss of documentation and the lack of access to officials remain some of the most pressing issues faced by women in the North and East.¹⁰ Their dual roles as caregivers and income earners often prevent women from learning about land procedures (e.g. how to report loss of documentation) and accessing land administration officials. According to the Anuradhapura District Women's Network, these vulnerabilities extend to women-headed households in border villages located in the North Central Province.¹¹ Meanwhile, institutional structures currently in place, such as

⁵ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (November 2011), para.5.103, citing a report dated 21 September 2011 received from the Ministry of Child Development and Women's Affairs.

⁶ R. Vasudevan, *Everyday Resistance: Female Headed Households in Northern Sri Lanka*, Graduate Institute Publications (2013), <http://books.openedition.org/iheid/680>, at para.2. Also see Centre for Housing Rights and Evictions, Shadow Report to the United Nations Committee on the Elimination of Discrimination against Women – Sri Lanka, 48th Session, 17 January – 4 February 2011 ('CEDAW Shadow Report').

⁷ Interview with Viluthu, Centre for Human Resource Development on 25 July 2014.

⁸ *Ibid.*

⁹ CEDAW Shadow Report, p.5.

¹⁰ See Verité Research, *Supporting Land Tenure Awareness: Lessons and Significance for Way Forward* (July 2014). These observations were also confirmed in interviews with an organization working in the North and East and Women Action Network for Transformation on 6 August 2014. According to a case study by an organization working in the North and East in Kepapulavu, Mullaitivu District, military occupation of private lands had caused protracted displacement. Many of the displaced families (including women headed households) faced additional challenges such as loss of documentation, which limited their ability to return to their land.

¹¹ Interview with Anuradhapura District Women's Network on 18 June 2014.

the mechanism to identify land-related problems under the Land Circular No. 2013/01, fail to offer solutions to particular challenges and vulnerabilities faced by women-headed households.¹²

Legal Context

- 2.5. Article 12 of the Constitution of Sri Lanka (1978) guarantees both the right to equality and non-discrimination. However, the framework under Article 12 is subsequently restricted by Article 16, which provides that '[a]ll existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.' Therefore, laws that came into existence before the promulgation of the Constitution in 1978 continue to apply regardless of any inconsistency with Article 12. Existing written laws of this nature, such as the Land Development Ordinance, No. 19 of 1935 (LDO), are discussed in subsequent sections of this Report.
- 2.6. The Sri Lankan legal system also includes indigenous personal laws i.e. *Tesawalamai*, Kandyan Law and Muslim Law, which apply to certain communities based on their region, ethnicity and religion.¹³ The *Tesawalamai*, for instance, applies generally to Tamils resident in the Northern Province of Sri Lanka. These personal laws were later codified in statutes, which occasionally deviated from the original substance of the personal laws. For example, the Jaffna Matrimonial Rights and Inheritance Ordinance, No. 1 of 1911 (JMPIO) attempted to codify the *Tesawalamai*. Yet the Ordinance obscured some of the original content and introduced certain new concepts, such as the idea that a husband is the 'irremovable attorney of his wife'.¹⁴ Such laws continue to apply regardless of any inconsistency with Article 12 of the Constitution.

3. Article 16 read with Article 3

- 3.1. Article 16 of the Covenant states: 'Everyone shall have the right to recognition everywhere as a person before the law.' Article 3 stipulates that states parties 'undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.' Thus Sri Lanka has an obligation to ensure the equal right of men and women to be recognised everywhere as a person before the law.

¹² See Land Circular No.2013/01 dated January 2013 and titled 'Accelerated Programme on Solving Post Conflict State Lands Issues in the Northern and Eastern Provinces' issued by the Land Commissioner General's Department. Under the Circular, problems are identified through meetings held at the divisional level. Women who play dual roles as caregivers and income earners are often unable to attend these meetings. It is unclear as to whether 'Mobile Service Programmes' contemplated under the Circular could be used to gather information directly from vulnerable groups unable to attend meetings at the divisional level.

¹³ Kishali Pinto Jayawardena & Jayantha de Almeida Gunaratne (eds.), *Is Land Just for Men? Critiquing Discriminatory Laws, Regulations and Administrative Practices relating to Land and Property Rights of Women in Sri Lanka*, Law & Society Trust (2010) ('Is Land Just for Men?'), p.15.

¹⁴ *Ibid.* at 16. The authors cite *Sangarapillai v. Devaraja Mudaliyar* (1936) 38 NLR 1 at p.7. Also see H.W. Tambiah, *The Laws and Customs of the Tamils of Jaffna* (Revised Edition) (2000).

- 3.2. In General Comment 28, the Committee observed that the right contained in Article 16 of the Covenant is ‘particularly pertinent to women, who often see it curtailed by reason of sex or marital status.’ The Committee observed that this right ‘implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground.’¹⁵
- 3.3. Certain laws in Sri Lanka pertaining to the ownership and transfer of land directly impact on the capacity of women to own property and enter into contracts. The application of the JMARIO, for instance, has had ‘far reaching effects on the property and contractual rights of married women.’¹⁶
- 3.4. According to Section 6 of the JMARIO, a woman governed by the law is required to obtain the written consent of her husband to sell her immovable property. According to an organization working in the North, this legal requirement is imposed on women in practice.¹⁷ Other civil society organisations, including an organization working in the North and East, also observe that this disability is particularly damaging to women’s property rights in a post-war setting, as their husbands are often deceased, detained or missing. In such circumstances, these women cannot transact on their personal property unless they obtain the permission of a District Court under Section 8 of the Ordinance.¹⁸
- 3.5. The law applicable to women residing in the Northern Province of Sri Lanka curtails their right to dispose of their immovable property. The law therefore curtails their capacity to enter into contracts with regard to land they own. The Committee has observed in General Comment No.28 that Article 16 of the Covenant implies the capacity to enter into contracts regardless of marital status. In this context, the current law applicable to women in the Northern Province is inconsistent with Article 16 of the Covenant read with Article 3.

4. Article 26

- 4.1. Article 26 of the Covenant states: ‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ This Article therefore prohibits

¹⁵ United Nations Human Rights Committee, General Comment No. 28 – Article 3 (The equality of rights between men and women), HRI/GEN/1/Rev.9 (Vol. I) (‘General Comment No. 28’), para.19.

¹⁶ Is Land Just for Men?, p.16. The authors cite *Ibrahim v. Anamma* [1982] 2 Sri.L.R. 633, where the Court of Appeal refused to accept the right of married woman governed by *Tesawalamai* to sue in contract without joining her husband.

¹⁷ Interview with an organization working in the North on 6 August 2014.

¹⁸ Section 8 of the JMARIO provides that, in certain exceptional circumstances, a woman could apply to the District Court to obtain an order authorising her to dispose of her immovable property without her husband’s consent. Where the husband’s whereabouts are unknown, the District Court could issue a Presumption of Death Certificate, which enables the woman to dispose of her property.

discrimination on the ground of sex, and places an obligation on states parties to guarantee effective protection against such discrimination.

Laws

Requirement of Written Consent to Dispose of Land

- 4.2. The preceding section sets out in detail the manner in which the personal law (as stated in the JMARIO) applicable to persons residing in the Northern Province of Sri Lanka directly discriminates against women. In addition to being inconsistent with Article 16 of the Covenant, the JMARIO is also inconsistent with Article 26, as it discriminates on the grounds of sex.
- 4.3. The requirement for a woman to obtain the written consent of her husband to dispose of her immovable property is not likewise imposed on a man (i.e. to obtain the consent of his wife prior to disposing his immovable property). This requirement therefore amounts to discrimination on the grounds of sex.
- 4.4. In its Concluding Observations on Sri Lanka in 2003, the Committee expressed concern about 'the contradiction between constitutional guarantees of fundamental rights and the continuing existence of certain aspects of personal laws discriminating against women, in regard to...devolution of property.'¹⁹ The Committee accordingly recommended that Sri Lanka 'complete the ongoing process of legislative review and reform of all discriminatory laws, so as to bring them into conformity with Articles 3... and 26 of the Covenant.'²⁰

Inequality and Discrimination in Alienating State Land

- 4.5. Several laws fail to ensure equality between men and women in terms of their rights to succeed to state land permits and grants. These laws also discriminate on the grounds of sex. The LDO authorises the state to alienate state land by issuing permits and grants. Sections 48A, 48B and 72 of the LDO deal with succession to land previously held by a permit-holder or grantee. Where a successor has not been named by the permit-holder or grantee, and where there is no surviving spouse,²¹ succession is determined according to Rule 1 of the Third Schedule to the LDO. Under this scheme, men are given preference over women.²²

¹⁹ UN Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee – Sri Lanka, 1 December 2003, CCPR/CO/79/LKA, para.19.

²⁰ *Ibid.*

²¹ Under the LDO, unless a surviving spouse is nominated by the original permit-holder or grantee, her interest in the property would be equivalent to 'life interest'. She cannot nominate a successor. Hence, upon her death, succession would devolve according to the Third Schedule.

²² The order of succession according to the Schedule is: (1) sons, (2) daughters, (3) grandsons, (4) grand-daughters, (5) father, (6) mother, (7) brothers, (8) sisters, (9) uncles, (10) aunts, (11) nephews, and (12) nieces. The Law Commission of Sri Lanka recommended that this order of succession be amended as follows: (1) Sons or Daughters, (2) Grandsons or Granddaughters, (3) Father or Mother, (4) Brothers or Sisters, (5) Uncles or Aunts, and (6) Nephews or Nieces, with preference given to age. See Jayantha de Almeida Gunaratne, 'Path to Law Reform- The Law Commission as a Statutory Institution', *The Law Commission of Sri Lanka, Commemorative Journal 2003*, pp.37-38.

- 4.6. The Land Grants (Special Provisions) Act, No. 43 of 1979²³ (LGA) also authorises the state to alienate state land through grants. Section 10 of the Act provides that the land would devolve to the surviving spouse if a grantee does not name a successor. The order of succession once again gives preference to men over women when there is no surviving spouse.²⁴
- 4.7. Given the post-war context, women in the North and East (whose husbands are deceased, detained or missing) have limited opportunities in terms of income generation and often rely on access to state land to develop sustainable livelihoods. These vulnerabilities also extend to women in border villages located in the North Central Province.²⁵ Therefore, any form of discrimination against women in terms of access to state land has a particularly adverse effect on women-headed households affected by the war.
- 4.8. In 2010, the Government of Sri Lanka made a commitment to amend provisions in the LDO that discriminate against women.²⁶ This commitment was re-stated in 2011 in the National Action Plan for the Protection and Promotion of Human Rights (NAPHR). Under the NAPHR, the Ministry of Lands and Land Development was tasked with ensuring that the LDO is appropriately amended within six months of publishing the Plan.²⁷ Meanwhile, in November 2011, the Lessons Learnt and Reconciliation Commission recognised that the concerns of women-headed households was ‘a major post conflict challenge that needs to be addressed as a matter of priority.’²⁸ However, the government is yet to amend the Third Schedule to the LDO.
- 4.9. Both the LDO and LGA give preference to men over women. These laws remain inconsistent with Article 26 of the Covenant, as they fail to guarantee equality of all persons before the law, and discriminate on the grounds of sex.

Wage Disparity

- 4.10. The Committee, in General Comment No.28, states: ‘The right to equality before the law and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and *private agencies* in all fields’ (emphasis added).²⁹ In this regard, the

²³ The Land Grants (Special Provisions) Act, No. 43 of 1979 (LGA) was passed after the promulgation of the Constitution of 1978. Hence, unlike the LDO, which was passed prior to the Constitution of 1978, the LGA does not receive the ‘protection’ of Article 16 of the Constitution. However, the Constitution does not provide for post-enactment judicial review of legislation. Therefore, the LGA cannot be challenged before the Supreme Court and requires an amending Act of Parliament to become consistent with the equality and non-discrimination provisions in Article 12.

²⁴ The order of succession is: (1) sons, (2) daughters, (3) grandsons, (4) grand-daughters, (5) father, (6) mother, (7) brothers, (8) sisters, (9) uncles, (10) aunts, (11) nephews, and (12) nieces.

²⁵ Interview with Anuradhapura District Women’s Network on 18 June 2014.

²⁶ See Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined fifth, sixth and seventh periodic reports of States parties – Sri Lanka, 24 March 2010, CEDAW/C/LKA/5-7, para.9. According to the Report, ‘[a]s at February 2009, the Land Development Ordinance (Amendment) Bill had been approved by Cabinet, presented to Parliament for enactment’ [*sic.*].

²⁷ National Action Plan for the Protection and Promotion of Human Rights (2011-2016), p.68.

²⁸ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (November 2011), para.5.111.

²⁹ General Comment No. 28, para.31.

Committee emphasises on the states parties' obligation to ensure 'equal pay for work of equal value' and to 'review...legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by prohibiting discrimination by private actors in areas such as employment.'³⁰

- 4.11. The law in Sri Lanka does not prohibit discrimination by private actors. According to Article 17 of the Constitution, constitutional guarantees against discrimination apply solely in respect of 'executive and administrative action', which is interpreted to mean action by the executive branch of government. The Sri Lankan Supreme Court has broadened the scope of 'executive and administrative action' to include entities under 'governmental control'³¹ as well as state 'agents or instrumentalities'.³² However, at present, the fundamental rights chapter of the Constitution does not bind private actors who are not in any way under the managerial control of the state. These actors cannot be legally prevented from discriminating on the grounds of sex. Hence they are free to violate the principle of 'equal pay for work of equal value' when determining wages for men and women.
- 4.12. This gap in the law adversely affects the livelihood prospects of women in Sri Lanka. Official statistics on a number of sectors, including agriculture, reveal a clear trend of paying women less than men for 'work of equal value'.³³
- 4.13. According to civil society observers, including Anuradhapura District Women's Network and Puttalam Women's Society, the daily wages paid to a female cultivator can be as low as LKR 500.00 (USD 3.84) while the daily wage paid to a male cultivator by the same proprietor for identical work can be as high as LKR 1,000.00 (USD 7.69).³⁴ These observations substantiate official data, but also indicate that the disparity can be much wider in individual cases. The same trend is observed in the construction sector for which there is no official data. According to some observers, including Viluthu, Centre for Human Resource Development and Women Action Network for Transformation, women are paid LKR 800.00 (USD 6.15) per day and men LKR 1,000.00 (USD 7.69) per day for identical work.³⁵ These trends are consistently observed in the North and East and in parts of the North Central Province.³⁶

³⁰ *Ibid.*

³¹ *Rajaratne v. Air Lanka Ltd.* [1987] 2 Sri.L.R. 128.

³² *Leo Samson v. Sri Lankan Airlines Ltd* [2001] 1 Sri.L.R. 94.

³³ See Central Bank of Sri Lanka, *Annual Report of 2013*. According to the Report, the average daily wage in the agriculture sector is LKR 833.00 (USD 6.40) for men and LKR 628.00 (USD 4.80) for women. The statistics show that the disparity is particularly high in paddy cultivation—a key livelihood activity in the North and East. In this sub-sector, the average daily wage is LKR 882.00 (USD 6.78) for men and LKR.667.00 (USD 5.13) for women. The problem is less prevalent in the North, where the average daily wages for men and women engaged in paddy cultivation are respectively LKR 983.00 (USD 7.56) and LKR 954.00 (USD 7.33). However, in the Eastern Province, the disparity is significant, with men on average paid LKR 880.00 (USD 6.76) and women just LKR.635.00 (USD 4.88).

³⁴ Interviews with Anuradhapura District Women's Network on 18 June 2014 and Puttalam Women's Society in Puttalam on 6 August 2014.

³⁵ Interviews with Viluthu, Centre for Human Resource Development on 25 July 2014, Women Action Network for Transformation on 6 August 2014 and another women's organization on 6 August 2014.

³⁶ Interviews with Viluthu, Centre for Human Resource Development on 25 July 2014, Women Action Network for Transformation on 6 August 2014 and Anuradhapura District Women's Network on 18 June 2014.

- 4.14. Women in the North and East of Sri Lanka, and in border villages in the North Central Province, face particular vulnerabilities with respect to securing sustainable livelihoods. Given the post-war context, they are often the sole income earners of their families, and rely on income generating opportunities in the agriculture and construction sectors. Wage discrimination in these sectors thus poses a serious challenge to these women and significantly diminishes their capacity to provide for their dependents.
- 4.15. The current law in Sri Lanka permits the private sector to discriminate on the grounds of sex. It therefore remains inconsistent with Article 26 of the Covenant as interpreted by the Committee in General Comment No.28.

Practices

Denial of Pre-emptive Rights of Spouses

- 4.16. The LDO ensures a pre-emptive right to the surviving spouse to a permit or grant held earlier by his or her deceased spouse.³⁷ According to Section 48A of the LDO, the spouse is afforded the statutory right to convert a land permit into a grant, where he or she is nominated by the original permit-holder as the successor. The spouse thereby becomes the owner of the land.
- 4.17. Studies have demonstrated that, in practice, state officials ignore these pre-emptive rights if the surviving spouse is a woman.³⁸ In practice, a female spouse who is nominated as a successor is treated identically to a spouse who is not nominated as a successor, in which case she does not have the option to convert a permit into a grant. Instead, she is given life interest in the land, and upon her death, the land devolves according to the order of succession mentioned in the LDO. Thus the surviving spouse, if she is a woman, is deprived of her full legal rights to succeed to state land. This practice remains inconsistent with Article 26 of the Covenant.

Denial of Joint Ownership and Discrimination in State Land Alienation

- 4.18. The State Lands Ordinance, No. 8 of 1947 (SLO) authorises the state to grant state lands to individuals for agricultural, residential, industrial and commercial purposes. The SLO is silent on the type of ownership that could be granted to applicants. In this context, the state is free to

³⁷ Sections 48A and 48B of the LDO.

³⁸ Is Land Just for Men?, p.62-64. The study uses data from a research sample of 144 female interviewees and 16 male interviewees. The research sample also includes divisional secretaries from selected districts. Clause 143 of the handbook issued by the Land Commissioner's Department in Colombo in July 1985 states: 'Surviving spouses who are not nominated as successors and those who are nominated are given only a life interest in practice.' This clause appears to be contrary to the scheme of the LDO, which differentiates between nominated spouses and spouses who are not nominated, and gives full rights to a nominated spouse. The correct position is upheld later in clause 145 of the handbook, which states: 'when issuing a 'deed of grant' in respect of permit-held land, none of the above provisions apply where the spouse has been nominated as successor by the permit-holder.' However, the study confirms that administrative officials ignore the latter clause and apply clause 143 in isolation.

grant joint ownership to spouses,³⁹ which would significantly strengthen land tenure amongst women who survive their spouses. Officials have, however, been reluctant to grant joint ownership to spouses, mainly due to 'administrative convenience'.⁴⁰

4.19. Studies have confirmed the existence of bias amongst government officials tasked with alienating state land. Officials have conceded that this particular policy of male preference is used to 'give the land to males [as]...they are better equipped to handle...cultivation.'⁴¹ Studies reveal that, in practice, ownership under the SLO is granted only to the 'head of the household', who is considered to be the husband.⁴² The practice is equally prevalent in respect of state land alienation under the LDO. Government documents also use the terms 'head of household', which in practice, is interpreted to mean the husband.⁴³ The application of the 'head of household' concept therefore has a direct impact on women's access to land. One study reveals that men were granted sole ownership over land distributed in the Eastern Province following the Tsunami.⁴⁴ Despite the fact that women owned the original property that was lost during the Tsunami, the new land was given to their husbands, as they were recognised as 'heads of households'.⁴⁵ According to some observers, even when the head of the household is a woman, government officials are known to register the land under the name of a male occupant of the household.⁴⁶

4.20. Another example of bias is the reluctance of officials to recognise unregistered marriages between men and women despite the fact that the law recognises these marriages.⁴⁷ Widows are deprived of succession rights to state land if they are unable to provide documentary evidence of their marriage to the deceased permit-holder or grantee. In such an event, a male relative of the original permit-holder or grantee is given preference.

4.21. The reluctance of officials to grant joint ownership, and the discriminatory application of the 'head of household' concept, expose women-headed households to other prevalent types of discrimination. For example, as a result of being deprived of initial joint ownership, a surviving

³⁹ The Attorney-General's department, in a legal opinion addressed to the Secretary, Ministry of Land and Land Development, dated 28th January 2008, opined that there is no prohibition against granting co-ownership under the SLO, if it is the policy of the state.

⁴⁰ CEDAW Shadow Report, p.12, citing COHRE, Gender Sensitive Guidelines on Implementing the Tsunami Housing Policy, July 2006, p.1.

⁴¹ Is Land Just for Men?, p.80. Also see CEDAW Shadow Report, p.15 citing Leelangi Wanasundera, *Rural Women in Sri Lanka's Post- Conflict Rural Economy*, Centre for Women's Research (CENWOR), 2006, p.25.

⁴² CEDAW Shadow Report, p.10.

⁴³ *Ibid.* p.18. The NAPHR specifically recommends abolishing the application of the 'head of household' concept and the allocation of state land based on joint ownership. However, these recommendations are yet to be implemented. See National Action Plan for the Protection and Promotion of Human Rights (2011-2016), p.125.

⁴⁴ *Ibid.* p.8, citing a COHRE study of 100 cases in the Eastern Province.

⁴⁵ *Ibid.* 85% of women interviewed confirmed this practice.

⁴⁶ See Joint Submission by the Women's Action Network and Centre for Human Rights and Development at the UN Universal Periodic Review (Sri Lanka), Second Cycle, 14th Session, November 2012.

⁴⁷ Under prevailing judicial interpretation of marriage laws in Sri Lanka, an unregistered marriage may be recognised if evidence of a customary marriage is produced. See *Gracia Catherine v. Wijegunawardena* [1986] 2 Sri.L.R. 190. Courts have also recognised the presumption of marriage by habit and repute in the event of the death of one spouse, despite the unavailability of any documentary proof of the marriage. See *Dino Hamy v. Bala Hamy* (1927) 29 NLR 114.

spouse may be subsequently exposed to another discriminatory practice—the denial of pre-emptive rights. Moreover, women who are deprived of land ownership face discrimination in terms of accessing bank loans, mortgages and other forms of financial credit, as these facilities often depend on land being offered as collateral.⁴⁸ Ownership of land is also crucial for accessing state-sponsored support services, such as crop subsidies.⁴⁹ Hence the practice of denying women land ownership places them at a significant disadvantage in terms of securing sustainable livelihoods.

4.22. These practices are observed throughout Sri Lanka, and are not necessarily endemic to the North and East. However, such practices produce a particularly adverse effect on women-headed households affected by the war.⁵⁰ These women stand to benefit from joint ownership and from the pre-emptive rights afforded to spouses of deceased permit-holders and grantees. Yet official practices deny them these rights, thereby depriving them of secure land tenure. Thus the current practices in respect of the SLO and LDO discriminate against women and remain inconsistent with Article 26 of the Covenant.

5. Conclusion and Recommendations

5.1. A number of laws and practices in Sri Lanka remain inconsistent with specific Articles of the Covenant as interpreted by the Committee. These laws and practices have a specific discriminatory impact on women affected by the war, particularly in terms of their rights pertaining to land and livelihoods. The Committee is invited to take cognisance of the findings of this Report in light of their specific relevance to this vulnerable group in Sri Lanka.

5.2. Article 2(2) of the Covenant places an obligation on states parties to ‘take the necessary steps...to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the...Covenant.’

5.3. The Committee is requested to consider the following recommendations in pursuance of Sri Lanka’s obligation to ensure that all laws and practices within the country are fully consistent with the Covenant:

1. Amend the JMRIO to ensure consistency with Articles 16 (read with Article 3) and 26 of the Covenant by removing the requirement for women (currently governed by the JMRIO) to obtain the written consent of their husbands or the authority of a court of law to dispose of their immovable property.

⁴⁸ CEDAW Shadow Report, p.18.

⁴⁹ *Ibid.* citing Camena Guneratne, *Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka*, Study Series No.5, 2006, Centre for Women’s Research (CENWOR), p.80.

⁵⁰ Interviews with Viluthu, Centre for Human Resource Development on 25 July 2014, and Anuradhapura District Women’s Network on 18 June 2014.

2. Amend the Third Schedule to the LDO, and the LGA, to ensure consistency with Article 26 of the Covenant by affording men and women equal rights of succession in respect of land permits and grants.
3. Introduce legislation, in compliance with Articles 3 and 26 of the Covenant, to prohibit wage discrimination on the grounds of sex, and guarantee 'equal pay for work of equal value' to men and women in the private sector.
4. Take measures, in compliance with Articles 3 and 26 of the Covenant, to abolish the administrative practice of denying the pre-emptive right of a spouse to succeed to a state land permit or grant, and to convert a land permit to a grant, where he or she is nominated as the successor to the permit.
5. Take measures, in compliance with Articles 3 and 26 of the Covenant, to introduce (and revise) legislation and administrative practices to ensure joint or co ownership of state land alienated under the LDO, LGA and SLO. This includes ensuring joint or co ownership of state land to Muslim women being resettled in the North and East.
6. Take measures, in compliance with Articles 3 and 26 of the Covenant, to abolish the administrative practice of preferring male 'heads of households' when considering applications under the LDO, LGA and SLO.