

Shadow Report
to the United Nations Committee on the Elimination
of Discrimination against Women

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Supported by: (in alphabetical order)

- 1. CARE International**
- 2. Estate Community Development Mission**
- 3. Muslim Women's Research and Action Forum**
- 4. Oxfam Australia**
- 5. Praja Abhilaasha Network**
- 6. Women & Media Collective**

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Submitting Organization

The Centre on Housing Rights and Evictions (COHRE) is an independent, non-Governmental, non-profit human rights organization campaigning for the protection of housing rights and the prevention of forced evictions around the world. COHRE's overall objective is to promote and protect the housing rights of everyone, everywhere. To achieve this, COHRE has developed varied work programmes guided by international human rights law. COHRE work involves housing rights training and education; research and publications; monitoring, documenting and preventing forced evictions; undertaking fact-finding missions; participating and advocating within the United Nations and regional human rights bodies; and carrying out legal advocacy and providing advice to communities and organizations involved in housing rights. Further information about COHRE is available at: <http://cohre.org>. Information on COHRE's women's rights programming is available at: <http://www.cohre.org/women>.

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Supporting Organizations

Lobby Group on the Head of the Household Concept and Joint Ownership

A Lobby Group was formed in 2009 by COHRE consisting of two INGOs, a grassroots network, two women's organizations and COHRE. The lobby group consists of CARE, Women & Media Collective (a women's organization working in Colombo), Oxfam (Australia), 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 is represented by the Estate Community Development Mission (ECDM) coordinated by a member of the Christian clergy.

The objective of the lobby group is 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. The Lobby Group supports and endorses the Shadow Report compiled by COHRE.

I. Introduction

The Centre on Housing Rights and Evictions (COHRE) takes this opportunity to submit a shadow report to the combined fifth, sixth and seventh periodic report of Sri Lanka to the Committee on the Elimination of All Forms of Discrimination of Women.

This report will deal with the Articles in the CEDAW Convention pertaining to land. Although the Convention does not have a specific article guaranteeing the right to ownership of land, there are Articles which are relevant. These are Articles 1, 2, 5(a), 13(a) and (b), 14(g), 15 and 16(h). Article 14 deals specifically with the rights of rural women.

In Sri Lanka, the 1978 Constitution guarantees equality before the law to all persons and also lays down that no one shall be discriminated against on the basis of sex. In spite of these positive developments, women continue to be discriminated against in many spheres of life.

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 and over twenty one thousand remain displaced in camps.¹

(i) Impact of War on Women and Their Land Rights

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 of lands are reclaiming them. The war 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.² Women have had to bear the brunt of the war; multiple displacements due to the conflict and the tsunami of December 2004, the burden of building livelihoods and the uncertainty and insecurity of relocation to new lands.

The percentage of women headed households according to the 2006/2007 survey stands at 25.5%, 23% and 22.9% in the urban, rural and estate sectors respectively. These statistics exclude the Northern Province and the Trincomalee district in the Eastern Province.³

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.⁴ The emergence of widows as a

¹ Approximately three thousand IDPs remain in transit sites. (These numbers exclude those displaced prior to 2008 and those living with host families. Data collected by UNHCR from government sources.

² The term 'women headed households' is deliberately not used as the terminology is misleading. Women most often are given this status where their husbands are unable to take on the role.

³ Source : Department of Census and Statistics, Household and Income Expenditure Survey, 2006/2007.

⁴ Leelangi Wanasundera, *Rural Women in Sri Lanka's Post- Conflict Rural Economy*, Centre for Women's Research (CENWOR), Food and Agricultural Association (FAO), 2006, p. 2. The study indicates that widows in the North totalled 22,323 and 27,291 in the East. Jaffna had the highest number of widows. Recent statistics compiled by

result of the conflict means that these widows have to take on the role of income earners, a role they have hitherto not borne.⁵ The 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. Women headed households does not mean that they are single headed households. Where there is a male member of the family living in the same household and if he is incapacitated in any way, then too it is a woman headed household for the purposes of administrative procedures.

II. Legal and Policy Framework

The 1978 Constitution entrenches the principles of equality and non discrimination.⁶ Article 12 also contains provisions that allow for special measures to be taken to advance the rights of women. The Directive Principles of State Policy in the constitution also contain a provision on the attainment of an adequate standard of living by all citizens, including food, clothing and housing.⁷ Interestingly, the Women's Charter (1993), a policy document has a few provisions which are relevant to land issues. Section 10 states:

The State shall 'take all appropriate steps to ensure to all women and men in the formal and informal sectors of the economy, among others, equal access to ownership of and other rights to land, including land in settlement schemes and equal treatment in land and agrarian reforms'

The section continues:

'The State shall re define the term 'Head of the Household' so as to ensure that women's contribution to the household is recognized and they have equal access with men to all State development programmes, distribution of benefits and entailed responsibilities.'

The above indicates that the State places upon itself an obligation to provide equal access to ownership and other rights to land for both men and women. It also recognizes as far back as 1993, the discriminatory connotations of the term 'head of the household' and the need to re define it.

The State does not have a written land policy. If Sri Lanka is to meet its international obligations, then a land policy must be formulated in consultation with land rights groups, I/NGO sector involvement and civil society's participation.

the Centre for Women's Development based in Jaffna states that there are 26,340 widows in the Jaffna district. This information was provided by Ms. Saroja Sivachandran, Director, Centre for Women's Development.

⁵ Leelangi Wanasundera, *Rural Women in Sri Lanka's Post- Conflict Rural Economy*, Centre for Women's Research (CENWOR), Food and Agricultural Organization (FAO), 2006, p.9.

⁶ Article 12 of the 1978 Constitution.

⁷ See Article 27(2)(c). The Principles are a set of guiding principles and are not enforceable in a court of law.

The statement below is taken from the *Mahinda Chinthana: Vision for the Future 2010*, the President's Manifesto:⁸

'Formulate a legal framework to recognize women as the head of the households in instances where she shoulders the responsibility of the family. By doing so, I will eradicate the legal or administrative barriers faced by them in this regard.

I believe it is the responsibility of the government to ensure the economic development and security of all women - headed households arising due to the conflict in the North and the East, the violence from 1987-89, or any natural disasters. In order to discharge such responsibility, I will:

Introduce a special loan scheme up to a sum of Rs. 200,000/- for such families at a concessionary rate of interest to enable them to engage in appropriate income generation activities.

Provide a block of land for cultivation and residential purposes for such landless families.'

The President in his Manifesto recognizes the importance of eliminating the legal and administrative barriers facing women as heads of the household. The statement above focuses on women as heads of households after natural disaster and the conflict. The statement also makes reference to the allocating of land to landless families. There is no reference to eliminating the usage of head of the household terminology or to providing land to landless women.

III. The Violation of CEDAW Articles

The following section will deal with the relevant articles in CEDAW and the violation of women's right to land in Sri Lanka with specific reference to the concept of the head of the household. This report will deal specifically with two issues pertaining to the land rights of women in Sri Lanka: the concept of head of the household and its discriminatory impact on women with regard to land issues and the non granting of joint ownership of title in State land allocations. This section will also examine the relevant Concluding Observations of the CEDAW Committee to Sri Lanka's last report.

IV. The Head of the Household Concept

This section examines the 'head of the household' concept as it is being applied in Sri Lanka. Although the terminology is gender neutral, the manner in which public administration applies this concept in its day to day tasks has resulted in discriminating against women. The report will look at its impact with specific reference to land ownership and women, although it permeates into every area of public administration.

⁸ http://www.mahinda2010.lk/downloads/mahinda_chintana_vision_for_the_future_eng.pdf

The only existing definition to the phrase uncovered by the research is the one adopted by the Department of Census and Statistics, which defines a head of the household as *'the person who usually resides in the household and is acknowledged by the other members as the head'*. Several other conditions are stipulated in the definition.⁹

According to historians, the origin of the concept of head of the household in Sri Lanka is connected with land ownership. In Sri Lanka, one's status in society is determined *inter alia* on the basis of land ownership.¹⁰ The usage of the concept by the colonizers was an unfortunate consequence of policies being implemented without appreciation of the socio political milieu of the country. The continued use of the concept seems to have granted it social recognition and facilitated its entry into formal, legal and administrative structures of the State. The usage of this concept in documents generated by the State has become embedded in State structures. The usage of the concept is a result of administrative practice which has gone unnoticed and unquestioned for generations.¹¹

Research indicates that in many instances the usage of this concept has resulted in discrimination against women.¹² This was particularly seen in the aftermath of the tsunami where women were disintitiled to property as a consequence of the stipulation that the male 'head of the household' be authorized to sign official documentation. This is due to the

⁹Hand book for Enumerators, Census of 2001- Sri Lanka, Department of Census and Statistics, Ministry of Finance and Planning, p. 2.

1. *There should be a head of the household for every household unit.*

2. *The head of the household must normally reside in the same place in which the other members of the household unit reside. If not, he/she should not be included in the schedule and the husband/ wife of the head of the household or a another member residing in the same household who has the confidence of the other members as being able to make decisions regarding day to day activities should be included in the list as the head of the household.*

3. *The head of the household need not necessarily have an income.*

4. *Where there are more than one household in a unit, each household should have a separate head of the household.*

5. *There should be a head of the household even when the household does not have a house to reside*

¹⁰ **A Socio Legal Study on the Head of the Household in Sri Lanka**, Women and Housing Rights Programme, COHRE, 2008,p.3.

¹¹ During the reign of the Sinhalese kings, service tenures were undertaken by men and upon their demise, succession favoured the male members of the family. This system under the kings influenced the subsequent compilation of the official registers during the Portuguese and Dutch era. The unintended effect of this process of land registration was the acceptance of male members over female members in a family as 'owners' and thereby 'heads of households'. *A Socio Legal Study on the Head of the Household in Sri Lanka: A Summary*, Briefing Paper, Volume III, March 2010, Women and Housing Rights Programme, COHRE. The phrase 'head of the household' (HoH) has been used in the socio-cultural context in Sri Lanka for such a long period of time, that the same phrase or similar terminology has entrenched itself in most official documentation relating to administration and legal affairs in the country.

¹² The voter's list explicitly requires that each household identifies its head. Head of the household terminology is found in the day to day dealings with state administration, in exceptional situations such as natural disasters and in official documentation. Standards used in measuring poverty include the income of the head of the household and level of education of head of the household. The Sri Lanka Labour Force Survey requires the details of the head of the household to be stated first. See *Revisiting the Concept of the Head of the Household'*, Briefing Paper, Issue 1, August 2007, Women's Housing Rights Programme, COHRE.

preconceived notion that a male member of the household i.e. husband, father, elder son etc, must assume the role of head of the household regardless of whether and if so how it is defined by laws and administrative procedures.

The acceptance of the concept of head of the household in administrative procedures tends to relegate the status of women to a secondary position by which the male 'head of the household' is at best expected to represent the interests of the other householders and at worst expected to authorize the existence and will of the other householders. In abusive households, this situation can lead to the deprivation of many rights for women including the rights to vote, access to aid and housing, etc.

One instance where this terminology was used and women were discriminated against was after the tsunami of 2004. The State allocated new land for those that had lost property to the tsunami. The shoreline in the North and East of the country was severely affected. The Hindus and Muslims living in the Eastern Province follow the practice of conferring ownership of the parental home on the daughter upon marriage.¹³ When the State allocated new land to those who have lost land, it gave it to the person who had signed the relevant form as head of the household. Due to the perception that men are heads of the household, men signed as heads and they were given the new land in their name. The women who had owned property were not given new land. Instead, it was their brothers, fathers and husbands who had signed off as heads of households that received the newly allocated land. A study of 100 cases conducted by COHRE reveals that 85% of women state that new property was given in the name of the spouse even though property was in their names prior to the tsunami.¹⁴ **(Annexure 1)**

A study carried out in the nineties notes that women were denied access to land as state officials allocated land to male heads of household.¹⁵ This again is an example of where the usage of the head of the household concept results in women being denied access to land.

Head of the household terminology is not used in any of the laws in Sri Lanka. It is an instance where an administrative practice has precedence over the law itself and has resulted in women being discriminated against. The potential discrimination that could arise also needs to be considered. The State is currently resettling thousands of IDPs and head of the household terminology could be used in official forms to elicit information and for purposes of registration. This could result in another post tsunami type situation where women are inadvertently discriminated against.¹⁶ The possibility of the usage of this terminology in future

¹³ *Gender Sensitive Guidelines on Implementing the Tsunami Housing Policy*, COHRE, July 2006.,p.7

¹⁴ *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.

¹⁵ ¹⁵ Swarna Jayaweera and Thana Sanmugam, *Women's Rights in the Informal Sector- Mahaweli Settlements-Coir Industry'*, Colombo, Centre for Women's Research (CENWOR), Study Series No.14, 1998, cited in Camena Guneratne, *Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka*, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.29.

¹⁶ The Presidential Task Force on Northern Development is engaged in the resettlement of IDPs and information cannot be obtained on the resettlement process and on the forms that are being used for this purpose..

land allocations stemming from natural disasters and displacement also needs to be taken into consideration.¹⁷

Sri Lanka's constitutional principles of non discrimination and equality before the law is violated where only males are given recognition as heads of their households in the interactions of the family unit with the State.

The inequality of status based on gender that is implicit in the use of the concept of 'head of the household', violates Sri Lanka's international legal obligations under the Convention on the Elimination of All Forms of Discrimination against Women 1979 – particularly Articles 2, 5, 13, 15 and 16 on the state's obligation 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women' with special reference to gender stereotyping and aspects of economic and social life and marriage and family relations.

General Recommendation 21 of the Committee on the Elimination of Discrimination Against Women in 1994 urges states not to define the rights and responsibilities of married partners exclusively relying on customary law, which "often result in the husband being accorded the status of head of household and primary decision maker and therefore contravene the provisions of the Convention". Significantly, the Concluding Observations of the Committee on the Elimination of Discrimination Against Women in 2002 urged the government of Sri Lanka "to develop policies and programmes to improve the situation of women-headed households...including recognizing women headed households as equal recipients and beneficiaries of development programmes."

The usage of the head of the household terminology results in women not being treated as equal recipients of development programmes.

Concluding Observation¹⁸ [Paragraph 289] - *Strengthen measures to eliminate stereotypical attitudes about the roles and responsibilities of women and men, including awareness-raising and educational campaigns directed at both women and men of the general public and at the media. Undertake an assessment of the impact of its measures in order to identify shortcomings and to adjust and improve these measures accordingly.*

The usage of the term 'head of the household' inevitably gives rise to stereotyping of women and assigns roles for men and women within the household. The State must do away with the terminology of 'head of the household' from official documentation. This is a first step towards recognizing that both men and women assume responsibility within the home. Attitudinal

¹⁷ Where the head of the household is concept is used in policy making and programme design, the other members of the household can be sidelined. Policies will be drafted with the head of the household as the focal point. Where a woman takes on the role of the head of the household by default, she will be faced with the general assumption that it is the male that should be the head. This in itself is an obstacle to the effective realization of gender equality.

¹⁸ Concluding Observations made by the CEDAW Committee to the State Report submitted by Sri Lanka in 2002.

change among government officials who deal with land is a prerequisite to ensure that women are also considered as capable of owning land. The State must conduct awareness programmes for these officials on the above.

V. Joint or Co-ownership

The State has been giving State land to the landless peasantry for many years. As a practice, it has only given these lands in single ownership. Most often, it is the male that is given the property as he applies for the land and he is also considered the head of the household. This discriminatory practice continues in spite of the fact that the law is silent on the type of ownership that may be granted.

The State in not granting joint or co-ownership of title when it gives land to the landless violates the following Articles in CEDAW: Articles 1, 2 (a), (d), (e) (f), 5, 13 (a), (b), 14 (2) (g), 15 (2) and 16 (1) (h).

Article 13

Article 13 is directly relevant in relation to land ownership. The elimination of discrimination to guarantee the same rights to bank loans, mortgages and other forms of financial credit for women can be realized only if women own property which they can use as collateral in their dealings with banks and other financial institutions. If women do not own land, they cannot access bank loans, mortgages and other forms of financial credit from banks.¹⁹ A research study concludes that *'some women believe that if the registration of land was in the husband's name, it is easier to obtain loans and that the loan amount would be higher. This impression is confirmed by Bank officials who state that most loans are given in the husband's name on comparison of incomes.'*²⁰ Research reveals that women are not given equal access to state allocated land.²¹ In the Mahaweli area, it was revealed that 20% of land was owned by women in the old villages, while land in the newly settled villages is almost entirely owned by men.²² Equal access to land for women also means that proactive measures to assist and enable women to make use of the land must be put in place.²³

¹⁹ This was revealed at a discussion between UN agencies and the Ceylon Chamber of Commerce held at the United Nations in Colombo, Sri Lanka in August 2010.

²⁰ Women's Access to Land Ownership and Property in Batticaloa, Jaffna and the Vanni, Centre for Policy Alternatives, 2005, cited in **Land and Property Rights of Women: Discriminatory Laws, Regulations and Administrative Practices**, Law & Society Trust, December 2009, p. 9.

²¹ See below the section on the Land Development Ordinance where the law discriminates against women in the succession to land. See generally Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo

²² Swarna Jayaweera and Thana Sanmugam, *Women's Rights in the Informal Sector- Mahaweli Settlements-Coir Industry'*, Colombo, Centre for Women's Research (CENWOR), Study Series No.14, 1998, cited in Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.76.

²³ Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.76.

Ownership of land would give women more visibility in the agricultural process and in public life. In addition, ownership of land would give them access to various state sponsored support services. For example, crop subsidies and other forms of agriculture related assistance.²⁴ More importantly, women would have the ability to participate in decision making processes in the community. The community would respect and value the contribution of a woman if she was a land owner. Giving joint title to women would ensure that the state bureaucracy also includes women when taking policy decisions that affect their lives. *'This means that the affairs of the property can be handled by both the husband and wife'* and *'through Joint property rights family members will have an equal share in the property; misuse of the property can be prevented, and gender equality will be preserved'* is what a woman in the plantation sector stated when asked if joint ownership of state allocated land is feasible.²⁵ *'If we are not given the joint ownership of Property, then the government will discriminate people'* and *'as we know the benefit of ownership of property, we demand for Joint Ownership'* is the call from landless women in the plantation sector.²⁶

The relevant discriminatory laws that violate the above Articles are discussed in the following section. This report will deal with the two main land laws, notwithstanding that there are other laws governing land on the issues raised below.

VI. Relevant Land Laws

The alienation of State land has been practiced for decades in Sri Lanka. The Land Development Ordinance No. 19 of 1935 and the State Lands Ordinance No. 8 of 1947 are the two main laws regulating the alienation of State land in Sri Lanka. Both these laws apply only to State land. Such land is held by the State in trust for the public. This trusteeship concept can be traced back to the ancient Sri Lankan land tenure system, where the king was called the "lord of the earth".²⁷ The objective of alienating Crown or State land to the peasantry was to ensure that they remained as landowners of small extents of land.²⁸ The Land Commissioner's Department formulates national policy on the use of State land.²⁹ The implementation of both these laws is also vested with the Department.

²⁴ Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.80.

²⁵ Workshop conducted by COHRE in Batticaloa with women leaders on 11th July 2010.

²⁶ Workshop conducted by COHRE in Hatton with women from the plantation community on 13th August 2010.

²⁷ State Lands Ordinance and LDO briefing paper, COHRE.

²⁸ Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.10.

²⁹ The Land Commissioner's Department functions under the Ministry of Land and Land Development.

a. State Lands Ordinance No. 8 of 1947 (SLO) and the Granting of Joint Ownership

The SLO is used in the allocation of state land to individuals, government and private sector institutions for agricultural, residential, industrial and commercial purposes.³⁰ Lands are allocated as outright grants or as long term leases.³¹

The issue of joint ownership of land titles arose as a result of the research undertaken by COHRE after the tsunami when land was being allocated by the State to those affected. Grants of State land to those affected by the tsunami were being allocated under the State Lands Ordinance. The common perception is that the State Lands Ordinance (SLO) does not permit the granting of State land to joint or co owners. This misperception is due to the long administrative practice that has gone un questioned where the State has been granting single ownership of land title ever since it started giving land to the landless under the SLO. The 1978 Constitution entrenches the notion of equality before the law and non discrimination on the basis of sex.³² **This misperception and subsequent administrative practice violates the constitutional guarantees and also violates the core principles of equality and non discrimination in CEDAW,**

Discussions have been held with the Land Commissioner's Department on clarifying the position as regards the conferring of joint ownership of State land under this law. The discussions have revealed that there is no express prohibition in the law on the conferring of joint ownership of property. It has emerged as a practice merely for administrative convenience³³. The State prefers to deal with a single owner. The State wants to ensure that no disputes arise between spouses as to decisions regarding jointly owned land. These are the arguments made by the Commissioner General of Land. The Commissioner General does not take into account the fact that disputes may arise between spouses irrespective of in whose name the title to land is in. The Commissioner General also argues that single ownership will ensure non fragmentation of land.³⁴

The Commissioner General of Land suggested that COHRE ask the Attorney General (AG) for a legal opinion as to whether joint ownership is possible under the current legal framework. As it is only public entities that can solicit a legal opinion from the Attorney General's Department, COHRE was able to approach the AG through the Ministry of Lands. **(Annexure 2)** After many meetings with the AG and State Counsel, the AG issued a legal opinion which stated that:

³⁰ Performance Report of the Land Commissioner General's Department for the Financial Year 2008, S.D.A.B. Boralessa, Land Commissioner General's Department, Colombo, p.156.

³¹ In 2008, a total of 303 land allotments were made as free and special grants and 1381 allotments were made as long term leases. A total of 106,082 lands have been allocated as grants, permits, encroachments and leases by the Land commissioner General's Department , See Performance Report of the Land Commissioner General's Department for the Financial Year 2008, S.D.A.B. Boralessa, Land Commissioner General's Department, Colombo, p.150,159-160.

³² See Article 12 (1) and 12 (2) of the 1978 Constitution.

³³ *Gender Sensitive Guidelines on Implementing the Tsunami Housing Policy*, COHRE July 2006, p.1.

³⁴ These observations by the Commissioner General of Lands have been made at several meetings with the COHRE Women's Housing Rights Officer.

*‘...in the light of the contents of your letter and the provisions of the State Lands Ordinance No.8 of 1947 as amended and the Registration of Title Act No.21 of 1998 as amended. I am now of the opinion that **the State Lands Ordinance No.8 of 1947 as amended and the Registration of Title Act No.21 of 1998 does not contain any prohibition against making of grants or other dispositions creating co-ownership under the State Lands Ordinance if it is the policy of the State***³⁵ (Emphasis added) (Annexure 3)

The opinion of the AG is clear. There is no legal bar to the granting of joint ownership. The administrative practice of giving land in single ownership needs to be changed and a clear State policy needs to be affirmed that joint ownership should be the default procedure unless there are compelling arguments against. However the Commissioner General of Land has not complied yet with the opinion of the AG, despite COHRE’s efforts.

COHRE has lobbied over the years for co or joint ownership where new land is given by the State. However, it has consistently maintained that in specific situations, joint ownership is not suitable. Joint or co-ownership is not suitable in every instance that the state allocates property. Where land is allocated by the State to compensate for land that has been lost, eg. due to a natural disaster or displacement, then the status of prior ownership needs to be taken into consideration. For example, where the title to land previously owned is not disputed, new State land title should be given to the previous land owner.³⁶ In this instance joint ownership is not suitable as the objective of the State must be to restore the prior status of the individual concerned.

However, where the State compensates for land that was previously encroached or squatted upon, land title should be allocated in joint or co ownership as there was no previous legal ownership.³⁷ Another instance where joint ownership is suitable is where previous ownership of title is unclear or disputed or where co owners have contributed financially to the previously owned property.³⁸

The State allocates land when an individual applies for land under the State Lands Ordinance and the Land Development Ordinance. In this instance, COHRE’s position is that it must be given in joint or co ownership of title, and not in single ownership. For example, if one spouse applies for land, then land title must be given to both spouses in co ownership.³⁹ Similarly, if two siblings apply for joint ownership of title to the land, provision must be made to grant joint title. Relevant amendments to the legal and administrative framework are needed to make joint ownership possible.

³⁵ Opinion of the Attorney General addressed to the Secretary, Ministry of Land and Land Development, dated 28th January 2008.

³⁶ If land had been co owned or jointly owned, then the land that is being allocated by the State to compensate must be given in joint or co ownership.

³⁷ Unless there are compelling reasons to do otherwise.

³⁸ Previous ownership maybe disputed in instances for example, where due to natural disaster or an unforeseen event, title deeds to lands are lost or destroyed.

³⁹ If the individual is unmarried, then the land title can be given in single ownership.

The above are basic guidelines and are based on the core values of equality, equity and non discrimination. The State must develop clear concise guidelines for state officials on the granting of joint ownership of land titles to ensure that equitable land distribution takes place.

Approximately 35,000 permanent houses are needed in the North. Various donors have pledged to build houses in the area. The UNDP has raised the issue of titles for the houses that are being built. UNDP wishes to give the titles to these lands and houses in joint or co-ownership. The State should grant co-ownership of land and houses built by the international community.

Interesting administrative practices emerged during research undertaken by COHRE. Contrary to accepted administrative practice, there have been limited instances that joint ownership of title to state land has been given.⁴⁰ A study conducted among women from the Mahaweli Settlement areas reveals that women have been granted joint ownership of houses and homesteads allocated by the State.⁴¹ Ownership by women of paddy land displays a similar trend where joint ownership is seen in new settlements. An increasing tendency towards joint ownership is seen in this sample of settlements. **(Annexure 4)** The joint ownership of title given by the state in this instance goes against the oft stated objective of the Land Development Ordinance which is to prevent fragmentation of land. As the above study states:

*'These findings also reveal the ground situation where people- despite legal rules and regulations- resort to their own methods of ownership where they attempt to bring about an equitable distribution of land.'*⁴²

The study concludes:

*Despite joint ownership of property not being a concept that is promoted by the State agriculture policy, research findings highlight that there are a considerable number of instances of joint ownership of immovable property found in the settlement samples. While the relevant authorities did not sanction these instances, nevertheless this reflects the reality where settlers have resorted to their own strategies to bring about a more equitable 'settlement' or existence. **Given this reality, perhaps it becomes necessary at this juncture to revisit the original principles of land distribution and to formulate a more equitable method of devolution of title to State agricultural lands.***⁴³

There is no legal or administrative barrier to joint ownership of state land being given in the current circumstances. It only requires a shift in administrative practice and a shift in

⁴⁰ See Generally *'All Her Worldly Goods: Women's Property and Inheritance Rights'* Study Series No.30, CENWOR, 2002

⁴¹ *'All Her Worldly Goods: Women's Property and Inheritance Rights'* Study Series No.30, CENWOR, 2002, p. 63.

⁴² *'All Her Worldly Goods: Women's Property and Inheritance Rights'* Study Series No.30, CENWOR, 2002, p. 63.

⁴³ *'All Her Worldly Goods: Women's Property and Inheritance Rights'* Study Series No.30, CENWOR, 2002, p.72.

patriarchal attitudes to make joint ownership a reality to the many thousands of women who have been discriminated against for many decades.⁴⁴

Another issue that has arisen is the remedial action that can be taken to deal with the land parcels that have already been allocated by the State in single ownership.⁴⁵ If the State agrees to change administrative practices and gives land in joint ownership, then remedial action is needed to correct the inequitable position that will arise. A State policy in this regard needs to be developed.

b. Land Development Ordinance No. 19 of 1935

The Land Development Ordinance (LDO) is the primary piece of legislation that is used in Sri Lanka in the alienation of State land. Under the Ordinance lands are mainly issued to the people belonging to low income groups for agricultural and residential purposes.⁴⁶

The concept of the Head of the Household is not considered in this instance. However, since the land is granted for agricultural purposes, priority is given to male applicants.⁴⁷ Although the LDO is gender neutral, administrative interpretation and practices often favour the male.⁴⁸ This is due to the perception that it is the male that cultivates the land. The fact that the woman in the household contributes to the process of cultivation through her efforts in running the household and caring for the children is not taken into account. The fact that women toil on the land along side their spouses is not taken into consideration in the distribution of land titles.

Guneratne cites Aggarwal who gives the following example:

*'women's work load in the settlement villages, relative to the older villages, is greater: they now work in the home garden and chena, as well as help harvest and process the paddy. Tasks women rarely did traditionally, such as clearing the jungle and bunding the paddy fields are now being undertaken by them alongside the labour they put into transplanting, weeding, watering, and harvesting the paddy.'*⁴⁹

⁴⁴ An alternative to the granting of joint ownership is to recognize the concept of trust where ownership of title to land is given to the male spouse for the beneficial interest of the wife. However, this option has to be researched before it is adopted.

⁴⁵ This was raised by a participant at a consultation on joint ownership held by COHRE on 4th August 2009 in Colombo.

⁴⁶ A total of 997,158 land grants have been given under the LDO. In 2008, a total of 7338 land grants were made. See the Performance Report of the Land Commissioner General's Department for the Financial Year 2008, S.D.A.B. Boralessa, Land Commissioner General's Department, Colombo, p.155.

⁴⁷ Mr. M.A.C. Perera, Officer in Charge, Archives, Land Commissioner General's Department.

⁴⁸ Leelangi Wanasundera, *Rural Women in Sri Lanka's Post- Conflict Rural Economy*, Centre for Women's Research (CENWOR), Food ND Agricultural Association (FAO, 2006, p.25.

⁴⁹ Bina Aggarwal, *Gender and Land Rights in Sri Lanka*, Geneva: International Labour Office, World Employment Programme Research Working Paper, 1990, p.31, cited in Camena Guneratne, *Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka*, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.72-73.

The position of the Commissioner General of Lands is that there is no restriction on women applying for land.⁵⁰ The gender discriminatory impact of the LDO is seen in the following section. The law unwittingly discriminates against women in its implementation. The spouse has a primary right to succeed to land given under the LDO. He/she may succeed to the land even without being nominated by the permit holder.⁵¹ However, a spouse's rights are limited where he/she has not been specifically nominated. According to section 48B(1), a spouse who has not been nominated by the permit holder has only a life interest in the land. The limited rights of the spouse are further eroded if he/ she decides to remarry as the title to the land will then devolve to the nominated successor or if there is no nominated successor, to the person who is entitled to succeed under the Third Schedule. A spouse who has not been nominated also cannot dispose of the property nor can he/ she nominate a successor to the property. **(Annexure 5)**

The above provisions impact on women disproportionately given the reality that permits are generally given to the male. In this instance the spouse is female and this is the case in most instances. The fact that the woman loses her rights to the land upon re marriage assumes that she is supposed to be dependent upon her spouse and she need not be financially self sufficient and ought not to have her independent sources of income. Although the law applies in a gender neutral manner, its discriminatory impact on women must be addressed by legal reform. The above example is one in which a seemingly gender neutral law is discriminatory in its implementation due to patriarchal administrative practices that remain embedded in state administration.

The provisions of the LDO refer to a 'permit holder'. This is in the singular and envisages one permit holder. These provisions would not allow the State to grant joint ownership of land permits.⁵² If joint ownership is to be given under the LDO, then an amendment is needed to allow for a land permit to be held jointly by two persons.⁵³ This again is an example where the law in its implementation is unwittingly discriminatory of women as it is males who are generally granted land permits.

Under the Third Schedule of this Ordinance, in the case of intestate succession, the order of successors favours male children. The principle of primogeniture is derived from colonial land policy and early English law. The reasoning behind this is the assumption that ownership of land would otherwise pass on to persons who are not engaged in agricultural activities, by way of dowries and other means if land is inherited by daughters.⁵⁴ There have been various attempts

⁵⁰ Mr. M.A.C. Perera, Officer in Charge, Archives, Land Commissioner General's Department. There is no restriction on a widow who also may apply for a land permit under the LDO. A woman who had previously owned land also may apply.

⁵¹ Section 68 of the Land Development Ordinance.

⁵² Comments made by Professor Savitri Goonesekere, former member of the CEDAW Committee and Professor of Law, University of Colombo at a discussion held by COHRE on 4th August 2009 in Colombo.

⁵³ Procedures are laid down as to how one may apply for land for development purposes.

⁵⁴ Mr. M.A.C. Perera, Officer in Charge, Archives, Land Commissioner General's Department. This, according to Perera is contrary to the purpose of providing these lands.

to amend the Third Schedule but these amendments are still at the bill stage.⁵⁵ The Land Commission in 1958 recommended the repeal of the Third Schedule. This preference for male heirs is contrary to the general law on inheritance which does not discriminate between male and female heirs. **The preference for male heirs articulated in the law also violates the principles of equality and non discrimination in the Sri Lankan Constitution and CEDAW.**

The CEDAW Concluding Observation to the last report submitted by Sri Lanka in 2002 cited below is relevant. It states:

Concluding Observation⁵⁶ [Paragraph 275]⁵⁷ - *Review all existing laws and amend discriminatory provisions so that they are compatible with the Convention and the Constitution. Take in to account, where appropriate, suggestions and recommendations from bodies such as the Muslim personal law reforms committee set up by the Ministry of Muslim Religious and Cultural Affairs. The Committee also encourages the State party to obtain information on comparative jurisprudence, including that which interprets Islamic law in line with the Convention.*

The Concluding Observation urges the State to review laws and to amend discriminatory provisions so that they are compatible with the Convention and the constitution. The recently submitted State Report pronounces that:

'the decision of the Government to amend the Land Development Ordinance⁵⁸ to, inter-alia, remove provisions discriminatory of women demonstrate the commitment of the State to remove discriminatory legislation even without a pronouncement from the Court.'

However, as stated above, this amendment is yet to be passed by Parliament though it has been in the pipeline for many years. The sincere commitment of the State to remove these gender discriminatory provisions will be seen only once the amendment passes through Parliament into law. Women's groups have been agitating for this amendment for many years.⁵⁹

VII. Nexus between the Head of the Household Concept and Joint or Co-ownership

Similar provisions exist in other statutes such as the Land Grants Special Provision Act 1979. Government policy has given priority to land allocated under the LDO being inherited or held by

⁵⁵ The Bill removes the restrictions whereby male heirs are given preference and ensures gender equality by providing for males and females to succeed to property equally.

⁵⁶ Concluding Observations made by the CEDAW Committee to the State Report submitted by Sri Lanka in 2002.

⁵⁷ All references to paragraphs are to paragraph numbers in the excerpt from Supplement No. 38 (A/57/38) of UN documents

⁵⁸ As at February 2009, the Land Development Ordinance (Amendment) Bill had been approved by Cabinet, presented to Parliament for enactment.

⁵⁹ Leelangi Wanasundera, *Rural Women in Sri Lanka's Post- Conflict Rural Economy*, Centre for Women's Research (CENWOR), Food ND Agricultural Association (FAO, 2006, p.25.

one permit holder to prevent fragmentation of agricultural land. The prevention of fragmentation of land is seen as the motivating factor in land distribution, although no written policy in this regard exists. Field research conducted in the 1980's indicated that women were not allocated land permits under the Mahaweli agricultural schemes⁶⁰ because of the Third Schedule to the Land Development Ordinance and the terminology 'head of the household' being used in government forms were being interpreted as giving preference to male applicants. This preference for a male head of the household has marginalized women and disentitled them from receiving land from the State. A belief among persons in the Mahaweli settlements is that generally women will not be granted land and instead men are favoured in this regard. This militates against the position of the State that there is no overt discrimination. However, there is a strong perception that such discrimination occurs.⁶¹

A study of the Mahaweli Scheme undertaken by Aggarwal argues '*that a strong gender bias can be seen in the conceptualization and implementation of the scheme*'.⁶² She further states:

*'Land allotted to married couples is registered only in the names of the husbands who are assumed to be the heads of the households. Each household can nominate only one heir who is invariably the son. This undermines the bilateral rules of land ownership and inheritance prevailing among the Sinhalese, whereby married women have independent rights to own and control land. Under the scheme, if a woman divorces her husband she is deprived of any means of subsistence from the land, underlining her dependent and subordinate position.'*⁶³

The dangerous nexus between the head of the household concept and the denial of co or joint ownership where the woman also would have ownership to land is seen above. Women face further problems in obtaining assistance and/or ownership from the Government. Women believe that permits and title deeds can only be written in the husband's name, even if it is dowry property. Where a spouse is missing, the difficulty in obtaining a death certificate results in women being disentitled to state assistance. Further, the usage of the head of the household terminology means that men are considered to be heads of households and entitled to claim land allocations.⁶⁴

The arguments against the granting of joint ownership given by the State are not compelling. The application of the law of intestate succession means that during the course of generations due to joint or co ownership by many, the cultivation and development of land may become

⁶⁰ The Mahaweli Development Programme was a scheme to develop certain areas of the country, the main objective being to optimize the use of land and water resources with the aim of expanding human settlements and agricultural productivity.

⁶¹ Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.51.

⁶² Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.29.

⁶³ Bina Aggarwal, cited in Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.29-39.

⁶⁴ Centre for Policy Alternatives (CPA) *Women's access to and Ownership of Land and Property in Batticaloa, Jaffna and the Vanni [DRAFT]* April 2005 www.cpalanka.org

difficult. Similarly, another argument is that due to successive sub division among many co owners the land will be divided into many small pieces of land which will not be of much use.⁶⁵ Co ownership does not mean that the land is physically divided or partitioned. It merely means that the land is jointly owned. Thus, with the consensus of co-owners, cultivation can continue to take place without difficulty and the land will continue to be of value.

The concerned government entities such as the Ministry of Lands and Ministry of Resettlement should consider granting joint ownership of land. Moreover, the Ministry of Plantation Industries should grant to the plantation community the land titles currently being processed in joint title. COHRE has engaged in diverse initiatives in this regard but a response is still awaited.

VIII. Voices of Women and Government Officials Working at Grassroots Level

COHRE has been working on these issues for the past four years. COHRE's Women and Housing Rights Initiative (WHRI) has conducted several training programmes for civil society, the I/NGO sector and for government officials over the years. The focus was on creating awareness among actors who work with rural communities on the importance of understanding the effects of the usage of the HoH concept and also on the importance of creating a groundswell that would advocate for co ownership of state allocated land. In an effort to reach out to the grassroots communities, work in 2009/2010 focused on working with women from rural areas; one community was those affected by the conflict in the East of the country and the other was the plantation community who are some of the disempowered and most underprivileged in the country.

The workshops conducted in these rural communities revealed that women in these communities are unaware of their rights as regards land ownership. Their attitudes towards property ownership are rooted in cultural norms that regard the male as the head or breadwinner and decision maker due to preconceived patriarchal notions of male dominance. The section below details the main findings of four workshops. The opinions expressed reinforce the view that the move to change currently unwritten policy on distribution of land must come from the State. If the State as a policy grants joint ownership of State land in specific laid out circumstances, and abolishes Head of Household terminology from government forms, this is a first step towards equality in land distribution.

a. The Plantation Sector⁶⁶

Two workshops were conducted in Hatton on the concept of Joint Ownership of Property (JOP) and the Head of the Household (HoH) concept as part of a larger project conducted for the Women's Housing Rights Initiative at COHRE. The objectives of the workshop were to create

⁶⁵ Mahinda Silva, *The Evolution of Land Policies in Sri Lanka- An Overview*, Marga Quarterly Journal 7(1):33-57, 1983, cited in Camena Guneratne, *Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka*, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.11.

⁶⁶ The plantation community had a 75.3 % literacy rate in 2009 although the participants at this workshop were mostly illiterate or semi literate.

awareness of the availability of joint ownership as an alternative to single ownership in cases where the State grants land and to create awareness about the discriminatory impact of the HoH concept. The second objective was to gather, as far as possible, support (in terms of signatures to statements), for the use of Joint ownership of Property in granting land to families and to call for the removal of the HoH concept from administrative practice.

The two workshops conducted in Hatton had 49 women who were all tea pluckers from the plantation sector participating and the other workshop consisted of 33 Government officials.⁶⁷ Among the government officials the dominant view which supported the continued use of HoH and considered single ownership of property as being “the accepted” form of ownership. The minority view, expressed mainly by two female government officers was that joint ownership of property was more protective of all family members and that HoH is interpreted in a manner that is discriminatory of women.⁶⁸

In the collective evaluations conducted at the workshop for women – the most common view was that the man should be, and is, the head of the household. There were one or two women, who expressed a different view. However, in relation to ownership of property all the participants held the view that property could be owned together and that if they were to receive title to property, it should be given in the name of two members of a family.

A statement calling for the use of joint ownership of property in instances where the State grants land to families was used in addition to the existing statement calling for the repeal of HoH from administrative practice.⁶⁹ There was no resistance to the statements at the workshop for women. All participants signed both statements.

When the statements were introduced to the government officers, there was no immediate resistance to it. Both statements were signed by all the government officers.⁷⁰

The women participants were unable to distinguish between possession of the line rooms they live in and the ownership of the same. Initially, when asked whether they own property, they replied in the affirmative.⁷¹ However, when asked if they had deeds to property, they

⁶⁷ The women who participated in the former were mostly illiterate or semi literate and had no awareness of their rights.

⁶⁸ The pre-evaluation for government officers reveals the patriarchal view where a father is seen as the “natural” head of a household. It was also suggested that single ownership of land by the bread winner of the family is most suitable for a family. However, there were a significant number of government officers who held different views.

⁶⁹ Both statements were given to participants of both workshops at the end, with a short explanation as to the objective and purpose of collecting the signatures.

⁷⁰ However, they had made their own annotations on those statements, in light of the interventions made by the Additional Secretary to the Ministry of Public Administration who recommended that the HoH should not be abolished but should be considered as gender neutral by those reading it.

⁷¹ The plantation community is a landless community and they have no legal ownership to the line rooms they live in. The line rooms are rooms with dimensions of ten feet by ten feet. Although there is a perception amongst some that they own the property, it is in fact possession of the line rooms that they have.

answered in the negative. Awareness raising on the rights of these communities is an urgent need.

b. The Eastern Province: Post Conflict

COHRE conducted two workshops in Batticaloa in the Eastern Province for 23 government official and 21 women community leaders in July 2010. Issues related to the Head of the Household and the need for joint ownership of property are not those that have been taken to the communities in an organized way. In that sense, these workshops play an important role in terms of creating awareness and also for purposes of advocacy.

In the pre workshop evaluation, 21 government officials participated.⁷² Eleven participants were of the view that HoH can have a negative effect on the family. They observed that *'HoH, in a family is always considered as the male member. This thinking should be changed'* and that *'Even though family members accept the possibility of either gender being the HoH, this might create a battle of status in the mind of others'* and finally that *'the leader makes all the decisions'*.

Twelve participants held the view that the concept of HoH should be changed.⁷³

The participants were asked to explain what they understood by the term joint ownership of property and it is evident from the responses that participants understood that it had a direct impact on gender equality between a couple.⁷⁴ The ability of the participants to connect JO with gender equality was also evidenced in their response to the question as to the importance of JO of property.⁷⁵ Only 11 participants stated that JO was recognized in law while the rest

⁷² Initially, participants were asked to identify who should be a HoH and were expected to select the most relevant answer. It was evident that while a patriarchal view of HoH existed, a liberal view was also articulated. Authority was the main criteria used in identifying HoH. In a patriarchal society, more often than not, authority would generally be identified with the male as opposed to the female.

⁷³ The following observations were made: *'Joint leadership will give equal opportunity to both parties' (Husband and wife)*

'Each house respects and considers the father as the HoH. However, in a situation where the father dies, then the mother can accept the responsibilities.'

'The change will allow everyone's opinion to be considered or given importance to.'

⁷⁴ *'This means that the affairs of the property can be handled by both the husband and wife.'*

'Property rights that is given to more than one person.'

'Property that's given after marriage should belong, equally to both husband and wife.'

Of the nine who answered in the negative, the following explanations were given:

'Only when a person has authority, other members of the family will be able to follow a good path.'

'Because a male has the ability to face challenges.'

⁷⁵ *'It's important because this will prevent the wife or husband selling the property without consulting the other.'*

'Property given when one is married belongs to both the husband and wife.'

'It's important because it will help women gain property rights.'

'To maintain Gender equality.'

(10) were of the view that it is not.⁷⁶ The answers reflect how the norms of a patriarchal society, shapes perceptions on ownership of property – that it could very well be the exclusive province of the male.⁷⁷

The post workshop evaluation illustrated a shift in perception only towards a gender-neutral understanding of HoH and not towards an understanding that HoH should be rejected altogether as a concept. In the case of joint ownership, only one government official had stated that his view of JO remains the same stating that it *“also has the potential to create a lot of problems.”* The other participants claimed that their view of JO of property changed as a result of the workshop.⁷⁸

Most comments illustrate the view that joint ownership of property either promote equality in a marriage or that it protects parties in situations of conflict. Studies carried out in the Eastern and Southern provinces by other organizations also have concluded that overall men and women favour joint ownership.⁷⁹ Women believe that income and security is increased if property is jointly owned. They were also of the view that joint ownership prevents violence in the family and elevates a woman’s status within the family.⁸⁰

⁷⁶ *‘In Sri Lanka property is generally given to the eldest son. The ‘Thesavalamai’ states that even if the woman is the owner of the property she has to get her husband’s signature to sell it. Instances for this to happen are few.’*

‘Because generational property mostly belongs to the household head- husband or male children.’

‘If either the husband or wife wants it, one person can have the property under their name.’

⁷⁷ The reference to *Tesawalamai* law must be noted as it does in fact provide that a married woman cannot deal with her property without the counter-signature of her husband.

⁷⁸ *‘Certain problems between husband and wife will be solved through joint property rights.’*

‘If the husband and wife were to get divorced, either of them will not be able to sell the property. As a result, problems may arise.’

‘Joint rights should be changed according to circumstances.’

‘Through Joint property rights family members will have an equal share in the property; misuse of the property can be prevented, and gender equality will be preserved.’

‘Without Joint property rights, in a situation where the husband is deceased, the wife is unable to use the property or give it to her child.’

‘A property that is to be sold should be done by a decision made by both the husband and wife.’

‘Anything regarding properties should not affect the family circle/unit.’

‘Properties should be owned jointly.’

‘The property should be handled with mutual understanding.’

‘Because both parties have joint rights and this will prevent atrocities.’

⁷⁹ 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, p.8

⁸⁰ 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, p.10.

IX. Domestic Violence and Discriminatory Administrative Practices in Land Distribution

The tsunami of 2004 threw up many challenges for the State. Ad hoc responses were seen that did not take into account the far reaching impact on both men and women as regards their land rights. An administrative circular of the Land Commissioner's Department on allocations of State land to those affected by the tsunami was problematic. **(Annexure 6)** It states that if a complaint of domestic violence or child abuse is made against a husband or male member of the household, the relevant government official has the power to inquire into the matter prior to issuing a land permit under the State Lands Ordinance.⁸¹ This type of arbitrary powers given to government officials who have little or no knowledge of the law pertaining to domestic violence can be dangerous as it can lead to misuse of that power. Although there is a clear link between domestic violence and a woman's right to land title, the danger of abuse of this power can result in more discrimination against women.⁸² These powers could also conflict with the Prevention of Domestic Violence Law which provides for the granting of protection orders and may result in conflicting court orders.⁸³ The circular under discussion should be withdrawn from circulation.

X. Gender Disaggregated Data

Concluding Observation⁸⁴ [Paragraph 295] - *Recognize rural women's contributions to the economy by collecting sex- disaggregated data on rural production and ensure the incorporation of a gender perspective in all development programmes, with special attention to minority rural women.*

No gender disaggregated data is available on ownership of private or state allocated land. It is therefore difficult to assess the number of women who have been given land by the State. The Commissioner General of Lands estimates that in 30-40% of applications for land filed by women, the women are granted land title. This is subject to verification and there is no hard data to back this claim.⁸⁵ This is a gap that needs to be rectified. The Commissioner General of Lands' records of State land allocations is stored under specific categories such as extent of land, district etc and there is no gender disaggregated data. Even the 2002 Agricultural Census does not contain any gender disaggregated data. A National Census is due to be conducted in 2011. It is important that the Census collects gender disaggregated data with regard to land ownership.

⁸¹ Circular No.2006/3, 31st October 2006, Land Commissioner General's Department.

⁸² If a woman has title to land, then she has a legal claim to it. She cannot be ejected or asked to leave the land in the event she is subject to domestic violence.

⁸³ Prevention of Domestic Violence Law No. 34 of 2005.

⁸⁴ Concluding Observations made by the CEDAW Committee to the State Report submitted by Sri Lanka in 2002.

⁸⁵ Camena Guneratne, Women and Land Rights in Irrigation Settlement Schemes in Sri Lanka, Study Series No.5, 2006, Centre for Women's Research (CENWOR), Colombo, p.22.

XI. Conclusion

The Ministry of Child Development and Women's Empowerment, the State nodal agency for women's concerns, lacks capacity and skills to move forward on women's issues. Members of the National Committee on Women (NCW), a body set up under the Women's Ministry have been supportive of the joint ownership initiative and the abolition of the head of the household concept. If Sri Lanka is to comply with its international obligations under CEDAW, the Ministry on Women's Empowerment needs to play a much more proactive role.

Sri Lanka must take steps to ensure that all persons are treated equally and without discrimination before the law. Legal reform is necessary to bring the land laws to conform to local and international standards.

The provisions in the Land Development Ordinance discussed above are contrary to Articles 1, 2 (a), (d), (e) (f), 5, 13 (a), (b), 14 (2) (g), 15 (2) and 16 (1) (h) of CEDAW. Sri Lanka must take steps to amend the relevant provisions of the LDO to bring it in line with the Articles in CEDAW. Similarly, the usage of the head of the household concept in state generated forms also violates Articles 2, 5, 13, 15 and 16 of CEDAW. Sri Lanka must also take measures to abolish head of the household terminology from forms and instead bring in terminology that does not assume the male to be the only person who can assume responsibility within a household.

Sri Lanka must also take measures to permit joint ownership of title to State allocated land in specific instances. This would ensure equality and non discrimination. It must also ensure that guidelines are formulated that lay down the specific instances in which joint ownership of land titles can be given.

With the end to the civil war in May 2009, Sri Lanka has set its development policies in action. The resettlement of the internally displaced persons due to the conflict is currently ongoing. The Presidential Task Force (PTF) on Northern Development is handling this process. New lands are being allocated to those persons who are being relocated. Similarly, the plantation sector is in the process of handing over lands to over 25,000 landless persons. Land allocations being done by the Land Commissioner General's department continues. The time is opportune for the government to come out with a strong policy in favour of joint ownership of land titles to rectify a long standing practice that has left many women over the years disempowered and without any access to credit and other benefits arising from land ownership.⁸⁶

⁸⁶ See supra note 47. It is safe to assume that of the thousands of land titles that have been given over the years by the State, a fair percentage of women would not have been given title. Joint ownership of land title would ensure that both men and women would have equal ownership to State land.

XII.ABBREVIATIONS

Attorney General	AG
Centre on Housing Rights and Evictions	COHRE
Estate Community Development Mission	ECDM
Head of the Household	HoH
Joint Ownership	JO
Land Development Ordinance	LDO
National Committee on Women	NCW
Presidential Task Force	PTF
State Lands Ordinance	SLO
Women & Media Collective	W & MC

XIII. ANNEXURES

1. 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
2. Dossier of communications on Joint Ownership and Head of the Household
3. Opinion of the Attorney General addressed to the Secretary, Ministry of Land and Land Development, dated 28th January 2008.
4. Table with jointly allocated state land, All Her Worldly Goods: Women's Property and Inheritance Rights' Study Series No.30, CENWOR, 2002
5. Sections 48, 49, 51, 68 and the Third Schedule of the Land Development Ordinance No. 19 of 1935
6. Circular No.2006/3, 31st October 2006, Land Commissioner General's Department