



ASIA-PACIFIC

Gender roles through coloured spectacles

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In post-conflict Sri Lanka, resettlement of internally-displaced persons and restitution of their proprietary rights are focal points. Women are a particularly vulnerable group among those displaced by disaster and conflict. Many Sri Lankan women have been widowed and forced to flee their homes, especially within the Northern and Eastern provinces, due to war. To address their grievances, it is essential to adopt a gender-sensitive approach towards restitution.

About 80 per cent of land in Sri Lanka is state owned. Most of the displaced had occupied state land, either under grants or permits, or illegally. As a consequence, the resettlement process involves both the restitution of private land ownership rights and the resettlement of people on state land. In both cases, women are discriminated by gender-biased administrative practices adopted under resettlement schemes. In addition, several laws governing state land allocation enshrine a discriminatory order of succession that favours male heirs over female.

Patterns and causes of discrimination

For decades, alienation of state land has been a commonplace practice in Sri Lanka. State-owned land is alienated to private individuals, government institutions and the private sector, with the main objectives being systematic development of state land and poverty alleviation.

In conformity with international standards, including Article 16(1)(h) of the Convention on the Elimination of All Forms of Discrimination against Women, there is no express legislative provision prohibiting women from owning land in Sri Lanka. The provisions of the 1978 Constitution of Sri Lanka include Article 12(1) which guarantees equality before the law, Article 12(2) which recognises non-discrimination based on gender and Article 14(1)(h) which provides for the freedom of movement and of choosing one's residence within the country.

Although the land allocation policies formulated by the Land Commissioner General's Department are not prima facie discriminatory, a pattern of discrimination can be seen in their implementation, particularly when selecting persons entitled to land grants. Men are often favoured over women as a result of gender-biased administrative practices adopted by local level government officers.¹

All resettlement programs introduced by the government — either to allocate state land or to

restitute private land ownership rights — require the head of the household to sign the data collection forms and the new land or housing rights are granted in the name of that person. The usual approach is to treat the husband or the eldest male member of the family as the head of the household, due to stereotypical attitudes in the public domain. As a result, often women are prevented from acquiring property rights or getting their rights restituted under resettlement and restitution schemes.

Allocation of privately-owned land

Authorities often do not inquire into previous land ownership. Land ownership rights are granted in the name of the head of the household who is generally understood to be a male member of the family, even if land was previously owned by a female member of the family. As a result, for example, the ownership rights of most women who owned land prior to the tsunami were not restituted.² The post-war resettlement schemes so far implemented in the Eastern province have also had the effect of negating and distorting the matrilineal inheritance pattern within the province.³ The same practice is likely to occur in the post-war resettlement programs in the Northern province where there is no indication that the authorities have incorporated special mechanisms to make the policies gender neutral.

Allocation of state-owned land

In respect of the laws governing state land, both the *Land Development Ordinance* and the *Land Grants (Special Provisions) Act* contain an order of succession that prefers male over female relatives. As required by Goal 3 of the Millennium Development Goals, the Sri Lankan government announced an intention to amend the Land Development Ordinance to address this discriminatory order of succession. However, due to objections raised by parliamentarians, it has not yet been passed into law.

In addition, under the *Land Development Ordinance*, the surviving spouse of a landowner loses the right to hold the land grant upon remarriage. Although the wording of this provision is gender neutral, since most of the land grants are made in the name of the husband in the first place, women are disproportionately affected by this provision.

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2. Centre for Policy Alternatives, *Landlessness and Land Rights in Post-Tsunami Sri Lanka* (2005) 26.
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Obstacles to women's access to justice

Despite large-scale discrimination in land and housing rights, the implementation of resettlement schemes has not come before the judiciary except for several complaints against arbitrary decisions of local level government officers made to the Human Rights Commission of Sri Lanka. This is not surprising given most of the women subjected to discrimination have low levels of education, lack sufficient means to secure legal representation and there is a dearth of legal aid services. Fear of being subjected to harassment by the authorities may also contribute to the lack of legal challenge to the scheme.

Apart from the unsuccessful attempt to amend the *Land Development Ordinance* the government has not taken a holistic approach towards this issue. However, several NGOs and INGOs have been urging the government to take measures to address this issue.⁴

One of the compelling reasons for securing the land ownership rights of Sri Lankan women is the increasing number of female-headed households, due to the widowing of many women following the tsunami and ethnic conflict. Further, in many rural families, the wife is the primary income generator and livelihood options available to rural uneducated women are limited. The most common ways to earn a living are through agriculture and livestock rearing, both of which are inextricably linked to land ownership.

A relationship also exists between women's land ownership and domestic violence; several studies have revealed that women who own land are less vulnerable to domestic violence.⁵ Also, women are often unable to show collateral for loans due to lack of land ownership.

Women's land ownership is all the more significant in Sri Lanka where people are required to prove residency to secure access to basic government services, such as water and electricity as well as voting rights and admission to schools.⁶

Recommendations

It is essential to integrate gender perspectives into resettlement schemes, to address grievances of women. It is recommended that Sri Lanka introduce laws and policies that:

- abandon the practice of using the term 'head of the household' and introduce a suitable alternative;
- ensure laws governing state land are interpreted in a gender-sensitive manner;
- view the household as a unit run jointly, giving due recognition to women's contribution to the family; and
- address the land ownership needs of various categories of women, for example unmarried and elderly women.

It is also recommended that the Sri Lankan government:

- collect sex-disaggregated data at regional and national levels to assess women's land ownership patterns;
- hold consultations with different ethnic groups before formulating state land allocation policies; and

- develop gender-sensitive indicators in areas such as credit and loan facilities, the holding of decision-making positions in civil society organisations and access to training.

A common set of administrative guidelines, applicable island-wide, should be developed. The guidelines should include a direction to the Divisional Secretaries, who deal directly with the claims of displaced persons, to inquire into previous ownership arrangements in every case to ensure that women are not discriminated. Where the title to land previously owned is not in issue, title should be granted to the previous land owner. In cases where previous ownership is disputed or unclear, joint ownership should be granted in accordance with Principle 4.2 of the Pinheiro Principles⁷ or a suitable alternative to joint ownership, such as granting ownership rights in the name of one of the spouses while recognising a beneficial interest in the other, should be introduced.

Conclusion

In Sri Lanka, despite the constitutional guarantees of equality and non-discrimination based on gender, several laws governing alienation of state land and administrative practices adopted in implementing resettlement schemes have perpetuated direct and indirect discrimination against women. The causes of unequal treatment of women include the concept of head of the household — generally understood to be the husband or eldest male of the family due to stereotypical roles attributed to both men and women. Poor awareness level, poverty and a lack of legal aid funding also prevent victims from accessing justice.

It is the responsibility of the government to adopt a gender-sensitive approach towards resettlement to promote transitional justice. Given the post-conflict context present in Sri Lanka, now is the ideal time to effect a change in policies.

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7. Centre on Housing Rights and Evictions, *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons* (2005) 10.