

Title: Charting Pathways to Gender Equality

Sri Lankan Women's Right to Housing and Land: The rhetoric of Equality and the Reality of State Inaction

Year: 2010

Author: Goonesekere, Savitri

Summary:

This paper will review Sri Lanka's current laws and policies on the rights of Sri Lankan women to land and housing, highlighting aspects of gender based discrimination that have been ignored for many decades. Land and housing are important economic assets, provide a range of economic opportunities and raise economic development issues. They also provide a private space in the household which is critical to women's wellbeing. The link to domestic violence and women's health has been noted in research and international standards (Bulankulame, 2006; Mason and Carlsson 2005: 114; See International Standards in References). Replacing State inaction with action to change existing laws and policies may require mainstreaming land and housing rights as a central human rights issue rather than a peripheral economic development issue in realising the promises and commitments on gender equality. While formal law reform alone will not ensure that women will not suffer discrimination in access to land rights, it is an essential strategy in developing countries to create a context for ensuring women's land rights.

In all communities women had less decision making power in disposal of their assets (Jayaweera, 2004). A study on women's access to land in some communities of the conflict affected areas of Batticaloa, Jaffna and the Vanni reaffirms that women use land as a productive economic asset, but they have unequal access and control of land (CPA, 2005).

A study on women's access to land in some communities of the conflict affected areas of Batticaloa, Jaffna and the Vanni reaffirms that women use land as a productive economic asset, but they have unequal access and control of land (CPA, 2005). There is also research to support the findings that women are in general unaware of their legal rights in relation to land (Guneratne, 2006; CPA, 2005; Wijayatilleke, 2002). There is some evidence that women migrant workers who remit earnings for purchase of land and houses do not actually ensure that this is transferred in their own name (CPA, 2005:12).

Lack of gender sensitivity in making grants of land and housing in programmes of State restitution and recovery, and the continued use of the male head of household concept have resulted and can continue to result in even women who originally owned separate land and housing not becoming entitled to this important economic asset.

Discriminatory aspects of private law, especially the law on inheritance impose additional burdens on women affected by HIV/AIDS or whose spouses have died of HIV/AIDS. Though Sri Lanka is considered a low prevalence country, the majority of women with HIV/AIDS have contracted the disease through their husbands. The issue of access to land and housing has been raised by these women in informal discussions as a critically important support in coping with their situation.

Land issues have been identified in much of the research in this period as mainly a poverty and economic development issue. Law reform and elimination of discrimination is not seen as an aspect of creating an enabling environment in this regard. The interface between coping with domestic violence and ill health and access to land and housing has not been raised in advocacy on violence against women or women's right to health care.

The failure to prioritise land issues is partly due to the fact that denying equal rights to property has not been considered a human rights violation against individual women as in the case of violence against women and citizenship, where lobbying has been successful, and changes in law and policy have been made.

Recommendations:

Adopting a human rights approach can help women's groups to link across communities and advocate for changes in each others' laws, highlighting positive elements of property and inheritance rights like the concepts of acquired property, family assistance and separate dowry property, accepting them as a basic norm in all systems.

A human rights focus can help to prioritise the need for both eliminating discrimination through formal law reform, and also addressing the need to go beyond and achieve substantive equality by responding to discrimination in the impact of gender neutral laws.

There is an urgent need to initiate change on equal access to land and housing in a context where women rather than men are undertaking family responsibilities in these situations.

It is impossible to prevent gender blind law and policy making which can have negative impacts on women unless an empowered independent national state agency has the mandate and resources to assess impact, before laws and policies are made. An empowered National Women's Commission can also contribute to developing gender disaggregated data on land entitlement. Disaggregated data and information on women's access to land and houses is essential in lobbying to remove gender bias in laws and policies. Though an effort has been made to engender national census and statistics in some areas indicating family household formation, this is incomplete. National gender disaggregated data is not available on land entitlement and use.