



RIGHTS AND REALITY



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by

Marjolein Benschop

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UN-HABITAT
Land and Tenure Section
Shelter Branch
P.O. Box 30030
Nairobi, Kenya
Tel. (+254 -2) 62 38 58
Fax (+254-2) 62 42 65
www.unhabitat.org
Email: landtenure@unhabitat.org

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FOREWORD



After decades of struggle, most constitutions in the world now enshrine women's equal rights. Although the fundamental human rights of women are recognised, many women still suffer from the continued consequences of traditional prejudices and practices.

This is nowhere more evident than in the area of ownership and inheritance of land and other property. Women's equal rights to land, housing and property are firmly anchored in various international human rights instruments, including the *Habitat Agenda* and the *UN Declaration on Cities and Other Human Settlements in the New Millennium*. While these rights are recognised at the international level, their translation into domestic legislation and policies and their local implementation remain difficult in most parts of the world.

Concerned about the urgent need to redress this gap between rights and reality, UN-HABITAT is eager to draw attention to the problems confronted by women all over the world caused by their lack of equal access to economic resources, in particular land and property. The result of this can be seen in the increasing feminisation of poverty and the hardship suffered by women faced with exclusion and eviction.

The *Habitat Agenda*, adopted at the Habitat II conference in 1996, commits 171 governments to providing adequate shelter for all, and, in particular, to providing women with equal access to housing and economic resources. Equal access in this case includes the right to inheritance and ownership of land and other property. The *Habitat Agenda* also commits its signatories to gender equality. In support of these commitments, UN-HABITAT's Global Campaign for Secure Tenure emphasises women's security of tenure, while the Global Campaign on Urban Governance emphasises women's participation in governance and decision-making. This book is published in conjunction with these two campaigns.

In East Africa, women have been advocating for rights equal with those of men to own, co-own and control land, housing and property. They have achieved some measure of success on various fronts. However, there still are many factors that limit women's access to land and property, even when positive legislation exists. One constraint has been lack of information and data. This book, *Rights and Reality*, addresses this gap through detailed analysis of existing legislation in Uganda, Tanzania and Kenya. On the basis of this analysis, recommendations for legal reform and for further implementation of the laws are made. The study also partly describes the governance structures in these three countries and affirmative action policies for women's representation in legislative and government positions. Last but not least, it examines the role of women's organisations in effecting positive legal reform and in implementing women's equal rights at community level.

The issue of women's equal rights to land, housing and property in East Africa is still evolving. Therefore, the reader should keep in mind that the information contained in this report is neither exhaustive nor static. We trust that our partners will continue to keep us updated on new developments on the ground. In the meantime, we hope this publication will help all our partners in the ongoing struggle to ensure women's equal access to, rights in and control over land, housing and property.



Anna Kajumulo Tibaijuka
Executive Director
UN-HABITAT

Nairobi, April 2002

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EXECUTIVE SUMMARY

“Stressing that the impact of gender-based discrimination and violence against women on women’s equal ownership of, access to, and control over land and the equal rights to own property and to adequate housing is acute (...)

- 1. Affirms that discrimination in law against women with respect to having access to, acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women’s human right to protection against discrimination***
- 2. Reaffirms women’s right to an adequate standard of living, including adequate housing ...***
- 5. Urges States to design and revise laws to ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance ...”***

From: Commission for Human Rights, Resolutions 2000/13 and 2001/34

While traditionally, women in East Africa merely had access to land through male relatives, social rules guarded against exclusion of women from land. Colonial influences such as individualisation of land tenure and changing gender relations contributed to an erosion of the traditional protection mechanisms. Women’s position became more vulnerable. Arbitrary eviction of women from land, especially women in polygamous marriages, divorced women and widows, has increased in the past decades. As the feminisation of poverty grows, women also face increasing constraints in obtaining access to affordable and adequate housing.

Up to 1979, women’s equal rights to land, housing and property were implicitly recognised as human rights. In 1979, the landmark Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted. This Convention has formed the basis for an increasing focus on the continuing violations of women’s human rights and on the need to adopt specific provisions that explicitly recognise and enforce women’s human rights as equal with those of men. Women’s equal rights to security of tenure (whether through purchase, co-ownership, lease, rent, occupancy right or inheritance) regarding land, housing and property are now firmly anchored in human rights law. This includes women’s right to control such land or other property on equal terms with men. A full overview of the

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