

**WOMEN'S EQUAL RIGHTS TO HOUSING, LAND  
AND PROPERTY IN INTERNATIONAL LAW.**



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## 1. ABOUT THIS DOCUMENT

Women's equal rights to adequate housing, land and property are well elaborated under international human rights law but are often elusive in practice. This document is a reference guide to international human rights standards identifying both the substance of women's rights as well as the commitments made by States with regard to improving women's rights to adequate housing, land and property.

### 1.1 Why Human Rights

The international human rights system aims to be an enabling framework through which every individual's entitlements and the corresponding State can be addressed for achieving policy goals. For example Goal 7, Target 11 of the *Millennium Development Goals* (MDGs), adopted by the United Nations General Assembly on 18 September 2000, calls for governments to achieve by 2020 "a significant improvement in the lives of at least 100 million slum dwellers". This would require, among other actions, better access to land, property and housing, an improvement in their security of tenure, protection from forced eviction and a range of other rights<sup>1</sup>. This document identifies goals and expectations of the global community in the areas of women's equality and empowerment with respect to land, property and housing rights.

Rights based approaches help identify where the rights come from and thereby assert their validity beyond moral or economic arguments<sup>2</sup>. They assert that everyone everywhere is entitled to certain basic rights including equality in pursuing the rights to adequate housing, land and property<sup>3</sup>. Human rights standards also establish various levels of obligations of States to respect, to protect and to fulfill these rights<sup>4</sup>. These obligations are supplementary and complementary to the national protection for it is ultimately the concerned State's responsibility to make rights realizable. Yet, the Zimbabwean court judgement in *Magaya v. Magaya* in 1999 - proposing that the 'nature of African society' dictates that women are not equal to men in the context of inheritance rights - may be nationally valid but fails to meet the basic human rights benchmarks<sup>5</sup>. On the other hand, the Nigerian court is using human

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<sup>1</sup> See Amnesty International (2006) 'Africa: Forced evictions reach crisis levels', Press release, AI Index: AFR 01/009/2006 (Public), 4 October 2006.

<sup>2</sup> See Bobbio, N (1996) *The Age of Rights* (Cambridge: Polity Press); Donnelly, J (1998) 'Human Rights: A New Standard of Civilization?' 74 *International Affairs* 1-24. See also Freeman, M (1994) 'The Philosophical Foundations of Human Rights,' 16 *Human Rights Quarterly* 491-514.

<sup>3</sup> Tomasevski, K (2005) Strengthening Pro-Poor Law: Legal Enforcement of Economic and Social Rights Overseas Development Institute: Rights in Action  
<http://www.odi.org.uk/rights/Meeting%20Series/EcoSocRights.pdf>

<sup>4</sup> Eide, A. (1989) 'Realization of social and economic rights and the minimum threshold approach', Volume 10: 1-2, *Human Rights Law Journal*, 35.

rights principles in finding an Igbo custom to be discriminatory and in violation of the right to marry and freedom of association<sup>6</sup>.

It is insufficient to note that women's equal rights to land, property and housing exist - without clarifying their nature and scope as well as the meaning of the operative terms. Thus, a closer look at human rights standards assists in ascertaining concepts such as 'right to adequate housing' or protection from 'forced eviction'<sup>7</sup>. The human rights infusion into land rights debates has provided normative depth and sophistication, clarification of expectations and standards relating to land rights as well as strategies in seeking formulations of accountability and redress. Yet, the individual civil rights human rights approach has its limits when it ignores family and group rights or the potential benefits of customary laws<sup>8</sup>. Human rights articulation cannot substitute development based approaches<sup>9</sup> or broader systematic objectives such as reform of land management and administration systems which are required for rights to be sustainable.

The role of law in bringing about social reform or women's empowerment also varies from country to country<sup>10</sup>. Human rights advocacy can make a difference only where a variety of factors including the political will, institutions, ability to resist patriarchal attitudes and strong networks exist<sup>11</sup>. This compilation does not outline the practical issues faced by women in accessing their property rights arising out of gender biased laws, gender deprecating customary and religious norms, patriarchal attitudes and social structures<sup>12</sup>. It merely

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<sup>5</sup> Ncube, W (1987) 'Underprivilege and Inequality: The Matrimonial Property Rights of Women in Zimbabwe' in A. Armstrong and W. Ncube (eds.) *Women and Law in Southern Africa*, (Harare: Zimbabwe Publishing House).

<sup>6</sup> See *Muojekwu v. Ejikeme* (2000) 5 NWLR 402.

<sup>7</sup> See for example United Nations Committee on Economic, Social and Cultural Rights, General Comment 7 on the right to adequate housing: forced evictions E/C.12/1997/4 (1997). See also UN-HABITAT *Compilation of United Nations Resolutions on Housing Rights* (Nairobi: UN-HABITAT, 2ed 2005)

<sup>8</sup> Palmer, R (2003) Opening Welcome, Women's Land Rights in Southern and Eastern Africa: FAO/Oxfam Workshop, Pretoria, South Africa, 17-19 June 2003.

<sup>9</sup> Jackson, C (2003) 'Gender Analysis of Land: Beyond Land Rights for Women?' Volume 3:4 *Journal of Agrarian Change*, 453. See also Nowak, M (1993) 'The Human Right to Development versus Human Rights based Development Cooperation', in: R. Tetzlaff (ed.), *Human Rights and Development*, (Bonn: Eine Welt Stiftung Entwicklung und Frieden).

<sup>10</sup> Rwezaura, B. (1990), "Researching on the Law of the Family in Tanzania, Some Reflections on Method, Theory and the Limits of Law as a Tool for Social Change," in A. Armstrong (ed.), *Perspectives on Research Methodology* (Harare: WLSA)

<sup>11</sup> Hathaway, O (2002) 'Do Human Rights Treaties Make a Difference?' 111 *Yale Law Journal* 1870-2042

<sup>12</sup> See Sait, S and Lim, H (2006) *Land, Law and Islam: Property and Human Rights in the Muslim World* (London: Zed)

identifies the international human rights tools as a significant part of the strategy by which women empower themselves. At the same time, it follows that the results of human rights approaches may be varied and complex and would have to be adapted to context<sup>13</sup>.

## 1.2 Why Women's Rights

Adopting a pro-poor developmental or gender neutral human rights approach fails to appreciate the particular needs and concerns of women. Though statistics are generally not complete, it is well recognised that women's access to land, property and housing is grossly disproportionate to that enjoyed by men. In many countries, women are systematically denied ownership of property and inheritance rights as well as adequate housing, and are particularly vulnerable to forced evictions<sup>14</sup>. Women's rights to property face particular challenges ranging from the impact of customary laws, traditional practices and religious dogma<sup>15</sup> to HIV/AIDS<sup>16</sup>. Their situation is exacerbated in situations such as conflict or displacement and they often face further discrimination owing to their age, ethnicity, race, religion and sexuality<sup>17</sup>. Contemporary trends such as globalization, changing employment and international trade patterns, and the food crisis in parts of Southern and Eastern Africa have further debilitated women. In fact, the benefits of land reform have largely bypassed women<sup>18</sup>.

A systematic study of women's rights also takes into consideration gender dynamics. There is considerable plurality and diversity in the contexts, experiences, needs, priorities and voices among women and equal access to land is not merely a gender issue but one of class, race, age and a variety of other factors. Women are not a homogenous group and particular issues such as HIV/AIDS, domestic violence, displacement, conflict, globalization and structural adjustment policies could further mitigate against them<sup>19</sup>. It is through making women

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<sup>13</sup> Wanyeki, L M (2003) *Women and Land in Africa: Culture, Religion, and Realizing Women's Rights* (London: Zed Books)

<sup>14</sup> Centre on Housing Rights and Evictions (COHRE) (2004). *Bringing Equality Home: Promoting and Protecting Inheritance Rights of Women, A Survey of Law and Practice in Sub-Saharan Africa* (Geneva: COHRE)

<sup>15</sup> Tilley, J (2000) 'Cultural Relativism' 22 *Human Rights Quarterly* 501-547

<sup>16</sup> Strickland, R. (2004). *To have and to hold: women's property and inheritance rights in the context of HIV-AIDS in Sub-Saharan Africa*. (New York: ICRW Working Paper)

<sup>17</sup> Englebert, B and Palmer, R (2003), *Women's Land Rights in Southern and Eastern Africa: A Short Report on the FAO/Oxfam Workshop, Pretoria, South Africa, 17-19 June 2003*

<sup>18</sup> Manji, A (1998) 'Gender and the politics of the land reform process in Tanzania'. Volume 36, Issue 4 *Journal of Modern African Studies* 645-667.

<sup>19</sup> Sparr, P (1994) *Mortgaging Women's Lives: Feminist Critiques of Structural Adjustment*, (London and Atlantic Highlands, N.J.: Zed Books); United Nations Development Fund for Women (UNIFEM) (2001) *Women's land and property rights in Situations of Conflict and Reconstruction A Reader based on the Feb, 1998 Inter-Regional Consultation in Kigali, Rwanda* (Kigali: Rwanda)

visible and addressing their concerns that obstacles to women's empowerment can be removed<sup>20</sup>.

Women's rights to adequate housing, land and property are also to be seen holistically in the endeavour to promote sustainable and equitable urbanization. These rights cannot be viewed in isolation from issues such as public safety, gendered violence, political participation, equal access to healthcare, education, natural resources, livelihood options, credit, technology and decent work<sup>21</sup>. Rights to land, property and housing are to be read alongside other rights-since human rights are universal, indivisible and inter-related.<sup>22</sup>

### 1.3 Why Gender Equality

This document traces the development of the principle of gender equality through the *Habitat Agenda* where it constitutes one of the seven commitments<sup>23</sup> as expanded through numerous treaty provisions, resolutions, declarations and platforms of action. The principle is reiterated in the various non-discrimination provisions of international covenants, and explicitly prescribed in the *Convention on the Elimination of All Discrimination Against Women (CEDAW)*. Furthermore, gender equality is one of the principles laid down in the *Millennium Declaration* and finds elaboration in the *World Summit Outcome 2005*. The relationship between women's rights, gender equality and the empowerment of women is well established in the field of human settlements and is explored here in the context of land, property and housing rights.

The term gender 'equality' or women's 'equal' rights recognises that all human beings, both men and women, are able to make choices without the limitations set by stereotypes, rigid gender roles and prejudices<sup>24</sup>. The divergent needs and expectations of women and men need to be considered and met equally. The concept of gender equality has faced some resistance from States who oppose sameness between men and women as a threat to traditional or religious social and family structures.

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<sup>20</sup> Deere, C. and Leon, M. (2001) *Empowering Women: Land and Property Rights in Latin America* (Pittsburgh: University of Pittsburgh Press).

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