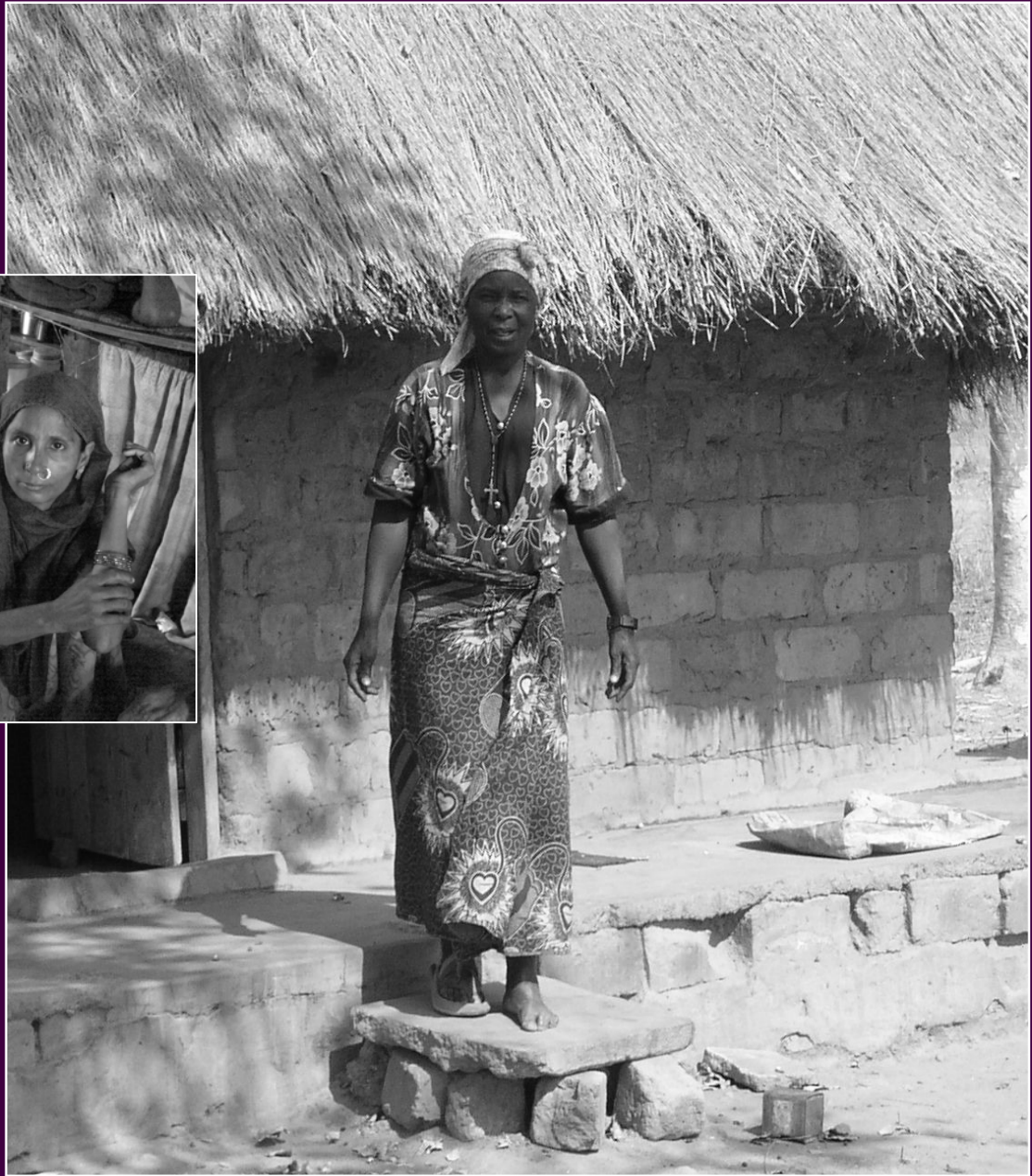


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SOURCES

WOMEN AND HOUSING RIGHTS

SECOND EDITION



COHRE
April 2008



WOMEN AND HOUSING RIGHTS

*Sources 5
Second Edition*

COHRE April 2008

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Preface

In 2000, COHRE first published its groundbreaking report *Sources 5: Women and Housing Rights*. The original Sources 5 presented, for the first time ever, a unified compilation of all of the major international legal resources which recognised the housing rights of women. Even now, the publication provides important information on women's housing rights under key international human rights treaties, and highlights some of the fundamental documents in the cannon of women's housing rights advocacy.

It has indeed been very positive that recent years have seen even more major advancements in the protection of women's housing rights at national, regional and international levels. In this Second Edition of Sources 5, COHRE is pleased to present updated information on just these advancements, focusing on critical issues which have emerged in the area of women's housing rights over the past decade. So as not to tread over the same ground as the first addition, the Second Edition of Sources 5 focuses in large part on standards which have emerged since the original Sources 5 was first published. The Second Edition, therefore, is not meant to reiterate the same information highlighted in the original Sources 5, but rather to serve as an extension of it.

We are pleased to note that the Second Edition of Sources 5 also now highlights how regional and national systems have worked to uphold women's rights to adequate housing. National case law examples have been woven in throughout, and draw attention to efforts undertaken by various civil society groups to encourage State compliance with their international human rights obligations vis-à-vis women's housing security. More and more often, grassroots groups and civil society organisations petition their own judicial systems, seeking to ensure that women are able to secure their rights to adequate housing, thus making women's *de facto* realisation of the right to adequate housing less elusive. The Second Edition also examines examples of national land reform, and its impact on women, as well as the gendered dimensions of the right to adequate housing itself. Further, the Second Edition also underscores how women's right to adequate housing must be considered holistically, and in conjunction with other human rights issues. Indeed, as this Second Edition repeatedly illustrates, breaches of various human rights may have a negative effect on women's ability to realise their right to adequate housing. The role of discriminatory customary norms, traditional beliefs and practices are also examined, as these too often impinge on women's realisation of their right to adequate housing.

Like the original Sources 5, this Second Edition is meant to inform and support the work of women's housing rights advocates around the world, and to illuminate standards and strategies which may be employed in local struggles to protect women's housing rights. Translating rights into reality remains a critical task. It is hoped that by raising awareness about the different issues and standards contained in this report, we can continue to contribute to strengthening the global movements for housing rights, women's empowerment, and gender equality.

Jean du Plessis
COHRE Deputy Director
1 April 2008

1 Assessing Our Progress: Highlighting Major Achievements in Women's Housing Rights



[Women in the slums of Mumbai share with COHRE their experiences of housing insecurity, domestic violence, and threats of forced eviction. Photo: COHRE]

Over the past decade, women's housing rights have increasingly garnered the attention of the international community. Once seen as being issues merely peripheral to human rights concerns, it has become ever clearer that in order for women to realise the full range of their human rights, housing security is -- indeed -- essential. Without a doubt, advocates all over the world are increasingly recognising that such issues as domestic violence, disinheritance, women's health, women's experience of forced evictions, the impact of the HIV/AIDS pandemic on women and girls, and women's food security, are all fundamentally intimately connected to the theme of women's housing rights. Women's housing rights are also now understood in a more inclusive way, with the understanding that housing security for a woman implies more than just a roof over her head. Rather, adequate housing consists of basic components, such as the right to water and sanitation, which are in fact indispensable to women's daily lives. Perhaps one of the greatest achievements in the field of women's housing rights advocacy is that activists increasingly view housing rights in conjunction with other human rights, *inter alia*, the right to water and sanitation, the right to health, the right to

information and the right to full and effective participation. In all regions of the world, advocates have made critical inroads.

The increased realisation of the importance of women’s housing rights has led to major advancements at both national and international levels. In the past ten years, we have seen every single human rights regional system standing up to recognize and protect women’s housing rights.

In all parts of the world, the tide has turned in support of women’s equal right to adequate housing. For example, in 2001, the Inter-American Commission on Human Rights handed down a milestone judgement condemning the Government of Guatemala for provisions under its Civil Code which enshrined discrimination against women by subordinating a wife’s control of jointly held property to the will of her husband. The Commission found that “the overarching effect of the challenged provisions is to deny married women legal autonomy.”¹ Critically, upholding not only the right of all women to non-discrimination, but also, to equality, the Commission further adjudged that the American Convention on Human Rights imposes both negative *and positive* obligations on States.² States, therefore, have to take effective measures, including affirmative action programmes, which will ensure women’s equality in practice.

The Inter-American Commission also took the opportunity to cite the United Nations Commission on the Elimination of All Forms of Discrimination against Women’s General Recommendation 19 on violence against women, arguing that *de facto* (in practice) or *de jure* (in law, policy, regulation) economic subordination, in turn, “forces many women to stay in violent relationships.”³ This was the first time that the Inter-American Commission on Human Rights noted the important link between the denial of women’s housing rights and the scourge of domestic violence within the Americas region.

In Europe, the European Union adopted its Charter of Fundamental Rights in 2000.⁴ Though it is non-binding, the Charter applies to all member States, and serves as a normative standard on human rights. It too sets forth important standards for the protection of women’s housing, land and property rights.⁵ The Charter contains several provisions dealing with equality and non-discrimination. For instance, Article 20 recognises that “everyone is equal before the law” and Article 23 states that “equality between men and women must be ensured in all areas.” The Charter also includes an affirmative action component informing States that “the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.”

1 Inter-American Commission on Human Rights, Report No 4/01, Case 11.625, *Maria Eugenia Morales De Sierra v. Guatemala*, Ruling on the Merits, (19 Jan. 2001), para. 38. See: http://www.escri.net.org/usr_doc/IA_Commission_Report_on_Merits_01-19-01.txt<http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Guatemala11.625.htm>

2 Ibid. para. 51.

3 Ibid. para. 52. See also: UN CEDAW Committee, ‘Violence against Women, General Recommendation No. 19,’ 11/1 (1992), UN Doc. A/47/38. See: http://www.dirittiumani.donne.aidos.it/bibl_2_testi/c_testi_interpr_ufficiali/c_comit_cedaw/racc19_violenza_engl.pdf [hereinafter ‘CEDAW General Recommendation No. 19’].

4 *Charter of Fundamental Rights of the European Union, 2000 O.J.* (C 364) 1 (7 Dec. 2000). See: <http://www1.umn.edu/humanrts/instrree/europeanunion2.html> [hereinafter ‘Charter of Fundamental Rights’].

5 John Parry, ‘Some thoughts about the Charter of Fundamental Rights.’ See: <http://www.federalunion.org.uk/europe/parrycharter.shtml>

The Charter's non-discrimination provision stipulates that "any discrimination based on any ground such as sex, race, colour, ethnic or social origin ... property, birth ... shall be prohibited."⁶ As regards the right to property, the Charter declares, "everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and ... subject to fair compensation being paid in good time for their loss."⁷ The Charter also includes a provision on housing assistance.⁸ These provisions, while quite modest, open up significant strategic avenues for advocates who seek to enforce women's equal housing rights in Europe.

The 22 members of the League of Arab States also amended the League's Charter in 2004.⁹ In addition to its clause recognising the right to adequate housing, the 2004 amended Charter also includes two clauses which affirm the equal rights of men and women.¹⁰ Under the Charter, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out under the Charter, including the right to adequate housing. Here again, advocates find an opportunity to amplify their calls for women's equality in Arab States, including effective realisation of women's housing rights.

Within the African human rights system, protections of women's housing rights have also been steadily advancing. In 1998, to protect the rights of women on the continent, the African Commission on Human and Peoples' Rights established the position of Special Rapporteur on Women's Rights.¹¹ In 2005, the landmark Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa came into force.¹² The Protocol focuses on an extensive number of human rights issues. Addressing gender equality, the Protocol summoned African States to eradicate all types of violence against women.¹³ Article 3(2) specifies that "States Parties ought to commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies," with the intention of realising "the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men."¹⁴

6 *Charter of Fundamental Rights, supra* note 4, Arts. 20, 21 and 23.

7 *Ibid.* Art. 17.

8 *Ibid.* Art. 34(3). Article 34(3) provides: "the Union recognises and respects the right to housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community Law and national laws and practices."

9 League of Arab States, 'Revised Arab Charter on Human Rights,' (22 May 2004), repr. *12 Int'l Human Rights Rep.* 893 (2005). See: <http://www1.umn.edu/humanrts/instree/loas2005.html> The first Arab Charter on Human Rights was adopted in 1994.

10 'Arab Charter on Human Rights 2004,' trans. Dr. Mohammed Amin Al-Midani and Mathilde Cabanettes, rev. Susan M. Akram, *Boston University International Law Journal*, 24, pp. 147-164.

11 The current Special Rapporteur has held the post since 2001. The Commission created the rapporteurship upon recognising that the African Charter failed to efficiently guarantee the protection of women's human rights. The Special Rapporteur's mandate consists of emphasising and investigating abuses of women's human rights in Africa, and praising those States which have worked to advance and protect women's human rights. See: http://www.achpr.org/english/info/index_women_en.html The Inter-American Commission on Human Rights also has a Special Rapporteur on the Rights of Women whose mandate was established in 1994.

12 African Union, 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,' adopted by the 2nd Ordinary Session of the Assembly of the Union (Maputo, 11 July 2003), entered into force 25 Nov. 2005. See: <http://www1.umn.edu/humanrts/africa/protocol-women2003.html> [hereinafter 'AU Protocol'].

13 *Ibid.* Arts. 3, 4, 5, 11, 22, 23.

14 *Ibid.* Art. 3(2).

In addition, several provisions within the Protocol relate specifically to women's equal housing, land and property rights. In regards to a woman's rights while she is married, the Protocol provides that women are entitled to obtain their personal property and to control it without restraint.¹⁵ Should there be dissolution of the marriage (annulment, separation, divorce), both spouses "shall have the right to an equitable sharing of the joint property deriving from the marriage."¹⁶ Moreover, women are entitled to "fully enjoy their right to sustainable development. In this connection, the States parties shall take all appropriate measures to: promote women's access to and control over productive resources such as land and guarantee their right to property."¹⁷

Article 16 of the Protocol specifically protects the rights of women to adequate housing, and states that women are entitled to "equal access to housing and to acceptable living conditions in a healthy environment."¹⁸ States can uphold women's equal right to housing by conferring on *all* women, regardless of whether they are married, widowed or single, access to adequate housing in their own right.¹⁹ Article 21 of the Protocol also contains – for the first time ever in a human rights treaty – specific reference to a "right to inheritance" for women. Article 21 guarantees that:

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it;

and

2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

For advocates across Africa struggling to make housing security a reality for women, the Protocol provides not only recognition of key human rights challenges faced by women across the continent, but also offers added potential to see women's rights enforced.

At the international level, the landscape for women's housing rights has also expanded, ushering in a new era of progress for women's rights advocates and deepening our understandings of the indivisibility of all women's human rights. For example, in 1999, the United Nations Commission on the Elimination of All Forms of Discrimination against Women adopted its General Recommendation No. 24 on women and health. That General Recommendation underscored that States parties to the Convention on the Elimination of All Forms of Discrimination against Women are obligated to "take all appropriate measures to ensure adequate living conditions, particularly *housing*, sanitation, electricity and water supply, transport and communications, all of which are critical for the prevention of disease and the promotion of good health care" [emphasis added].²⁰

15 Ibid. Art. 6(j).

16 Ibid. Art. 7(d).

17 Ibid. Art. 19(c).

18 Ibid. Art. 16. *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, 33 I.L.M. 1534 (1994), entered into force 5 Mar. 1995. See: <http://www.cidh.oas.org/women/convention.htm>

19 AU Protocol, *supra* note 12, Art. 16.

20 UN Commission on the Elimination of All Forms of Discrimination against Women, 'General Recommendation No. 24 on Women and Health,' 20th session (1999). See: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

More recently, the United Nations Committee on Economic, Social and Cultural Rights adopted its General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights.²¹ The General Comment explicitly recognised that the enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. In that regard, guarantees of non-discrimination and equality in international human rights treaties mandate both *de facto* and *de jure* equality. The Committee noted that:

Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality.²²

On housing rights, the Committee on Economic, Social and Cultural Rights made a critical connection between women’s ability to seek safety from domestic violence, and their ability to enjoy their housing rights. The Committee held that the International Covenant on Economic, Social and Cultural Rights *requires* States parties “to provide victims of domestic violence, who are primarily female, with access to safe housing.”²³ This was a tremendous achievement for women’s housing rights advocates and anti-domestic violence activists alike, and a critical realisation for the international community.

The Committee also took the opportunity to highlight women’s equal inheritance rights, noting that States must “ensure that women have equal rights to marital property and inheritance upon their husband’s death.”²⁴ Further, the Committee reiterated that “women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so.”²⁵

In March 2000, five years prior to the adoption of General Comment No. 16 by the United Nations Committee on Economic, Social and Cultural Rights, the United Nations Human Rights Committee adopted its General Comment 28 on the equality of rights between men and women.²⁶ The Human Rights Committee stipulated, “Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality.” In addition, “the full effect of this provision is impaired whenever any person is denied the full and equal enjoyment of any right. Consequently, States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant.”²⁷ Pertaining to gender-based bias stemming from traditional, cultural and religious practices, the Committee

21 UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 16, Article 3: the Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights,’ 34 (2005), UN Doc. E/C.12/2005/3 (2005) [hereinafter ‘General Comment No. 16’]. See: <http://www.ohchr.org/english/bodies/cescr/docs/CESCR-GC16-2005.pdf>

22 Ibid. para. 14.

23 Ibid. para. 27.

24 ‘General Comment No. 16,’ *supra* note 21, para. 27.

25 Ibid. para. 28.

26 ICCPR, ‘General Comment 28 on the Equality of Rights between Men and Women, Article 3,’ adopted 29 Mar. 2000, UN Doc. CCPR/C/21/Rev.1/Add.10. See: <http://www.unhchr.ch/tbs/doc.nsf/0/13b02776122d4838802568b900360e80?Opendocument>

27 Ibid. para. 2.

stressed that “States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.”²⁸ The Committee also emphasised that:

“The capacity of women to own property ... may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family.”²⁹

These explanations of women’s rights have laid the foundation for standards which have continued to develop since that time, and which continue to expand understandings of women’s housing, land and property rights.

In September 2000, pursuant to its resolution 2000/9, the United Nations Human Rights Council (formerly the United Nations Commission on Human Rights)³⁰ appointed Miloon Kothari as the Special Rapporteur on the Right to Adequate Housing.³¹ Mr. Kothari’s mandate encompasses housing and land rights, access to water, forced evictions and displacements, and he has consistently employed a gender perspective in his work.³² In fact, in recent years, the mandate of the Special Rapporteur on the Right to Adequate Housing has focused in large measure on women’s housing rights and gender-based violations of those rights. In his 2001 report to the Commission, Mr. Kothari identified the scope of the right to housing when he defined the right to adequate housing as “the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity.”³³

In addition to the Special Rapporteur’s general mandate, in 2002 the Human Rights Commission assigned Mr. Kothari the additional assignment of producing a report on women and adequate housing.³⁴ Consequently, Mr. Kothari generated a questionnaire to collect pertinent information from States and civil society groups on States’ legal and policy framework as well as information on the way particular components of the right to adequate housing have an impact on women.³⁵ The questionnaire was used to gather information from various sources, including studies, regional conferences, and statements collected from

28 Ibid. para. 5.

29 Ibid. para. 19.

30 The Human Rights Council was formed 15 Mar. 2006. Unlike the 53 autonomous members of UN Commission on Human Rights, the Human Rights Council is comprised of 47 seats and is considered a subsidiary organ of the General Assembly.

31 Commission on Human Rights, ‘Question of the Realization in all Countries of the Economic, Social and Cultural Rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and Study of Special Problems which the Developing Countries face in their Efforts to achieve these Human Rights,’ *CHR Resolution 2000, 9* (17 Apr. 2000), para. 7(c). See: <http://www.hri.ca/fortherecordcanada/documentation/commission/2000-9.htm>

32 Ibid. para. 7(d).

33 Miloon Kothari, ‘Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living,’ submitted pursuant to Commission Resolution 2000/9, UN Doc. E/CN.4/2001/51 (25 Jan. 2001), para. 8. See: [http://www.unhcr.org/Huridocda/Huridoca.nsf/e6802d4a3d1ddbefc1256610002ee274/e1da15286e4a955fc12569f40033acc/\\$FILE/G0110587.pdf](http://www.unhcr.org/Huridocda/Huridoca.nsf/e6802d4a3d1ddbefc1256610002ee274/e1da15286e4a955fc12569f40033acc/$FILE/G0110587.pdf)

34 Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on ‘Adequate Housing as a Component of the Right to an Adequate Standard of Living, Women and Housing.’ See: <http://www.ohchr.org/english/issues/housing/women.htm>

35 Special Rapporteur on Adequate Housing, ‘Questionnaire on Women and Adequate Housing,’ Commission on Human Rights Resolutions 2002/49 and 2003/22. See:

<http://www.ohchr.org/english/issues/housing/docs/questionnaireEn.doc> The second part of the questionnaire solicited, among other things, information about: security of tenure, access to land and water, affordability, habitability, physical accessibility, location, adequacy, access to information, participation. Miloon Kothari, ‘Women and Adequate Housing, Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination,’ in accordance with Commission Resolution 2002/49, UN Doc. E/CN. 4/55 (26 Mar. 2003).

individual women themselves. The questionnaire elucidates housing rights, and their violations, as they are experienced by women.³⁶ Several regional consultations on women's housing rights were also organised to assist Mr. Kothari in executing a mandate with a gender perspective. The consultations have permitted Mr. Kothari to garner the perspectives of grassroots women in all corners of the globe, and to share these perspectives with relevant international human rights bodies.

The former United Nations Commission on Human Rights (made up of members representing Governments from all over the world) also adopted a series of crucial annual resolutions affirming women's housing, land and property rights.³⁷ In its resolution adopted in 2005, the Commission tackled key issues facing women's housing security and reaffirmed that women's housing rights were integral to the full realisation of women's human rights.³⁸ The Commission also expressed its conviction that a lack of adequate housing can make women more vulnerable to various forms of violence, including domestic violence, and in particular that the lack of housing alternatives may limit many women's ability to leave violent situations.³⁹ The Commission also linked the growing prevalence of HIV/AIDS in women with laws that inhibit the full enjoyment of women's rights to land, joint ownership, and inheritance. Furthermore, the Commission reiterated that there was a need for positive change and attention to women's empowerment and protection of women's housing and land rights to make women less vulnerable to HIV/AIDS.⁴⁰

The former United Nations Special Rapporteur on Violence Against Women, in her report on economic and social policy and its impact on violence against women, also highlighted the importance of securing women's housing rights in the struggle to combat domestic violence, noting:

“Shelter is also a woman's issue. Women who are economically dependent on their partner or their family are often faced with the dilemma of being abused or being homeless.”⁴¹

In 2002, UN-HABITAT and the United Nations High Commissioner for Human Rights created the United Nations Housing Rights Programme (UNHRP), which serves as the United Nations' primary vehicle for promoting housing rights.⁴² The aim of the UNHRP is to: (1) help Governments and other stakeholders enforce their Habitat Agenda obligations, (2) promote programmes that raise awareness, and encourage dialogue between partners, (3)

36 United Nations, Human Rights Council, Implementation of General Assembly Resolution 60/251 (15 Mar. 2006). Miloon Kothari, Human Rights Council, 'Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living,' 4th Session, Item 2, Provisional Agenda, UN Doc. A/HRC/4/18 (5 Feb. 2007), paras. 18-19. *See*: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement> [hereinafter 'Report of the Special Rapporteur, A/HRC/4/18'].

37 *See*: Resolution 2000/13; Resolution 2001/34; Resolution 2002/49; 2003/22; Resolution 2004/21; Resolution 2005/25, available on the website of the UN High Commissioner for Human Rights. *See*:

<http://www.ohchr.org/english/issues/housing/women.htm>

38 UN Commission on Human Rights, 'Resolution 2005/25: Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing,' UN Doc. E/CN.4/2005/RES/25 (15 Apr. 2005). *See*: http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-25.doc

39 *Ibid.*

40 *Ibid.*

41 Radhika Coomaraswamy, 'Report of the Special Rapporteur on Violence against Women, its Causes and Consequences,' submitted in accordance with Commission on Human Rights Resolution 1997/44, Addendum on 'Economic and Social Policy and its Impact on Violence against Women,' UN Doc. E/CN.4/2000/68/Add.5 (4 Feb. 2000). *See*:

[http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/7bf7c36bdd98602c802568be0051f988/\\$FILE/G0011265.doc](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/7bf7c36bdd98602c802568be0051f988/$FILE/G0011265.doc)

42 *See*: UN HABITAT's website, *Our Work: Housing Rights*, <http://www.unhabitat.org/categories.asp?catid=282>

promote the United Nations human rights system, especially the Special Rapporteur on Adequate Housing, (4) create an international scheme to oversee and assess housing rights practices, and (5) encourage the evolution of pertinent laws, and investigation and analysis on housing rights.⁴³ Within its mandate, the UNHRP also works to promote women's equal enjoyment of their housing rights.

The Governing Council of the United Nations Human Settlements Programme (formerly Commission on Human Settlements) has also carried the banner for women's housing rights. In 2005, the Council adopted a resolution on 'Gender Equality in Human Settlements Development.'⁴⁴ The resolution appealed to States to, *inter alia*, "involve women in decision-making at all levels of government and to encourage their participation in human settlements development planning."⁴⁵ The Council also exhorted States to re-examine and, if imperative, "to revise policies, laws and other practices that are discriminatory against women, especially with regard to property rights and to promote proactive policies in favour of strengthening effective women's rights to land and shelter."⁴⁶

Most recently, the Governing Council approved a resolution on women's housing and land rights.⁴⁷ Stressing "that women form the majority of the urban poor, especially those living in slums," the Governing Council "Urge[d] Governments and their development partners to support women's land access trusts, housing cooperatives and other women's organisations, including grassroots organisations, working on land, housing and housing finance to realise women's access to land, housing, housing finance, and security of tenure."⁴⁸

All of these developments – and numerous others⁴⁹ – add up to a tremendous momentum for women's housing rights. But they are not the end of the story. Throughout the sections ahead, we will continue to discuss other recent advancements in the area of women's housing rights. To do so, we will look more closely at some key themes in the area of women's housing rights advocacy, examining corresponding developments at national, regional and international levels.

43 See: UN HABITAT's website, *Our Work: Housing Rights, Programme Focus*, <http://www.unhabitat.org/content.asp?typeid=19&catid=282&cid=790>

44 Governing Council of the United Nations Human Settlements Programme, 'Gender Equality in Human Settlements Development,' UN Doc. HSP/GC/20/7 (8 Apr. 2005). See: http://www.unhabitat.org/downloads/docs/1350_7703_WR1.htm [hereinafter 'Governing Council Resolution 20/7']. Prior to the 2005 Resolution, the Governing Council adopted Resolution 19/16, 'Women's Role and Rights in Human Settlements Development and Slum Upgrading,' UN HABITAT Governing Council, 19th Session, Resolution 19/16, HSP/GC/19/16 (9 May 2003). This resolution acknowledged that women make up a significant number of the urban poor, and exhorted States to guarantee "gender sensitive implementation of slum upgrading programmes, and to promote credit schemes for shelter and income generating activities that are affordable to poor women, in particular those affected by HIV/AIDS." UN HABITAT, *Women's Equal Rights to Housing, Land and Property in International Law* (July 2006), para. 3. See: http://www.sarpn.org.za/documents/d0002451/Women_equal_rights_Jul2006.pdf

45 Governing Council Resolution 20/7, *supra* note 44.

46 Ibid.

47 Governing Council of the United Nations Human Settlements Programme, Submission by the President of the Governing Council, 'Draft Resolution: Women's Land and Property Rights and Access to Finance,' 21st session (Nairobi: 16–20 Apr. 2007), Agenda item 5, HSP/GC/21/CRP.4 (19 Apr. 2007). See: http://www.unhabitat.org/downloads/docs/4722_12798_K0761425%20HSP-GC-21-CRP4%20.pdf

48 'UN HABITAT Governing Council Backs Women in Land and Property Rights,' (26 Apr. 2007). See: <http://www.unhabitat.org/content.asp?cid=4738&catid=528&typeid=6&subMenuId=0>

49 See, for example, the Johannesburg Plan of Implementation approved at the World Summit on Sustainable Development, 26 Aug.– 4 Sept. 2002, UN Doc. A/CONF.199/20. See: <http://www.un.org/jsummit/html/documents/documents.html> The Seventh African Regional Conference on Women (Beijing + 10) – Decade Review of the Implementation of the Dakar and Beijing Platform for Action: Outcome and the Way Forward (Addis Ababa, 12-14 Oct. 2004). See: <http://www.uneca.org/beijingplus10/>. See also: African Union Solemn Declaration on Gender Equality in Africa, adopted 27 May 2005. See: <http://www.africa-union.org/Gender/SOLEM/Presentation.doc>

2 Cross-Cutting Issues for Women's Housing Rights

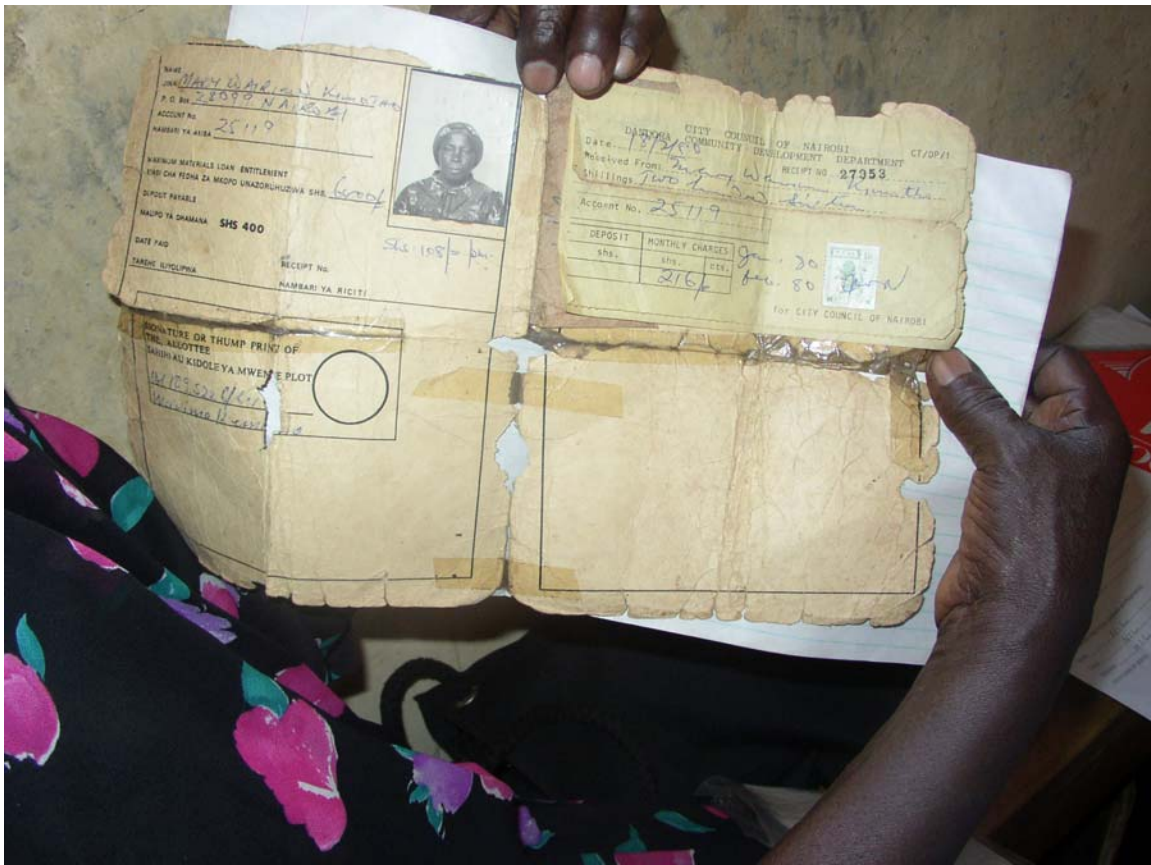


[Adequate housing for women means more than just a roof over one's head. It is a place of income generation, of caring for family, and of protection from insecurity and violence. Photo: COHRE]

In order to properly appreciate women's housing rights as they have continued to evolve over the past decade, it is important to see how they have been deployed, reconceptualised, and broadened to touch upon issues as critical – and as diverse – as health, freedom from violence, and gender equality. No longer seen to be peripheral issues, women's housing rights are increasingly recognised as central to women's overall well-being and status. In order to illustrate advancements in the field of women's housing rights, this section is organised according to issue, or by theme, so that one can better come to know all of the various spheres in which advocates and activists are raising their voices in loud support of women's housing, land and property rights.

While not all areas covered in this section can be said to come with concrete advancements in the areas of law (indeed, many of the laws covered cannot properly be called 'advancement'), we nonetheless see both women's rights activists and housing rights activists increasingly converging on these key issues relevant to millions of women's lives. As women's housing rights continue to strengthen and develop over the next several years, it is in these cross-cutting areas where we expect to see the greatest normative advancements.

2.1 Non-discrimination and Equality



[A woman in Nairobi holds the papers recognising her independent ownership of her land. Photo: COHRE]

All aspects of women's housing rights touch upon the themes of a woman's rights to non-discrimination and equality. Indeed, the very ideas of non-discrimination and equality are cornerstone human right principles which themselves have enjoyed rich development. International human rights law has repeatedly set forth the overarching right to non-discrimination, a principle which applies to all aspects of housing, land and property. Nevertheless, there is a stark gap between the law and the reality for women. Gender discrimination in relation to housing security continues to characterise the daily reality of women in all corners of the world.

In order to secure women's housing and land rights, it is critical to understand that gender neutral laws are often simply not enough to make a real change in the lives of women. Too often, the application of such laws continues to disadvantage women by failing to address entrenched systems of male dominance and male privilege. Indeed, in order to address the housing rights violations which women and girls experience, it must also be understood that those violations are not only rooted in unjust systems of poverty and/or social neglect, they are also deeply rooted in systems of gender-based oppression which must themselves be challenged and put right.

Anti-discrimination provisions are widely contained in a number of international standards (conventions, treaties and supporting documents) as well as regional instruments. These provisions are implemented in national law, usually through constitutional provisions guaranteeing equal rights to all citizens regardless of, among other criteria, sex. Non-discrimination as a principle of law therefore must inform domestic legal frameworks, advancing the recognition of women's equal rights, including the right to own, inherit, purchase, lease, rent or bequeath property.

It is clear that gender equality and non-discrimination are vital tenets germane to the right to adequate housing. Yet, many cultures quite plainly oppose granting women equal land and property rights, going so far as to enshrine women's second class status into national legislation. This is evident in the myriad of cultures that maintains systems only wherein it is almost invariably men who register land and assets. Under such circumstances, women must rely on the male figures in their lives for housing security and to acquire land and property. In the end, this relationship of dependence and subjugation makes women far more susceptible to landlessness and abject poverty. Many times, a woman's ability to have security of tenure hinges precariously on her marital status or whether she has borne a male child.⁵⁰ When women are evicted from their homes, they may relocate to areas that are distant from the schools their children attend, thus requiring women to travel extensively to ensure that their children are able to go to school. Moreover, policies which on their face do not seem to discriminate, often times fail to take into account those particular circumstances which may hinder women's ability to access property, thereby having a discriminatory effect.

Women confront gender-based bias in numerous aspects of housing, including policy development; management and control of family assets; and ability to own, inherit and possess property. Women are also frequently deprived of security of tenure and face many impediments, legal and cultural, when they seek to acquire property on their own.⁵¹

In 1996, the international community acknowledged gender equality in housing rights during the second United Nations Conference on Human Settlements (Habitat II).⁵² At the Habitat II conference States pledged, *inter alia*, to remedy gender discrimination related to housing; to provide "legal security of tenure and equal access to land to all people, including women and those living in poverty," and to "undertak[e] legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property," and to eliminate gender bias in access to housing.⁵³

The former United Nations Commission on Human Rights also affirmed that norms that are biased towards women with respect to access to acquiring, securing and financing land,

50 Asia Pacific Forum on Women, Law and Development (APWLD), International Women's Rights Action Watch Asia Pacific (IWRAP-AP), Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN), Centre on Housing Rights and Evictions (COHRE) & Office of the High Commissioner for Human Rights (OHCHR), Proceedings of the Asia Regional Consultation on 'The Interlinkages between Violence against Women and Women's Right to Adequate Housing,' held in cooperation with the UN Special Rapporteur on Adequate Housing (New Delhi, India: Oct. 2003), para. 35. *See*: http://www.hic-sarp.org/interlinkages_VAW&RAH.pdf

51 Ibid.

52 United Nations Conference on Human Settlements (HABITAT II), 'Report of the United Nations Conference on Human Settlements (HABITAT II),' (Istanbul: 3-14 June 1996), UN Doc. A/CONF.165/14 (7 Aug. 1996), para. 27. *See*: <http://daccessdds.un.org/doc/UNDOC/GEN/G96/025/00/PDF/G9602500.pdf?OpenElement>

53 Ibid. paras. 36, 40(b) and (j).

property and housing “constitute a violation of women’s human rights to be free of gender discrimination.”⁵⁴ The relevant areas in which women face *de jure* or *de facto* discrimination may include: **Marital status** (i.e. submission of a woman’s rights during marriage, or denial of property rights upon death of husband), **Personal status** (i.e. citizenship, legal personhood), and **Economic status** (i.e. access to credit, property, inheritance and independent livelihood). These are also further compounded by discrimination on account of race/ethnicity, religion, language, age, disability, sexual orientation, etc.

Certain critical areas affecting women, including family law (*e.g.* provisions relating to matrimonial property that provide for lesser shares for women; laws that apply only to legally married women and exclude single women or women in customary and consensual unions by default) and key components of women’s property rights, may be either expressly excluded or subject to discriminatory laws that may have to be challenged. At the same time, as women’s human rights advocates around the world have repeatedly pointed out, *non-discrimination provisions in law alone often do not ensure gender equality*. Non-discrimination provisions, rather, must also be supported by effective mechanisms if women are to claim their rights, and many times must also be complimented by targeted, gender-specific programmes which advance women’s equality.

In addition to legal discrimination, whether formal or customary, women also suffer discrimination in the form of social attitudes that constrain their ability to claim and enforce their rights in several respects, including rights to housing, land, property and participation in public fora. There is often a general social acceptance of women’s inferior role, even in reference to language, and these social attitudes can have serious implications for the realisation of women’s rights. For example in the area of legislative reform, which often advocates gender-neutral language and terminology, the persistence and pervasiveness of underlying social attitudes often hinders the development of gender-sensitive legislation which tackles fundamental problems of gender inequality and bias.

Even where States have enacted gender-neutral housing norms, the tradition has been to discriminate against women by limiting their right to acquire and manage property. In countries like India and South Africa which have progressive legislation, women’s rights continue to be governed by social attitudes, a situation which also in turn prevents or discourages them from challenging socially established norms. In these countries, the social framework that discriminates against women denies the legitimacy of their claims to legal rights or denies them power to exercise control over land in cases where they may actually own it. Similarly, while Latin America is frequently recognised for having a normative framework that grants women equal rights to own and inherit property, its enforcement mechanisms continue to be insufficient.⁵⁵

Customary law deserves special consideration here. Customary law generally signifies an unwritten set of social norms governing individual and community behaviours and expectations. Although at times unwritten, customary law is nevertheless grounded in

54 UN Commission on Human Rights, ‘Resolution 2001/34: Women’s Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing,’ 71st meeting, (23 Apr. 2000), [adopted without a vote]. See: http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2001-34.doc

55 Richard S. Strickland, ‘To Have and to Hold: Women’s Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa,’ International Center for Research on Women, Working Paper, (June 2004), p. 8.

generations of practice that is socially accepted and condoned by the community. It is also established through relations of authority that define individual relations within their community and responsibilities within the family. In the context of women's housing, land and property rights, customary law is particularly significant inasmuch as it is grounded in the need to determine individual rights and access to land, which is a principal foundation of customary society.

Distinguishing between genders, customary norms frequently oppose acknowledging women's rights to housing and land. In the context of the family, customary law is often based on the notion of a subservient wife vis-à-vis her husband or is otherwise predicated on a woman's relationship to a male heir. Customary norms therefore place great significance on marriage status, particularly in the context of women's rights and access to family resources, including housing and land. These norms often exclude single, separated and divorced women from accessing and acquiring housing and land, and rarely treat women and men on equal footing. In addition to underlying assumptions that generally accord greater preference and dominance to men, customary practice may discriminate against women in the allocation, management and administration of land as well as in the resolution of disputes, including disputes over inheritance. Although women may have rights of use and access in relation to land, they often do not have *autonomous* rights to land, as rights of use and access are vicarious and derived through relationships with men (i.e. husband, father, uncle, brother or son).

Equality and non-discrimination are themselves bedrock principles on which advocacy on behalf of women's equal housing, land and property rights is itself premised. These principles are overarching, and they touch upon various aspects of women's housing, land and property rights, including each of the more specific themes discussed below.

2.2 Women and Housing Rights in the Context of HIV/AIDS

Research suggests that women who have secure access to, ownership and control over land and other assets are better able to avoid relationships that threaten them with HIV, and to manage the impact of AIDS.

The Global Coalition on Women and AIDS

Research has clearly shown that when women's housing rights are respected and protected – including when women and girls are able to inherit and control housing, land and property – women and girls are better able to cope with the detrimental effects of HIV/AIDS. Because housing security leads to better living conditions, access to livelihood and access to education, women and girls are often better able to mitigate the negative personal and financial impact of HIV/AIDS. Furthermore, a secure home and all that comes with it enhances personal autonomy and reduces many of the risk factors associated with HIV/AIDS. Critically, for women, the realisation of housing and land rights may actually prevent HIV/AIDS transmission in certain cases by reducing dependency and enhancing personal autonomy. On the other hand, repressive norms and traditional practices, gender-based bias and inability to access property generate and sustain circumstances leading to women's susceptibility to HIV/AIDS infection.

According to UNAIDS, women comprise 50 per cent of the total number of HIV/AIDS infected individuals,⁵⁶ yet globally they possess under 15 per cent of the world's land,⁵⁷ and about 1 to 2 per cent of land titles.⁵⁸ In certain States, girls are much more vulnerable to HIV infection than boys.⁵⁹ Certain categories of women are also particularly vulnerable to HIV/AIDS infection, such as impoverished women, sex workers, minority groups, refugees and the internally displaced.

Social factors related to gender relations, status of women and social networks impact women's adaptability and resilience to HIV/AIDS. Indeed, research has shown that the effect of women's unequal legal and social status relative to men increases women's vulnerability to HIV/AIDS. Reproductive health rights are central to women's ability to build their capabilities, take advantage of economic and political opportunities, and control their destinies. In turn, women make strategic life choices which are fundamentally related to their housing, land and property status and security. In situations where their housing security is threatened, women are unable to make truly independent decisions about their sexuality and may not feel able to demand safer sexual practices from their husbands and sexual partners. This not only reduces their power to prevent infection from HIV/AIDS,

56 Miloon Kothari, 'Women and Adequate Housing, Report by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination,' UN Commission on Human Rights, Sixty-second Session, Agenda item 10 of the Provisional Agenda, UN Doc. E/CN.4/2006/118, (27 Feb. 2006), para. 71. See: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/111/66/PDF/G0611166.pdf?OpenElement>

57 ICRW, 'Reducing Women's and Girls' Vulnerability to HIV/AIDS by Strengthening their Property and Inheritance Rights,' *Information Bulletin* (May 2006), para. 1 [hereinafter 'Reducing Women's and Girls' Vulnerability to HIV/AIDS'].

58 Marjolein Benschop and M. Siraj Sait, 'Tools on Improving Women's Secure Tenure,' *Land & Tenure Branch, UN HABITAT, Progress Report on Removing Discrimination in Respect of Property & Inheritance Rights*, 1/2 (Aug. 2006), para. 4. See: http://www.unhabitat.org/downloads/docs/3983_71713_Inheritance%20Final%20071006.pdf

59 Human Rights Watch (HRW), *A Dose of Reality: Women's Rights in the Fight against HIV/AIDS* (21 Mar. 2005). See: <http://hrw.org/english/docs/2005/03/21/africa10357.txt.htm>

but also leaves them with little or no material support if and when their male partner is no longer with them.

One of the greatest obstacles HIV/AIDS infected women confront is their inability to secure property. Women's inability to possess and manage property may result in their impoverishment, particularly in cultures which have a propensity to humiliate or shun HIV/AIDS infected women and girls. Destitution and homelessness at times lead women and girls to engage in perilous conduct by trading sex for their continued existence (i.e. sex for pecuniary purposes as well as housing). In many cases, subsequent to the HIV/AIDS related deaths of male partners or disclosure of their HIV/AIDS status, women are divested of their marital property, inheritance rights, livelihoods, and at times even their children, by relatives who forcibly evict them from their homes.

Gender inequities and stigma combine to produce deleterious circumstances for many women affected by HIV and AIDS. Once their families became aware of their positive status, many women often report suffering verbal harassment, lack of social support and exclusion. In India, for instance, when women revealed their positive status, 6.4 per cent of their spouses and family members responded by renouncing them, compared to 1.4 per cent of males that suffered the same fate. In the aftermath of the disclosure, 12.3 per cent of females, as opposed to 6.9 per cent of males, were abandoned, segregated, verbally and/or physically ridiculed. 5.5 per cent of females, compared to 1.9 per cent of males, were asked to depart from the dwelling. In addition, women reported greater incidences of discrimination in State-run hospitals than did men (70.4 per cent and 59.7 per cent, respectively).⁶⁰

Marital families frequently impugn women when their spouses have HIV/AIDS. Family members often fear that the infected woman might infect them. They are sometimes accused of using witchcraft to bring about their husband's HIV/AIDS related death. In India, 79 per cent of the infected widows asserted that they were deprived of the right to inherit a share of their deceased spouse's property.⁶¹ Approximately 90 per cent of the women also stated that they were disgracefully, and forcibly, ousted from their marital home.⁶²

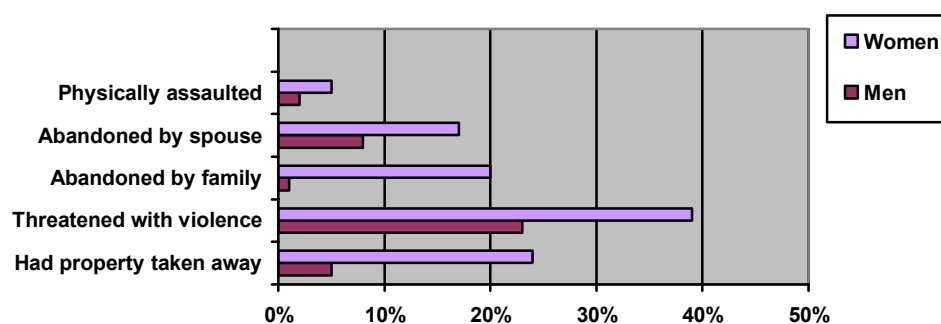
60 Basanta K. Pradhan & Ramamani Sundar, 'Gender Impact of HIV of HIV and AIDS in India,' *United Nations Development Programme* (2006), paras. 70 and 77.

61 Ibid. paras. 108 and 110.

62 Ibid.

Stigma and HIV/AIDS

In addition to being more susceptible to HIV/AIDS, infected women are also more prone to experience harsh stigma. Stigma precedes bias. In a 2005 survey of 218 infected men and women in Tanzania, women overwhelmingly faced greater stigma and bias because of their HIV/AIDS positive status.



Source: International Center for Research on Women (ICRW), 'HIV/AIDS Stigma, Finding Solutions to Strengthen HIV/AIDS Programs,' (2006). See: http://www.icrw.org/docs/2006_stigmasynthesis.pdf

When forcibly evicted from the marital home, women sometimes return to their natal family for lodging. However, in some instances, viewed as “vectors of disease,”⁶³ women are at times forsaken by their natal families because they are infected with HIV/AIDS. When they are involved in property disputes with their deceased husband’s family, the in-laws may obstruct the estate’s management hoping that the infected widow and/or other beneficiaries would die before the case is resolved.⁶⁴ Though destitute and landless in the aftermath of their husbands’ HIV/AIDS related death, women may be reluctant to sue to reclaim their property because they may be compelled to reveal their positive status and subsequently confront the ensuing stigma. In addition, women are confronted with the additional care and responsibility for dependents, including orphans. Having access to an orphan’s land may or may not attenuate the strain placed on these women.

The HIV/AIDS pandemic also “begets human rights violations such as further discrimination and violence.”⁶⁵ To reverse this cycle, the international community has recognised that countries must protect “women’s rights to, *inter alia*, legal capacity and equality within the family, in matters such as divorce, inheritance, child custody and property,” thus empowering women to terminate relationships and work that make them vulnerable to HIV infection.⁶⁶ As the United Nations has noted, having “access to and control over housing, land and other property acquires particular urgency for HIV-positive

63 Office of the United Nations High Commissioner for Human Rights (UNHCHR) & Joint United Nations Programme on HIV/AIDS, *International Guidelines on HIV/AIDS and Human Rights* (2006 Consolidated Version), para. 86 [hereinafter '*International Guidelines on HIV/AIDS*'].

64 Hema Swaminathan, Nandita Bhatla, & Swati Chakraborty, 'Women's Property Rights as an AIDS Response, Emerging Efforts in South Asia,' *International Center for Research on Women (ICRW)*, (2007), para. 8. See: <http://www.icrw.org/docs/2007-property-rights-south-asia.pdf>

65 *International Guidelines on HIV/AIDS*, *supra* note 63, para. 6.

66 *Ibid.* para. 113.

women or widows and children orphaned by AIDS.”⁶⁷ Support for women’s rights to housing and to inherit property can in fact lessen the spread of HIV/AIDS, and advocates continue to shine a light on the preventative and counteractive powers that women’s housing, land and property right have in the context of the pandemic.⁶⁸

2.3 Women and Land Rights

In many developing countries, access to land and natural resources forms the basis of social, political and economic well-being, and is fundamental to housing security. Land is a crucial factor of livelihood and the “focal point of social identity and solidarity.”⁶⁹ For women as well as for men, “ownership and control over property signifies command over productive resources, which enables individuals to make choices regarding livelihoods, provides security against poverty and promotes autonomy.”⁷⁰ In considering land law in the context of women’s housing rights, it is useful to first consider the nature and significance of land rights, including the gendered dimensions of land and tenure.

Land law often has the effect of codifying land tenure systems which embody a complex system of social relations (as well as harmonisation of sometimes conflicting or competing tenure systems). Land law may not account for the full complexity of these systems, thus failing to take into consideration the gendered dimensions inherent in land tenure. Discourse on property rights often regards “property ownership as a relationship between people and things.” However, exploring how property is acquired and managed *in terms of gender inequality* reveals that “property relations signify a relationship *between people and people* and the relationship defines the ability or inability of persons to make claims” [emphasis added].⁷¹

In many instances, rights over land and access to land are determined at the local level and are not subject to the same level of scrutiny as is national legislation. Land law may also not address various forms of tenure at the local level. For example, Uganda’s land law recognises various forms of tenure, but in the case of customary law does not define the forms of tenure that are recognised. Similarly in South Africa, the Communal Land Rights Act requires communities to devise and register a communal plan for rights and access to, as well as management and administration of, communal lands. The greatest challenges in implementation, particularly in terms of ensuring gender equality, often arise at the local level in the context of regulation of land use, management and administration. While States are sometimes reluctant address the gender-bias inherent in many customary systems of land allocation, women’s human rights activists continue to highlight that “gender equality in access to and control over property, especially family property, has to be argued from the point of view of women’s interests and not that of citizens or the family.”⁷²

67 United Nations, ‘Women and HIV/AIDS: Advocacy, Prevention and Empowerment,’ *UN Backgrounder, International Women’s Day* (2004), para. 3. See: http://www.un.org/events/women/iwd/2004/aids_backgrounder.pdf

68 Ibid.

69 Yomi Oruwari, ‘The Formal and Informal Land Markets in Southern Nigeria,’ paper given at EGDI-WIDER Conference, Unlocking Human Potential: Linking the Informal and Formal Sectors, (Helsinki: 17-18 Sept. 2004), p. 2. See: <http://www.wider.unu.edu/conference/conference-2004-2/conference-2004-2-papers/Oruwari%2025052004.pdf>

70 Maitrayee Mukhopadhyay, ‘Introduction: Women and Property, Women as Property,’ *Gender Perspectives on Property and Inheritance, A Global Source Book* (Oxfam GB, 2002), p. 13. See: www.kit.nl/net/KIT_Publicaties_output/showfile.aspx?e=529

71 Ibid. p. 15.

72 Ibid. p.17.

In addition, land law and regulation of land usually has political implications,⁷³ including competing claims in national development policy and access to basic services such as infrastructure and development resources. In poorer countries, land policy reform often forms the basis of government development policy. Land reform, for example, may include legal provisions on land, which aim at redistributing land for economic development or altering rights and access to land to promote individual, private and market-based ownership in line with a country's development objectives. Land reform policy and land legislation in particular may therefore reflect certain gender-based assumptions. These include assumptions on the nature of rights and access to land which may ignore the subordinate or secondary nature of women's rights to land, or may do little to empower them.

Implementation of land tenure rights frequently necessitates "a buttress of instruments such as courts, police, financial institutions, the legal profession, land surveys, cadastral and record keeping systems."⁷⁴ For women in rural Africa, for example, these institutions too often either do not exist or are ineffective. The majority of Africans hold their land under indigenous customary land tenure systems irrespective of the formal legal positions under national law. Rural Africans, therefore, rely largely on traditional customary institutions. Even with inclusive anti-discrimination provisions that exempt the application of customary law, to the extent that land allocation and administration continues to be done at the local level, customary norms and attitudes which discriminate against women may prevail.

2.3.1 Land Reform Legislation

Land reform legislation differs from land law in the sense that besides determining rights and access, land reform legislation has an additional -- often progressive -- function of redistribution frequently in favour of marginalised or traditionally disadvantaged groups. Land reform seeks to achieve a specific purpose in addition to redistribution, which may include, but is not limited to, stimulating economic growth, addressing overcrowding and slum upgrading.

73 See Liz Alden Wily, 'Land Tenure Reform and the Balance of Power in Eastern and Southern Africa,' *Overseas Development Institute (ODI), Natural Resource Perspectives*, 58 (June 2000). See: [\[http://www.odi.org.uk/nrp/58.html\]](http://www.odi.org.uk/nrp/58.html)

74 Food and Agriculture Organization of the United Nations (FAO), 'Irrigation Technology Transfer in Support of Food Security,' (Water Reports - 14), Proceedings of a sub-regional workshop, (Harare, Zimbabwe: 14-17 Apr. 1997), Part II: Technical Papers Presented in the Workshop: Land Tenure, Governance and Sustainable Irrigation Development. See: <http://www.fao.org/docrep/W7314E/w7314e0a.htm#land%20tenure,%20governance%20and%20sustainable%20irrigation%20development>

Lessons from various land reform processes demonstrate that women are often excluded as beneficiaries of agrarian land reform. For various reasons often related to gender-based assumptions about land ownership and access (or rather, failure to account for gender-based realities of land ownership and access), land reform legislation thus fails to address issues of equal access and representation for women. Notwithstanding the increasing number and proportion of female-headed households, land reform often targets ‘heads of households’ that are often assumed to be men. The continuous disregard for joint ownership, as well as single female heads of households, contributes to the under-representation of women as beneficiaries of agrarian land reform. To reverse this trend, programmes targeting women should include direct proactive ‘inclusion’ measures such as mandatory joint titling and adjudication of land rights. Moreover, proactive measures must consider gender equality as a *specific and central objective* of land reform.

With regard to women, a whole range of land rights requires particular and sensitive attention. Despite a great deal of lobbying by women’s groups, progress has proven extremely challenging. Participation and wide consultation are important not only to ensure that legislation is responsive to women’s needs, but also to encourage broad-based support assisting implementation of pro-women land reforms. Additionally, women’s groups should be encouraged to monitor parliamentary debates closely to avoid “lost amendments”⁷⁵ (*see e.g. Uganda below*). It is also noteworthy that implementation of land reform remains a significant task, particularly where governments do not have the capacity or resources to implement new laws or where the law creates new institutions and mechanisms without making adequate consideration for costs and budgeting. Coordination and integration of government planning on land, as opposed to multiple and different or divergent initiatives, can assist with implementation.⁷⁶

2.3.1.1 Uganda and South Africa

In Southern Africa, Malawi is the only country in the region which explicitly refers to women in constitutional provisions pertaining to property rights.⁷⁷ South Africa is the sole State to acknowledge the right to adequate housing in its Constitution.⁷⁸ Though constitutions throughout the region provide for equal rights of men and women, as well as non-discrimination, at times States disregard the constitution and apply customary norms (*e.g. Zimbabwe*). Armed conflicts and the HIV/AIDS pandemic have disproportionately impacted women’s entitlement to housing, land and property.⁷⁹ By and large, women are

75 The “lost clause” in Uganda refers to an Amendment which several civil society groups submitted to the Ugandan Parliament since the proposed land bill failed to bolster women’s property rights. The civil society groups succeeded in having the Parliament adopt the Amendment. The spousal co-ownership Amendment was however omitted from the final version of the Land Act thus the term “lost amendment” or “lost clause.” The Amendment stated that:

Where land acquired by a spouse individually or by spouses jointly is used as the principal place of residence or becomes the principal source of income or sustenance of the family...such land is and shall accordingly be treated for every purpose thereafter as land owned in common by the spouses.

Women’s Action 17.1, Uganda: Exclusion of Women from land Ownership – The “Lost Clause”(Aug. 2000). *See:* http://www.equalitynow.org/english/actions/action_1701_en.html

76 Robin Palmer, *Learning Lessons from Land Reform in Africa*, (East Africa: Oxfam GB, 2000).

77 United Nations Human Settlements Programme (UN HABITAT), ‘Law, Land Tenure, Housing Rights and Gender in Brazil,’ *Land Tenure and Gender Review Series: Latin America*, (2005), para. 17 [hereinafter ‘Law, Land Tenure, Housing Rights and Gender in Brazil’].

78 *Ibid.* para. 18.

79 *Ibid.*

granted restricted realisation of their inheritance rights. The practice of divesting widows of property, a problem that has been exacerbated by HIV/AIDS, is widespread throughout Southern Africa despite the fact that it is against the law.⁸⁰ A number of States are attempting to ameliorate women's inequality through affirmative action programs, land reforms with pro-women dimensions, and law reform.⁸¹

In Uganda, the Constitution is deemed rather progressive with regard to its equality provisions. The Constitution specifies that everyone is "equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law"⁸² and that no one should be subjected to discrimination based on "sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability."⁸³ The Constitution also disallows traditional and customary practices that are prejudicial to women.⁸⁴ Nevertheless, legislative reform processes has failed to ensure that national norms are in accord with the Constitution.

Even the most progressive protections of a constitution lack genuine force unless the rights enshrined therein are converted into effective domestic laws, with corresponding enforcement mechanisms which are themselves accountable to the law. For example, the Ugandan Constitution ensures that "Every person has a right to own property either individually or in association with others,"⁸⁵ while customary norms regulating property rights or traditional application of gender-neutral statutory norms continue to prefer male ownership, thus depriving women of the right to own property. To reverse this trend, advocates have diligently sought to stimulate land law reform to amend the Land Act of 1998,⁸⁶ which established an official scheme of tenure, management and possession of land⁸⁷ devoid of women's property entitlements.⁸⁸

Aware that the Land Act was being reconsidered, women's rights advocates in Uganda revitalised the effort to incorporate the "lost clause" in the Land Act. Recognising that the people were not in favour of including a provision on joint ownership of property, non-governmental organisations pushed for inclusion of the household's interest in land by appealing to the Parliament to incorporate a provision obliging that "family land" be recorded in the names of spouses and dependent children.⁸⁹ Inclusion of this provision would guarantee that women have access to land and increase their chances of residing in

80 Ibid. paras. 21-22.

81 Ibid. paras. 18-19.

82 *Constitution of the Republic of Uganda* (1995) para. 22(1). See: http://www.parliament.go.ug/index.php?option=com_wrapper&Itemid=78.

83 Ibid. para. 22(2).

84 Ibid. para. 33(6).

85 Ibid. para. 26(1).

86 Women's Action 17.1, Uganda, *supra* note 75.

87 Aili Mari Tripp, 'Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda,' *African Studies Quarterly*, 7/4 (Spring 2004), p. 5. See: <http://www.womenforwomen.org/downloads/CHJournalv3.pdf>

88 Cara Dilts, "Engendering" Rights in Uganda: Women's Struggle for Equality, *Critical Half*, *Bi-Annual Journal of Women for Women International*, 3/1 (Summer 2005), p. 36. See: www.womenforwomen.org/downloads/CHJournalv3.pdf The Land Act of 1998 declined to bestow on married women the right to jointly possess property with their husband.

89 Ibid.

the marital dwelling if the marriage dissolves.⁹⁰ The Land (Amendment) Bill was adopted in June of 2003.⁹¹

In 2004, the Ugandan Land (Amendment) Act was passed. Though it lacks a provision on joint ownership, it contains a “security of occupancy” clause. Section 38A of the Land (Amendment) Act of 2004 provides for spousal “security of occupancy” on family land, which involves the entitlement to access and reside on the family property, to utilise family property, and to grant or deny authorisation to dealings that encroach on a spouse’s land entitlement. Article 38A protects the family’s primary residence, the property from which the family obtains its nourishment or the property the family regards as family property according to law, customary and religious practices. This provision does not pertain to women who are legally separated (by divorce or death) nor does it *per se* grant women the right to own the property.⁹² Rather, this Article merely affords women the right to dwell in the family home, and to otherwise occupy land and property.

The Constitution and Land Act of 1998 has generated concrete land reforms. These reforms are currently being enforced. However, the development has been a difficult undertaking for the State to accomplish in its entirety because when the reforms were designed, the Government failed to extensively consider the enforcement phase as well as the necessary resources. Consequently, upon recognising that it is crucial to review its next steps, the Ugandan Government created the Land Tenure Reform Project.⁹³ This plan seeks to (1) enhance the public’s awareness of the land laws as a means to lowering opposition to it, (2) establish an efficient inexpensive mechanism for enforcing the land laws, and (3) create a medium and long term strategic plan to direct the enforcement procedure.⁹⁴

South Africa’s Constitution grants equal rights to men and women⁹⁵ while at the same time acknowledging customary norms which tend to favour men. Notwithstanding the State’s commitment to gender equality, as a matter of practice, women’s right to access property often hinges on their associations with men.

Only male heads of household who have been formally allocated land rights hold full citizenship rights within their communities, including the right to build a house, plant a crop, control their productive earnings from the land, access public resources and participate in public debates. Women’s secondary rights to land similarly correspond to secondary rights in respect of other community activities,

90 Update: Women’s Action 17.2, Uganda: Exclusion of Women from Land Ownership – The “Lost Clause” (Nov. 2004). See: http://www.equalitynow.org/english/actions/action_1702_en.html

91 *Just Die Quietly: Domestic Violence and Women’s Vulnerability to HIV in Uganda*, 15/15(A) (Aug. 2003), p. 47. See: <http://www.hrw.org/reports/2003/uganda0803/4.htm> See also: Land (Amendment) Bill: <http://www.parliament.go.ug/billtrack/bills/text/2002-013.doc>

92 Margaret Rugadya, Esther Obaikol & Herbert Kamusiime, *Gender and the Land Reform in Uganda, Assessing Gains and Losses for Women in Uganda* (Aug. 2004), p. 13. See: http://www.oxfam.org.uk/resources/learning/landrights/downloads/afd_gender_land_reform_process.pdf

93 Margaret Rugadya, ‘Current Status and Challenges in the Land Reform Process in Uganda: An NGO Perspective,’ *Uganda Land Alliance* (5-7 May 2003). See: <http://www.acs.or.ke/paplr/docs/CTPAPLRR-UgandaLandAllianceRugadyaPaper.pdf> (See also “status” under each section).

94 *Ibid.* p. 4.

95 *Constitution of the Republic of South Africa*, No. 108 (1996), Art. 3 and Art. 39(3). See: <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>

rendering them as subjects, or minors, both within their households and within the wider community, as dependents of the formal holder.⁹⁶

To rectify this problem, in 1997 the State endorsed a manuscript entitled “Land Reform Gender Policy” designed to establish “an enabling environment for women to access, own, control, use and manage land; as well as access credit for productive use of the land.”⁹⁷ However, there is a disconnect between the policy’s aspirations and its implementation. Numerous women have pointed out that housing is usually reserved for married men and they encountered hardships when they attempted to obtain property from the traditional leaders. Similarly, unwed mothers acquired land allotments, if at all, only where the land is registered under the name of a male family member. Land was also rarely allotted to widows or women who lacked male progeny.⁹⁸

One of the tenure reform programs, the 2004 Communal Land Rights Act, sought to implement the security of tenure provision of the Constitution.⁹⁹ The Act provides that “a woman is entitled to the same legally secure tenure, rights in or to land and benefits from land as is a man, and no law, community or other rule, practice or usage may discriminate against any person on the ground of the gender of such person.”¹⁰⁰ This provision establishes joint ownership of old order property rights: property previously distributed to unwed women or married individuals will convert into property that is jointly owned.¹⁰¹

The implications for women under the Communal Land Rights Bill in South Africa included significant provisions:

- The legal recognition and formalisation of the African traditional system of communally-held land¹⁰² within the framework provided by the Constitution of South Africa;
- Security of tenure for communities and individuals, including women, the disabled and the youth within the tenure system of their choice;
- Transfer and registration of communal land and rights in and to that land regardless of gender; and
- Creation of a uniform national registration system for all tenure rights whether held individually or communally.

96 Ingunn Ikdahl, et al, ‘Human Rights, Formalisation and Women’s Land Rights in Southern and Eastern Africa,’ *Studies in Women’s Law*, 57 (June 2005), p. 59. See: http://www.sarpn.org.za/documents/d0001447/P1786-Women-rights_June2005.pdf

97 Ibid. p. 60.

98 Ibid. pp. 115-16.

99 Ibid. p. 15; *Constitution of the Republic of South Africa*, No. 108 (1996), Art. 25(6). See:

<http://www.info.gov.za/documents/constitution/1996/a108-96.pdf> Article 25(6) states that “a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.”

100 Republic of South Africa, *Communal Land Rights Act*, 11 (2004), Art. 4(2). See: www.info.gov.za/gazette/acts/2004/a11-04.pdf

101 Aninka Claassens, ‘The Communal Land Rights Act and Women: Does the Act Remedy or Entrench Discrimination and the Distortion of the Customary?’, *Land Reform and Agrarian Change in Southern Africa*, An occasional paper series, 28 (Sept. 2005), p. 17. See: <http://www.plaas.uwc.ac.za/publications/OP%2028.pdf>

102 Communal land is defined in Article 1 of the Communal Land Rights Act 2004 as land occupied or used by members of a community subject to rules and customs of the community.

2.3.1.2 India and China

In Asia, it is common for inheritance norms to prefer men. Husbands control the property their wives ‘inherit.’ In some States, a woman possesses property until she dies, at which point it returns to the men in her family.¹⁰³ Similar to those in Southern Africa and Latin America, land laws in Asia are generally either gender neutral or they unequivocally forbid gender or sex-based bias with regard to land. Nevertheless, these laws are rarely enforced in rural regions because customary norms are used extensively.¹⁰⁴ Land reform has produced positive results in East Asia because it has been linked to the development policies of the States.¹⁰⁵ Land reform policy in East Asia seeks to diminish poverty, particularly in the rural areas, and to offer auspicious “conditions for an economic ‘take off’ that embraced and supported industrialisation.”¹⁰⁶

Article 14 of the Constitution of India specifies “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” The Constitution also bans “discrimination on grounds of religion, race, caste, sex or place of birth.”¹⁰⁷ Nonetheless, women are by and large dispossessed of their property entitlements despite the fact that the 1956 Hindu Succession Act granted females (daughters, widow, mother) the right to inherit property.¹⁰⁸

The Indian Government asserted its land reform policy when it adopted its First Plan (1951-1956). The Government expounded in the First Plan that its land reform goals were to boost effective land use and to permit tenants to farm on the land in order to lower inequalities related to earnings and assets, to eradicate exploitation, and to “provide security to tenants, as well as to achieve social transformation through equality of status and an opportunity for different sections of the population to participate in development initiatives.”¹⁰⁹

The Eighth Five-Year Plan (1992-1997) established fundamental prerequisites for improving the lives of women. This plan obliges the State to revise inheritance norms to enable women to inherit property from their natal family. Additionally, the State urged local governments to allocate to women 40 per cent of excess land (land obtained by the State from families possessing more than the permissible allocation). The strategy also provided that 60 per cent of excess allocated land should be given to families with the land title in both spouses’ names. The Ninth Five-Year Plan (1997-2002) focused on women’s empowerment. The latest plan, the Tenth Five-Year Plan (2002-2009), proposes explicit guidelines and programmes to help empower women. The Tenth Five-Year Plan states that:

103 Women in Development Service (SDWW) FAO Women and Population Division, Women and Land Tenure. See: <http://www.fao.org/sd/fsdirect/fbdirect/FSP002.htm>

104 Food and Agricultural Organization of the United Nations (FAO), International Conference on Agrarian Reform and Rural Development, ‘Issue Paper One, Policies and Practices for Securing and Improving Access to Land,’ UN Doc. ICARRD 2006/IP/1 (Feb. 2006), para. 53. See: http://www.icarrd.org/en/icard_doc_down/Issue_Paper1sum.pdf [hereinafter ‘Policies and Practices for Securing and Improving Access to Land’].

105 Lloyd M Sachikony, *Inheriting the Earth, Land Reform in Southern Africa* (2004), p. 9. See: http://www.cjrr.org/shared_asp_files/uploadedfiles/%7B56AF3F5A-3E1D-4DC3-93CE-E62C34AFE3DB%7D_Inheriting_the_earth.pdf

106 Ibid. p. 10.

107 *Constitution of India, adopted* 26 Nov. 1949, *effective* 26 Jan. 1950, as *amended* through 20 Jan. 2006 (93rd amendment), Art. 14. See: <http://indiacode.nic.in/coiweb/coifiles/part.htm>

108 R.S. Deshpande, ‘Current Land Policy Issues in India,’ *Land Reform – Land Settlement and Cooperatives* – 2003/3 Special Edition, p. 171. See: <http://ftp.fao.org/docrep/fao/006/y5026e/y5026e03.pdf>

109 Ibid. p. 158.

Measurement of development has to go beyond the achievement of GDP growth to indicators of distributive justice and their monitoring. Women-headed households have to be specifically targeted, identifying added disadvantages in the rural and urban locations with reference to different parameters of deprivation. Formulation of gender development indicators to measure human development and their use as a tool for monitoring development needs to be hastened.¹¹⁰

Despite this laudable plan, however, women's concerns with regard to land entitlements have been largely ignored because of entrenched traditional beliefs and customary practices which deny women full equality.

China's normative framework also protects women's rights and interests. The Constitution provides that women "enjoy equal rights with men in all spheres of life, in political, economic, cultural, social and family life."¹¹¹ The Marriage Law reaffirms the wife's equal status with her husband within the family unit,¹¹² asserts that inherited or bequeathed properties are co-owned by both spouses¹¹³ and notes that both spouses and their children have the right to inherit from each other.¹¹⁴ China's General Principles of the Civil Law stipulates that women have equal civil rights with men.¹¹⁵ Besides the Marriage Law, the Law on the Protection of Women's Rights and Interests also safeguards women's rights to land.¹¹⁶

In 2002, the National People's Congress in China approved the Rural Land Contract Law (RLCL). The RLCL entered into force on 1 March 2003¹¹⁷ as a groundbreaking instrument in China to address agrarian land tenure in its entirety.¹¹⁸ The RLCL protects 30-year land entitlements for farmers.¹¹⁹ The scope of the farmers' land entitlements according to the RLCL consists of the "the rights to use the land contracted, to reap the yields and to circulate the right to land contractual management, and the right to make [their] own

110 Vibhuti Patel, 'How India's Budget for 2003-04 will Impact Women.' See:

<http://www.infochangeindia.org/bookandreportsst38.jsp#>

111 *Constitution of the People's Republic of China*, adopted 4 Dec. 1982, amended 14 Mar. 2004, Art. 48. See:

<http://www.npc.gov.cn/zgrdw/English/constitution/constToDetail.jsp?id=full&pages=3#Chapter2>

112 *Marriage Law of the People's Republic of China*, adopted 10 Sept. 1980, amended 28 Apr. 2001, Art. 13. See: <http://edinburgh.china-consulate.org/eng/rz/v214055.htm>

113 *Ibid.* Art. 17.

114 *Ibid.* Art. 24.

115 *General Principles of the Civil Law of the People's Republic of China*, adopted at the Fourth Session of the Sixth National People's Congress, promulgated by Order No. 37 of the President of the People's Republic of China 12 Apr. 1986, effective 1 Jan. 1987, Art. 105. See: http://www.chinaproject.de/Recht_Steuern/General%20Principles%20of%20the%20Civil%20Law%20of%20the%20People's%20Republic%20of%20China.htm

116 People's Republic of China, *Law on the Protection of Women's Rights and Interests*, adopted 3 Apr. 1992, amended 28 Aug. 2005, Arts. 32 and 33. See: <http://www.wcwonline.org/pdf/lawcompilation/TheRevisedLawProtection.pdf>

Article 32

Women enjoy equal rights with men in aspects of land contract, distribution of proceeds of collective economic organization, land expropriation, the use of expropriation compensation and the use of housing sites.

Article 33

No unit or individual can violate women's rights and interests in the collective economic organization based on women's status as single, married, divorced or widowed. Both husband and children enjoy the equal rights and interests as other members of collective economic organization when the husband moved to his wife's residence after his marriage

117 *Law of the People's Republic of China on Land Contract in Rural Areas (Order of the President No.73)*, adopted 29 Aug. 2002, entered into force 1 Mar. 2003. See: http://www.gov.cn/english/2005-10/09/content_179389.htm

118 J.D. Ping Li, 'Rural Land Tenure Reforms in China: Issues, Regulations and Prospects for Additional Reform,' *Land Reform – Land Settlement and Cooperatives* (Special Edition 2003/3), p. 61. [hereinafter 'Rural Land Tenure Reforms in China']. See: <http://ftp.fao.org/docrep/fao/006/y5026e/y5026e01.pdf>

119 *Law of the People's Republic of China on Land Contract in Rural Areas (Order of the President No.73)*, adopted on 29 Aug. 2002, entered into force 1 Mar. 2003, Art. 20. See: http://www.gov.cn/english/2005-10/09/content_179389.htm

decision regarding the arrangements for production and operation as well as the disposition of the products” and the “right to obtain appropriate compensation for the contracted land that is requisitioned or occupied according to law.”¹²⁰ The RLCL grants farmers the power to convey, lease, barter or allocate their land entitlements.¹²¹

Women in China have *de jure* right to land but in reality have been excessively deprived of their land rights particularly due to relocation, marriage or death of a spouse.¹²² The RLCL reaffirms the tenet of equality by granting women land rights on a par with men. The RLCL provides that “women shall enjoy equal rights with men. The legitimate rights and interests of women shall be protected in contract. No organisations or individuals may deprive their rights to land contractual management, which they are entitled to, or infringe upon such right.”¹²³ In regards to the rural women who tend to lose their land entitlements when land is readjusted, the RLCL states these provisions:

During the term of contract, a woman gets married and undertakes no contract for land in the place of her new residence, the party giving out the contract may not take back her originally contracted land; and where a divorced woman or a woman bereaved of her husband still lives at her original residence or does not live at her original residence but undertakes no contract for land at her new residence, the party giving out the contract may not take back her originally contracted land.¹²⁴

Besides the aforementioned legislative measures, China has published a few circulars designed to protect women’s rights to land. One such example is the 2001 Circular on Safeguarding in Real Earnest Rural Women’s Land Contracting Right and Interests, which specifies that all rural women, married or single, have comparable rights to “male villagers having the same conditions and that no organisation or individual shall, in any form, deprive them of their legitimate land contracting right, their right to use their housing-site land, their right to share collective economic organisations’ incomes and other economic rights and interests.”¹²⁵

While there has been explicit jurisprudential development with regard to women’s rights to land in China, implementation of these rights needs to be strengthened. For instance, a survey disclosed that 8.3 per cent of the rural inhabitants lacked contracted land and 71 per cent of that affected group were women. Moreover, community standards and patrilocal practices have had a negative impact on women’s ability to enjoy their rights to land. In a number of rural communities contracting land rights were reserved for men. Other communities granted land exclusively to married women, while others required married women to pay a fee as a precondition for her children and herself to benefit from similar rights as inhabitants of the same rural community.¹²⁶

120 People’s Republic of China, *Rural Land Contract Law*, Art. 16 [hereinafter ‘*Rural Land Contract Law*’]. See: http://www.gov.cn/english/2005-10/09/content_179389.htm

121 Ibid.

122 Rural Land Tenure Reforms in China, *supra* note 118, Art. 63.

123 *Rural Land Contract Law*, *supra* note 120, Art. 6.

124 Ibid. Art. 30.

125 Mao Wenxiu, ‘Rural Women’s Land Rights and Interests Merit Close Attention,’ *China Society for Human Rights Studies, Human Rights*, 6/2 (Mar. 2007). See: <http://211.167.236.236/zt/magazine/20040200741992705.htm> The Government also issued, in 2004 and 2006 respectively, its ‘Decision on Deepening Reforms and Exercising Stricter Administration over Land,’ and the ‘Circular on Related Issues Regarding Strengthening Regulations on Land’ in its attempt to secure women’s rights to land.

126 Ibid.

Notwithstanding their place of residence, financial circumstances and education, wedded women in China's agrarian communities have feeble *de facto* land entitlements in their natal family unit and rural communities.¹²⁷ The majority of women are divested of their land entitlements when they get married.¹²⁸ This is illustrated by a survey on married women's rights to retain their interest in the natal family's contract land. This survey revealed that 76.6 per cent of those participants believed that married women lacked entitlement to the profits from her interest in the natal family's contract land.¹²⁹ Like the African context, customary standards in China's agrarian communities frequently prevail over *de jure* land rights to deny married women of their interest in the natal family's contract land.¹³⁰

2.3.1.3 Brazil

Constitutions in Latin America have bestowed equal rights to men and women. Rights pertaining to property, inheritance and family are enshrined in civil codes throughout the region, and most of the civil codes have been revised to acknowledge the rights of both genders.¹³¹ Titling programs usually confer land titles to men because they are viewed as the head of the family although property titles in the names of both spouses are acknowledged in domestic laws.¹³²

In Brazil, 52 per cent of the population is female.¹³³ Under the Brazilian Constitution, women are granted equivalent rights to men.¹³⁴ The Constitution also protects women's right to property¹³⁵ and grants married men and women equal right to inherit from their deceased spouse.¹³⁶ One of the constitutional revisions led to the integration of the right to adequate housing within the Constitution's enumerated social rights.¹³⁷ Though the Constitution provides for the right to adequate housing, it does not expressly provide for equal property rights for married couples.¹³⁸ Still, women in Brazil are granted the right to have the agrarian land deed of title in their names, regardless of whether they are married or single.¹³⁹

Women in Brazil have *de jure* right to land, but in reality they are unable to realise this right due to customary laws that discriminate against them and favour men.¹⁴⁰ For instance, an agricultural land policy reserved for families favours men because female-headed households rarely meet the recipient requirements¹⁴¹ though they make up 26 per cent of the Brazilian population.¹⁴² Despite the fact that most of the destitute and landless are women, the ones

127 Li, Yang and Yin-Sheng, Xi, 'Married Women's Rights to Land in China's Traditional Farming Areas,' *Journal of Contemporary China*, 15/49 (2006), p. 628.

128 Ibid. p. 629.

129 Ibid.

130 Ibid. p. 634.

131 'Law, Land Tenure, Housing Rights and Gender in Brazil,' *supra* note 77, para. 14.

132 Ibid. para. 15.

133 Hazel Onsrud, Silvane Paixao & Sue Nichols, *Women and Land Reform in Brazil*, (May 2006), p. 90. See:

<http://gge.unb.ca/Pubs/TR239.pdf> [hereinafter 'Women and Land Reform in Brazil'].

134 *Constitution of Brazil*, Art. 5(I). See: <http://www.servat.unibe.ch/law/icl/br00000.html> [hereinafter 'Constitution of Brazil'].

135 Ibid. Art. 5(XXII). Property ownership is considered to serve a social purpose.

136 Ibid. Art. 5(XXX).

137 *Women and Land Reform in Brazil*, *supra* note 133, p. 25 (re Constitutional Amendment No. 26).

138 Policies and Practices for Securing and Improving Access to Land, *supra* note 104, p. 62.

139 *Constitution of Brazil*, *supra* note 134, Arts. 183(1) and 189.

140 Ibid. Art. 1.

141 Ibid. Art. 92.

142 UN HABITAT, *Policy Makers Guide to Women's Land, Property and Housing Rights Across the World*, (Mar. 2007), para. 8 [hereinafter 'Policy Makers Guide'].

who have access to housing usually lack security of tenure¹⁴³ because they are perhaps without title to their residence.¹⁴⁴

In 2000, a program was established to address gender discrimination in the housing rights area. This program set up a quota to permit women to play a political role in implementing the housing programme.¹⁴⁵ Due to this programme, joint titling of land in both spouses' names became mandatory and there have been attempts to help women secure titles to land.¹⁴⁶ However, although Brazil started to implement joint titling of land in 2001 consistent with its Constitution,¹⁴⁷ land registration continues to be in men's names because women frequently do not have the mandatory documents to be able to have land titled in their own names.¹⁴⁸ In 2001, Brazil modified the customary practice of securing land ownership for men and began to distribute joint land titles pursuant to its Constitution,¹⁴⁹ but the number of women who have benefited from joint titling or have secured titling in their own name is still unknown.¹⁵⁰

In 2001, the National Forum of Urban Reform's efforts led to the adoption of the City Statute (Law no.10.257/2001). This law established the legal structure and standards of land reform in the cities. Two years later this civil society group also helped create the Ministry of Cities.¹⁵¹ Although Brazil lacks a specific clause for equal entitlements to property for married couples, in 2002 a new Civil Code (Law No. 10.406/2002) was promulgated to apply a gender perspective while addressing issues pertaining to family, inheritance, ownership and property rights. The 2002 Civil Code also acknowledges the equal rights and duties of the married couple.¹⁵²

In 2004, Brazil passed a groundbreaking rule in São Paulo obliging urban establishments to support women workers by helping them prepare and gain specialisation for the workforce so that they may contribute to the industrial processes, manage their own businesses and become involved in neighbourhood organisations dealing with housing.¹⁵³ The São Paulo rule made it mandatory for housing plans to contain provisions granting women, regardless of marital status, preference as recipients of "contracts, conventions and other forms of partnerships" funded by city funds.¹⁵⁴ An additional significant development is the enactment of a federal law in 2005 (Law no. 11.124/2005). This law resulted from a popular initiative¹⁵⁵ which suggested the establishment of a National Popular Housing Fund and a

143 Hazel Onsrud, Silvane Paixao & Sue Nichols, *Women and Land Reform in Brazil*, (May 2006), p. 25. See:

<http://gge.unb.ca/Pubs/TR239.pdf>

145 Ibid. p. 90.

145 Ibid. p. 99.

146 Ibid.

147 United Nations Human Settlements Programme (UN HABITAT), 'Law, Land Tenure, Housing Rights and Gender in Brazil,' *Land Tenure and Gender Review Series: Latin America*, (2005), para. 37.

148 Policies and Practices for Securing and Improving Access to Land, *supra* note 104, p. 61.

149 United Nations Human Settlements Programme (UN HABITAT), 'Law, Land Tenure, Housing Rights and Gender in Brazil,' *Land Tenure and Gender Review Series: Latin America*, (2005), para.37.

150 Ibid.

151 Food and Agricultural Organization of the United Nations (FAO), International Conference n Agrarian Reform and Rural Development, 'Issue Paper One, Policies and Practices for Securing and Improving Access to Land,' UN Doc. ICARRD 2006/IP/1 (Feb. 2006), para. 40. See: http://www.icarrd.org/en/icard_doc_down/Issue_Paper1sum.pdf

152 *Policy Makers Guide*, *supra* note 142, para. 21.

153 Ibid. para. 10.

154 Ibid. para. 31.

155 The Brazilian Constitution affords citizens the right to present bills by popular initiative. Registration of 1 per cent of the national electorate is required for national projects of law. United Nations Human Settlements Programme (UN HABITAT), 'Law, Land Tenure, Housing Rights and Gender in Brazil,' *Land Tenure and Gender Review Series: Latin America*, (2005), para. 40.

National Popular Housing Council with the goal of enforcing a nationwide housing strategy for people earning low wages. As a result of this legislation, housing subsidies may be made available to those in need, including women.¹⁵⁶

2.4 Women and Forced Evictions

“Women bear the brunt of forced evictions, especially when evictions are accompanied by violence.”

Miloon Kothari
UN Special Rapporteur on the Right to Adequate Housing

“My sister, you know that in every aspect of life, whenever there is a problem the women suffer more, if marriage breaks, the woman suffers the cultural stigma that accompanies divorces/separation as well as economic hardship. So the same thing goes for forced eviction.”

Testimony given to COHRE by a woman forcibly evicted in Nigeria

The prohibition against forced evictions is a vital principle inherent in the right to adequate housing. A State’s duty to abstain from, and to shield its citizens against, the practice of forced evictions is an obligation upheld within numerous international human rights standards.¹⁵⁷ Forced evictions are frequently connected to lack of security of tenure, an indispensable component of housing rights. On a global scale, forced evictions aggravate the worldwide homeless and housing crisis. Forced evictions include urban slum clearances, displacement during armed conflict and evictions during large-scale development projects. Forced evictions result in displacement, loss of homes, livelihood, property and belongings, but also lead to loss of relationships and support systems, and physical and psychological injury for those evicted. Their impact on women is profound, and the devastation of forced evictions is felt globally. While forced evictions are a phenomenon which affects woman as well as men, it is important to highlight the unique ways in which forced evictions combine with gender inequality to produce specific crises for women. Forced evictions are often accompanied by violence, sometimes specifically targeting women (including gender-based and other forms of bias, such as race and class-based discrimination). In addition, women’s position within and outside the family becomes more precarious as eviction places additional strain on situations that are often difficult from the onset. The loss of support systems impacts women’s ability to care for children and other dependent family members, which also affects their ability to find work and attend to daily chores.

Forced evictions represent a brutal violation of the right to adequate housing, and have particular ramifications for women. Women are most often the primary targets during forced evictions because evictions most often take place during the day, when women (often perceived to be less likely to resist) are at home. In the midst of the violence and chaos

156 Ibid.

157 Report of the Special Rapporteur, UN Doc. A/HRC/4/18, *supra* note 36, p. 14, para. 1.

which often accompanies forced evictions, private actors and State security forces, including the police, often perpetrate acts of physical and sexual abuse and harassment against women and girls.

Indeed, the affects of forced evictions are very hard on women, as women are often charged with taking care of the children and family before, during and after an eviction, and for providing a sense of stability at home. In cases where a woman is the sole economic provider for her household, forced eviction can also result in utter destitution for herself and her children. Discriminatory norms, customary laws, cultural practices, domestic violence, and economic obstacles all contribute to women's susceptibility to forced evictions. Women are prone to forced evictions as a result of the gender-based bias they experience. For instance, within the HIV/AIDS context, women susceptible to forced eviction due to (real or perceived) positive status, or upon the death of a spouse. Women who reside with their in-laws may also face eviction once they divorce their spouse, when their spouse dies, or because of domestic violence.

Forced evictions almost invariably reinforce existing social inequities by affecting those already living in extreme poverty and vulnerable groups including women, children and minorities. Particularly vulnerable groups of women include domestic workers, commercial sex workers, migrant workers, women living with HIV/AIDS, widows, victims of domestic violence and divorced women. Because women bear primary responsibility for caring for their families, the loss of materials resources and social networks that accompanies forced evictions increase demands on women's time, and also limits their future options. Women may also suffer additional violence in the home in the context of strained living conditions and psychological impact of eviction on family members, which may also at times aggravate problems of substance abuse and social isolation.

In practice, "forced evictions share many consequences similar to those resulting from arbitrary displacement, including population transfer, mass expulsions, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities."¹⁵⁸ The United Nations Committee on Economic, Social and Cultural Rights delineates forced evictions as "the permanent or temporary removal against their will, of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."¹⁵⁹ The Committee also made clear that evictions can only take place in the most exceptional circumstances and after the exploration, in meaningful participation with those facing eviction, of all feasible alternatives to eviction. Even then, due process protections must be in place and no eviction should be undertaken in a discriminatory manner or result in homelessness.

The Committee identified women as one of several deprived groups deserving of assistance pertaining to forced evictions: "Women," the Committee acknowledged, "suffer disproportionately from the practice of forced evictions. Women in all groups are especially vulnerable given the extent to statutory and other forms of discrimination which often apply

158 Ibid. p. 15, para. 5.

159 Committee on Economic, Social and Cultural Rights, 'General Comment 7, The Right to Adequate Housing (Art. 11 (1) of the Covenant): Forced Evictions,' UN Doc. E/C.12/1997/4 (1997), para. 4. See: <http://www.law.wits.ac.za/humanrts/gencomm/escgencom7.htm>

in relation to property rights (including home ownership) or rights of access to property or accommodation” and women’s heightened risk of violence and sexual abuse when they are rendered homeless.”¹⁶⁰ These findings have also been reiterated again more recently by the United Nations Special Rapporteur on the right to adequate housing, within the context of his mandate.

Indeed, the practice of forced evictions represents a “gross violation of human rights, in particular the right to adequate housing”¹⁶¹ and is a *prima facie* breach of States’ duties under the International Covenant on Economic, Social and Cultural Rights.¹⁶² In 1998, the United Nations Sub-Commission on the Promotion and Protection of Human Rights reiterated that forced evictions are a flagrant infringement of an extensive array of human rights, specifically “the right to adequate housing, . . . the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment.”¹⁶³ The international normative framework obliges States to guarantee that “protection against forced evictions, and the human right to adequate housing and secure tenure, are guaranteed without discrimination of any kind on the basis of . . . sex . . . legal or social status . . . property, birth or other status.”¹⁶⁴

In a recent resolution on forced evictions, the former United Nations Commission on Human Rights reiterated that every “woman, man and child has the right to a secure place to live in peace and dignity, which includes the right not to be evicted unlawfully, arbitrarily or on a discriminatory basis from their home, land or community.”¹⁶⁵ The Commission recollected that the United Nations Committee on Economic, Social and Cultural Rights regards forced evictions as “incompatible with the requirements of the Covenant and could only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”¹⁶⁶ The Commission exhorted States to adopt measures, without delay, that abolish “the practice of forced eviction by, *inter alia*, repealing existing plans involving forced evictions as well as any legislation allowing for forced evictions, and by adopting and implementing legislation ensuring the right to security of tenure for all residents.”¹⁶⁷ The Commission also urged States to “protect all persons who are currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation with affected persons or groups.”¹⁶⁸

160 Ibid. para. 11.

161 ‘Forced Evictions, Commission on Human Rights Resolution 1993/77,’ (10 Mar. 1993). See: <http://www.unhchr.ch/huridocda/huridoca.nsf/6d123295325517b2c12569910034dc4c/9fd992e449c32b04c1>

162 United Nations Commission on Human Rights, ‘Resolution: 2004/28, Prohibition of Forced Evictions,’ Commission on Human Rights, 52nd meeting, (16 Apr. 2004), [adopted by a recorded vote of 45 votes to 1, with 7 abstentions. See Chap. X. of UN Doc. E/2004/23 and UN Doc. E/CN.4/2004/127]. See: http://www.unhabitat.org/downloads/docs/1341_73776_forced%20evic4.doc [hereinafter ‘Resolution 2004/28’].

163 UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, ‘Resolution 1998/9 on Forced Evictions,’ (adopted 20 Aug. 1998).

164 Report of the Special Rapporteur, UN Doc. A/HRC/4/18, *supra* note 36, p. 16, para. 14.

165 ‘Resolution 2004/28,’ *supra* note 162.

166 Ibid.

167 Ibid.

168 Ibid.

2.5 The Links between Violence against Women and Women's Housing Security

“Housing policy is directly related to issues of violence against women... Women who are economically dependent on their partner or their family are often faced with the dilemma of being abused or being homeless. Lack of shelter facilities forces up to 30 per cent of women who have fled domestic violence to return to their homes and thus to violence.”

Radhika Coomaraswamy

Former UN Special Rapporteur on Violence against Women, its Causes and Consequences

Gender-based violence is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”¹⁶⁹ The United Nations General Assembly, in a landmark Declaration, acknowledged that “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women...”¹⁷⁰ Moreover, “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”¹⁷¹ Various categories of women (i.e. refugees, displaced, impoverished, girls) are particularly susceptible to violent conduct. Since 2000, the General Assembly has approved many resolutions on violence against women.¹⁷²

Violence against women is a universal problem that manifests itself in different forms in every country and culture. Various norms and practices that are biased against women may make them more susceptible to violence, and also to concurrent housing rights violations. Globally, during their lifetime, “1 in 3 women have been beaten, coerced into sex, [or] otherwise abused,” “10-69 per cent of women reported being physically assaulted by an intimate male partner at some point” and “intimate partners commit[ted] 40-70 per cent of homicides of women.”¹⁷³ Typically, violence against women is perpetrated by women's family members or intimate partners. At the domestic level, it is usually perpetrated by males, who traditionally hold positions of power over women and girls. The overall consequence of any form of violence against women and girls is the denial of fundamental human rights, including nullifying or impairing their enjoyment of the right to secure tenure and adequate housing.

169 CEDAW, ‘General Recommendation No. 19,’ *supra* note 3, para. 6.

170 United Nations General Assembly, ‘Resolution 48/104, Declaration on the Elimination of Violence against Women,’ 85th Plenary Meeting, (20 Dec. 1993), UN Doc. A/RES/48/104. See: <http://www.un.org/documents/ga/res/48/a48r104.htm>

171 *Ibid.*

172 ‘Elimination of All Forms of Violence, including Crimes against Women’ (UN Doc. A/RES/55/68, Dec. 2000); ‘Women 2000: Gender Equality, Development and Peace for the Twenty-first Century’ (UN Doc. A/RES/57/181, Dec. 2002); ‘In-depth Study on All Forms of Violence against Women’ (UN Doc. A/RES/58/185, Dec. 2003); ‘Elimination of Domestic Violence against Women’ (UN Doc. A/RES/58/147, Dec. 2003); ‘Elimination of All Forms of Violence against Women, including Crimes Identified in the Outcome Document of the Twenty-third Special Session of the General Assembly, entitled “Women 2000: Gender Equality, Development and Peace for the Twenty-first Century”’ (UN Doc. A/RES/59/167, Dec. 2004); ‘In-depth Study on All Forms of Violence against Women’ (UN Doc. A/RES/60/136, Dec. 2005); ‘Intensification of Efforts to Eliminate All Forms of Violence against Women’ (UN Doc. A/RES/61/143, Jan. 2007). See: <http://www.un.org/womenwatch/daw/vaw/reports.htm#declaration>

173 Family Violence Prevention Fund, *The Facts on International Gender-Based Violence*, p. 1. See: <http://www.endabuse.org/resources/facts/International.pdf>

2.5.1 Domestic Violence

Domestic violence may be “physical, verbal, emotional and even economic (*e.g.* controlling household finances).”¹⁷⁴ It occurs in the home, disrupts the peaceful enjoyment of the home and creates fear, tension and insecurity, which may eventually lead to the destructive, forceful eviction of women from their homes. While domestic violence is an extension of male dominance rather than poverty, inadequate housing conditions such as overcrowding, lack of security of tenure and other insecurity can aggravate situations of domestic violence and leave women with few options. Combined with other factors, such as women’s low economic, social and cultural status, women and girls become easy targets for abuse.

Domestic violence constitutes a brazen infringement of women’s right to adequate housing because they are deprived of the “right to live somewhere securely and with peace and dignity.”¹⁷⁵ A woman’s right to adequate housing is violated if she is unable to reside in her home because her intimate partner or family member abuses her. Female victims of domestic violence reside in dwellings devoid of security, peace and dignity as their dwellings are transformed into a setting for repression, terror, and embarrassment and a penitentiary where one’s most intimate partner can behave as an uncontrolled torturer.¹⁷⁶

Under international human rights law and standards, victims of domestic violence have the right to live free of violence, and to have access to legal protection and redress. Victims also have a right to the resources necessary to support themselves and their children, including the right to adequate housing. Nonetheless, lack of access to safe, alternative housing is too often a major factor in keeping women trapped in violent relationships. This is true for women all across the world, regardless of whether they are living in developing or developed countries.

In all corners of the world, victims of domestic violence face the stark choice of either living on the street or being beaten by a partner. In many cases, victims of domestic violence have difficulty accessing alternative housing because of an abhorrent lack of domestic violence shelters, transitional housing programmes, and public or market rate housing which is affordable to poor women. Victims of domestic violence are also routinely denied access to housing due to discrimination on the part of landlords and others who do not want to rent to women fleeing situations of violence for fear of aggravating the abuser. It is imperative that the housing security of these women is adequately ensured, so that access to housing does not become a barrier for women seeking to leave abusive situations.

Sadly, domestic violence is often a primary cause of homelessness for women. Women and girls facing homelessness face the additional threat of sexual abuse on the streets, or continued domestic violence should they return to their abusers. Long and short term

174 Alison G. Aggarwal, Proceedings of the Pacific Regional Consultation on ‘Women’s Rights to Adequate Housing and Land,’ *Our Land, Our Homes, Our Culture, Our Human Rights*, (Nadi, Fiji: 12-15 Oct. 2004). See: <http://www.hic-sarp.org/fiji%20report.pdf>

175 Giulia Paglione, ‘Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing,’ 28 *Hum. Rts. Q.* 120, 122 (2006) [hereinafter ‘Giulia Paglione’].

176 Ibid. p. 126. Observatorio Derechos Humanos (DESC), ‘Testimony of Manuela,’ *Mediterranean Regional Consultation on Women’s Right to Adequate Housing*, (Barcelona: Mar. 2006), pp 42-43. See: http://www.descweb.org/continguts/publicacions/Consulta_Ing.pdf

housing options for abused women may be difficult or impossible to access. In developing countries, abused women generally lack any access to safe houses or emergency shelters, while the trend in developed countries indicates continued reductions in budgetary allocations and restrictions in social services, resulting in a decrease in the numbers of temporary shelters available for abused women.

Undermining the Housing Security of Victims of Domestic Violence in the USA

In the United States, the Department of Housing and Urban Development (HUD)'s "one-strike" policy allows housing providers to evict entire families for crimes committed and disturbances created by family members or "guests." In cases of domestic violence, the actual attacks may be classified as "disturbances."

The policy, though not directed at abused women, invariably leads to a lack of security of tenure, condoned violence, social stigma and discrimination.

2.5.2 Sexual Harassment

Women who have difficulty obtaining adequate housing face further violations of their basic rights. Throughout the world, women remain vulnerable to sexual harassment from landlords and their agents. In exchange for housing, particularly where the ability to pay determines accessibility to housing, women have been forced to use sex as a market commodity. This has serious repercussions in the spread of HIV/AIDS and a denial of the right of women to live in dignity. Women who lack adequate shelter or housing are also more vulnerable to abuse (*e.g.* when they are forced to live in the streets or in other dangerous conditions).

While not all countries recognise that sexual harassment in the area of housing constitutes a genuine problem, some countries have enacted legislation to prohibit the practice. In the United States, the Fair Housing Act (FHA) recognises sexual harassment in housing as illegal sex discrimination. In the United States, the National Organization for Women (NOW) provides insight into how domestic courts in the United States upheld women's right to be free of sexual harassment in housing:

The recognition that sexual harassment is a form of sex discrimination has been developed most fully in the employment context where victims of sexual harassment have established that their rights to be free of discrimination in employment under Title VII of the Civil Rights Act of 1964 ("Title VII") are violated when they are harassed in the workplace. A number of courts have held that the FHA's prohibition on sex discrimination parallels the prohibition under Title VII, using the same analysis as courts have used in cases involving sexual harassment in employment to give relief for sexual harassment in housing. As some courts have observed, sexual harassment in the home may even have more severe effects than sexual harassment in the workplace.¹⁷⁷

¹⁷⁷ National Organization for Women (NOW), 'Legal Resource Kit: Sexual Harassment in Housing,' 2003.

2.6 Women and Security of Tenure

“Securing tenure for the household does not necessarily secure tenure for women and children. The extension of secure tenure must benefit women and men equally, which will require some fundamental changes to the rights of women.”

**UN-HABITAT Global Campaign for Secure Tenure
Implementing the Habitat Agenda**

Security of tenure encompasses the right to own, inherit, rent, lease and remain on one's land or in one's house and protection from arbitrary or involuntary removal. For women, security of tenure is often especially precarious because women may not be able to independently access their homes and the land on which they live. Tenure is considered secure only if it protected in law (including constitutional guarantees), as opposed to reliance on mere custom, tradition, or the whims of governmental authorities. For women, tenure security is linked to economic security and survival; that is, loss of tenure not only means loss of housing, but also often loss of livelihood. Security of tenure applies to various forms of property, including housing and land, and can be affected by numerous factors including population pressure, land scarcity, poverty, legal and institutional challenges, as well as direct and indirect discrimination.

For women, tenure insecurity means exclusion from ownership, access and control over housing and land, as well as exclusion from the processes by which rights to housing and land are allocated, secured and enforced/protected. Various forms of tenure either explicitly exclude women or discriminate against them directly or indirectly. These include customary forms of tenure; communal tenure that supports community ownership but may nevertheless marginalise women; privatisation schemes that favour men or male headed households; and certain combinations, such as private ownership limited by lack of access to resources as well as customary norms that disfavour women's ownership and control.

Moreover, there is a relationship between women's tenure insecurity and the lack of recognition and protection of women's rights, more generally. Tenure insecurity does not begin upon the immediate threat or loss of property, and cannot necessarily be protected merely by guaranteeing women their rights to land and property. Viewed more holistically, there is a need for recognition of women's rights in general and the relationship of women's property rights to the enjoyment and fulfilment of other rights, as well as the contribution of deprivation of other rights to women's tenure insecurity.

Women's tenure insecurity reveals the gendered dimensions of property ownership and access. For example, social economic conditions, population pressures, HIV/AIDS and general developments in areas such as housing and land policy all have a gendered dimension. Ensuring secure tenure for women therefore requires an examination of these key factors from a gender perspective, and more specifically in terms of their impact on

women.¹⁷⁸ Similarly, developments in the field of women's rights have shown the relationship between women's tenure insecurity and violations of other human rights of women. This has helped the idea of 'women's property rights' gain increasing attention in other fields. These rights are increasingly recognised as essential elements of women's full enjoyment of, and ability to enforce, their human rights. Nonetheless, 'property rights' remain controversial and thorny, and should not necessarily be seen as a panacea for women's empowerment. More often, what is most critical for women is, in fact, tenure security, and the ability of individual women to exercise true autonomy over their day to day living situations and to benefit from the accumulation of wealth.

In addition to gender discrimination, poverty is also both a contributing factor and determinant of women's access to housing, land and property and ultimately women's tenure security. Women who lack access to land and property often also lack the means to ensure their own livelihoods and economic survival. Moreover, even where there are no statutory or customary barriers permitting women to own land or housing, the lack of economic resources necessary to secure access to land and property, particularly where money is the chief determinant of access, remains an obstacle. The implications of poverty are not, however, purely monetary. Women are often not empowered; they often lack the means, access and resources to seek judicial or other redress to secure their rights to housing and land. A common example is formal registration of land that may be ultimately too expensive, time consuming and inaccessible for poor and often illiterate women. Other factors include:

- Women's ability to challenge the *status quo*, where they risk losing their homes and/or livelihood (e.g. in situations of domestic violence, but also in less extreme situations, where women's social status places them at risk of losing their homes if they challenge predominant social norms), and
- Women's lack of awareness of their rights and the mechanisms that are available to enforce these rights.

It is crucial for women to obtain legal security of tenure as "without it they are disproportionately affected by forced evictions ... domestic violence... discriminatory inheritance laws, development projects and globalisation policies that circumscribe access to productive land and natural resources."¹⁷⁹ Specifically in relation to domestic violence, a woman who is deprived of security of tenure is compelled to remain in a violent home and to tolerate the abuse. If women lack security of tenure, their right to adequate housing is breached and the State is circuitously contributing to the pervasiveness of domestic abuse.¹⁸⁰ Women in many countries remain in abusive situations since they will become destitute once they resist abuse in the home.¹⁸¹

¹⁷⁸ See: Benschop/Trujillo, 'Global Strategy for Shelter to the Year 2000,' *Habitat Debate*, 5/3.

¹⁷⁹ Miloon Kothari, 'Women and Adequate Housing,' Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination, in Accordance with Commission Resolution 2002/49, UN ESCOR, Commission on Human Rights, 59th Session, Agenda Item 10, UN Doc. E/CN.4/2003/55, para. 21, (2003) [hereinafter '2003 Study by the Special Rapporteur on Adequate Housing'].

¹⁸⁰ Giulia Paglione, *supra* note 175, at 129.

¹⁸¹ 2003 Study by the Special Rapporteur on Adequate Housing, *supra* note 179, para. 27.

2.7 Inheritance Rights and Equal Ownership of Marital Property

Stripping women of marital property upon the death of a spouse is one of the most frequent methods used to deprive women of their assets.¹⁸² Activists in many parts of the world have championed the rights of women to ‘inherit’ their marital property through succession, the method by which property is distributed when a person dies. The key issues in succession are determining the extent of the estate of the deceased, i.e. what property and other assets the deceased owned. Succession not only determines who is entitled to share the estate, but also determines the relative shares and rights of the potential beneficiaries. The obvious and immediate heirs are usually the family of the deceased, including the spouse, children and, in some cases, parents or other family members, often in that order.

The concept of succession, particularly under customary law, is also a question of status; therefore power and gender relations figure prominently, in addition to the large number of potential beneficiaries or claimants. The succession debate is also not removed from broader questions of land rights, particularly in the case of customary laws, which were often historically designed to achieve a particular economic or social goal (*e.g.* preventing alienation and consolidating land holdings). With current economic policies focusing on individualisation, privatisation and marketability of land, new conflicts over rights of control, use and access to land are created.

In much of the world, customary law generally awards property to male members of the family, who usually assume control over the property. In some instances male members of the family also replace the deceased as heads of households with responsibility over the deceased’s wife and his dependent children.

The denial of women’s equal right to inheritance violates women’s economic, social and cultural rights in two respects. First, it denies women equal rights on par with men and represents discrimination on the basis of sex, often in conjunction with social and cultural norms that view women as incapable or undesirable custodians of land, which is basis for economic status and power within social relations. Second, it denies women the benefits of ownership, including the means for achieving and maintaining an adequate standard of living, in accordance with internationally recognised norms.

Family law is a multi-faceted branch of law which addresses, among others, the following areas: marriage, divorce, child custody, child support, alimony, domestic disputes and violence, property and inheritance rights.¹⁸³ In most parts of the world, and especially in the developing world, women have fewer rights or no rights compared to men in marriage; this inequality is also reflected within the family, where family or household needs may be prioritised over those of women in the family. Even when women are taken into consideration, their rights are derived from their relationship with men within the family. In addition, the separation between private and public spheres (what has been referred to by

¹⁸² Tools on Improving Women’s Secure Tenure, Series 1, *supra* note 58, para. 4.

¹⁸³ Other Free Encyclopaedias: *Law Library – American law and Legal Information, American Court Cases Review: Family Law - Further Readings*. See: <http://law.jrank.org/pages/12485/Family-Law.html>

many feminist human rights activists as an ‘artificial dichotomy’) means that women often do not have legal recourse to address abuses within the family.

Right in marriage may be governed by several legal regimes: civil law, religious law, customary law, and common law. The rights of women, and of women as wives, are derived from these laws. The key issues in relation to marriage, housing, land and property rights are affected by marital status and the laws under which a marriage was contracted. In many parts of the world, the husband automatically has a position of superiority in the relationship, which is often translated into control over all the property and assets within the marriage. Civil law is considered as a contract between both parties but it does not automatically give property rights to the woman. Distribution of the property acquired during the marriage is often the subject of divorce proceedings.

Unfortunately, due to high levels of illiteracy, complexities of court systems and meagre financial resources, even women married under civil law are hesitant to seek redress on property issues after divorce. Women married under customary law are vulnerable because of the inherent discrimination against women in many traditional systems. For example, in many countries, customary marriages are automatically considered to be out of community of property, which means that not only does the husband retain all property acquired before and during the marriage, he also gains control over the property of his wife. The failure to address gender-based discrimination in the family laws of many countries has implications for implementation of international human rights instruments such as Convention on the Elimination of All Forms of Discrimination against Women.

Gender biased policies in financing generally, and housing in particular, are further structural barriers to women’s access to housing, land and property. Rules and procedures of financial institutions for loans, mortgages and other forms of credit in both the formal and informal sectors disadvantage women in acquiring credit for housing and other types of investment in the housing sector. These restraints arise from social and institutional practices including assumptions regarding women’s literacy levels. Financial institutions are usually unlikely to give loans to low-income women, or have income requirements such as large collateral, requirements of title, long-term repayment and proof of income that disqualify and ultimately discriminate against poor women.

2.7.1 Case Law on Women’s Inheritance Rights

In the context of economic, social and cultural rights, property rights, including inheritance, remains a critical factor in determining women’s unequal position relative to men. Inheritance is one of the principal means of property ownership in the absence of financial resources to enable women to acquire valuable property, including land. As mentioned previously, ownership of property, particularly land, is the principal means of attaining social and economic status, especially in developing countries, where access to land for agriculture is the main determinant of subsistence survival and economic development.

At the national level, a number of decisions relating to women’s inheritance rights have sought to address discrimination, particularly with regard to customary laws that preclude

women from inheritance. In each case, the main issue under consideration was whether prohibitions or restrictions on women's rights to inherit violated national constitutional principles of equality and non-discrimination. However, although in each case, the State was a party to international conventions, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women, the Courts took a somewhat different approach to interpretation of the Government's obligation under international law to ensure conformity in domestic law and implementation (or failed to address it), resulting in both positive and negative outcomes and implications for women's equal rights and status under domestic law.

2.7.1.1 South Africa

The Constitution in South Africa offers a good legal structure to safeguard women's housing rights.¹⁸⁴ However, notwithstanding the Constitution, gender-based bias persists. In addition to the Constitution, South Africa has enforced several land restructurings which focus on tenure, restitution and redistribution.¹⁸⁵ The redeployment of land has been sluggish while restitution has accomplished significant advancements.¹⁸⁶ In 2004, the State approved the Communal Land Rights Act 2004, another effort to safeguard, *inter alia*, women's tenure rights. Yet, advocates fear that because the Act grants power over land to customary leaders, it might enfeeble the realisation of women's rights.¹⁸⁷

Despite South Africa's notable Constitution and land reforms, customary law is grounded on the principle of male primogeniture, which allows only males to inherit property.¹⁸⁸ Similarly South Africa's Black Administration Act sanctioned gender-based bias by depriving women of the right to inherit property.¹⁸⁹ As a result of successful challenges to the Black Law and customary norms, gender discrimination in matters of inheritance is now deemed unconstitutional.

Bhe and Others v. The Magistrate, Khayelitsha and Others, Case CCT 49/03 Constitutional Court of South Africa (October 15, 2004)¹⁹⁰

Main Legal Issues

Validity of Section 23 of the Black Administration Act 38 of 1927, which deals solely with the intestate estates of Africans and gives effect to customary law of succession; Validity of the principle of male primogeniture, which is the main feature of customary law of succession; Implication of extra marital birth on intestate succession.

¹⁸⁴ Kaori Izumi (ed.), *Reclaiming Our Lives, HIV/AIDS: Women's Land and Property Rights and Livelihoods in Southern and East Africa – Narratives and Responses*, (2006), p. 49 [hereinafter 'Reclaiming Our Lives'].

¹⁸⁵ *Ibid.* at 47.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ In South Africa, though acknowledged, conflicting customary norms are superseded by the Constitution.

¹⁸⁹ *Reclaiming Our Lives, supra* note 184, at 49.

¹⁹⁰ The *Bhe Case* is in fact a decision concerning three cases including (1) *Bhe*, (2) *Charlotte Shibi v Mantabeni Freddy Sithole and Others* (the *Shibi*) case and (3) a direct access application brought by the South African Human Rights Commission and the Women's Legal Centre Trust. The Commission for Gender Equality was admitted as *amicus curiae*; and notice was given to the National House of Traditional Leaders because of the implications of the case, but no submissions were made; also no submissions were received from the deceased's father (second respondent). The Minister for Justice and Constitutional Development (fourth respondent) supported confirmation of the orders of the High Court.

Facts

Ms. Bhe and the deceased cohabited as husband and wife although they were never legally married. They had two extra-marital daughters during their twelve-year relationship. The deceased obtained State housing subsidies to purchase property and building materials, but had not built a house by the time of his death. Ms. Bhe and the deceased resided in a temporary home with their youngest daughter. Her older daughter lived with the deceased's father in another distant town. After the deceased's death, Ms. Bhe and her daughters continued to reside on the property. The deceased died intestate (i.e. without a will) which thus triggered the African customary rule of male primogeniture. According to this customary rule, the eldest surviving son of a deceased or, in the absence of a son, another male blood relative inherits the deceased's property. In this case, the deceased's father (the children's grandfather), the oldest male relative of the deceased, would inherit the estate (home) of the deceased. The Magistrate of Khayelitsha appointed the deceased's father as representative of the estate. He intended to sell the home to pay for the funeral expenses. Challenging the constitutional validity of the customary rule of male primogeniture, Ms. Bhe appealed to the Cape High Court on behalf of her two young daughters.¹⁹¹

Court's Holding

The Cape High Court, *inter alia*, declared Ms. Bhe and her daughter sole heirs in the estate of the deceased and stated that Section 23(10)(a), (c) and (e) of the Black Administration Act are unconstitutional and invalid.¹⁹² The Court found that the customary rule of primogeniture excludes widows, daughters, younger sons and extra-marital children. They are subject to male heirs, regarded as minors and are excluded from the right to property which others enjoy by virtue of their sex. Women and girls are deemed not to be fit or competent to inherit, an exclusion which the Court held to be clearly discriminatory and in violation of human dignity.

Shibi v. Sithole and Others, Case CCT 69/03 **Constitutional Court of South Africa (October 15, 2004)**¹⁹³

Facts

Ms. Shibi's brother died intestate. The deceased had neither married nor did he have any children. His parents and grandparents predeceased him in death, and his closest surviving relatives were two male cousins. Ms. Shibi's deceased brother's estate would be distributed pursuant to traditional customs.

Applying the customary law of male primogeniture, the Magistrate's Court appointed one of the deceased's male cousins as representative, but subsequently removed him following complaints from the family of misappropriation. The Court consequently appointed an attorney to administer the estate and distribute the assets in accordance with customary law. Under the customary law, Ms. Shibi was barred from inheriting her brother's estate. The attorney liquidated and distributed all of the remaining estate to the same cousin. Ms. Shibi

¹⁹¹ 'Bhe and Others v The Magistrate, Khayelitsha and Others,' Case CCT 49/03, Constitutional Court of South Africa, (15 Oct. 2004), paras. 10-18. See: <http://www.constitutionalcourt.org.za/Archimages/2167.PDF> [hereinafter 'Bhe Case'].

¹⁹² Ibid. para. 19.

¹⁹³ 'Shibi v. Sithole and Others,' Case CCT 69/03, Constitutional Court of South Africa, (15 Oct. 2004), paras. 21-26. See: <http://www.constitutionalcourt.org.za/Archimages/2167.PDF> [hereinafter 'Shibi Case'].

challenged the Court's judgment and requested that the Court assert her as the deceased's only heir as well as awarding her damages.

Court's Holding

The Pretoria High Court reversed the lower Court's decision along the same lines as Bhe, invalidating the provisions of the Black Administration Act and declaring Ms. Shibi sole heir. It also awarded damages against the two cousins.¹⁹⁴

On appeal to the Constitutional Court no submissions were received from either of the first two respondents. The Minister for Justice and Constitutional Development supported confirmation of the High Court's decision.

South African Human Rights Commission and Another v. President of the Republic of South Africa and Another, Case CCT 50/03 **Constitutional Court of South Africa (15 Oct. 2004)**

Facts

The applicants¹⁹⁵ in this case filed an application for direct access,¹⁹⁶ acting in their own interest and that of the public. The Women's Legal Centre Trust also brought an action on behalf of a class of citizens. The applicants wanted the provisions of the Black Administration Act declared invalid in accordance with the High Court's prior decisions. In addition, they wanted Section 23 of the Act as a whole (alternatively sub-sections 1, 2 and 6) declared unconstitutional and invalid as inconsistent with constitutional provisions guaranteeing equality, human dignity and the rights of children.¹⁹⁷

The parallel system of intestate succession set up by Section 23 of the Black Administration Act specifically excludes application of the Intestate Succession Act and purports to "give effect to customary law of succession."¹⁹⁸ Under the Intestate Succession Act property devolves to spouses, descendants, or both (the spouse inherits a child's share), parents, parents' descendants and blood relations. The Act applied to all intestate estates, with the exception of those covered by Section 23 of the Black Administration Act.¹⁹⁹

¹⁹⁴ Ibid. para. 27.

¹⁹⁵ 'South African Human Rights Commission and Another v. President of the Republic of South Africa and Another,' *Case CCT 50/03, Constitutional Court of South Africa* (Oct. 2004), para.29. See: <http://www.constitutionalcourt.org.za/Archimages/2167.PDF> The South African Human Rights Commission is a state organization whose mandate is, inter alia, to "promote respect for human rights and a culture of human rights . . . [and] to take steps to secure appropriate redress where human rights have been violated" (citing Section 184(1)(a) and (2)(b) of the Constitution of the Republic of South Africa). The Women's Legal Centre Trust is a non-governmental organisation which seeks "to advance and protect the human rights of all women in South Africa, particularly black women who suffer many intersecting forms of disadvantage." The NGO handles proceedings such as legal action to promote women's human rights. [hereinafter 'South African Human Rights Commission and Another'].

¹⁹⁶ Direct access applications are granted under exceptional circumstances. In the present case leave was granted on account that the law challenged solely governed the administration and distribution of the intestate estates of deceased Africans; the impact of the law falls mainly on women and children who are the most vulnerable members of society; the impact of primogeniture also falls on males who are not entitled to inherit under customary law.

¹⁹⁷ 'South African Human Rights Commission and Another,' *supra* note 195, paras. 30-31.

¹⁹⁸ Ibid. para. 2.

¹⁹⁹ Ibid. para. 39.

Court's Holding

Racial Discrimination

The Court's analysis focused on the context of racial discrimination within which the legislation had been drafted and found that its intention had been to separate and exclude Blacks. The Court held that although Section 23 recognises customary law and acknowledges the pluralist nature of South African society (recognised and encouraged by the Constitution and case law), its intent, dominant purpose and effect are racist, and therefore should be prohibited.

Customary Rule of Primogeniture

The Court found that the customary rule of primogeniture excludes widows, daughters, younger sons and extra-marital children. The exclusion of women is clearly discriminatory and in violation of human dignity. Women are deemed not fit or competent to inherit. They are subject to male heirs, regarded as minors, and excluded from the right to property which others enjoy by virtue of their sex.

In its analysis, the Court drew on constitutional provisions and the international human rights norms and principles that they embody. First, the Court noted that human dignity is the basis for all other rights; it is a concept which informs the adjudication and interpretation of other rights, and it is a justiciable right in itself. With regard to the provision on equality, the Court maintained that the Constitution guaranteed substantive equality, i.e. the opportunity to enjoy the benefits of an egalitarian and non-sexist society. The Court also referenced international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, the Banjul Charter and the Protocol on Rights of Women in Africa, and highlighted the obligation to consider international law in the interpretation of the Bill of Rights by any court, tribunal or forum (Section 39(1) of the Constitution the Republic of South Africa).

With regard to the rights of children, the Court found that the *Bhe case* implicated both the prohibition against discrimination on the grounds of sex (i.e. female children) and the prohibition against discrimination on the grounds of birth (i.e. extra-marital children).

In its ruling, the Court noted that, in theory, relief should be granted to all people who are in the same situation as the litigants. The Court however saw its role as facilitating "cleansing of the statute book" and concluded that any order should be regarded as an interim order pending legislative action and not a "permanent fixture of the customary law of succession."²⁰⁰

Daniels v. Campbell NO and Ors, CCT 40/03 **Constitutional Court of South Africa (March 11, 2004)**

Facts

The applicant wedded the deceased by Muslim rites and, though required by the Marriage Act, an officer never celebrated the marriage. At the time of the applicant's marriage to the

²⁰⁰ *Bhe Case, supra* note 191, at para. 116.

deceased, she had been the tenant of a council dwelling for 8 years. The year before she married the deceased the tenancy was registered in her name. However, after her marriage, the City of Cape Town transferred the tenancy of the property to her husband's name, as he was the principal breadwinner in the family. The deceased subsequently purchased the property in his name with the applicant also signing the deed of sale since she had contributed extensively to the purchase price and other household expenses. After the deceased died the property was transferred to his estate. The applicant was informed that she could not inherit from the deceased's estate because she did not qualify as a surviving spouse, because her marriage was invalid as she and the deceased had failed to formally solemnise the union pursuant to the Marriage Act.²⁰¹

Court's Holding

The Constitutional Court held that the Acts, as interpreted, were unconstitutional. The Court stated that the constitutional values of equality, tolerance and respect pointed strongly in favour of giving the word "spouse" a broad and inclusive construction, the more so when it corresponds with the ordinary meaning of the word.²⁰² Stating that the value of non-sexism "is foundational to our Constitution," Justice Sachs pointed out that the objective of the Acts was to ensure that widows received at least a child's share instead of being precariously dependent on family benevolence. The purpose of the Acts would be frustrated if widows were to be excluded from the protection the Acts offer, just because the legal form of their marriage happened to be in accord with Muslim tradition and not the Marriage Act.²⁰³ The Court held that the applicant was a "spouse" and a "survivor" for the purpose of the Acts.²⁰⁴

Republic of South Africa v. Grootboom, CCT 11/00²⁰⁵ **Constitutional Court of South Africa (October 4, 2000)**

Facts

Ms. Grootboom, with several other respondents, many of them children,²⁰⁶ formerly resided in a squatter community in shacks under deplorable conditions while on a waiting list for low-cost housing for an extended period of time. While residing in the squatter community, she and the others had no access to water, sewage or waste removal. Due to the dire circumstances, Ms. Grootboom and the others relocated to a contiguous private land reserved for low cost housing where they constructed their shacks and shelters. The owner of the private land sought and obtained an eviction order to compel Ms. Grootboom's community to vacate his land. The Court ordered the dismantling and removal of constructions found on the land, and ordered the community and town to discuss substitute land for the community to use either permanently or in the interim.²⁰⁷ The homes were destroyed and the respondents rendered homeless. Respondents sought a High Court order

²⁰¹ 'Daniels v. Campbell NO and Ors,' Constitutional Court of South Africa, CCT40/03, (11 Mar. 2004), paras. 3-5, 8, *See*: <http://www.constitutionalcourt.org.za/Archimages/1341.PDF> The petitioner argued that the protection afforded to spouses under the Intestate Succession Act and the Maintenance of Surviving Spouses Act should extend to her, as a spouse in a *de facto* monogamous union, married according to Muslim rites.

²⁰² Ibid. para. 68.

²⁰³ Ibid. paras. 22-23.

²⁰⁴ Ibid. para. 109.

²⁰⁵ 'Republic of South Africa v. Grootboom,' CCT 11/00, *Constitutional Court of South Africa* (4 Oct. 2000). *See*: http://www.law-lib.utoronto.ca/Diana/TAC_case_study/Grootboom.pdf

²⁰⁶ Ibid. para. 4, note 2. There were 390 adults and 510 children.

²⁰⁷ Ibid. paras. 7-10.

enjoining the appellants to provide the respondents (adults and children) with adequate provisional housing until the respondents acquire permanent lodgings and shelter to the children. Ms. Grootboom and the others relied on Sections 26 and 28(1)(c) of the South African Constitution for their claims.²⁰⁸

Court's Holding

The Court noted that section 26(1) bestows a “general right of access to adequate housing.”²⁰⁹ According to the Court, the State has a duty under section 26(1) to “create the conditions for access to adequate housing for people at all economic levels of [] society, taking into account the individuals who are unable to pay for their own housing.”²¹⁰ States have a positive duty to formulate a reasonable legislative “comprehensive and workable plan” to implement their duties under section 26(1).²¹¹ The Court further noted that South Africa already possesses legislation on housing.²¹² However, “mere legislation is not enough” as “policies and programmes must be reasonable both in their conception and their implementation.”²¹³ Devising a housing plan is just the State’s initial phase in complying with its duty. The State is also required to reasonably execute the plan.²¹⁴

The Court found that “a programme that excludes a significant segment of society cannot be said to be reasonable, as demanded by section 26(2).”²¹⁵ The State has a duty to “act positively to ameliorate [respondents’] conditions” and must offer *inter alia*, housing and adequate water to individuals who cannot provide for themselves or their families. The State is obliged to promote conditions to allow people to obtain access to property without discrimination.²¹⁶

In regards to Section 28(1) (c), the Court held that parents are first and foremost the ones charged with the care of their children. Section 28(1) (c) imposes no duty on the State to offer housing to children whose parents or families have custody.²¹⁷ However, the State is obliged to provide housing to abandoned children and those in the State’s custody.²¹⁸

2.7.1.2 Zimbabwe

In Zimbabwe, a dual scheme of norms (customs and general law) governs women’s property rights.²¹⁹ Article 23 of the Constitution focuses on equality; however, discrimination is

²⁰⁸ Ibid. para. 13. Article 26 states: “(1) Everyone has the right to have access to adequate housing.; (2) The state must take reasonable legislative and other measures, within its available resources to achieve the progressive realisation of this right.; (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.” Article 28(1)(c) states: “Every child has the right . . . to basic nutrition, shelter, basic health care services and social services.”

²⁰⁹ Ibid. para. 21.

²¹⁰ Ibid. paras. 35-36.

²¹¹ Ibid. para. 38.

²¹² Ibid. para. 40.

²¹³ Ibid. para. 42.

²¹⁴ Ibid.

²¹⁵ Ibid. para. 43.

²¹⁶ Ibid. para. 93.

²¹⁷ Ibid. para. 77.

²¹⁸ Ibid. para. 79.

²¹⁹ Trancelike Gwen (Zimbabwe Women Lawyers Association Bulawayo), *Strategic Litigation – Women’s Property Rights in Zimbabwe*, (2005), p. 2 [hereinafter ‘*Strategic Litigation*’].

permitted based on “African customary law in any case involving Africans.”²²⁰ Article 23(s) is incompatible with Article 16, which grants everyone the right to own property, as Zimbabwean women acquire their property rights from their relationship with men.²²¹

Magaya v. Magaya
(Zimbabwe, Supreme Court, [1999] (3) LRC 35; [1999] (2) CHRLD 414)²²²

Facts

The deceased died intestate leaving two widows, both of whom had been married to him in a polygamous marriage under customary law. The appellant was the deceased’s eldest child, a daughter by his first wife. The respondent was the deceased’s son by his second wife. The appellant was initially granted succession by the community court, which was later reversed after the respondent appealed. The respondent’s elder brother declined to take up his position as heir, therefore succession was awarded to the respondent, the deceased’s second male child. The appellant appealed to the Supreme Court on the grounds that:

1. The decision violated international human rights law to which Zimbabwe was a party and that it was based on the notion of “perpetual minority” status of women, which had been struck down by law.
2. The Court should use its discretionary power to ensure that women were not excluded from succession under customary law.
3. The Constitution of Zimbabwe²²³ does not expressly prohibit discrimination based on sex, whereas every person regardless of factors including sex is entitled to fundamental freedoms including life, liberty, conscience and protection of property.

Section 23(1) of the Constitution forbids discrimination generally; however, Section 23(3) provides that “Nothing contained in any law shall be held to be in contravention of subsection 1(a) to the extent that the law in question relates to any of the following matters – (a) ... devolution of property on death or other matters of personal law; (b) the application of African customary law in any case involving Africans ...” and section 89 of the Constitution generally sanctions the application of customary law.

The case would therefore be dismissed, first, on the grounds that it applies to devolution of property upon death; second, that it applies to the estate of an African, married under African customary law, both of which are expressly excluded by the Constitution. It was argued that it was never the intention of the legislature to distort customary law; hence, matters concerning customary law and succession were deliberately exempted in the

²²⁰ Human Rights Forum, ‘Women’s Rights, What is Gender?’ p. 1, Section 23(3)(b) of the Zimbabwean Constitution. *See*: www.hrforumzim.com/monitor/hrm_33.htm

²²¹ *Ibid.* Section 16 of the Zimbabwean Constitution.

²²² While women have the right to possess their own property, married women frequently permit their husbands to record the property in their husbands’ name, which grants the husbands complete entitlement to the property. Marriages stem from community of property; thus a husband can vend the property devoid of his wife’s knowledge. *Magaya v. Magaya*, Zimbabwe, Supreme Court, [1999] (3) LRC 35; [1999] (2) CHRLD 414, [hereinafter ‘*Magaya Case*’].

²²³ The *Magaya Case* illustrates how the Supreme Court of Zimbabwe applied Article 23 of the Constitution to justify gender-based bias in women’s rights to inherit property.

Constitution. Moreover, courts do not have the power to make new law in an area as complex as inheritance and succession; they can uphold only the true intent and purport of African customary law against abuse. Furthermore, matters of reform must be left to the legislature.

On perpetual minority status, the Court concluded that no additional rights could be conferred than would have been conferred under customary law. Hence “discrimination” against women stems not from their minority status, but rather from the nature of African society, in which the main focus is the family and not the individual. The appellant, therefore, was entitled to seek relief only where the male heir failed to meet his responsibilities as a representative of the deceased since the heir inherited not only property but corresponding responsibilities.

Further, although it is desirable to advance gender equality in all spheres of society, the Court argued that great care must be taken when dealing with African customary law. People, the Court noted, will not easily abandon customary law, particularly in rural areas where they have and still conduct their lives according to customary law.

Court’s Holding

The principal rationale for the Court’s decision was the preservation of customary law, *inter alia*, against “abuses” and “distortions” including those which conferred rights on women that they would not otherwise have under customary law. As opposed to the decision in *Bhe*, which focuses on the evolutionary nature of customary law and on the idea that it must not only evolve but also must be subject to the Constitution, the Court in *Magaya* found instead that customary law *was not* subject to the prohibition against non-discrimination, i.e. even if discrimination on the grounds of sex had been expressly prohibited.

Further, the Court ruled that customary law regarding inheritance and succession *was* subject to legislation conferring majority status on women to the extent that it granted them any additional rights such as inheritance that they would not otherwise have had, and ruled that customary law is not subject to international human rights obligations to which Zimbabwe is a party.

The Court ruled that additional rights granted to women, either through the Constitution or other legislation, must be viewed in the context of traditional African society which focuses on families, duties and obligations, not on individual rights. The implication is that future legislative amendments would have to state a clear intention to confer positive rights on women.

The implication of the Court’s decision is that, as long as the Constitution excludes customary law and personal matters from non-discrimination provisions, legislation conferring rights on women would not confer more rights (including rights to property and inheritance) than they would have under customary law. Therefore, two constitutional amendments would be required; one prohibiting discrimination on the basis of sex and the other prohibiting discrimination on the basis of sex under customary law in matters relating to personal law.

2.7.1.3 Nepal

Since the promulgation of the Constitution of Nepal in 1990 and subsequent ratification of Convention on the Elimination of All Forms of Discrimination against Women in 1991, Nepal has had formal guarantees for women's equality through its national and international obligations. The Nepali Constitution not only protects against discrimination on the basis of sex but also allows for special provisions for the protection and advancement of women and children. National legislation, including the Civil Liberties Act (1955), also provides for equal protection under the law for all citizens. Nevertheless, formal and substantive discrimination against women continues, particularly in the area of women's property rights and status within the family.

Dhungana v Nepal **Supreme Court of Nepal Writ No. 3392 of 1993, 2 August 1995**

Facts

In 1993, a movement led by non-governmental organisations and women's rights groups pushed for the elimination of discrimination against women in matters of inheritance through a challenge in the Supreme Court against the National Civil Code, which contained an inheritance provision that discriminated against women on the basis of sex and marital status. Under this law, girls were denied inheritance from birth, on par with boys -- a daughter was entitled to inherit from her father only if she remained unmarried at the age of 35. In cases of intestate succession, a daughter was not entitled to inherit as long as a husband, wife, son or grandson was living. In such instances, married daughters were entitled to less than their unmarried sisters. A married woman was entitled to inherit from her husband only after 15 years of marriage, and only after she had attained the age of 30 years. She was also expected to return any share received from her natal family upon marriage. Divorced women were not entitled to inherit. Generally, chastity was a condition for inheritance, and a widow who remarried was required to return to her in-laws any property she had received from her deceased husband.

Court's Holding

The Supreme Court in *Dhungana* found the National Civil Code's requirement that a woman remain unmarried until the age of 35 in order to inherit from her father to be discriminatory but declined to invalidate it. Instead, the Court directed the Government to, within one year, introduce appropriate legislation amending the laws related to property rights pursuant to the Constitution's equality provision. However, the Court also cautioned that changes to laws based on custom and tradition were likely to be countered with resistance and instructed the Government to consider the consequences and impact of the review. The Court issued a similar caution in other cases challenging discriminatory provisions, including adoption, succession and discrimination in divorce and remarriage.

In its rulings, the Court highlighted Nepal's Hindu tradition, which played a vital role in regulating matters of social behaviour, culture and conduct, and reasoned that society may not be able to adapt to changes that were not in conformity with culture and tradition.²²⁴

²²⁴ China Bajracharya for Misha Khala v. Parliament Secretariat *et al.*, (224), and Sapana Pradhan for FWLD v. Ministry of Law and Justice (224), in Sapana Pradhan-Malla, "Gender Equality."

Following the Supreme Court's decision there have been some changes to gender-biased laws in Nepal. The 11th Amendment to the Civil Code enacted several changes relating to women's rights and status, including rights in marriage and inheritance. However, although the Amendment recognises daughters as equal heirs with sons, it continues to discriminate against women on the basis of marital status, upholding the requirement that daughters are to return their shares upon marriage.

In 1997, two years after the Court's decision in Dhungana, women's rights groups filed a contempt case against the Government for failing to comply with the Court's ruling within the specified time frame.²²⁵ The case requested elucidation on two issues: (1) the State's and legislature's duty to enact appropriate legislation in accordance with Nepal's duty under its Constitution and as a State Party to the Convention on the Elimination of All Forms of Discrimination against Women, and (2) the significance and intent of the Court's ruling.²²⁶ The new law seeks to empower women by granting unwed females equal entitlement to their natal families' property as well as a portion of the spouse's property if the husband dies or the marriage is dissolved.

²²⁵ After several years of advocacy efforts, the Government approved the Country Code (Eleventh Amendment) Bill. The Bill became law on 26 Sept. 2002. See: http://www.laccnepal.com/eleventh_amendment.html

²²⁶ 'Challenging Nepal's Inheritance Law,' *WPRN Newsletter*, (July – Oct. 1997). See: http://www.aworc.org/bpfa/pub/sec_f/eco00001.html

2.8 Women and the Right to Water and Sanitation



[The right to water is fundamental to ensuring adequate living conditions, and is integral to the right to health. When water is not readily available, women and girls face the added challenge of fetching water, often at great personal costs to themselves. Photo: COHRE]

The right to water and sanitation is enshrined in international human rights law as a stand alone right.²²⁷ At the same time, water and sanitation are also recognised as integral to the right to adequate housing.²²⁸ In most of the world, gender roles demand that women spend a great deal of time in the home, nurturing children and caring for the needs of their families. Household responsibilities also require women and girls to attend to various household chores, including providing, and using, water for a variety of purposes. For women, the home may also be the principal place of employment or income generating activities, and access to water may be a necessary component of making one's living. Moreover, because women and girls are usually responsible for collecting water for the family's use, regardless

²²⁷ Committee on Economic, Social and Cultural Rights states that: "the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 15, The Right to Water' (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), *UN Doc. E/C.12/2002/11* (29th Session, 2002), para.2. See: <http://www.law.wits.ac.za/humanrts/gencomm/escgencom15.htm> [hereinafter 'CESCR General Comment No. 15'].

²²⁸ The Committee on Economic, Social and Cultural Rights established that "all beneficiaries of the right to adequate housing should have sustainable access to . . . safe drinking water." Committee on Economic, Social and Cultural Rights (CESCR) 'General Comment No. 4, The Right to Adequate Housing,' (Art. 11 (1) of the Covenant), (Sixth session, 1991), *The Right to Adequate Housing* (Art.11 (1)): 13/12/91, para. 8(b). See: <http://www.fao.org/righttofood/KC/downloads/vl/docs/AH356.pdf> [hereinafter 'CESCR General Comment No. 4'].

of the distance they must travel, they may be subject to increased risk of gender-based violence as they venture out in search of water.

When a woman's right to water is infringed, her right to adequate housing is also at risk. A home that lacks access to safe water sufficient for personal and household needs is rendered uninhabitable. General Comment 15 of the United Nations Committee on Economic, Social and Cultural Rights acknowledged that States have a duty to make sure that no household lacks "the right to water on the grounds of their housing or land status."²²⁹ The Committee further held that "deprived urban areas, including informal human settlements and homeless persons, should have access to properly maintained water facilities."²³⁰ Any woman who has adequate housing, therefore, should also have access to unpolluted, potable water.

General Comment 15 identifies three elements of the right to water: availability, quality and accessibility, which are essential for the full realisation of the right to adequate housing.²³¹ The effects of insufficient or lack of water are especially overwhelming for women and children. Because of a deficiency of safe potable water, many children under the age of five die annually.²³²

Making the right to water benefit the lives of real women remains an ongoing challenge. As UNIFEM has noted:

Water is a basic element essential to all forms of life. Women are most often responsible for domestic and community water management in developing societies. On average women and children travel 10-15 kilometers, spending 8 or more hours per day collecting water, carrying up to 20 kilos or 15 liters per trip. It was recently cited that in South Africa alone, women collectively walk the equivalent distance of 16 times to the moon and back per day gathering water for families. In this role, women are responsible for determining sources of water to collect, quantity of water to be taken and the water's hygienic quality. However, in this era of globalization, women's decisions in regard to water management are often dictated by their social position, geographic location and increasingly by market forces.²³³

The recent United Nations Draft Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation recognise the difficulties that women face when it comes to securing their water rights. The Draft Guideline stipulates that "Water and sanitation facilities should be designed to take account of the needs of women," and, furthermore, that "Special efforts must be made to ensure the equitable representation in decision-making of vulnerable groups and sections of the population that have traditionally been marginalised, in particular women."²³⁴

²²⁹ CESCR, 'General Comment No. 15,' *supra* note 227, para. 16(c).

²³⁰ *Ibid.*

²³¹ *Ibid.* para. 12.

²³² Miloon Kothan, 'Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living,' submitted in accordance with Commission Resolution 2002/21, Commission on Human Rights, 59th Session, Item 10 of the Provisional Agenda, UN Doc. E/CN.4/2003/5, (3 Mar. 2003), para. 41, *See*: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/113/62/PDF/G0311362.pdf?OpenElement>

²³³ UNIFEM Concept Paper, *Promoting and Protecting Women's Right to Water in the Context of Globalization and Feminized Poverty*, 2004.

²³⁴ El Hadji Guissé, Special Rapporteur on the 'Realization of the Right to Drinking Water and Sanitation,' UN Sub-Commission on Human Rights, UN Doc. E/CN.4/Sub.2/2005/25, (11 July 2005).

2.9 The Housing Rights of Girls

Article 27 of the Convention on the Rights of the Child ensures girl children the right to adequate housing. Several of children's rights, and more specifically girls' rights, are grounded in the basic human right to adequate housing. Nevertheless, millions of girls reside in informal settlements, without adequate housing, or are actually homeless because of poverty. If girls live in miserable circumstances or are homeless, their development and safety are gravely compromised, and they face unique challenges because of their gender.

The lack of adequate housing impacts, *inter alia*, girls' rights to health and education. In most parts of the world girls, like boys, are reared to perform stereotyped roles. The inability of girls to secure their housing rights is influenced by their lack of education. In developing countries where families lack resources to educate their children, the trend is to allow boys to obtain an education while the girls remain at home preparing for their future roles as mothers or wives. Girls' inability to obtain an education or receive job training during their childhood erodes their potential to obtain adequate housing in their own right.

Girls residing in informal settlements also risk forced eviction. Forced evictions have an injurious effect on girls as their family's property may be obliterated, and their family's livelihood and the girls' schooling may be at risk. Where the families lack adequate housing they may be compelled to separate from their female children.

Girls confront inimitable problems as a result of gender-based bias and violence. When girls live in informal settlements, they also become vulnerable to gender-based violence and HIV/ AIDS infection. Globally, girls also confront many dangers when living in camps for refugees and Internally Displaced Persons (IDPs). Teenage girls are subjected to sexual violence in the camps when they attempt to collect water or firewood.

When parents die, extended family members may resort to property grabbing, thus depriving orphaned girls of a place to live or any of the family's assets. Girls may then become homeless and hence susceptible to violence, sexual exploitation and trafficking. In addition, girls are frequently deprived of their right to inherit property compared to their brothers, hence compromising their entitlement to housing. The right to inherit is extremely crucial for girls, particularly in cultures that reserve inheritance for boys. The same rationale used to deprive widows of their inheritance rights is used to deny girls of theirs. Many cultures justify depriving girls of their right to inherit property because they reason that once a girl gets married she joins her husband's family and any property she owns will now pass on to his family, hence reducing her natal family's wealth. On the contrary, a boy, once married, does not become a member of his wife's family, thus his natal family's wealth does not get transferred to the wife. Moreover, girls are deprived of their inheritance rights because once they wed, their husbands are deemed to be the breadwinners for the family and thus it is appropriate that they are selected as the custodian of the family's wealth.

There have been some important developments in a few countries in the area of girls' rights to housing. One such example is the landmark *Bhe case* (discussed above) where the

Constitutional Court of South Africa held that the customary rule of male primogeniture which deprives girls of their inheritance rights is unconstitutional.

2.10 The Housing Rights of Displaced Women

The United Nations Guiding Principles on Internal Displacement defines internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence” due to “armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.”²³⁵ Today, most of the world’s internally displaced persons are women and children.²³⁶

Being deprived of housing, land and property, and lacking the ability to go back to their previous homes and property constitute a grave dilemma for displaced women, regardless of whether they have crossed an international boarder and are considered ‘refugees’ or ‘internally displaced persons.’ Most often, displaced women and girls desire to return to the homes they occupied prior to displacement and to preferably be safely reintegrated within their original communities.²³⁷

The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (hereinafter “Pinheiro Principles”)²³⁸ confirms the entitlement of displaced women to housing, land and property restitution.²³⁸ The fourth Pinheiro Principle deals explicitly with the equal rights of men and women to housing, land and property restitution.²³⁹ Principle 4.1 focuses on displaced women’s right to a “voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.”²⁴⁰ These are all areas where women and girls have traditionally been disadvantaged. Principle 4.2 seeks to eliminate gender bias which is evidenced by the unofficial recognition of men as “heads of households” and when men are viewed as “rights holders or when they are provided with

²³⁵ Francis M. Deng, Report of the Representative of the Secretary-General, UN Commission on Human Rights, 54th Session, Item 9 (d) of the Provisional Agenda, ‘Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission Human Rights, Mass Exoduses and Displaced Persons,’ submitted pursuant to Commission Resolution 1997/39, Addendum, Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, (11 Feb. 1998), para. 3. See: <http://www.unhcr.org/home/RSDLEGAL/3d4f95e11.pdf>

²³⁶ Erin Mooney, ‘The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern,’ *Refugee Survey Quarterly*, 24/3, (2005), p. 17. See: http://www.brookings.edu/~media/Files/rc/articles/2005/fall_humanrights_mooney/9.pdf

²³⁷ UN *Principles on Housing and Property Restitution for Refugees and Displaced Persons – The Pinheiro Principles*, para. 3. See: <http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf>

²³⁸ UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-sixth session, Item 4 of the provisional agenda, Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, Final report of the Special Rapporteur, Paulo Sérgio Pinheiro, Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005, at 3rd Preambular para. See: www.hic-mena.org/documents/ECN4Sub2200517%20restitution%20en.pdf [hereinafter ‘Pinheiro Principles’].

²³⁹ UN Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-sixth session, Item 4 of the provisional agenda, Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, Final report of the Special Rapporteur, Paulo Sérgio Pinheiro, Principles on Housing and Property Restitution for Refugees and Displaced Persons, UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005, at 3rd Preambular para. See: www.hic-mena.org/documents/ECN4Sub2200517%20restitution%20en.pdf [hereinafter ‘Pinheiro Principles’].

²⁴⁰ Handbook on Housing and Property Restitution for Refugees and Displaced Persons, Implementing the ‘Pinheiro Principles’, Mar. 2007, at 36. See: <http://ftp.fao.org/docrep/fao/010/a1131e/a1131e00.pdf>

formal title to housing or other property ownership rights, leaving women without legal control over what should also be treated as their property.”²⁴¹

In a 2005 resolution on internally displaced persons, the former United Nations Human Rights Commission conveyed its “particular concern at the grave problems faced by many internally displaced women and children, including violence and abuse, sexual exploitation, forced recruitment and abduction.”²⁴² The Commission also commented on “the need to pay more systematic and in-depth attention to their special assistance, protection and development needs, as well as those of other groups with special needs.”²⁴³ From the commencement to the conclusion of displacement, a main worry for women is whether they will be able to obtain access to land and/or housing. They may have to confront intricate problems in their attempt to secure housing. When security is ameliorated, displaced women who go back home generally discover that their homes or land have been demolished or inhabited by others.²⁴⁴

Where the mechanism for buying and conveying land is not operating properly or the customary scheme has collapsed, “land titling initiatives can thus have a negative effect, in particular on vulnerable individuals, such as displaced people, women (particularly widows) and children. Members of these groups are usually considered to have tenancy rights only, not ownership rights.”²⁴⁵ Moreover, due to gender-based prejudices, land titling is generally reserved for men, depriving women of their right to possess family property jointly with their spouse. If the process to obtaining title to land contributed to breaches of rights which were one of the reasons for the displacement, the land should ideally be reallocated to enable women to gain ownership rights.²⁴⁶

In times of armed conflict, after being forcibly removed from their property, women are then at risk of additional abuse once displaced. The United Nations Special Representatives on internally displaced persons expounded that “displaced women are particularly vulnerable to gender-specific violence as the protection afforded to them by their homes and communities disappears and the stress of displacement becomes manifest in the family unit.”²⁴⁷ The Special Representative also noted “such abuses include physical and sexual attacks, rape, domestic violence and sexual harassment, increased spousal battering and marital rape.”²⁴⁸ Additionally, displaced women are often forced to exchange sex for necessities (i.e. food and housing) as well as for protection, additional aid and access to records.

²⁴¹ Ibid. at 36.

²⁴² UN Commission on Human Rights, ‘Human Rights Resolution 2005/46, Internally Displaced Persons,’ 57th meeting, (19 Apr. 2005), para. 4. [*adopted* without a vote. See chap. XIV, UN Doc. E/CN.4/2005/L.10/Add.14]. See: <http://www.unhcr.org/home/RSD.LEGAL/429c525d4.pdf>

²⁴³ Internal Displacement Monitoring Center (IDMC), ‘Housing, Land and Property,’ para. 80. See: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E3CEAF22C4A4E236C12572BF003DFE6D/\\$file/Global_Overview_2006_Property.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E3CEAF22C4A4E236C12572BF003DFE6D/$file/Global_Overview_2006_Property.pdf) [hereinafter ‘IDMC, Housing, Land and Property’].

²⁴⁴ Ibid. para. 81.

²⁴⁵ Ibid.

²⁴⁶ Francis M. Deng, ‘Internally Displaced Persons,’ Report of the Representative of the Secretary-General, UN Doc. E/CN.4/1996/52, (22 Feb.1996), para. 46 [hereinafter ‘Francis M. Deng Report’].

²⁴⁷ Ibid.

²⁴⁸ Ibid.

Under a customary law system, ownership of property depends on possession and occupation.²⁴⁹ When people are displaced, the property they previously possessed will then be in the hands of others. In the myriad of countries where gender-based bias prevails with regards to property, displaced women are at risk because if the husbands or male family members die or they are unable to reunite with them during the women's displacement, the women risk losing their inheritance or property ownership since any entitlement they may have had to the property emanated from their deceased or missing husbands or male family members. Their inability to re-access land and property in such instances may hinder their return.²⁵⁰ Under such circumstances, biased property and inheritance norms will impede not only their ability to go back home but also their reintegration.²⁵¹

²⁴⁹ Chaloka Beyani, Background Papers, Key Issues: 'Women's Land and Property Rights in Situations of Conflict and Reconstruction,' para. 38. See: www.unifem.org/filesconfirmed/69/204_background.pdf

²⁵⁰ Francis M. Deng Report, *supra* note 246, para. 50.

²⁵¹ Executive Committee of the High Commissioner's Programme, Standing Committee, 35th meeting, 'Issues Related to Women at Risk: Discussion Paper on a Possible Executive Committee Conclusion on Displaced Women and Girls at Risk, UN Doc. EC/57/SC/CRP.7 (17 Feb. 2006), para. 3. See: <http://www.unhcr.org/doclist/excom/3ba7211c7.html>

3 Bridging the Gaps: Continuing the Struggle for Women's Housing Rights



[While the past decade has seen much advancement for women's housing rights, the struggle is far from over. In fact, a careful assessment of where we have been, and where we are now, reveals that several key openings exist for advancing women's housing rights worldwide. Photo: COHRE]

3.1 Challenging 'Gender-Neutral' Laws, Exclusions, and Gender-Biased Judicial Interpretation and Practical Applications

In practice, not all housing policies – even despite some good intentions – are pro-women. In all parts of the world, women's human rights advocates and housing rights advocates alike have fought to make housing rights laws, policies and standards work for women. One of the leading mistakes that law makers and government authorities make is to believe that 'gender neutral' laws will not, in fact, disadvantage women. The truth, however, is that unless

advancing women's equality becomes a central focal point for the development of housing policy, women's needs and rights will continue to be marginalised, and their status will remain second-class.

At the national level, legislative provisions are generally open to interpretation both in their application and in the adjudication of disputes before the Courts. Constitutional guarantees of non-discrimination and gender neutral laws may be rendered ineffectual if the interpretation and application of these provisions fail to guarantee equality for women. Where the law appears neutral on its face, judicial interpretation may nonetheless exclude women from protection, either in the application of the laws themselves or in the interpretation of such laws relative to non-discrimination provisions. In the *Magaya Case*²⁵² (please see discussion above) the Court failed to extend non-discrimination on the basis of sex and refused to interpret the law to provide more protection to women than what was "intended by the legislature."

In situations of legal pluralism where customary law prevails in matters affecting marriage, divorce, dowry, maintenance, support, and inheritance, the operation of non-discrimination provisions may be expressly excluded by both legislative and judicial interpretation. Moreover, where the social or cultural context does not afford women equal rights with men, courts and others may be unwilling or even hostile to the challenges on the basis of gender discrimination.

In *Madhu Kishwar and others v State of Bihar and others* (1996) 5 SCC 125, customary law was used to deny "tribal women" their rights of equality as enshrined in the Indian Constitution and in the International Conventions ratified by India. In this case, the Court was called upon to determine whether customary law, as applied, was contrary to the Constitution and International Conventions that protect the rights of women. Although the majority decision recognised that the customary law of succession discriminated against women, the Court refused to strike it down. The Court held that "it was not desirable to declare customary law to be contrary to the rights of women under the Constitution of India and the rules of succession sometimes provide different treatment that is not necessarily equal."²⁵³

3.2 Reforming the Regulation of Housing, Land and Property and Combating Structural Barriers to Equal Ownership

The law is one level on which women's equal housing rights must be assured. But, this is not the end of the story; regulation and implementation of the law is yet another level. The legal framework for women's housing, land and property rights includes regulations that determine allocation, management and administration of housing, land and property at the local and national levels. National laws and policies may provide for regulations to be enacted in accordance with and to give effect to the laws. In theory, regulations and practices should also conform to constitutional provisions guaranteeing equality for women.

²⁵² *Magaya Case*, *supra* note 222.

²⁵³ Case quoted in the Commonwealth Secretariat, *Gender and Human Rights*, para. 6. See: http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B0241CD75-2E82-4186-BD5E-BA7FC5240EC6%7D_GenderandHumanRightsSOLMpaper-final.pdf

In addition, regulations can provide specific and additional protection for women through the enforcement of affirmative action programmes.

In practice, however, where no particular attention is given to women's social and economic context, regulation in areas such as housing and land can operate to discriminate against women, directly and indirectly. Moreover, regulations may be incomplete, ineffective or poorly implemented and women often do not have access to justice to redress regulatory failure or abuse. This therefore underscored the need for meaningful participation and inclusion of women in planning and policymaking.

The development of gender-sensitive and responsive policies and programs in planning and administration impacts women's property rights. There is therefore a need to incorporate gender-based approaches to planning and administration, including generating gender-disaggregated data and analysis and involving women at all stages of the process including identification of problems, development of strategies and solutions, implementation, monitoring and evaluation. Regulatory agencies and administrative bodies can also benefit from increased awareness of women's housing, land and property rights.

By increasing women's participation in planning and implementation of infrastructure projects including housing, water and transport services, women's specific needs and concerns, including privacy, safety, and access to affordable services such as health care and legal services will only then be adequately addressed.²⁵⁴ Activists have also made inroads in these areas. For example, the European Charter for Women in the City incorporates gender-based approaches to planning and administration, including generating gender-disaggregated data and analysis.²⁵⁵

3.3 Upholding the Justiciability of Women's Housing Rights

Justiciability generally refers to the ability of judicial, quasi-judicial and non judicial bodies to provide a remedy for an aggrieved party claiming a violation of their rights.²⁵⁶ An argument against economic, social and cultural rights, including the right to adequate housing, is that the rights are not justiciable and are incapable of judicial enforcement. This argument has been discredited, however. Indeed, many States have enshrined economic, social and cultural rights in their constitutions, and there are numerous examples of courts applying domestic and international law to enforce economic, social and cultural rights.

Historical neglect of economic, social and cultural rights cannot be attributed to methodological obstacles. While there is always a need for additional indicators to measure compliance in specific areas, it must be emphasised that the definition of all rights, even freedom from torture, changes and expands over time through concrete practice. The main obstacle to realising economic, social and cultural rights, including the right to adequate housing, remains a lack of political will and commitment on the part of States and other

²⁵⁴ Pedro Sanchez, M.S. Swaminathan, Philip Dobie & Nalan Yuksel, 'Halving Hunger: It Can Be Done,' UN Millennium Project, Task Force on Hunger, (2005), Chapter 5. See: http://www.unmillenniumproject.org/reports/tf_hunger.htm

²⁵⁵ See the European Charter for Women in the City, (1995). See: <http://www.unesco.org/most/westeu20.htm>

²⁵⁶ This description does not assume a technical nature and is therefore not intended to be read as encompassing the strict definition.

powerful actors whose responsibility it is to respect, protect and fulfil these rights, on the basis of equality, and for the benefit of all human beings.

Housing rights violations have been challenged at the national and regional levels. In a number of countries such as India and South Africa, and in Latin America through the Inter-American Court of Human Rights, economic, social and cultural rights have been litigated, including through challenges based on environmental degradation, loss of livelihood, impact of development projects, forced evictions and failure to provide basic services including health and housing.

Instances of breaches of economic, social and cultural rights that have been the subject of litigation include:²⁵⁷

- Forced evictions
- Deliberate poisoning of a water supply
- Discrimination in access to medical care, work, housing, education etc.
- Depriving children of adequate food and water
- Failing to provide basic health care facilities
- Housing in such poor condition that it poses a risk to safety

Test case litigation is an effective mechanism for advocacy on women's housing and land rights and can be used in a number of ways to enforce State obligations under international human rights law. Successful litigation supports the premise of legally protected rights enshrined in international law and enforceable at the national level. Litigation can have several objectives, including:

- To create legal or policy change
- To seek clarification or stabilisation of the law
- To create a foundation for future litigation and establish basis for government reform
- To translate legal possibility into reality, particularly where rights are nominally guaranteed, but are either not protected or enforced

In the case of litigation, one consideration advocates must confront is the probability of success. Strategic litigation is one form of advocacy which combines both individual claims seeking immediate and specific relief, as well as broader claims seeking benefits for similarly situated individuals and society at large. The outcome of litigation is often uncertain and the process can be both lengthy and costly. Moreover, where the issue is particularly contentious, strategic litigation, which is often public (and publicised), may pit the individual claimant against the society at large. In addition, strategic litigation may raise numerous challenges in terms of resources, planning, support and follow-up to ensure a successful and lasting outcome.

Litigation is also most successful where it presents a realistic opportunity for enforcement, in other words, where the judgment leads to concrete and lasting action. A negative result may

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Centre for Economic and Social Rights, 'Justiciability of ESCR.' See: <http://cesr.org/justiciability>

set a difficult precedent and reinforce unfavourable laws with serious implications, where judgments and interpretations may have a broader application and form the legal basis for laws in multiple jurisdictions. Nevertheless, even a negative judgement can have a positive impact including publicity, education and empowerment, as long as the individual litigant is prepared to take the risk.

Obstacles to Using Litigation to Affect Legislation

Obstacles to effective strategic litigation include the doctrine of separation of powers, the principle of justiciability, lack of or inadequate domestic law, weak or ineffective courts and general opposition to change.

- ✓ Separation of Powers – One of the arguments against strategic litigation is that asking courts to enforce economic, social and cultural rights forces them to overstep into the boundary of the legislature (lawmaking) and the executive (enforcement). Courts may not be given the power to strike down legislation and international courts have limited powers of enforcement. Judicial bodies may give deference to legislative branches, particularly with respect to issues involving resource allocation, and will only make recommendations (rather than compel action) because of concerns about judicial intervention in policymaking or capacity to supervise orders. Moreover, courts may be reluctant to issue orders where they know that they will be disobeyed and may therefore diminish their authority.

However, as jurisprudence from South Africa and elsewhere has demonstrated, courts *can* overcome this hurdle to enforce economic and social rights, for instance by requiring a reasonable plan of action to fulfil a specific right and requiring the dedication of reasonable resources necessary to implement that plan.

- ✓ Inadequate Domestic Law – Economic, social and cultural rights have been successfully litigated, particularly in countries where they have been incorporated into domestic law and where mechanisms exist to provide for adjudication of these rights (*See, e.g.*, India, South Africa and Latin America). Supporting legislation on housing and land, and regulatory frameworks with specific references and incorporation of principles of equality, participation, and requirements of due process and opportunities for redress provide additional support for litigation of economic, social and cultural rights. In the absence of incorporation through domestic legislation, courts have nonetheless relied on arguments based on civil and political rights to include State obligations to provide basic necessities (*See, e.g.* India, where economic, social and cultural rights have been found to be components of the right to life.)²⁵⁸

- ✓ Weak Courts – Some courts do not have the clout or power needed to strike down offensive laws. In addition, judicial authorities may lack knowledge on housing rights or may be hostile to particular groups of litigants, including women. In such instances, education and sensitisation are essential elements and objectives of

²⁵⁸ *Paschim Banga Khet Samity v. State of West Bengal*, Case No. 169, Judgement of 6 May 1996, Writ Petn. (Civil) No. 796 of 1992. *See*: http://www.escri-net.org/usr_doc/Paschim_banga_Khet_Samity_judgment.doc

the litigation strategy.²⁵⁹

✓ Strong Opposition – Opposition may lie outside the courts including governments and private actors. Law reform in such instances may not be the focus of serious discussion at the national level or may be often tied up with political manoeuvring.²⁶⁰

Successful litigation may therefore be combined with other forms of advocacy, particularly in terms of information and awareness raising to generate support, but also to provide a persuasive factual basis for a favourable judgement.²⁶¹ Because of its targeted nature, strategic litigation often involves consideration of various factors including the appropriateness of the particular case or litigant to achieve the desired goal or objective.²⁶²

²⁵⁹ See: e.g., ICJ, Commonwealth Resources on Issues such as Rule of Law, Judicial Reform, Independence and Accountability, Training and Domestication of International Human Rights Law.

²⁶⁰ See also: Nepal in relation to negative media campaign against women's property rights; general resistance to women's property rights (social and cultural) even among women themselves based on intractability of entrenched social values, lack of awareness or outright hostility against those who challenge accepted norms.

²⁶¹ See: Birte Scholz, 'Challenging Legislation,' Draft Discussion Paper, WLC 2005 Strategic Litigation Conference.

²⁶² For further information on the justiciability of economic, social and cultural rights, see: COHRE, *Litigating Economic, Social and Cultural Rights: Legal Practitioners Dossier*, Geneva: COHRE 2006; COHRE, *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies*, Geneva: COHRE 2003. Available at: www.cohre.org/litigation

3.4 Strengthening Local Action and Participation

“If women are to exercise their rights, they must have full knowledge and information.”

Miloon Kothari
UN Special Rapporteur on the Right to Adequate Housing



[Women march for equal housing, land and property rights in Accra, Ghana. Photo: COHRE]

Advocacy on women’s housing rights cannot be removed from the broader context of women’s human rights advocacy, including the inclusion of women’s rights within the broader human rights framework. This includes the specific recognition of the interdependence and indivisibility of rights, *viz.* economic, social and cultural rights, women’s economic status and issues affecting women including discrimination and violence. Successful advocacy therefore seeks to integrate women’s rights and legal instruments. In short, without significant improvement in the realisation of women’s rights overall, including legal protections against discrimination, gains in other areas such as poverty reduction, HIV/AIDS and economic development are unlikely to be achieved.

Community-based initiatives are an important part of both advocacy and implementation of human rights norms and can help to address issues such as access to justice where, for example, institutional mechanisms and resources are inaccessible to individuals at the local level. Moreover, in the area of women’s housing, land and property rights, issues such as land administration and adjudication of disputes often arise at the local or community level, often in informal settings, where adherence to international and even domestic human rights requirements is more difficult to monitor and enforce.

Promoting and protecting rights requires participation in broader civic and community initiatives that have traditionally been male dominated. Although working with men may initially create conflict, it can also create spaces and opportunities to address gender inequities and allow for a more comprehensive and inclusive approach to issues such as land reform.

Increasing women's knowledge and understanding of their rights can be achieved by having women partake in dialogues and international exchanges where women serve as facilitators to petition for their views particularly on delicate topics. An unique example of this was the "Asia Pacific Court of Women on HIV, Inheritance and Property Rights," a regional summit held in Sri Lanka on 18 August 2007. Here a "court" offered HIV/AIDS infected women who had been deprived of their property and inheritance rights a forum to share the obstacles they confront as infected women.²⁶³ During the summit, twenty women²⁶⁴ spoke of the abuse they experienced in the hands of members of their marital family and within their community because of their HIV status. A Sri Lankan woman recounted how her home became a prison for her and her daughters after her HIV positive husband committed suicide, how her neighbours, encouraged by her brother in-law, set her house ablaze so that he could subsequently divest her of the property that was also registered under her name.²⁶⁵ An Indian woman described how her marital family accused her of killing her husband, after his death she took her daughter to an orphanage to shield her from getting infected and she starved for days since she had no source of income.²⁶⁶

The basic requirement for women to exercise their rights is comprehensive knowledge and information regarding those rights and access to full participation and enforcement mechanisms. Regardless of the strategy, advocacy initiatives on women's housing and land rights share the same fundamental goals. Determining the appropriate strategy depends on a variety of internal and external factors and conditions at the local, regional and international level. Nevertheless, each strategy depends on the same essential elements, including information, planning, access and resources. Advocacy can take place at multiple (and concurrent) levels and phases, and via various means as long as the goals and objectives can be achieved.

In addition to substantive claims, advocacy on women's housing, land and property rights also seeks to address the underlying causes of women's unequal status and the gendered dimensions of property ownership and control, which operate to deny women of the equal exercise and enjoyment of their rights to housing. Successful advocacy in women's housing and land rights in areas such as strategic litigation and legislative lobbying often depends on the existence of legal and institutional structures including legislation that allow for participation in the political process. However, in addition to legal and legislative advocacy, and even in the absence of institutional structures, the creative use of available resources can encourage inclusion of issues such as women's housing and land rights in programmatic

²⁶³ First Asia Pacific Court of Women, 'HIV and Inheritance and Property Rights,' (Colombo: The Hindu, 16 Aug. 2007). See: <http://www.hindu.com/thehindu/holnus/003200708162240.htm>.

²⁶⁴ Nadia Fazlulhaq & Isuri Kaviratna, 'HIV/AIDS-affected Women Take Woes before "Court,"' *The Sunday Times Online*, 42/12 (19 Aug. 2007) See: <http://lakdiva.org/suntimes/070819/News/nws18.html>. The women who testified came from Sri Lanka, Bangladesh, India, Nepal, Pakistan, Malaysia, Cambodia, Vietnam, Thailand, Papua New Guinea and South Africa.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

areas such as development planning by establishing the importance of women's rights in long-term strategies for women's economic and social empowerment.

3.5 Integrating International Human Rights Standards into Domestic Advocacy Strategies

States, who are parties to international human rights treaties and conventions, bear the ultimate responsibility for enforcement of rights and implementation of corresponding obligations. Moreover, like all human rights, housing rights are often tied up with political considerations including decisions regarding the allocation of resources. Therefore, in addition to demanding action in substantive areas, such as changes in the law, advocacy can also seek to generate changes in policies and practices that impact on enforcement and implementation and address issues of political will.

Political advocacy campaigns can be a blend of international, national and local initiatives. At the international level, establishing thematic campaigns and networks around women's housing and land rights can increase solidarity with local campaigns and heighten international awareness on national and local issues affecting women's access to housing and land. Regional and international advocacy requires the knowledge and understanding of regional and international treaties and documents and the various mechanisms involved.

At the national level, knowledge and information regarding institutions and policies and available avenues for participation can add impetus to addressing women's housing and land rights. Understanding of national mechanisms and avenues for advocacy and redress can provide insight into the types and numbers of initiatives that already exist and some of the work that has been accomplished on women's housing and land rights, and assist in determining appropriate strategies. Collaboration with national level institutions may also provide opportunities for increased visibility, access to lobbying, and greater potential for media coverage.

Potential avenues for advocacy include:

- Pressuring governments to repeal laws that discriminate against women and adopt new laws which protect women's housing and land rights, including incorporating substantive women's housing and land rights issues into law and policy.
- Bringing international human rights instruments which protect women's housing and land rights to the attention of national and local governments in particular ministries concerned with housing, women, urban/rural affairs, planning and the environment.
- Bringing international human rights instruments to the attention of political parties and urging them to include recognition of women's housing and land rights in their political platforms.
- Meeting with a government's appointed delegation to United Nations meetings,

including the United Nations Human Rights Council, the United Nations Commission on the Status of Women, and the United Nations Commission on Human Settlements and asking them whether they intend to take or support initiatives to further promote women's rights.

- Entrenching women's housing and land rights as human rights including delineating and developing holistic legal framework.
- Contributing to research on the relationship of right to adequate housing to developing support for women's land and property rights.
- Providing a legal basis and framework for the interpretation of existing national laws and passage of new legislation; *e.g.* those working to have laws repealed or amended or new laws adopted can use international treaties to draft alternative legislation which explicitly recognises women's right to adequate housing and its constituent elements.
- Ensuring gender integration in ongoing international human rights campaigns.
- Voicing demand for policy, legislative and constitutional reform which is pro-women.
- Empowering women to advocate for their own housing rights through human rights education and training regarding rights, resources and mechanisms to redress violations at the local, national, regional and international levels.
- Lending visibility and legitimacy to campaigns, protests and other activities aimed at changing local laws, customs or traditions and using rights-based language to enhance a social demand to a claim which has the force of law behind it.
- Monitoring State compliance with international and regional obligations, including monitoring and documenting women's housing rights violations and initiating campaigns to pressure ratification of international and regional human rights conventions.
- Holding governments accountable for the legal obligations undertaken to respect, protect, promote and fulfil the right to adequate housing and related rights including equality and anti-discrimination.
- Pressuring governments for more gender-sensitive policies and legislation in matters relating to housing, land, property and inheritance, and measuring national legislation against internationally established human rights norms.
- Providing a common basis across national borders for the development of strategies and exchange of experiences using the common language and understandings of the international treaties.

3.6 Supporting Innovative Research and Media Campaigns Promoting Women's Housing, Land and Property Rights



[A woman and her family living in a rural community with substandard housing outside of Managua, Nicaragua. Photo courtesy of Habitar.]

Knowledge generated by research is an essential element of decision-making. Partnerships involving researchers, practitioners and women whose human rights are directly implicated can serve in the development of knowledge, allow for more targeted and effective programs. Research serves as a mechanism for updating information and providing the foundation for decision-making, and can assist in determining appropriate strategies for advocacy.

Research can contribute to the advancement of women's housing, land and property rights in a number of ways, including:

- Establishing participatory programmes working with women to gain greater understanding of issues or move beyond existing models
- Developing critical analyses through research
- Contributing to the development of training tools
- Documenting best practices and helping organisations develop evaluation tools and methods
- Providing, in strategic litigation, information on laws and policies, analysis of substantive issues and an in-depth understanding of broader trends and

implications of issues challenged in the litigation

Civil society organisations should, where possible, ensure the full participation by all stakeholders, including women to avoid duplication and maximise the impact of work. Participatory methods can extend to include the ideas of ‘network bridges,’ involving actors working in different sectors, pooling and complementarity of resources to avoid competition and dilution and provide a mechanism for dissemination of information on initiatives and challenges and transfer of knowledge.

Civil society organisations also have a role to play in disseminating information, not only in publishing studies and best practices, but also in actively promoting networks and bringing issues and results to the attention of government partners in individual negotiations and in planning for individual projects.²⁶⁷

Media campaigns can be particularly useful on their own, and can also be used in conjunction with other strategies, including litigation and legislative lobbying to generate awareness of international human rights norms and encourage support for women’s housing and land rights at the national and local level. Different forms of media (i.e. television, radio and internet) may be utilised to teach the people about the various organisations and services that are available to help women enjoy their housing rights.²⁶⁸ The media is also an essential tool for teaching local leaders and State bureaucrats about women’s housing rights.

Information campaigns can take various forms, including:

- **Disseminating** international legal documents that protect, promote, and enforce women’s rights to adequate housing and land.
- **Translating** documents or pertinent sections into local languages, preparing leaflets, booklets, brochures, posters and postcards explaining key aspects of women’s housing rights in simple terms.
- **Publishing** full copies of the text of resolutions and important excerpts in local newsletters, journals, magazines, newspapers, books and other written material.
- **Increasing exposure** of women’s housing rights and the consequences of their violation by generating television or radio attention and linking these issues to existing campaigns aimed at advancing women’s housing and land rights.

²⁶⁷ Women in Cities, Sharing Practices and Developing Discussion Networks.’ See:

http://www.femmesetvilles.org/seminar/english/themes_en/the_reseaux_en.htm See also comments on FAO’s role in Rural Women’s Access to Land; See also: comments on UN HABITAT’s role in HABITAT Debate article on Security of Tenure.

²⁶⁸ In Zambia, the Justice for Widows and Orphans Project (JWOP) used multiple forms of media to communicate with the public about its programs and services. A viewer expressed, “I wish I had seen this program before I lost everything. I would have known what to do.” Charlotte Johnson Welch, Nata Duvvury & Elizabeth Nicoletti, International Centre for Research on Women (ICRW), ‘Women’s Property Rights as an AIDS Response, Lessons From Community Interventions in Africa,’ para. 5, (2007). See: <http://www.icrw.org/docs/property-rights/2007-wpr-community-interventions-africa.pdf>

3.7 Advancing Pro-Women Interpretations of Housing Rights at All Levels



[Women activists in the Philippines work together to protect women in poor communities from the ravages of forced eviction. Photo: COHRE]

Globally, despite the increased attention given to women's housing rights, it remains essential to develop and enforce norms that actually secure these rights. The good news is that international, regional and national systems now have widespread jurisprudence to secure and promote women's housing, land and property rights. However, gender-based bias grounded on traditional rules and statutory norms that favour men prevent women from enjoying these rights in practice. The various genres of laws ought to inspire each other to generate the most comprehensive housing, land and property rights protections for women everywhere. Though numerous civil society groups are engaged in efforts to clarify new norms and policies for the communities they serve, further work remains to be done.

It is essential to continually focus and strengthen human rights standards that overlap or are perhaps inconsistent (and more often silent) when it comes to women's housing, land and property rights.

There are many international instruments that include housing rights provisions. The International Covenant on Economic, Social and Cultural Rights offers some of the most

salient legally binding reference to housing rights protections. Currently, there are 157 States parties to the Covenant.²⁶⁹ To globally attain a cohesive and secure protection of women's housing rights, civil society should encourage governments to universally ratify and adhere to the Covenant, along with all the other conventions that ensure housing rights. Collectively, the treaties offer a cohesive framework on housing rights that can inform regional, State and community change.

States parties to the various covenants must remove any reservations, understandings and declarations that are inconsistent with the object and purpose of the treaties. As with all instruments that are binding on States that have either ratified or acceded to a treaty, the legal duty imposed by the treaties is governed by the principle of *pacta sunt servanda*, which is codified in Article 26 of the Vienna Convention on the Laws of Treaties. In other words, States parties to the International Covenant on Economic, Social and Cultural Rights and the other treaties may not merely ratify or accede to these instruments, but must act in good faith to respect, protect and fulfil women's housing, land and property rights.²⁷⁰

Three organisations focus on human rights at a regional level. As noted previously, the African Union, the Organisation of American States and the Council of Europe can each be instrumental in advancing and defending women's housing rights. This can be achieved by explicitly ensuring women's right to adequate housing in those regional human rights instruments which contain the most effective means of implementation. Furthermore, the three regional organisations should revise or supplement their regional instruments so that they are in sync with international standards. Incorporating international standards within the regional normative framework informs the international community that States are earnest about their international legal duties and that they also intend to enforce the human rights guaranteed within the international treaties.

At the national level, States should integrate housing rights standards into their domestic laws for their international human rights obligations to take effect, particularly where international and regional human rights norms do not automatically get incorporated into the domestic laws. When States incorporate housing rights in their domestic laws, States fulfil their international legal duties and make it possible for their citizens to realise their rights.

In a number of countries, international human rights treaties are deemed 'self-executing' meaning that once the State becomes a party to the treaty, the State need not enact any legislation to permit it to implement the norms contained in the international instrument in order to meet its duties. In such instances States should endeavour to enact norms that further strengthen women's housing rights. Efforts should focus on the synchronisation of property and marriage norms and to ensure concordance among the standards, the State's constitution as well as the State's duties as a party to international human rights conventions. Civil society groups should encourage States to live up to their international human rights obligations and secure women's equal rights to housing, land and property.

²⁶⁹ For status of ratifications, reservations and complete texts of the treaties please consult the UN High Commissioner for Human Rights, website at <http://www.ohchr.org/english/bodies/ratification/3.htm>

²⁷⁰ Vienna Convention on the Law of Treaties, 1155 UN T.S. 331, UN Doc. A/Conf. 39/27, Art. 26, (1969). Article 26 states: "every treaty in force is binding upon the parties to it and must be performed in good faith." See: <http://www.un.org/law/ilc/texts/treaties.htm>

At the international level, advocates are working to construct gender-sensitive interpretations of key housing rights standards, including General Comment No. 4 of the United Nations Committee on Economic, Social and Cultural Rights on the Right to Adequate Housing. This is an important step which could ultimately strengthen protections of women's housing rights at all levels.

An important step in this direction will be revisiting the essential elements of the right to adequate housing, and engendering each of these elements with a pro-women perspective. In this regard, women's housing rights advocates are increasingly working to highlight what housing rights really mean *for women*. The elements of the right to adequate housing,²⁷¹ and what each means from the standpoint of women's equality, are summarised below:

- **Security of Tenure** Secure tenure protects people against arbitrary forced eviction, harassment and other threats. *Tenure for women is that it is often dependent upon their relationship to a male. Victims of domestic violence, without legal claim in the home and facing obstacles to obtaining housing on their own, must often face the choice of homelessness or remaining prisoners of violence.*

- **Availability of Services, Materials, Facilities and Infrastructure** Adequate housing requires access to potable water, energy for cooking, heating and lighting, sanitation, washing facilities, food storage, refuse disposal, drainage and emergency services. *The importance of the proximate availability of these services is clear, considering the reality of many women's daily lives, often bearing the primary responsibility for the care of household, children and other family or community members.*

- **Affordability** The housing affordability principle stipulates simply that the amount a person or family pays for their housing must not be so high that it threatens or compromises the attainment and satisfaction of other basic needs. *This provision must be interpreted so that women, often economically marginalised, are able to afford adequate housing through appropriate credit and financing schemes.*

- **Habitability** Inhabitants must be ensured adequate space and protection against the cold, damp, heat, rain, wind or other threats to health or structural hazards. *In this respect, women must also be protected from domestic violence, a clear threat to their health.*

- **Accessibility** Disadvantaged groups such as the elderly, children, the physically and mentally disabled, HIV-positive individuals, victims of natural disasters and other groups should be ensured some degree of priority consideration in housing. *Women are also a traditionally disadvantaged group vis-à-vis housing, due to societal and cultural discrimination and subordination. Women with disabilities or HIV/AIDS are even further marginalised. As such, States' must undertake specific measures to address the needs of specific groups of women.*

- **Location** Housing must be situated so as to allow access to employment options, health care services, schools, childcare centres and other social facilities. *The location of housing is especially vital for women to allow them the opportunities to fulfil other fundamental rights and achieve gender equality.*

²⁷¹ General Comment No. 4, *supra* note 228, para. 8.

• **Cultural Adequacy** Housing must allow for the expression of cultural identity and recognise the cultural diversity of the world's population. *Women must be given the chance to effectively participate the planning of housing to ensure a reflection of their cultural identity, and women must also be able to have a say in the creation and interpretation of cultural norms related to housing.*

At all levels of advocacy on behalf of women's housing, land and property rights, we can see that much advancement has been made over the past decade. At the same time, much work remains to be done. In the years ahead, further inroads will no doubt be made. Advocates are increasingly showing how women's social status is intimately connected to the status of their housing, land and property rights. Yet, women's housing insecurity is more than a mere symptom of gender bias and sexism; women's housing insecurity also reinforces the systems of oppression which give rise to gender bias and sexism in the first place. Properly seen, women's housing, land and property rights are *tools for change* and they can be a catalyst for creating a more gender equal world. The constitutive elements of housing are impacted by gender inequality, yet when properly protected, they can further uplift women's status and take us one step closer to a world where gender equality is the reality for all people.

Annex 1: Key Provisions from International Human Rights Standards Relevant to Women’s Housing Rights

At the international level, the right to adequate housing is contained in numerous international treaties and declarations. Broadly speaking, these human rights instruments not only articulate the right to adequate housing and related rights, but also create the obligation of non-discrimination and equal enjoyment of all other rights for all people regardless of sex.

This annex highlights some of the important international legal provisions that guarantee the right to adequate housing to women and sets out provisions for their protection and promotion.²⁷²

These documents further elaborate the inalienable, integral and indivisible nature of all human rights that ought to be enjoyed by women free from discrimination and on parity with men.

International obligations

In addition to individual State obligations, discussed below, the international community is obligated to ensure international cooperation for the realisation of economic, social and cultural rights, including specifically the attainment of adequate housing. These obligations include refraining from coercive measures to force States to abrogate or infringe on housing rights, offering where possible financial and other assistance to States affected by natural or other disasters resulting in destruction of homes or settlements, ensuring provision of housing to displaced persons, refugees and persons fleeing civil strife, drought, responding to abject violations by any State, reaffirming the right to adequate housing, and ensuring legal texts do not detract from existing levels of recognition afforded this right.

State party obligations

The United Nations and the international community have recognised that international legal instruments such as treaties and covenants create specific obligations for State parties (governments) upon accession or signing and ratification of the relevant instruments.

Under the tripartite framework the State has the overall duty to “respect, protect and fulfil” all human rights. Applied to the right to adequate housing, by *respect* the State has a negative duty to refrain from any action that would result in the violation of the right. For example, in the case of arbitrary forced evictions, “[t]he State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.”²⁷³ In ensuring its obligation to *respect*, the State must bring to conformity with the

ICESCR any domestic legislation or State policies that would negate the enjoyment of the right to adequate housing, especially for women and other marginalised groups.

²⁷² For an in depth analysis of international legal sources to the right to housing, see: Office of the High Commissioner for Human Rights: ‘Fact sheet No. 21, The Human Right to Adequate Housing.’ See: <http://www.ohchr.org/english/about/publications/docs/fs21.htm>

²⁷³ CESCR, ‘General Comment No. 7, The Right to the Adequate Housing,’ (Art. 11.1: Forced Evictions, Art. 8/, UN Doc. E/1998/22, annex IV.) [hereinafter ‘General Comment No. 7’]. See: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument)

The obligation to *protect* encompasses a State's positive duty to take steps to impede, proscribe and attend to violations of women's housing rights by non-state actors. Further, the State is obliged to adopt sound legislative provisions that would guarantee the right to adequate housing such as non-discrimination provisions for women in accessing housing. More significantly the State must adopt measures and programmes that would secure the right to adequate housing for the most vulnerable or socially marginalised, including women.²⁷⁴ Such measures include, *inter alia*, complaint mechanisms and appropriate remedies for victims.

To meet its obligation to *fulfil*, the State has a further duty to "facilitate, provide and promote."²⁷⁵ In regard to housing, the duty to *facilitate* requires the State to adopt measures to facilitate women's enjoyment of their housing rights. The obligation to *provide* compels States to supply essential necessities to women who are unable to enjoy their right to adequate housing. States can *promote* women's housing rights by supporting "international cooperation programmes and policies which may contribute to the realisation of women's [housing] rights"²⁷⁶ or by implementing domestic policies and legal reforms to safeguard women's housing rights.²⁷⁷

The States obligation to *fulfil* may be achieved through the adoption of legislative, administrative and promotional measures to secure the protection of the right to adequate housing. This involves the active participation of the State geared at the progressive realisation of the right. However, the obligation to *fulfil* progressively imposes a responsibility to move as "expeditiously and effectively as possible towards that goal."²⁷⁸ Therefore, inordinate delay or lack of appropriate policy in the fulfilment of its State obligation cannot be condoned or even excused on the ground of inadequate resources.

The *Maastricht Guidelines* on the question of fulfilment of the State obligation under the ICESCR provides: "The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation."²⁷⁹

The legal basis for protection, promotion and fulfilment of women's housing and land rights can be found in internationally recognised human rights laws and norms. In addition to instruments such as CEDAW, which directly address the elimination of all forms of discrimination against women, women's housing and land rights also draw on broader notions of equality and non-discrimination in the principal human rights instruments,

²⁷⁴ CESCR, General Comment No. 3, 'The Nature of States Parties Obligation,' UN Doc. E/1992/23, (1991), Annex III, para. 9 [hereinafter 'General Comment No. 3']. *See*: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument)

²⁷⁵ CESCR, General Comment No. 14, 'The Right to the Highest Attainable Standard of Health,' Art. 12, UN Doc. E/C.12/2000/4 [hereinafter 'General Comment No. 14']. *See*: <http://www.publichealthlaw.net/Reader/docs/GenCom14.pdf> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, (Maastricht: 22-26 Jan. 1997). *See*: http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html [hereinafter 'Maastricht Guidelines'].

²⁷⁶ Andrew Byrnes, María Herminia Graterol & Renée Chartres, 'State Obligation and the Convention on the Elimination of All Forms of Discrimination Against Women [2007],' *UNSWLRS* 48 (14 Aug. 2007), last updated: 14 Aug. 2007. *See*: <http://www.austlii.edu.au/au/journals/UNSWLRS/2007/48.html>

²⁷⁷ 'Mediterranean Regional Consultation on Women's Right to Adequate Housing,' Observatorio Derechos Humanos, DESC (Barcelona: Mar. 2006), p. 22.

²⁷⁸ General Comment No. 3, *supra* note 273.

²⁷⁹ Maastricht Guidelines, *supra* note 274, paras. 6, 15.

including the UDHR, ICCPR and ICESCR.

Where women's housing, land and property rights are not specifically dealt with in the main text of the instruments, one can look to interpretations provided by treaty bodies, special procedures, including special rapporteurs, outcomes of international conferences, case law at the national and international levels and policy papers from international organisations, development agencies and NGOs working on women's housing, land and property rights in the field. Even where resources do not provide legal basis per se, they can provide guidance in interpretation, information on resources for successful advocacy, documentation of violations and information on trends and developments in analysis, particularly on cross-cutting issues. Other useful sources of information include these:

- ✓ *Reports and recommendations published by international human rights bodies* can provide the basis for the interpretation of and guidance on the application of international human rights norms such as non-discrimination, substantive equality and State obligations. They can also provide guidance on the evolution of substantive issues, particularly developments integrating women's housing and land rights and gender-based interpretations of human rights norms.
- ✓ *Regular submissions and reporting requirements to international human rights bodies* by State parties to treaties and conventions can also serve an important monitoring function in terms of documenting women's housing and land rights experiences at the national level. Country reports may also provide information on the development of national laws, and help to identify areas where additional work may be required, including monitoring, reporting or technical assistance in implementation. International and regional bodies also present opportunities for advocacy to develop human rights norms, particularly women's housing and land rights, and to expand the scope of recognised and protected rights.
- ✓ *United Nations General Assembly Resolutions*, although not binding on States in the same manner as the conventions, recognise a range of rights relevant to women's housing security, including the detrimental impact of domestic violence on, in particular, women's social and economic status and their ability to find alternatives to escape violent situations. See Resolution 2001/34, 2002/49, 2003/22, 2005/25, 49/8 (recognising the impact of women's economic and social status and lack of alternative housing on their inability to leave violent family situations).

Highlighted International Sources of the Right to Adequate Housing

The legal sources of the right to adequate housing begin with the International Bill of Rights, made up of the Universal Declaration of Human Rights,²⁸⁰ the International Covenant on Economic, Social and Cultural Rights,²⁸¹ the International Covenant on Civil and Political Rights²⁸² and its two additional protocols.

The right to adequate housing is also contained in a number of international instruments, most notably the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),²⁸³ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁸⁴ and the Convention on the Rights of the Child (CRC).²⁸⁵

The full texts of these instruments can be accessed on line at <http://www.ohchr.org>.

The Universal Declaration on Human Rights, 1948

Adopted unanimously in 1948 by the United Nations General Assembly, the Universal Declaration of Human Rights (UDHR) contains important provisions relating to women and the right to housing, land and property. Though not a legally binding document, the UDHR has since gained universal acceptance and can now be cited as a leading standard of human rights norms.

The Universal Declaration on Human Rights		
Article	Full Text	Application
2	Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.	Women have the inherent right to be free from discrimination with respect to all the rights under the UDHR.

²⁸⁰ Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc. A/810, para. 71 (1948). *See:* <http://www.hrweb.org/legal/udhr.html>

²⁸¹ International Covenant on Economic, Social and Cultural Rights, (16 Dec.1966), 993 UNT.S. 3. *See:* http://www.unhchr.ch/html/menu3/b/a_cescr.htm

²⁸² International Covenant on Civil and Political Rights, (16 Dec. 1966), 999 UNT.S. 171 [hereinafter 'ICCPR']. *See:* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

²⁸³ Convention on the Elimination of All Forms of Racial Discrimination, (21 Dec. 1965), 660 UNT.S. 195. *See:* <http://www.ohchr.org/english/law/cerd.htm>

²⁸⁴ Convention on the Elimination of All Forms of Discrimination Against Women, (18 Dec. 1979), 1249 UNT.S. 13. *See:* <http://www1.umn.edu/humanrts/instree/e1cedaw.htm>

²⁸⁵ Convention on the Rights of the Child, (20 Nov. 1989), 1577 UNT.S. 3. *See:* <http://www.ohchr.org/english/law/crc.htm>

7	All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.	Entitles all women to equal treatment before the law, and to protection against any form of discrimination. The provisions of the UDHR apply equally to both women and men.
16	(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.	Establishes the right of all women to consensually enter into marriage and to equal rights during marriage, separation or dissolution.
17	(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.	Provides women equal rights to the access and ownership of housing, land and property including the right to inherit property. This Article also provides protection against forced eviction, domestic violence or other violations that would lead to the arbitrary deprivation of property.
25	(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.	Establishes equal rights to housing, land and property. Read together with Article 2 and 16, Article 25 reinforces the principle of non-discrimination with respect to housing, land and property.

The provisions contained in the UDHR relating to women’s right to housing, land and property were subsequently codified in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as other United Nations treaties.

The International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted in 1966 and is viewed as the most authoritative pronouncement on economic, social and cultural rights and housing rights in particular.²⁸⁶

²⁸⁶ General Comment No. 4, *supra* note 228, para. 8.

Under the ICESCR, the right to adequate housing has been defined to encompass seven key aspects,²⁸⁵ which include

- Legal security of tenure, including legal protection against forced evictions
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility for disadvantaged groups
- Location
- Cultural adequacy

The United Nations Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council as the supervisory body of the ICESCR. In 1988, the Committee began preparing General Comments on normative content of the ICESCR with a view to assisting States parties in fulfilling their State reporting obligations and to provide greater interpretative clarity and specificity to the intent, meaning and content of the ICESCR.

International Covenant on Economic, Social and Cultural Rights		
Article	Text	Application
2	(2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.	Guarantees non-discrimination on the basis of sex and reinforces the equal enjoyment of rights by men and women set out in Article 3.
3	The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.	Guarantees women's equal rights provided in the ICESCR, including the right to adequate housing provided in Article 11(1). Read together with Article 11, women are guaranteed the right to own, use or otherwise control housing, land and property on an equal basis with men.
	(1) The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.	Establishes the right of women and men to adequate housing, which has been interpreted to include the right in land and property and access to and control over

		sources of livelihood and basic civic amenities. This article also forms the basis of protection against forced eviction.
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International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1966. The ICCPR, though intended to address traditional civil and political rights, contains reference to economic, social and cultural rights and provides important safeguards for the rights of women.

The Covenant also has two optional protocols. The First Optional Protocol provides for an individual complaints procedure for persons who claim that their rights established by the ICCPR have been violated. The Second Optional Protocol commits State parties to the abolition of the death penalty.

The United Nations Human Rights Committee is the body that monitors implementation of the ICCPR and its optional protocols. The Committee issues general comments to guide State parties in the interpretation of the ICCPR.

International Covenant on Civil and Political Rights		
Article	Text	Application
2	(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.	Prohibits any discrimination based on sex. The State is therefore obligated to guarantee women's rights to equal parity with men with respect to housing, land and property. The State is also obligated to provide an effective remedy to all women for any violations suffered, such as domestic violence and forced evictions.
3	The States Parties to the present Covenant 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.	States are under the obligation to ensure the equal access to effective remedies to both women and men. States are also required to also take affirmative action to ensure the positive

		enjoyment of rights for women. This complements the overall protection against discrimination.
6	(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.	This article, read together with Article 7 (Torture and Cruel, Inhuman and Degrading Treatment), and Article 9 (Liberty and Security of Person), as well as the fundamental principles of equality and non-discrimination, has been broadly interpreted to safeguard women's rights to living in dignity, to physical and mental health, and security.
17	(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.	Provides for the further protection against domestic violence, forced evictions and deprivation of any nature whether they emanate from State authorities or from natural or legal persons. The provision further enjoins the State to ensure that women receive adequate legal protection against such violations, including according women effective security of tenure and guaranteeing that women can live in security, peace and dignity.
23	(4) States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.	Provides for equality of rights and responsibilities in marriage, including equal inheritance rights for women and men. Women should enjoy equal rights in matters such as choice of residence, running of the household, education of the children and administration of assets.
26	All persons are equal before the law and are entitled without any discrimination to the equal	Provides equal protection of the law. States are under the

	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.	obligation to bring its laws and policies into conformity with the ICCPR's equality provisions.
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The Convention on the Elimination of All Forms of Discrimination against Women, 1979

The Convention on the Elimination of Discrimination against Women (CEDAW) has been described as the international bill of rights for women. The Convention addresses the various aspects of discrimination faced by women and provides measures aimed at ensuring the *de facto* and *de jure* equality of women and men and the overall protection of women against discrimination. CEDAW is a fundamental tool in the advancement of women's rights to housing, land and property.

The Committee on the Elimination of Discrimination against Women monitors implementation of CEDAW. The Optional Protocol to CEDAW authorises the Committee on Elimination of Discrimination against Women to receive and examine communications from individuals claiming to be victims of a breach of one of the provisions of the Convention by a party State.

CEDAW General Recommendation No. 21 (1994)

- Provides useful interpretations of various State obligations in line with the Convention relating to equality in marriage and family relations.
- Highlights the importance of culture and tradition in restricting the exercise of basic rights by women.
- Notes women's lack of legal autonomy in relations to financial matters, including access to credit, which limits their ability to hold property as sole owners or manage businesses.
- Notes that women's lack of legal autonomy also affects their ability to access litigation or legal advice to address violations of their rights.
- Addresses marital property and inheritance, noting that women are often denied equal ownership of marital property, either explicitly or in their inability to claim equal ownership where such rights are guaranteed.
- Recognises that law and custom regarding property and inheritance frequently result in serious discrimination against women, including failure to recognise equal ownership and inheritance rights for women.
- Highlights the fact that family laws in many states (including State parties to the Convention) continue to discriminate against women based on norms, customs and traditions.
- Calls on States to provide comment on legal or customary provisions relating to inheritance laws as they affect the status of women in their regular submissions to the Committee.

- Recommends the elimination of public/private distinctions, which often relegate women to the private sphere where discriminatory or restrictive custom and tradition often operate to deny women equal.

International Convention on the Elimination of all forms of Discrimination against Women		
Article	Text	Application
1	For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.	Discrimination is defined to include any distinction, exclusion or restriction on the ability of women to access adequate housing.
2, 2(f)	2 States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake 2(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; ...	Any existing laws, regulations, customs and practices which constitute discrimination against women on the basis of inequality of treatment are violations of the Convention.
3	States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.	Requires the State to ensure that women are given equal opportunities with men to realise their own potential in the political, social, economic and cultural fields.
5	States Parties shall take all appropriate measures (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.	This article recognises that social and cultural practices have more often than not been applied to the detriment of women and their ability to access, own and control housing, land and property. The State is obligated to take appropriate measures to eliminate such practices.

13	<p>States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular</p> <p>(a) The right to family benefits;</p> <p>(b) The right to bank loans, mortgages and other forms of financial credit;</p> <p>(c) The right to participate in recreational activities, sports and all aspects of cultural life.</p>	<p>Requires States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life in guaranteeing equal access to economic resources to ensure their economic empowerment.</p>
14 (2)	<p>(2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ...</p> <p>(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;</p> <p>(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.</p>	<p>Recognises the right of women in rural areas to equal access to adequate housing, land and property as well as economic and other productive resources.</p>
15	<p>(1) States Parties shall accord to women equality with men before the law.</p> <p>(2) States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.</p> <p>(3) States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.</p> <p>(4) States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.</p>	<p>Women are entitled to equal treatment in court (equality before the law) and should exercise equal rights with men in the administration of property. Women therefore have the right to own, manage, enjoy and dispose of property. Women are also entitled to parity with men in determining where they wish to live. Grants women equal autonomy.</p>

16	1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, (c) The same rights and responsibilities during marriage and at its dissolution; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.	Guarantees women equal rights for men during and at dissolution of marriage, including equal right to property. The definition of family covers all forms of families whether recognised by legal system, religion, custom or tradition. This article also safeguards the rights of women to equal inheritance.
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International Convention on the Elimination of All Forms of Racial Discrimination, 1965

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) recognises and protects housing rights of persons, including women, belonging to marginalised, racial and ethnic groups.

The Committee on the Elimination of Racial Discrimination monitors implementation of the CERD. The Committee publishes its interpretation of the Covenant through general recommendations (or general comments) on thematic issues and organises thematic discussions.

International Convention on the Elimination of All Forms of Racial Discrimination		
Article	Text	Application
5 (e) (iii)	In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:... (e) Economic, social and cultural rights, in particular... (iii) The right to housing;	Generally protects the right to housing of ethnic minorities, people of different nationalities, origin, colour and race without discrimination.

The Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child is the first legally binding international instrument that fully incorporates civil and political rights as well as economic, social and cultural rights. The Convention was adopted in recognition of the specific needs of children and to highlight the human rights of all children. The Convention recognises the right to an adequate standard of living for all children irrespective of sex.

The Committee on the Rights of the Child monitors implementation of the Convention on the Rights of the Child 1989 and its optional protocols on involvement of children in armed conflict and on sale of children, child prostitution and child pornography. The Committee publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues, and organises days of general discussion.

The Convention on the Rights of the Child		
Article	Text	Application
16 (1)	(1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.	Recognises the rights of children irrespective of sex to protections against acts such as forced eviction and domestic violence that adversely affect both women and children.
27	(1) States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. (2) The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. (3) States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.	Recognises the same rights of housing for children that women and men have and the responsibilities of parents, irrespective of their marital status, in matters relating to their children. The State is obligated, subject to prevalent national conditions, to assist both women and men in providing adequate housing.

Highlighted Regional Sources of the Right to Adequate Housing

League of Arab States, Revised Arab Charter on Human Rights

This Charter, though not yet in force, protects civil, political, economic, social and cultural rights. It upholds the right to non-discrimination, the right to equal treatment, and the right to privacy. More importantly, the Charter contains a provision on the right to own property and the right to housing. It also provides for a remedy if the rights enshrined in the instrument are breached.

League of Arab States, Revised Arab Charter on Human Rights

Article 3

(a) Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.

(b) The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enunciated in the present Charter so as to ensure protection against all forms of discrimination on any of the grounds mentioned in the preceding paragraph.

(c) Men and women have equal human dignity and equal rights and obligations in the framework of the positive discrimination established in favour of women by the Islamic Shariah and other divine laws and by applicable laws and international instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.

Article 11

All persons are equal before the law and have the right to enjoy its protection without discrimination.

Article 21

(a) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation.

(b) Everyone has the right to the protection of the law against such interference or attacks.

Article 23

Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 31

Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.

Article 38

Every person has the right to an adequate standard of living for himself and his family, one that ensures their well-being and a decent life, including food, clothing, housing, services and

the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

The African System

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa came into force in 2005. It provides important protections related to violence against women, and women's housing, land and property rights. The relevant provisions related to women's housing rights are provided below. The Articles of the Protocol related to violence against women are contained in the next section.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Article 1: Definitions

j. "Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.

k. "Women" means persons of female gender, including girls.

Article 2: Elimination of Discrimination against Women

1. States parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall

- a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
- b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination, particularly those harmful practices which endanger the health and general well-being of women;
- c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
- d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
- e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.

2. States parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Article 3: Right to Dignity

1. Every woman shall have the right to dignity inherent in a human being and to the

recognition and protection of her human and legal rights;

2. Every woman shall have the right to respect as a person and to the free development of her personality;

3. States parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women;

4. States parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

Article 4: The Rights to Life, Integrity and Security of the Person

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

2. States parties shall take appropriate and effective measures to

a) enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex whether the violence takes place in private or public;

b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;

c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;

d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;

e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;

f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women; ...

i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women.

Article 6: Marriage

States parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that

j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7: Separation, Divorce and Annulment of Marriage

States parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

Article 16: Right to Adequate Housing

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States parties shall grant to women, whatever their marital status, access to adequate housing.

Article 19: Right to Sustainable Development

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States parties shall take all appropriate measures to

- c) promote women's access to and control over productive resources such as land and guarantee their right to property.

Article 20: Widows' Rights

States parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- a) that widows are not subjected to inhuman, humiliating or degrading treatment.

Article 21: Right to Inheritance

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

The European Union

The Charter of Fundamental Rights has only declaratory status. It contains numerous equality and non-discrimination provisions as well as a clause on the right to housing.

Charter of Fundamental Rights of the European Union

Article 17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

Article 20: Equality before the law

Everyone is equal before the law.

Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Article 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 34: Social security and social assistance

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by community law and national laws and practices.

The Inter-American System

The American Convention on Human Rights was adopted by the Organization of American States in 1969.

American Convention on Human Rights

Article 1 - Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, “person” means every human being.

Article 11 - Right to Privacy

1. Everyone has the right to have his [or her] honor respected and his [or her] dignity recognized.

2. No one may be the object of arbitrary or abusive interference with his [or her] life, his [or her] family, his [or her] home, or his [or her] correspondence, or of unlawful attacks on his [or her] honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

Article 21 - Right to Property

1. Everyone has the right to the use and enjoyment of his [or her] property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his [or her] property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

Article 24 - Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 26 - Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights

implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

NOTE: *Article 26, when linked to the Charter of the Organization of American States, provides one of the clearest articulations of housing rights in the Americas. Article 34(k) of the Charter states:*

The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: (k) Adequate housing for all sectors of the population. The Charter has been interpreted as not containing rights in and of itself, per se, but rather as articulating standards. Article 26 of the Convention, however, establishes the rights implicit in those standards.

As such, Article 26 of the Convention, when seen in concert with Article 34(k) of the Charter, could be effectively read to state:

The States Parties undertake to adopted measures ... with a view of achieving progressively ... the full realization of the right ... [to] adequate housing for all sectors of the population.

Article 26 of the Convention thereby recognizes the right to adequate housing in the Inter-American system for the protection of human rights

Highlighted Regional Sources on Violence against Women

The African System

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa came into force in 2005.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Article 1 (j)

Violence against women means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peacetime and during situations of armed conflicts or of war.

Article 3 (4)

States parties shall protect women from all forms of violence, particularly sexual and verbal violence

Article 4 (2)

State parties shall take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex, whether the violence takes place in private or public

Article 11

States parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide, and/or crimes against humanity and that their perpetrators are brought to justice before a competent jurisdiction.

The Inter-American System

The Convention of Belém do Pará is the sole legally binding international instrument on violence against women. It is a significant treaty because it grants women a right of petition. NGOs can also file complaints with the Inter-American Commission of Human Rights.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belém do Pará”

Article 2

Violence against women shall be understood to include physical, sexual and psychological violence

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the State or its agents regardless of where it occurs.

Article 3

Every woman has the right to be free from violence in both the public and private spheres.

Article 4

Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others,

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The right to have the inherent dignity of her person respected and her family protected;
- f. The right to equal protection before the law and of the law;
- g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights.

Article 5

Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognise that violence against women prevents and nullifies the exercise of these rights.

Article 6

The right of every woman to be free from violence includes, among others,

- a. The right of women to be free from all forms of discrimination; and
- b. The right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.

Article 7

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. establish fair and effective legal procedures for women who have been subjected to violence, which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

Article 8(d)

The States Parties agree to undertake progressively specific measures, including programs

- a. to provide appropriate specialised services for women who have been subjected to violence, through public and private sector agencies, including shelters, counselling services for all family members where appropriate, and care and custody of the affected children.

Article 9

With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.

Highlighted National Sources

India

The Protection of Women From Domestic Violence Act, 2005 NO. 43 of 2005 [13 Sept. 2005]

This Act aims to shield wives or female live-in partners from domestic violence. Domestic violence consists of actual or the threat of physical, sexual, verbal, emotional and economic abuse. *One of the salient features is women's right to housing. The Act grants women the right to live in the marital or shared home even if she lacks any title or right in the home. The law also protects family members (e.g. sisters) who reside as a family. The right to housing is ensured.*

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Section 3 (Chapter 3) Definitions.

(a) "Aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(f) "Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(s) "Shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

Chapter II Domestic Violence

Section 5 (Chapter 5) Definition of domestic violence.

3. Definition of domestic violence -

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental

or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Section 21 (Chapter 21) Right to reside in a shared household.

17. Right to reside in a shared household.

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

Hindu Succession (Amendment) Act 2005²⁸⁷

The Hindu Succession (Amendment) Act aims to eliminate the 1956 Hindu Succession Act's gender-biased articles. Under Section 6, the Amendment grants daughters and sons equal rights to inherit property whether or not the daughter is married. Pursuant to Section 6:²⁸⁸

1. The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son;
2. The daughter has the same rights in the coparcenary property as she would have had if she had been a son;
3. The daughter shall be subject to the same liability in the said coparcenary property as that of a son; and any reference to a Hindu Mitakshara coparceners shall be deemed to include a reference to a daughter of a coparcener;
4. The daughter is allotted the same share as is allotted to a son;
5. The share of the pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter.

²⁸⁷ In India, which norms to apply to certain groups of people hinges on their religions. The Hindu Succession Act 1956 and this Amendment apply to "Hindus, Sikhs, Buddhists and Jains." As regards women's property rights, the applicable law varies based on their faith, marital status, from what section of India she originates and her ethnic group. 'Dipika Jain, Women, Property Rights and HIV in India,' *Insight Exchange*, (Mar. 2006), p. 10. See: www.kit.nl/net/KIT_Publicaties_output/showfile.aspx?e=1055

²⁸⁸ Government of India, Press Information Bureau, Ministry of Justice, 'Hindu Succession (Amendment) Act comes into Force Today,' Friday, 9 Sept. 2005. See: http://pib.nic.in/release/rel_print_page.asp?relid=11899 A coparcener is "one of two or more persons sharing an inheritance; a joint heir." "Coparcener", The American Heritage® Dictionary of the English Language, Fourth Edition. Houghton Mifflin Company, 2004 (26 Oct. 2007). See: <http://dictionary.reference.com/browse/coparcener>

<u>Hindu Succession Act 1956</u>	<u>Hindu Succession (Amendment) Act 2005</u>
The Deceased Man's Separated Property	
Equal shares for class I heirs, viz. son, daughter, widow, mother and specified heirs of predeceased sons and daughters.	No change, except for expanding the list of class I heirs for gender equality (see further below).
The heirs of both sexes have full rights to alienate inherited property.	No change.
The <i>Mitaksara</i> Joint Family Property (Section 6)	
Class I heirs (male and female) as specified above have equal claims in a man's "notional" share of the undivided joint family property. A man can, however, will away his "notional" share.	No change, except in the specification of class I heirs (see further below).
Son has <i>additional</i> independent birth right in joint family property, as a coparcener. Daughters cannot be coparceners.	Modified Section 6: Sons and daughters both have independent birth rights (and liabilities) as coparceners in joint family property. [These shares cannot be willed away by the father.]
Agricultural Land (Section 4 (2))	
Inheritance of agricultural land is subject to state-level tenorial laws, and not to the HSA. Many of the tenorial laws specify inheritance rules that are highly gender unequal.	Inheritance rights in all agricultural land are subject to the HSA (overriding state laws inconsistent with the Act), and so effectively are now gender equal.
Family Dwelling House (Section 23)	
In a dwelling house wholly occupied by members of the deceased's family, no female heir can claim partition, "until the male heirs choose to divide their respective shares." Daughters have only rights of residence, and then only if unmarried, or deserted, separated or widowed.	Section 23 deleted: Now daughters (unmarried or married) have the same rights as sons to reside in and to claim partition of the parental dwelling house.

Certain Categories of Widows (Section 24)	
The widow of a pre-deceased son, or of a predeceased son of a predeceased son, or of a brother, is not entitled to inherit the intestate's property as a widow, if on the date the succession opens she has remarried.	Section 24 deleted: The mentioned categories of widows can inherit even if they have remarried.
Definition of Class I Heirs (Schedule: reference to Section 8)	
The class I heirs of a Hindu male include the children of predeceased children, but these are recognised up to two generations for predeceased sons, and up to only one generation for predeceased daughters.	Schedule modified to include as class I heirs the children of predeceased children, going down to two generations for both sons and daughters.
Testamentary Rights (Section 30)	
Both men and women have full rights to will away their property, including their shares in joint family property.	No change

In 2000, COHRE first published its groundbreaking report *Sources 5: Women and Housing Rights*. The original Sources 5 presented, for the first time ever, a unified compilation of all of the major international legal resources which, at the time, recognised the housing rights of women. Even now, the publication provides important information on women's housing rights under key international human rights treaties, and highlights some of the fundamental documents in the cannon of women's housing rights advocacy. Recent years have seen even more major advancements in the protection of women's housing rights at national, regional and international levels. In this Second Edition of Sources 5, COHRE presents updated information on just these advancements, focusing on critical issues which have emerged in the area of women's housing rights over the past decade.



The Centre on Housing Rights and Evictions (COHRE) is an international human rights organisation which promotes practical legal and other solutions to endemic problems of homelessness, inadequate housing and living conditions, forced evictions and other violations of economic, social and cultural rights throughout the world. To this end, COHRE promotes the creative use and application of international human rights law.

COHRE established its Women and Housing Rights Programme (WHRP) in 1998, when it became clear that a gender-neutral approach was not sufficient to fully ensure that women's specific needs and concerns with respect to the right to housing are understood, addressed and championed. It is the only international human rights programme solely focused on ensuring the right to housing specifically for women.

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Housing Rights for Everyone, Everywhere